

4th Amendment Search and Seizure in Public Schools

by

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Public School Students DO Have a Constitutional Right to Privacy

- Students do not shed their constitutional rights at the school house doors (*Tinker v. Des Moines*, 393 U.S. 503 (1969)).
- Boards of Education are NOT excepted (*West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943)).
- Public school administrators are state actors for purposes of the 4th Amendment and are subject to the constitutional prohibition on unreasonable searches and seizures (*New Jersey v. T.L.O.*, 469 U.S. 325 (1985)).

Liability for Illegal Search

- Section 1983
- What is the standard?
- The qualified immunity of school personnel does NOT protect school agents against liability if their actions are excessively intrusive of students' privacy.
- If school officials deny a student his constitutional rights but does so *in the good faith fulfillment of school responsibilities and not in ignorance of and disregard for established indisputable principles of law*, then no liability will occur.

4th Amendment

- The right of people “to be secure in their persons, houses, papers and effects.”
- It protects persons from unreasonable searches and seizures.
- A search cannot be instituted without the government showing probable cause or giving evidence that a search is necessary.
- The search must be specific, describing the place to be searched and the articles to be seized.
- A judge is interposed between the individual and the government.

Types of Searches

- **Suspicionless**
 - Lockers
 - Canine
 - Metal detectors
 - Field trips
 - Group searches
 - Drug testing
- **Reasonable Suspicion**
 - Person and property
 - Vehicles
 - Strip searches
 - Electronic storage devices

New Jersey v. T.L.O. (1985)

- The legality of a search of a student should depend on the reasonableness, under all circumstances, of the search adhering to a *two-step inquiry*.
- *Whether the search was justified at its inception*. The inception of the search is the point at which reasonable suspicion comes into play. Was the motivation for the search reasonable in light of the information obtained by the school official?
- *The reasonableness of the search itself*. The measures adopted for the search must be reasonably related to the objectives of the search (specificity) and not excessively intrusive in light of the age and gender of the student and the nature of the infraction.

Guidelines for a Search

- School official must have some evidence regarding the particular situation in order to establish **reasonable suspicions** at the **inception of the search**.
- **Reasonable suspicion** is a belief or opinion based on the facts or circumstances which include reports and observations that raise a moderate chance of finding evidence of wrongdoing. What is reasonable depends on the context within which the search takes place.
- A search must be supported by **specificity** as to the offense and by a **particularized knowledge** as to where the illegal contraband is located (scope) as well as the identity of the offending student (individualized). Some individualized suspicion is essential as a prerequisite to a constitutional search.
- Courts will consider the **magnitude of the offense** and extent of the **intrusiveness** on the student's privacy when evaluating whether the search is reasonable in light of the age and gender of the student.

Suspicionless

- Lockers
- Canine
- Metal detectors
- Field trips
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- Drug testing

Suspicionless

- Special needs are required to conduct random suspicionless (*absence of individual suspicion*) searches. Three factors are looked at:
 - *The student's legitimate expectation of privacy,*
 - *The intrusiveness of the search, and*
 - *The severity of the school system's needs that were met by the search.*
- Balancing test: reasonable expectation of privacy versus the need to maintain order in school

Lockers

- When school policies dictate that lockers are private (or are silent), there is a reasonable expectation of privacy.
- When school policies dictate that lockers are not private, there is a de minimis expectation of privacy.
 - *Lockers are property of the school*
 - *School retained control over the lockers*
 - *Subject to periodic general inspections at any time, for any reason, with or without notice*
- Generally, most courts have concluded that no expectation of privacy exists for the search of school lockers.

State of Iowa v. Jones (2003)

- Annual, school wide cleanout of lockers permissible despite student's privacy interest and lack of individualized suspicion.
- In assessing *the nature of the privacy interest*, it is imperative to remember this controversy arose within the school context where the State is responsible for maintaining discipline, health, and safety.
- The locker search was *not overly intrusive* in light of the underlying governmental interest. The scope of the search supported by underlying purpose.

Canine Searches

- The use of trained dogs for the exploratory sniffing of lockers is generally upheld.
- Absent individual suspicion, the sniffing of students is too intrusive and not reasonable.
- The sniffing of cars is generally upheld.
- Does not require individualized suspicion.

Metal Detector Searches

- Generally upheld based upon reasonable rationale that such is necessary for a safe school environment (especially for threats of very dangerous activities).
- An administrative search is reasonable when the intrusion involved in the search is no greater than necessary (deemed to be minimally intrusive) to satisfy the governmental interest underlying the need for the search.

Field Trip Searches

- Pre-trip inspection of luggage and personal belongings generally upheld, especially if consent was obtained in writing and prior notice (*Desilets v. Clearview Regional (N.J. Super. 1993)*).
- For overnight trips, room checks (with students present) have generally been upheld, especially if consent was obtained in writing and prior notice.

Group Searches

Doe v. Little Rock School District, 380 F.3d 349 (8th Cir. 2004)

- Random, suspicionless searches of students' persons and belongings, book bags etc., is unconstitutional.
- Review must consider (1) *the scope of the legitimate expectation of privacy at issues*, (2) *the character of the intrusion that is complained of*, and (3) *the nature and immediacy of the governmental concern*.
- Court asserted students are entitled to expect some degree of privacy in the personal items that they bring to school. Also, they found that the situation was not so dire that students in the schools may claim no legitimate expectation of privacy.
- The character of intrusion pervasive since results were turned over to law enforcement.
- School district failed to demonstrate *special circumstances*.

Thompson v. Carthage School District, 87 F.3d 979 (8th Cir. 1996)

- Bartel and science teacher Ralph Malone conducted the search by bringing each class of students to Malone's classroom. The students were told to remove their jackets, shoes and socks, empty their pockets, and place these items on large tables in the science room. Bartel and Malone then checked the students for concealed weapons with a metal detector. Malone would pat down a student if the metal detector sounded, as it often did because of the metal brads on the student's blue jeans. Malone and Bartel also patted the students' coats and removed any objects they could feel in the coat pockets.

Thompson v. Carthage School District, 87 F.3d 979 (8th Cir. 1996)

- Malone searched Lea's coat pocket and found a used book of matches, a match box, and a cigarette package. He discovered "a white substance" in the match box. A test revealed that the white substance was crack cocaine.
- *The inquiry focuses on whether the search was justified at its inception, whether its scope was reasonably related to the circumstances justifying a search and the extent of the privacy intrusion.*
- Principal Bartel had two independent reasons to suspect that one or more weapons had been brought to school that morning. *Though she had no basis for suspecting any particular student, this was a risk to student safety and school discipline that no "reasonable guardian and tutor" could ignore. Bartel's response was to issue a sweeping, but minimally intrusive command.*

*Thompson v. Carthage School
District, 87 F.3d 979 (8th Cir. 1996)*

- The district court further concluded that the scope of the search was not reasonably related to its original purpose because Lea's pockets were searched after the metal detector had revealed that he did not possess a gun or knife. But in a school setting, Fourth Amendment reasonableness does not turn on "hairsplitting argumentation." If Lea had emptied his own coat pocket, the cigarette package and match box would have become contraband in plain view.

Drug Testing

Vernonia School District 47J v. Acton (1995)

- Legitimate privacy expectations are even less with regard to student athletes.
- The privacy interests compromised by the process of obtaining the urine sample are negligible.
- The decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met by the search supports constitutionality.
- Individualized suspicion is not always required for school searches.

*Board of Education of Independent School District
No. 92 of Pottawatomie County v. Earls (2002)*

- A finding of individualized suspicion may not be necessary when a school conducts drug testing.
- The need to prevent and deter the substantial harm of drug use provides the necessary immediacy for a school testing policy.
- Policy requiring all students who participated in competitive extracurricular activities to submit to a drug test was reasonable.

Miller v. Wilkes (Cave City School Board of Education), 172 F.3d 574 (8th Cir. 1999)

- Beginning with the 1997-98 school year, the School District instituted a "Chemical Screen Test Policy for Cave City Schools," which provides for random testing of urine samples from students in grades seven through twelve.
- Pathe Miller has averred that he wishes to participate, and would participate, in such school activities as the Radio Club, prom committees, the quiz bowl, and school dances, among others. Pathe and Troy Miller, however, refuse to consent to Pathe's participation in the random testing program and therefore Pathe is not permitted to engage in any extracurricular activities.
- Upheld drug-testing program for athletes and students in extra-curricular activities .
- *The Court saw no reason that a school district should be compelled to wait until there is a demonstrable problem with substance abuse before taking action.*

Reasonable Suspicion

- Person and property
- Vehicles
- Strip searches
- Electronic storage devices

New Jersey v. T.L.O. (1985)

- The legality of a search of a student should depend on the reasonableness, under all circumstances, of the search adhering to a *two-step inquiry*.
- *Whether the search was justified at its inception*. The inception of the search is the point at which reasonable suspicion comes into play. Was the motivation for the search reasonable in light of the information obtained by the school official?
- *The reasonableness of the search itself*. The measures adopted for the search must be reasonably related to the objectives of the search (specificity) and not excessively intrusive in light of the age and gender of the student and the nature of the infraction.

Guidelines for a Search

- School official must have some evidence regarding the particular situation in order to establish **reasonable suspicions** at the **inception of the search**.
- **Reasonable suspicion** is a belief or opinion based on the facts or circumstances which include reports and observations that raise a moderate chance of finding evidence of wrongdoing. What is reasonable depends on the context within which the search takes place.
- A search must be supported by **specificity** as to the offense and by a **particularized knowledge** as to where the illegal contraband is located (scope) as well as the identity of the offending student (individualized). Some individualized suspicion is essential as a prerequisite to a constitutional search.
- Courts will consider the **magnitude of the offense** and extent of the **intrusiveness** on the student's privacy when evaluating whether the search is reasonable in light of the age and gender of the student.

Search of Person or Property

- Student had only a minimal expectation of privacy regarding the outer touching of his school bag when school personnel heard a loud thump when the student placed his bag on a metal table (*In re Gregory M.*, 82 *N.Y.2d* 588 (1993)).
- Scope of search of student was unreasonable when, based on information that either she or another student had a knife at school, assistant principal searched student's purse and, finding no knife, unzipped a small side pocket inside the purse where marijuana was found (*T.J. v. State*, 528 *So.2d* 1320 (1989)).

Vehicle Search

- Reasonable suspicion is required.
- Administrators have the right to search for drugs in a student's car without a search warrant if it is parked on school property and if the administrator has reasonable grounds that evidence of illegal activity will be found in the car (*State v. Best, No. A-77 September Term 2008 (N.J. 02/03/2010)*).
- Greater expectation than that of lockers, but see *State v. Schoegel, 2009 Wi App 85 (2009)*.

Strip Searches

- The more intrusive the search, the more necessary it is to show probable cause rather than merely reasonable suspicion.
- Generally impermissible when dealing with money, especially small amounts.
- Generally permissible when dealing with weapons.
- Mixed views related to drugs, but increasing latitude provided to school officials.

Strip Searches

- Strip searches of students can be permissible if they are justified at their inception and are performed with reasonableness and in the least intrusive manner possible.
 - The student's legitimate expectation of privacy,
 - The intrusiveness of the search, and
 - The severity of the school system's needs that were met by the search.

Phaneuf v. Fraikin (2006)

- The seniors at Plainville High School were scheduled to attend their senior class picnic at an off-campus location. Prior to their departure, school officials performed a pre-announced search of all students' bags for security purposes. This search revealed a package of cigarettes in Phaneuf's purse. She was legally entitled to possess them since she was over the age of eighteen, but school regulations prohibited the possession of cigarettes by students on school grounds.
- A student reported that Phaneuf told her and other students that she possessed marijuana. Phaneuf told her that she planned to hide the marijuana "down her pants" during the mandatory bag check. Phaneuf had a history of disciplinary problems, though none involved drug possession.

Phaneuf v. Fraikin (2006)

- Once at the nurse's office, Cipriano instructed the school's substitute nurse, to conduct a search of Phaneuf's underpants. Cipriano ordered nurse Fraikin to "open and check" that area. Phaneuf's mother arrived at the school she expressed objections to the search but was told that if she refused to participate in the search, school officials would call the police. Phaneuf's mother conducted the search. Phaneuf first raised her shirt and pulled down her bra to show that nothing was concealed there. Phaneuf then dropped her skirt to the floor, around her ankles. Phaneuf then pulled her underpants away from her body and turned around so that her mother could view her buttocks.
- The search did not reveal marijuana.

Phaneuf v. Fraikin (2006)

- **First**, the search must be justified at its inception. Under ordinary circumstances, a search of a student by a teacher or other school official will be justified at its inception when there are *reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school*. The requirement of reasonable suspicion is not a requirement of absolute certainty but only of sufficient probability.
- **Second**, the student strip search must be reasonably related in scope to the circumstances which justified the interference in the first place. A search will be permissible in its scope when the measures adopted are reasonably related to the objective of the search and *not excessively intrusive in light of the age and sex of the student and the nature of the infraction*.

Phaneuf v. Fraikin (2006)

- The question then is whether the school officials had a reasonably high level of suspicion that Phaneuf had marijuana on her person to justify an intrusive, potentially degrading strip search. Looking first at those that might have created a reasonable suspicion that such a search was justified at its inception. Base our determination on, only those facts known to the school officials prior to the search.
- School officials point to four factors they contend created the reasonable suspicion required to justify the search:
 - (1) *the tip from a fellow student,*
 - (2) *Phaneuf's past disciplinary problems,*
 - (3) *the suspicious manner of her denial, and*
 - (4) *the discovery of cigarettes in her purse.*

Phaneuf v. Fraikin (2006)

- Informant's tip and discovery of cigarettes in students' purse could not alone establish reasonable suspicion justifying strip search. Informants' tips may vary greatly in their value and reliability.
- A student's past history of drug use can be a factor adding to the mix in a school official's decision to conduct a strip search. Disciplinary problems by themselves are not necessarily indicia of drug abuse, because most school discipline problems do not involve drug abuse, although many of the most serious do.
- The discovery of the cigarettes and lighter has such a tenuous connection to the alleged marijuana on her person so as to be of relatively little consequence in deciding whether the strip search for drugs was reasonable.
- What may constitute reasonable suspicion for a search of a locker or even a pocket or pocketbook may fall well short of reasonableness for a nude search.
- As the intrusiveness of the search intensifies so does the standard of reasonableness.

Cornfield v. Consolidated High School District No. 230 (1993)

- Strip search of student was reasonable.
- Two prong analysis: (1) The search must be *justified at its inception*. (2) The search must be *permissible in scope*.
- The measure adopted must be reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.
- Whether a search is reasonable will vary according to the context of the search.

Cornfield v. Consolidated High School District No. 230 (1993)

- A nude search of a student by an administrator or teacher of the opposite sex would obviously violate this standard.
- A highly intrusive search in response to a minor infraction would not comport with the sliding scale advocated in *TLO*.
- The fact that no drugs were found does not retrospectively invalidate the reasonableness of the scope of the search.

Safford U.S.D. #1 v. Redding

129 S.Ct. 2633 (2009)

- After escorting 13-year old Savana Redding from her middle school classroom to his office, Assistant Principal Wilson showed her, four prescription-strength, and one over-the-counter, pain relief pills, all of which are banned under school rules without advance permission. She denied knowledge of them, but Wilson said that he had a report that she was giving pills to fellow students. She denied it and agreed to let him search her belongings. He and Helen Romero, an administrative assistant, searched Savana's backpack, finding nothing. Wilson then had Romero take Savana to the school nurse's office to search her clothes for pills. After Romero and the nurse, Peggy Schwallier, had Savana remove her outer clothing, they told her to pull her bra out and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. No pills were found.

Safford U.S.D. #1 v. Redding *129 S.Ct. 2633 (2009)*

- *Wilson had sufficient suspicion to justify searching Savana's backpack and outer clothing. A student who is reasonably suspected of giving out contraband pills is reasonably suspected of carrying them on her person and in her backpack. Looking into Savana's bag, in her presence and in the relative privacy of Wilson's office, was not excessively intrusive, any more than Romero's subsequent search of her outer clothing.*

Safford U.S.D. #1 v. Redding *129 S.Ct. 2633 (2009)*

- *Wilson did not have sufficient suspicion to warrant extending the search to the point of making Savana pull out her underwear, because the suspected facts pointing to Savana did not indicate that the drugs presented a danger to students or were concealed in her underwear. Its indignity does not outlaw the search, but it does implicate the rule that the search be reasonably related in scope to the circumstances which justified the interference in the first place.*

Safford U.S.D. #1 v. Redding

129 S.Ct. 2633 (2009)

- *Here, the content of the suspicion failed to match the degree of intrusion.*
- When suspected facts must support the categorically extreme intrusiveness of a search down to an adolescent's body, petitioners' general belief that student hid contraband in their clothing falls short; a reasonable search that extensive calls for suspicion that it will succeed. *Nondangerous school contraband does not conjure up the specter of stashes in intimate places, and there is no evidence of such behavior at the school.*

Electronic Storage Devices

- Cell phones may be confiscated if in violation of school policy (*Koch v. Adams, 2010 Ark. 131*).
- However, further administrative search of the cell phone is subject to the 4th Amendment (*Klump v. Nazareth Area S.D., 425 F. Supp. 2d 622, 2006*)

Electronic Storage Devices

- To search further, an administrator would have to have a reasonable suspicion that another law or school policy has been violated and that search is likely to turn up evidence of that violation.
- Examples: bullying, cheating on a test, drug dealing, and ‘sexting’

Police Involvement

- A number of courts have ruled that where police are involved and in charge, the full complement of 4th Amendment rights applies, and the higher standard of probable cause must prevail.
- When the search is directed by school officials with reasonable suspicion, then it is generally sufficient to justify the search.

Patman v. State, 244 Ga. App. 833 (2000)

- Officer at school; teacher reported smell of marijuana; officer frisked for safety purposes; felt bags in pockets; officer then removed bags
- Reasonable suspicion existed but not probable cause.
- Since police officer was on school property at the behest of school officials, he only needed reasonable suspicion at the inception of the search.

School Resource Officers

- Is the SRO a school employee, or a member of the local police?
- What are the terms of employment?
- What is the purpose of the search?
- What is the role of the SRO in the search?
- What is the emanation of the search?

School Resource Officers

- The Court noted that the resource officer “acted to enable” the principal to obtain the bag and search it. He did not search the bag himself, nor did he conduct any investigation of the bag on his own (*In re Jason Patrick Murray, 525 S.E.2d 496 (2000)*).
- The Court determined that the T.L.O. reasonableness standard applied, not only to searches by school officials, but also to searches where police officers work “in conjunction with” school officials, so long as they do so **to maintain a safe and proper educational environment** (*In re D.D., 554 S.E.2d 346 (2001)*).

Shade v. City of Farmington, 309 F.3d 1054 (8th Cir. 2002)

- At the time of the search in question, Shade was a 17-year-old student at the Apple Valley Alternative Learning Center. Shade's teacher, Allen Schmitz, transported Shade and seven other students by bus from Apple Valley ALC to Al's Auto body, a local business in the neighboring community of Farmington, Minnesota, for automotive shop class. Along the way, Mr. Schmitz stopped the bus at a local fast-food restaurant to allow the students to purchase breakfast. Shade bought a breakfast sandwich and a container of orange juice.
- Once the students and Mr. Schmitz were back on the bus and on their way again, Shade asked whether any student around him had something he could use to open his container of orange juice. Bandon Haugen, a student sitting nearby, offered Shade his folding knife. Shade took the knife, unfolded the blade, and used it to open the orange juice. Shade then closed the blade and handed the knife back to Haugen. Through the review mirror Mr. Schmitz had observed Shade using the folding knife but had not seen where the knife came from or where it went after Shade had used it.

Shade v. City of Farmington, 309 F.3d 1054 (8th Cir. 2002)

- The principal for the alternative school decided that the automotive shop students should be searched before returning to the alternative school because of possession of a knife violated the school district's rule prohibiting weapons and presented an immediate safety concern. The school liaison officer, Michael Eliason, to assist in searching the students.
- The officers then asked the students to exit the bus, which they searched but did not find a knife. After the students had exited, Officer Dau informed the students that each of them would be searched to locate the knife that Mr. Schmitz had seen. When Officer Dau asked if any student had a knife to turn over before the officers began their search, Haugen stepped forward and handed a knife to Officer Eliason. Officer Dau thereafter directed the students to place their hands on the bus and spread their legs. Dau conducted a pat-down search of the male students, and Ms. Gilmore searched the two female students in the group.

Shade v. City of Farmington, 309 F.3d 1054 (8th Cir. 2002)

- When Officer Dau searched Shade, he found no knife but did find an item similar in appearance to an ASP tactical baton in Shade's front pocket.
- As a general rule, the reasonableness requirement obligates law enforcement officers to obtain a judicial warrant, issued only on a showing of probable cause, before conducting a search. Even in those situations where the Court has found it permissible for officers to conduct a search without a warrant, an officer may, as a general rule, search an individual only when there is "probable cause to believe that the person to be searched has violated the law."
- *The question remains whether T.L.O.'s standard applies when, as here, law enforcement officers were involved in searching a student and the search occurred away from traditional school grounds.*

Shade v. City of Farmington, 309 F.3d 1054 (8th Cir. 2002)

- Most courts addressing law enforcement involvement have concluded that *T.L.O.'s reasonableness standard applies when school officials initiate the search or when the officers are only minimally involved in the search.*
- The officer's involvement Officer Dau and Officer Eliason played a more substantial role in the investigation and search. Because Shade was seen with a knife, it was entirely reasonable for Officer Dau and Officer Eliason to play a greater role in questioning those involved and in directing the mechanics of the search.
- The fact that the search occurred away from what one would consider traditional school grounds similarly does not elevate the Fourth Amendment standard to one of probable cause.

Shade v. City of Farmington, 309 F.3d 1054 (8th Cir. 2002)

- *Because school officials initiated the investigation and search of Shade in furtherance of the school's interest in maintaining a safe learning environment, and because they asked officers to assist them in furtherance of that interest, we hold that T.L.O.'s two-part inquiry governs the lawfulness of the search conducted by Officer Dau.*
- *It is not realistic to require school officials to abort the search of a particular child who does not appear to be in possession of contraband once the officials decide to quickly search many children's pockets for dangerous weapons.*
- *A search is reasonable in scope if the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. Officials may pat down and search a student's pockets when looking for a dangerous weapon.*

Watkins v. Millennium School, 290 F.Supp.2d 890 (2003)

- \$10 missing
- 3rd grader strip searched without individualized suspicion
- Analysis
 - High expectation of privacy existed,
 - Highly intrusive search, and
 - The gravity of the violation is low since theft was at issue.

Thomas v. Roberts, 261 F.3d 1160 (2003)

- Search of an envelope containing \$26 progressed from turning pockets inside out to patting them down to students being taken to the restroom and either lowering their pants or undoing their bras.
- The Court could not find the school district's interest in maintaining order and discipline as justification for an intrusive strip search over \$26.

Rhodes v. Guarricino (S.D.N.Y. 1999)

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- School official must have some evidence regarding the particular situation in order to establish **reasonable suspicions** at the **inception of the search**.
- **Reasonable suspicion** is a belief or opinion based on the facts or circumstances which include reports and observations that raise a moderate chance of finding evidence of wrongdoing. What is reasonable depends on the context within which the search takes place.
- A search must be supported by **specificity** as to the offense and by a **particularized knowledge** as to where the illegal contraband is located (scope) as well as the identity of the offending student (individualized). Some individualized suspicion is essential as a prerequisite to a constitutional search.
- Courts will consider the **magnitude of the offense** and extent of the **intrusiveness** on the student's privacy when evaluating whether the search is reasonable in light of the age and gender of the student.

Searches found NOT to be reasonable

- Highly intrusive,
- Undertaken to find money (especially small amounts),
- Substantial number of students involved,
- Absence of individualized suspicion,
- Students did not consent, and
- Searches in the presence of other students.