

STUDENT SEARCH & SEIZURE IN THE PUBLIC SCHOOLS- A LEGAL ANALYSIS

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Any discussion of the legality of in-school searches carried out by public school officials must necessarily focus on the benchmark decision of the Supreme Court in *New Jersey v. T.L.O.*ⁱ

In 1985, the Supreme Court, by a 6-3 vote, held that the warrant and probable cause requirements that generally apply to police-initiated searches do not apply to searches conducted by school personnel. However, a school search must be "justified at its inception" based on reasonable grounds for suspecting the search will reveal evidence of a violation of law or school rules. Additionally, the search must be reasonable in its scope and "not excessively intrusive in light of the age and sex of the student and the nature of the infraction." Thus, the Court adopted a "reasonable suspicion" standard which "will . . . neither unduly burden the efforts of school authorities to maintain order in their schools nor authorize unrestrained intrusions upon the privacy of school children."^{€€}

The *T.L.O.* standard requires educators to act in a reasonable manner considering all the circumstances that lead up to the search and cause the educator to continue the search. Under *T.L.O.*, reasonable suspicion to initiate a search is dependent upon the totality of the circumstances. Thus, a school official need not separately analyze the importance of each observation or piece of information she acquires when determining whether to engage in an investigation of student misconduct or search of students or property.

POCKET SEARCHES

In the course of their duties, school officials conduct a number of different types of investigations, depending upon the nature of the problem that arises to confront them. One of the most typical school search situations occurs when a student, concerning whom suspicion has arisen, is taken to the office of the school principal to be questioned about the matter. If the principal is not satisfied by the student's responses to the questions, and if the principal suspects that the student may have contraband on his person, the typical next step is for the principal to request, or direct, the student to empty his pockets. In *Stern v. New Haven Community Schools*,ⁱⁱⁱ a federal district court in Michigan held that such a pocket search was lawful because the school official had reasonable suspicion or reasonable cause to believe that the student had contraband on his person. (Since this decision used a "reasonableness under all the circumstances" test, it likely retains validity post-*T.L.O.* provided the intrusion on the student's privacy is viewed as not unreasonable.)

LOCKER SEARCHES

Where schools have a policy retaining joint ownership over lockers or advising students that the school retains ownership and control of lockers, or that students have no reasonable expectation of privacy in their locker, searches of lockers have been upheld without the need for reasonable individualized suspicion. See *Zamora v. Pomeroy*^{iv}; *State v. Stein*^v; see also New Mexico Administrative Code, NMAC 6.11.2.10B.

CAR SEARCHES

Although a student's car is perhaps even more sacred to the student than his locker, the standards of reasonableness established by *T.L.O.* have been applied to such searches of student vehicles parked on school property when undertaken by school officials. *In re P.E.A.*^{vi}; NMAC 6.11.2.10B(4)(b).

STRIP SEARCHES

Any search can be controversial, but few are as likely to draw public criticism as strip searches. Understandably, courts have disfavored and have thus tended to scrutinize strip searches more carefully than other types of searches. To be upheld, the search must be reasonable at its inception and reasonable in scope depending upon the circumstances. The New Mexico Court of Appeals in *Kennedy v. Dexter Consol. Schs.*^{vii}, held that due to the typical adolescent's self-consciousness about their body, requiring a student to strip to undergarments is sufficiently offensive to require the protection of at least individualized reasonable suspicion.

DRUG TESTING

Where there is no individualized suspicion or belief that the student possesses or is using drugs and/or alcohol, it has been ruled to be violative of a student's Fourth Amendment rights to require routine or random urine tests to identify users. *Odenheim v. Calstadt-East Rutherford Regional School District.*^{viii} In March 1995, the U.S. Supreme Court decided *Vernonia School District No. 47J v. Acton.*^{ix} There the Court upheld the use of random urinalysis drug testing of students who participate in athletic programs at secondary schools. The 6-3 decision shattered the barrier that school officials must have reasonable individualized suspicion to conduct a student search.

The use of drug sniffing dogs to conduct general searches of student lockers and cars has been upheld on the theory that a person does not have a reasonable expectation of privacy in the air surrounding an inanimate object in a public place. Simply put, such is not a search. See *Zamora v. Pomeroy*^x; *Horton v. Goose Creek Consol. Indep. Sch. Dist.*^{xi} The courts have split over whether a sniff of a student's

person by drug detection dogs constitutes a search, and is therefore unreasonable unless based on individualized suspicion supported by specific or articulated facts.

NEW MEXICO CASES

Within New Mexico, the courts have enunciated the following factors for consideration when determining the sufficiency of cause to search a student: the child's age, history and record in the school; the prevalence and seriousness of the problem in the school to which the search was directed; the exigency to conduct the search without delay; and the probative value and reliability of the information used as a justification for the search. *Doe v. State*.^{xii}

In *State v. Tywayne H.*,^{xiii} two high school students attempted to enter a school dance through the wrong door. A non-school assigned police officer stationed at the dance smelled alcohol on one of the students and the student admitted to drinking beer outside the dance. The officer conducted a pat-down search and discovered a gun on one of the students. In a criminal proceeding, the student, , moved to suppress the gun arguing the search was unlawful. The Court determined that the "reasonable suspicion" standard applicable to school searches did not apply to a student search conducted completely at the discretion of police officer. In contrast, in *In re Joshue T.*^{xiv}, a commissioned police officer, assigned and paid as the resource officer at the high school, conducted a student search during school hours when the student became evasive upon questioning by a school official and smelled of marijuana. The school official requested that the resource officer search the student and a gun was found. The Court ruled that a school resource officer needs only reasonable suspicion to search a student at the request of a school official.

Given these judicial rulings over the last several decades, courts will continue to balance the student's legitimate expectations of privacy against the school's equally legitimate need to maintain an environment in which learning can take place, based upon the reasonableness under the totality of the circumstances test. This court-imposed balancing test for search and seizure in the public schools simply provides a measure of the public's priorities by which reasonableness might be determined. So long as there is either a real or perceived threat to students or others because of drugs and violence, courts will continue to recognize that "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject."^{xv}

ⁱ *New Jersey v. T.L.O* , 469 U.S. 325 (1985).

ⁱⁱ 469 U.S. 325.

ⁱⁱⁱ *Stern v. New Haven Community Schools*, 529 F. Supp. 31 (E.D. Mich. 1981).

^{iv} *Zamora v. Pomeroy*; 639 F.2d 662 (10th Cir. 1981).

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- ^v *State v. Stein*, 203 Kan. 638, 456 P.2d 1 (1969).
- ^{vi} *In re P.E.A.*, 754 P.2d 382 (Colo. 1988).
- ^{vii} *Kennedy v. Dexter Consol. Schs*, 124 N.M. 764, 955 P.2d 693 (1998)
- ^{viii} *Odenheim v. Calstadt-East Rutherford Regional School District*, 211 N.J. Super. 54 (1985).
- ^{ix} *Vernonia School District No. 47J v. Acton*, 515 U.S. 646 (1995).
- ^x 639 F.2d 662.
- ^{xi} *Horton v. Goose Creek Consol. Indep. Sch. Dist.*, 690 F.2d 470 (5th Cir. 1983).
- ^{xii} *Doe v. State*, 88 N.M. 347 (1975).
- ^{xiii} *State v. Tywayne H.*, 123 N.M. 42, 933 P.2d 251 (Ct. App. 1997).
- ^{xiv} *In re Joshua T.*, 128 N.M. 56, 989 P.2d 431 (Ct. App. 1999)
- ^{xv} 469 U.S. at 325.