

Public School Law: Student Search and Seizure in K-12 Public Schools

Dana T. Bedden

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M. David Alexander, Co-Chair
Richard G. Salmon, Co-Chair
Steven M. Janosik
Santee Ruffin

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ABSTRACT

School officials are consistently challenged to perform various duties in an extremely complex and demanding job with numerous responsibilities. They are expected to work with a variety of students, faculty, and parents under difficult circumstances. “Faced with multiple needs, with the necessity of making fast decisions in an atmosphere of fragmented time, administrators are liable for everything they do.”¹ School administrators have to understand the rights guaranteed to students by the Fourth Amendment and how it applies to the school setting. This document will provide an overview of student search and seizure in kindergarten to 12th grade (K-12) public schools in a non-traditional dissertation (non-experimental design) format by providing an historical review of the relevant case law. Specifically, based upon legal research, it will review relevant Supreme Court cases, post-*New Jersey v. T.L.O.*² federal, Pennsylvania and other state court cases related to search and seizure in K-12 public schools. The conclusion and summary will provide answers to the guiding questions, provide a conceptual model, outline what is a reasonable search, and provide a short practical school law exercise to test the reader’s understanding of search and seizure in public schools.

¹ Alan Watson, “The Essential Function of Legal Process,” in *The Nature of Law* (Edinburgh: University Press, Ilkely, Yorks, 1977), 1.

² *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

DEDICATION

I dedicate this dissertation to my family and friends, past, present and future. Thank you for all your support and encouragement during this process. May the next many years to come provide many opportunities for our companionship and fellowship to flourish and grow. I extend a special dedication to my stepfather, Frank Taylor, who encouraged me and looked forward to the conclusion of this dissertation but passed away before its completion—I kept my promise!

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CHAPTER I: INTRODUCTION

School administrators are responsible for providing both safe and orderly school environment that contribute to learning. To provide this environment, they are sometimes required to address disruptive or unsafe behavior that violates the law as well as school policy, which may require searching students and their belongings. Dealing with inappropriate behavior or actions that are violations of school policy and the law creates a complex situation that requires sound decision-making when choosing when, where, and how to conduct a search and seizure. How does an individual maintain order while also serving as a guardian for large numbers of young people and not violating their constitutional rights?

In an effort to provide guidance and understanding of the case law governing search and seizure in public schools, legal research was conducted and is being presented in this dissertation in a non-traditional format. It differs from the typical experimental dissertation because it follows the format used in previous legal research documents by providing a historical review of relevant case law.

In Loco Parentis

School officials have and continue to operate based upon the doctrine of *in loco parentis* which means “in place of a parent.”³ Sir William Blackstone stated in his Commentaries,

A parent may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then in loco parentis, and has such a portion of the power of the parents *viz.* that of restraint and correction as may be necessary to answer the purposes for which he is employed.⁴

³ Kern Alexander and M. David Alexander, *American School Law*, 4th ed. (Belmont: West Publishing, 1998), 309.

⁴Sir William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1769), 441.

Because of this doctrine, administrators have previously been afforded some of the same rights and privileges as parents regarding the safety, discipline, and general care of children.⁵ In its early application, *in loco parentis* provided school officials with broad authority to discipline students. By applying the doctrine of *in loco parentis* to schools, courts were able to avoid addressing the issue of students' rights, as stated in the Fourth Amendment:

The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U.S. Const, Amend. IV.)

However, recent trends in constitutional law have more clearly defined student rights and narrowed the application of *in loco parentis*.

Alexander and Alexander⁶ stated the courts never intended nor meant for the doctrine of *in loco parentis* to authorize school authorities or teachers to stand fully in place of parents in control of their children. School officials' and teachers' prerogatives are circumscribed by, and limited to, school functions and activities. In *Richardson v. Braham*,⁷ the court stated,

General education and control of pupils who attend public schools are in the hands of school boards, superintendents, principals, and teachers. This control extends to health, proper surroundings, necessary discipline, promotion of morality and other wholesome influences, while parental authority is temporarily superseded.⁸

⁵ M. Teresa Harris, "New Jersey v. T.L.O.: New Standard of Review or New Label," 9 *Am. J. Trial Advoc.* 157 (1985): 163.

⁶ Alexander and Alexander, 308.

⁷ *Richardson v. Braham*, 249 N. W. 557 (Neb. 1933).

⁸ *Ibid.*

Further, in *Lander v. Seaver*,⁹ the Supreme Court of Vermont pointed out the power of the teacher over a student is not coextensive with that of the parent.¹⁰ According to Mike Levin, Pennsylvania School Board Association attorney and legal counsel for several school districts in Pennsylvania, “*in loco parentis* is limited to maintaining order.”¹¹

When a student violates a school rule that also violates the law, the student may be subject to two sanctions: one by the school and one by law enforcement officials. Actions usually taken by the school are intended to protect the school environment and educational program. An action by law enforcement officials is often taken to address a violation that may be considered a criminal act. In both situations—a violation of a policy or law—the student is entitled to due process. Courts have consistently ruled students are entitled to due process when they may be subject to certain exclusions from school. Students have a right to a notice of specific allegations and the right to a hearing (administrative) to hear the evidence against them and to present their own evidence. In *Goss v. Lopez*¹² the court stated there are procedural processes and minimum requirements for a notice and a hearing, specifically, 1) “students facing temporary suspension from a public school have property and liberty interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment”¹³ and 2) “due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his version. Generally, notice and hearing should precede the student’s removal from school, since the hearing may almost immediately follow the

⁹ *Lander v. Seaver*, 32 Vt. 114 (1859).

¹⁰ *Ibid.*

¹¹ Mike Levin (Attorney Levin Legal Group) interviewed by Dana Bedden, Lansdowne, PA (2005).

¹² *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct., 729 (1975), 572-576.

¹³ *Id.* 577-584.

misconduct, but if prior notice and hearing are not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice and hearing should follow as soon as practicable".¹⁴

Unlike a court, with its very formal procedures, an administrative hearing is not a trial and may be conducted with a degree of informality. However, it must be conducted with fairness.

Student Rights

The U.S. Supreme Court ruled in *Tinker v. Des Moines*¹⁵ that students have rights that are explicitly and implicitly guaranteed by the Constitution, and school administrators must know what, when, and where it is appropriate and legal to search students and their belongings. The Court declared that "students in school as well as out of school are 'persons' under the Constitution."¹⁶ The *Tinker* decision ushered in an "era of student rights," which changed the previous judicial view that attendance at public schools is a privilege and not a right.¹⁷ In *Tinker*, the court also found that a denial of freedom of expression might be justified by a reasonable forecast of substantial disruption.¹⁸ Approximately 20 years later, two other U.S. Supreme Court cases brought clarification and balance to this new way of thinking about student rights.

*Bethel School District v. Fraser*¹⁹ and *Hazelwood v. Kuhlmeier*²⁰ balanced the legal standard back to favor school officials. *Fraser*, a 17-year-old honor student, gave a nominating speech on behalf of a classmate who was campaigning to be the vice president of student

¹⁴ *Id.* 738–741.

¹⁵ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

¹⁶ *Id.* 511.

¹⁷ Alexander and Alexander, 365.

¹⁸ *Id.* 367.

¹⁹ *Bethel School District v. Fraser*, 478 U.S. 675 (1986).

²⁰ *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

government. School officials accused Fraser of using sexual innuendos and metaphors and disciplined Fraser for presenting a lewd and indecent speech that violated school policy. The Supreme Court ruled for the school district by a 7-2 vote. This decision reversed a Ninth Court of Appeals decision, which had indicated the student's speech was no different than the wearing of the armband in *Tinker*. The Supreme Court ruled, however, that, unlike in *Tinker*, the penalties given in this situation were not related to any political view. According to Chief Justice Burger, "children's rights are not coextensive with those of adults. And the First Amendment does not protect students in the use of vulgar and offensive language in public discourse."²¹

In *Hazelwood*, two articles were removed from the student newspaper at the direction of the school principal, who objected to their content involving the pregnancy experiences of three school students and the impact of divorce on children. Three members of the newspaper sued in federal court alleging their freedom of expression had been violated. The District Court denied the students' request. Later, the Eighth Circuit of Appeals reversed the District Court's decision, which had been decided in favor of the school. Upon review by the Supreme Court, the Eighth Circuit's decision was reversed by a 5-3 vote. The majority ruling found the principal had acted reasonably in his response to "legitimate pedagogical concerns" regarding speech (as protected by *Tinker*) and "speech sponsored by the school and disseminated under its auspices." The *Hazelwood* standard of "reasonable exercise of legitimate pedagogical concerns" extends beyond the issue of student newspapers.²²

Together, the two decisions in *Bethel* and *Hazelwood* granted school officials considerable discretion in deciding matters of student expression, whether the context of the

²¹ Richard S. Vacca and William C Boshier Jr., *Law and Education: Contemporary Issues and Court Decisions*, 6th ed. (New York: Lexis Nexus, 2003), 297–298.

²² *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

activity is curricular in nature or where the school’s sponsorship is evident, and where the school’s official imprimatur (i.e., official license to print or publish) is present.²³ In short, *Tinker* found that denial of student expression must be justified by reasonable forecast of substantial disruption, *Bethel* found the students’ lewd and indecent speech was not protected by the First Amendment, and *Hazelwood* ruled that schools could regulate the content of school-sponsored newspapers.²⁴

When considering the issue of student rights, one of the most significant issues is the deprivation of student rights resulting from a search and seizure. *New Jersey v. T.L.O.*²⁵ (*T.L.O.*) was the landmark case in which the United States Supreme Court found the prevention of unreasonable searches and seizures applied to public schools under the Fourteenth Amendment:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Cons, Amend XIV, §1)

T.L.O. set forth several important legal points about which school administrators must be knowledgeable if they wish to avoid litigation. First, *T.L.O.* changed school administrators’ (schools) broad protection under the *in loco parentis* concept. “In carrying out searches and other functions pursuant to disciplinary policies mandated by state statutes, school officials act as representatives of the State, not merely as surrogates for the parents of students, and they cannot

²³ *Id.*

²⁴ Alexander and Alexander, 353, 355, 367.

²⁵ *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

claim the parents' immunity from the Fourth Amendment's strictures."²⁶ Second, the case established the standard of reasonable suspicion instead of probable cause as the basis for school administrators when conducting searches and seizures.²⁷

The standard of reasonable suspicion provided a more flexible standard for school administrators to use as they conduct searches compared to the probable cause standard applicable to law enforcement. In *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*,²⁸ Justice Breyer's concurring opinion clarified the modified view of the Supreme Court related to *in loco parentis* and the need for a more flexible standard:

Schools prepare pupils for citizenship in the Republic and inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation. The law itself recognizes these responsibilities with the phrase *in loco parentis*—a phrase that draws its legal force primarily from the needs of younger students (who here are necessarily grouped together with older high school students) and which reflects, not that a child or adolescent lacks an interest in privacy, but that a child's or adolescent's school-related privacy interest, when compared to the privacy interest of an adult, that fails adequately to carry out its responsibilities may well see parents send their children to private or parochial school instead—with help from the State.²⁹

²⁶ Alexander and Alexander. 336.

²⁷ *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

²⁸ *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 122 (2002).

²⁹ *Id.* 840.

Third, and probably most significant, the decision answered some questions, but it also created unresolved legal issues (which increased litigation) because the court failed to specifically define “reasonable suspicion” or to address the following:

1. Does the exclusionary rule apply to an unlawful search in school? In particular, the court clarified,

“In holding that the search of *T.L.O.*’s purse did not violate the Fourth Amendment, we do not implicitly determine that the exclusionary rule applies to the fruits of unlawful searches conducted by school authorities. The question whether evidence should be excluded from a criminal proceeding involves two discrete inquiries: whether the evidence was seized in violation of the Fourth Amendment, and whether the exclusionary rule is the appropriate remedy for the violation. Neither question is logically antecedent to the other, for a negative answer to either question is sufficient to dispose of the case. Thus, our determination that the search at issue in this case did not violate the Fourth Amendment implies no particular resolution of the question of the applicability of the exclusionary rule.”³⁰

2. Do students have privacy rights related to lockers, desks, etc.?
3. Do standards change if police are involved?

However, *New Jersey v. T.L.O.* did find searches conducted by school officials are constitutionally permissible if (a) reasonable suspicion exists, (b) the search is not excessively intrusive, and (c) it is necessary to have individualized suspicion at the inception before a search takes place.³¹

³⁰ *New Jersey v. T.L.O.*, 469 U.S. 325 at Footnote 3.

³¹ *28 New Jersey v. T.L.O.*, 469 U.S., 325–342 at n. 3–8 (1985).

Statement of the Problem and Statistics

As incidents of school violence appear to become more frequent and severe, public perception is that schools are unsafe and that administrators lack the power to control inappropriate student activity. As administrators develop safety and security procedures, they have been provided limited guidance by the Supreme Court regarding how the Fourth Amendment applies to a school setting. As statistics differ on the relationship between the perceptions of danger in American schools and the reality of how safe they are, school administrators fear legal repercussions due to their uncertainties, confusion, and limited knowledge about students' Fourth Amendment rights. Schools are responsible for ensuring the safety of students and staff. One method of determining safety in America's public schools is the amount of violence occurring on school campuses.

In the National Center of Education Statistics 2000 School Survey on Crime and Safety³² report, 71% of public elementary and secondary schools experienced at least one violent incident. The report also indicated that approximately 1.5 million violent incidents occurred in about 59,000 public schools that year. Further, it shared that 36% of public schools reported at least one violent incident to police or other law enforcement personnel during the 1999–2000 school year. Of the 1.5 million violent incidents that occurred in schools, around 257,000 were reported. Twenty percent of public schools experienced at least one serious violent incident (including rape, sexual battery other than rape, physical attacks or fights with a weapon, threats of physical attack with a weapon, and robberies, either with or without a weapon), for a total of 61,000 serious violent incidents.³³

³² U.S. Department of Education, National Center for Education Statistics, School Survey on Crime and Safety (SSOCS, 2000). <https://nces.ed.gov/pubs2004/2004314.pdf>

³³ Ibid.

With increased resources, technological improvements, and media industry growth, newspapers, televisions, and radio stations across the country broadcast the aforementioned statistics to the public. The news media communicates that students are participating in more violent and illegal behavior that includes theft, use of weapons, drugs, explosive devices, and other forms of violence. While news media reports provide us with information on events that occur locally, nationally, and internationally in the larger society, news reports can also create a false perception there is more violence than what actually exists. News articles and broadcasts are communicating what appears to be a significant problem facing our schools and administrators as it relates to school safety and, more specifically, to searching students.

The U.S. Department of Education also gathered national statistics about weapons in schools for its first annual report on school safety. These statistics revealed that weapon problems exist in a growing number of public schools. For example, 5% of twelfth-grade students reported being purposely injured with a weapon while in school during the previous twelve months and 12% of twelfth-grade students reported being threatened with injury with a weapon.³⁴ However, on November 29, 2004, a report issued by the Justice Department and the Department of Education, titled “Indicators of School Crime and Safety,”³⁵ stated that crime in the nation’s schools *fell sharply* from 1992 to 2002. School crime over that period dropped from 48 violent incidents to 24 violent incidents per 100,000 students. These figures were based on a nationwide random sample of students who were asked whether they had been victims of a crime. The report also stated that in 2002, students 12 to 18 years old were more likely to be victims of serious violent crime away from school.

³⁴ A. K. Miller, *Violence in U.S. Public Schools: 2000 School Survey on Crime and Safety* (Washington, D.C.: NCES, 2004), 314.

³⁵ U.S. Department of Education and Department of Justice, “Indicators of School Crime and Safety,” U.S. Department of Education, November 2004, <https://nces.ed.gov/pubs2005/2005002.pdf>.

The report further indicated that, in the 12 months from July 1999 to June 2000, 16 students were victims of homicide at their schools, representing 1% of homicide victims among school-age children during that time period. Despite these encouraging findings, the report included a number of warnings that bullying, violent crime, drinking, and drugs remained a serious problem at many schools. For example, it found that 659,000 students had been victims of violent crimes such as rape, robbery, and aggravated assault—while at school in 2002. An additional 1.1 million students said they had been victims of theft at school during that year. In 2003, 7% of students who were questioned said they were bullied while at school.

Additionally, 21% of high school students reported the presence of street gangs in their schools. Twenty percent of public schools reported they had experienced one or more serious violent crimes in the 1999-2000 school year. Regarding the use of drug and alcohol, 5% of high school students in 2003 said they had at least one drink of alcohol on school grounds in the last 30 days, 22% said they had used marijuana either at school or somewhere else, and 29% said they had been approached with offers to give or sell them illegal drugs on school grounds within the past year.

The study also found that teachers were also often at risk of being victims of crimes committed by students. From 1998 to 2002, students committed 144,000 thefts and 90,000 violent crimes against teachers. According to the report, in 1999, 9% of all teachers were threatened with injury and 4% were physically attacked by a student. On the positive side, from 1993 to 2003, the number of high school students reporting they carried a gun or a knife to school dropped to 6% from 12%. Among students 12 to 18 years old who reported being bullied in 2003, the highest rate, 10%, was at schools in rural areas, while those in urban and suburban areas averaged 7%. Private schools had the lowest rate of bullying, at 5%. Fighting on school

grounds declined from 16.2% in 1993 to 12.8% in 2003. Similarly, a significant linear trend of decline was detected among all subgroups.³⁶

In other words, while school safety is a concern, *no significant changes* were found in the pervasiveness of threats or injuries with a weapon on school property between 1993-2003 overall or among female, male, Hispanic, 10th-, and 12th-grade students. A significant increase during 1993-2003 was detected among white and 9th-grade students, but there was a decline among black students of incidences of being threatened or injured with a weapon on school grounds from 1993-1999. From that point on through 2003, there was an increase. The number of 11th-grade students being threatened or injured with a weapon on school grounds also declined during the 1993-1999 period and then remained level through 2003.³⁷ The following figure from the publication “The Condition of Public Education 2005, School Violence and Safety” showed a general decline in the rate at which students between the ages 12 to 18 were victims of theft, violent crime, and serious violent crime at school from 1992-2002.³⁸

³⁶ Ibid.

³⁷ D. Brener, L. Simon, N. Lowry, R. Barrious, and T. Eaton, “Violence-Related Behaviors among High School Students—United States, 1991–2003.” *Morbidity and Mortality Weekly Report*, July 30, 2004, 651-655.

³⁸ U.S. Department of Education, National Center for Education Statistics. *The Condition of Education 2005* (NCES 2005-094) (Washington, DC: U.S. Government Printing Office, 2005), <https://nces.ed.gov/pubs2005/2005094.pdf>.

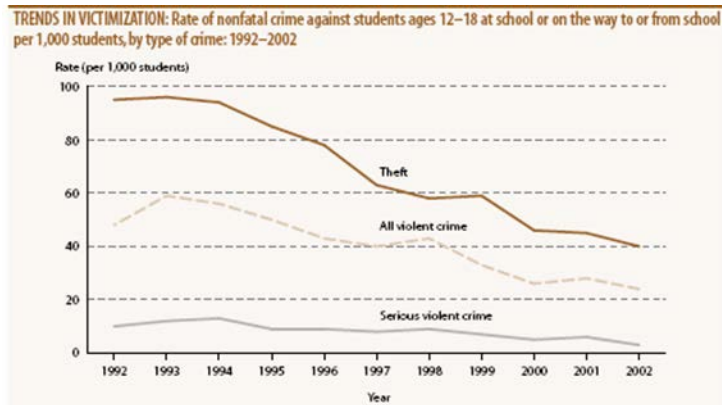


Figure 1. Trends in victimizations.

From U.S. Department of Education, National Center for Education Statistics. *The Condition of Education 2005* (NCES 2005-094). Washington, DC: U.S. Government Printing Office, 2005. <https://nces.ed.gov/pubs2005/2005094.pdf>.

Even with the positive movement towards a decline in school violence, school safety remains an issue for public school administrators because of the continued presence of weapons, drugs, and violence on school property. One death, injury, or theft is one too many. Increased awareness, and more severe deviant juvenile (student) violence, has prompted an increase in aggressive interventions by school administrators and an increase in police involvement in school-related issues. In reaction to national concern and the perceived increase in school violence, federal lawmakers took several unsuccessful actions to make public schools safer.

While the federal government does not have direct oversight over education in the United States, it has attempted to pass several acts designed to withhold federal funds from states that did not implement legislation on educational issues. These actions represented the federal government's unsuccessful attempt to influence how states and public education officials addressed school violence. Table 1 lists two of the laws passed by the federal government that targeted reducing school violence but were ruled unconstitutional by the courts.

Table 1

*Federal Laws Targeting School Violence*³⁹

Searching for Safe Schools: Legal Issues in the Prevention of School Violence

Law	Purpose and Result
The Gun-Free School Zones Act of 1990, 18 U.S.C.A. [Section] 922	This law made it a federal crime to possess a firearm in a school zone (i.e., within 1,000 feet of a public, parochial or private school). <p style="text-align: center;">Ruled Unconstitutional United States v. Lopez, 514 U.S. 549 (1995)</p>
The Gun-Free Schools Act of 1994, 20 U.S.C.A. [Section] 8921	This law required states receiving federal funds to pass legislation requiring local education agencies to expel from school for at least a year students possessing weapons in school. Exceptions are allowed on a case-by-case.

In reality, a large number of studies have shown the school environment is a safe place for children. However, the schoolhouse is still a microcosm of society, and it is not uncommon for the problems that affect youth in society to become problems that school personnel must address or be prepared to respond to in their day-to-day operations and management of the school climate. Because of the types of violent acts being committed, school administrators are now more aggressively searching students and their property to maintain a teaching and learning environment that is considered safe and orderly.

³⁹ Michael E. Rozalski and Mitchell L. Yell, “Searching for Safe Schools: Legal Issues in the Prevention of School Violence,” *Journal of Emotional and Behavioral Disorders* Vol. 8 (Fall 2000): 187-196.

The map in Figure 2, taken from the American Schools Safety Archives,⁴⁰ shows the location of some of the serious and violent acts committed at various schools around the nation from 1997 to 2004.

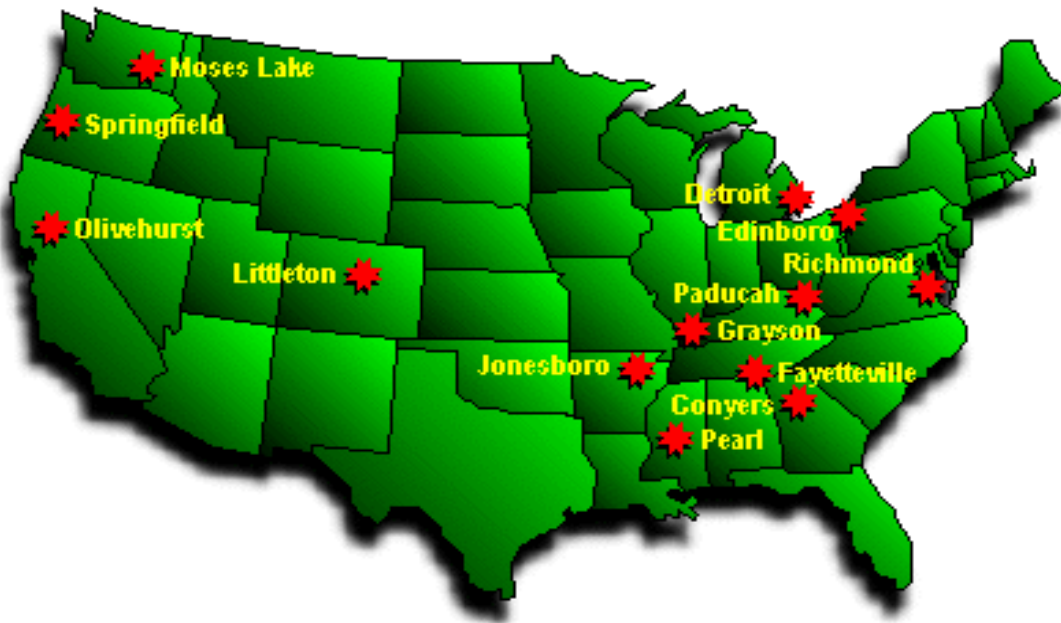


Figure 2. American schools safety.

From “Archives.” American School Safety Archives. 1999.
<http://www.americanschoolsafety.com/members/archives.html>.

The National Schools Safety Center’s report (see Table 2) on school associated violent deaths and the data from the American Schools Safety Archives map indicates there are still a large number of serious and deadly acts being committed in schools. Meanwhile, the bar graph in Figure 3, taken from The National Safety Centers Report on school associated violent deaths, indicates the number of school deaths by school type between the 1992 to 2005 school years.

⁴⁰ “Archives,” American School Safety, 1999,
<http://www.americanschoolsafety.com/members/archives.html>.

Over this 13-year period, there were 266 high school deaths, for an average of 20.46 deaths per year. Additional data from the same report, illustrated in Figures 4-7, were collected in the following areas: methods of death, location of death, reasons for death, and the victim's gender.

Table 2

Incidences of School Violence Since 1997

National School Safety Center's Report on School Associated Violent Deaths⁴¹

Date	Incident
2-19-1997	A 16-year-old student opened fire in Alaska High School. Killed with a shotgun in a common area at the Bethel were the school principal and a classmate. Student was sentenced to two 99-year terms.
10-9-1997	A 16-year-old student in Pearl, Mississippi, was accused of killing his mother, then going to school and shooting nine students. Two of them died.
12-1-1997	A 14-year-old opened fire on a student prayer circle in a hallway at Heath High School in West Paducah, Kentucky. Three students were killed and five others wounded.
3-24-1998	Two students opened fire with rifles on classmates and teachers when they came out during a false fire alarm at the Westside Middle School in Jonesboro, Arkansas. Four girls and a teacher were killed and 11 people were wounded.
4-24-1998	A 14-year-old student fatally shot a teacher and wounded two students at an eighth-grade dance at J.W. Parker Middle School in Edinboro, PA.
5-19-1998	A high school senior shot and killed another student in the school parking lot at Lincoln County High School in Fayetteville, TN.
5-21-1998	In Springfield, OR, a freshman student opened fire with a semi-automatic rifle in a high school cafeteria, killing two students and wounding 22 others. The teenager's parents were later found shot to death in their home.
6-15-1998	Richmond, VA, Armstrong High shooting resulted in two life threatening wounds. Two suspects were taken into custody.

⁴¹ "School-Associated Violent Deaths Report," National School Safety Center, 2004, <http://www.nssc1.org/savd/savd.pdf>.

Date	Incident
4-20-1999	Two students entered Columbine High School in Littleton, CO armed with a handgun, rifle, shotguns, and home-made bombs. The death toll was 15 (12 fellow students, one teacher, and the two terrorists-the latter by suicide). 20 students were injured, some very seriously.
5-20-1999	Sophomore student in Conyers, GA wounded six students in Atlanta suburb school and threatened to commit suicide.
10-1999	Philadelphia, PA Vice Principal wounded.
10-1999	Cleveland, Ohio authorities (Mayor) ordered a high school closed Friday after they uncovered an apparent plot by students to stage “violent acts.”
11-1999	Several students, who overheard classmates’ threats to plant a bomb to kill students and school employees, told their parents. The parents called school administrators resulting in the arrest of four Windsor, CT, middle school students.
11-1999	A 4-year-old boy who brought a loaded .38-caliber handgun to school in Oklahoma was suspended for one year, a punishment required by school district policy for the offense. The boy apparently got the gun from a dresser in his parents’ room.
11-1999	A boy dressed in camouflage shot and critically wounded a 13-year-old female classmate in the lobby of their New Mexico middle school. The boy also pointed a pistol at the principal and assistant principal.
12-1999	A 13-year-old student wounded four Oklahoma middle school classmates with a handgun Three boys and a girl, all students at the school were wounded in the shooting.
12-1999	A student opened fire at a Netherlands high school in a southern Dutch town, wounding a teacher and three others.
12-1999	A threatening message scrawled in a boy’s bathroom allegedly read: “If you think what happened at Columbine was bad, wait until December 15.” Classes for the remaining three days before winter break were cancelled.
12-1999	A Kansas school principal was charged with making a phony bomb threat that forced officials to close schools early. The school was evacuated immediately, followed by evacuations of four other schools.

Date	Incident
3-2000	A shooting outside a Georgia high school killed one person and injured two. An 18-year-old black male was shot in the head. He later died at Memorial Health University Medical Center.
3-10-2000	Francisco Valerdi, 15, was fatally stabbed about 100 yards away from Franklin D. Roosevelt High School at about 1:00 pm. He died later that night. Gang activity was suspected.
4-2000	A teacher was shot in the shoulder Monday morning at a Tucson, AZ middle school before students reported for class. The injury was not life-threatening. The schoolteacher who reported being shot in her empty classroom confessed to authorities that she shot herself.
5-2000	An Arkansas seventh-grade student who left school in an apparent fit of rage and a police officer, were injured after shooting each other in an altercation in a field north of the school.
5-26-2000	Barry Grunow, 35, was shot and killed by a 13-year-old student. Grunow was a teacher at Lake Worth Middle School in West Palm Beach, FL. The suspect, Nathaniel Brazil had been sent home for throwing water. He returned to the school with a gun stolen from his grandfather. When Mr. Grunow asked Brazil to stop talking, Brazil took out the gun and shot his teacher in the head.
10-26-2000	Joseph Gallo-Rodriguez, an 18-year-old tow truck driver, was shot and killed as he helped a teacher change a tire in the Bushwick High School parking lot in Brooklyn, NY. The suspect was an 18-year-old special education student, Victor Moreno.
1-10-2001	The Oxnard Police SWAT team fatally shot Richard Lopez as he held a female student hostage at Hueneme High School. Lopez was not a student of the school. The event took place in the quad just as the students were finishing lunch.
1-17-2001	Juan Matthews, a 17-year-old student at Lake Clifton Eastern Senior High School was shot and killed as he stood near a flagpole at the school's main entrance. The suspect was not known.
3-5-2001	Santana High School student Andy Williams shot two people in a restroom and then walked onto the quad and began to fire randomly at students. He stopped to reload as many as four times, getting off 30 or more shots. Two students were killed. The wounded included 11 students and two adults - a student teacher, and a campus security officer. Santana High is in Santee, CA. Williams was known to be a victim of frequent taunting. He told friends of his desire to shoot up the school during the weekend prior to the Monday

Date	Incident
	event. Friends said he claimed to be joking and decided to let it go. One adult friend tried to call his father to warn him about Andy's threats during the weekend, but failed to reach him. Other friends reportedly checked his backpack and "patted him down" checking for a gun before school on Monday.
3-30-2001	Neal Boyd, a 12-year-old student at Lew Wallace High School in Gary, IN, was shot and killed by 17-year-old former student, Donald Burt, Jr. in the school's parking lot.
5-15-2001	Jay Goodwin, 16-year-old student at Ennis High School, shot and killed himself in front of a teacher and his former girlfriend after releasing 17 other hostages.
12-5-2001	Theodore Brown, 51, a counselor at Springfield High School, was stabbed and killed after he asked a male student to take off a hooded sweatshirt. The student argued and drew a knife. In the struggle, Mr. Brown was stabbed and killed.
8-8-2002	An 18-year-old student at John F. Kennedy High School in the Bronx, NY, was stabbed three times during a fight over the victim's sister.
10-4-2002	A 13-year-old student at Page Middle School in San Antonio, TX, shot and killed herself just as school began for the day.
11-19-2002	A 17-year-old-student of Hoover High School in Hoover, AL, stabbed and killed his 17-year-old classmate between classes. No motive given.
2-13-2002	A 13-year-old student, Tony Fiske, shot into Wind River Middle School, Carson, WA and injured two students. He then used the gun to kill himself.
12-16-2002	Maurice Davis, an 18-year-old student at Englewood Tech Prep Academy in Chicago, IL was shot and killed as he tried to protect his sister from the advances of two other males.
1-13-2003	An unknown attacker slashed Jose Lopez, age 14, as he stood on the campus of Cary Middle School in Dallas, TX. The suspect was not caught.
1-27-2003	Jose Hertas was found bleeding from puncture wounds on the campus of Elizabeth High School in Elizabeth, NJ. An unknown student slashed the victim three times.

Date	Incident
2-10-2003	Ashley Carter, 16, a student at Wilcox Central High School was stabbed six or seven times in her upper body as she attempted to walk away from the suspect, another 16 year-old girl.
3-5-2003	Sedrick Daniels, 17, was fatally stabbed in the Livingston High School cafeteria shortly after the morning bell. The suspect fled the scene and was arrested later that day.
3-28-2003	Fifteen-year-old Ortralla Mosley was stabbed repeatedly by her ex- boyfriend, Marcus McTear, using an 11 inch butcher knife in the hallway of Reagan High School in Austin, TX.
4-14-2003	Johnathan Williams, 15, was killed when an unknown gunman opened fire with an AK-47 rifle in the packed gymnasium of John McDonough High School in New Orleans, LA. Three girls were also wounded in the attack. The suspect has not been caught.
10-29-2003	David Robey, 12, shot and killed himself in the bathroom of the Rock L. Butler Middle School. Witnesses said that the boy had been picked on for months by the same group of boys and could no longer take it.
9-5-2003	Even Nash, 14, was shot and killed by his father who later killed himself. The incident happened on the track at Point Loma High School.
9-5-2003	Vasquez Acosta, 16, died as a result of a school “scuffle” in which the victim was held down and blows were delivered to his head.
9-24-2003	Jason McLaughlin (15) opened fire on students at Rocori High School in Cold Spring, MD. The gym teacher talked Jason into putting down the gun but not before he had shot and killed Aaron Rollins, and wounded Seth Bartell who died later on 10-10-2003.
12-8-2003	An unknown male, age 15, stabbed another student of Porter High School in Porter OK on the school bus. He ran from the scene as soon as the bus stopped.
1-27-2004	Saul Pena, 15, was on his way to school at Willow Glen High School when an argument on the bus escalated to an assault. Pena died of multiple stab wounds in San Jose, CA.
2-2-2004	James Richardson, 17, shot and killed another student in the cafeteria of Ballou High School in Washington, D.C.

Date	Incident
2-3-2004	An unknown student slashed Jaime Gough's (14) neck causing him to bleed to death in the school locker room. Gough was a student at Southwest Middle School in Palmetto Bay, FL. Other students say that Gough was a shy boy often terrorized by bullies.
2-11-2004	Gaheem Thomas-Childs (10) was killed on the playground of Pierce Elementary School in Philadelphia when a gun battle between adults moved near the school. At least 94 rounds were fired in the altercation.
6-25-2004	A female student age 16 was beaten to death in the school parking lot by a gang of more than 5 girls.
9-5-2004	Bob Mars, 44, a teacher in Benton City, WA was killed by two gang members, ages 14 and 16.

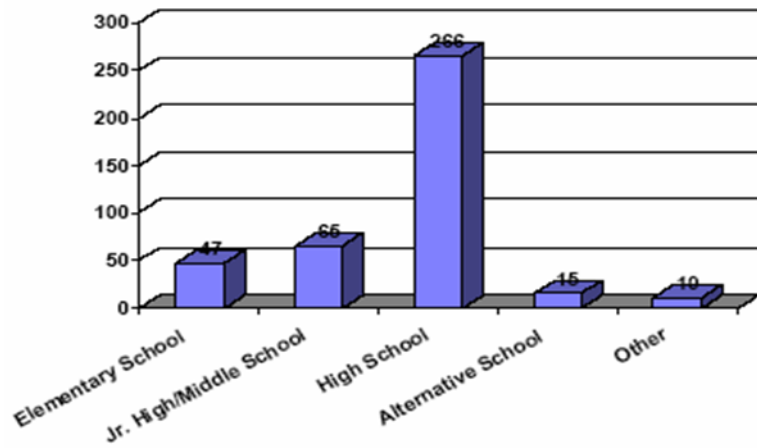


Figure 3. Deaths by school type. From “School-Associated Violent Deaths Report,” National School Safety Center, 2004, <http://www.nssc1.org/savd/savd.pdf>.

Figure 4 shows the method of deaths during the 1992 to 2005 school years. Shooting deaths totaled 295, an average of 22.69 shooting deaths per year.

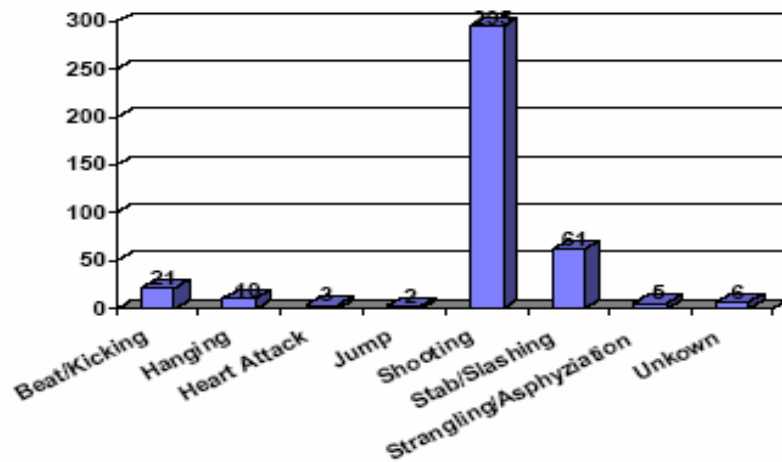


Figure 4. Methods of death.

From “School-Associated Violent Deaths Report,” National School Safety Center, 2004, <http://www.nssc1.org/savd/savd.pdf>.

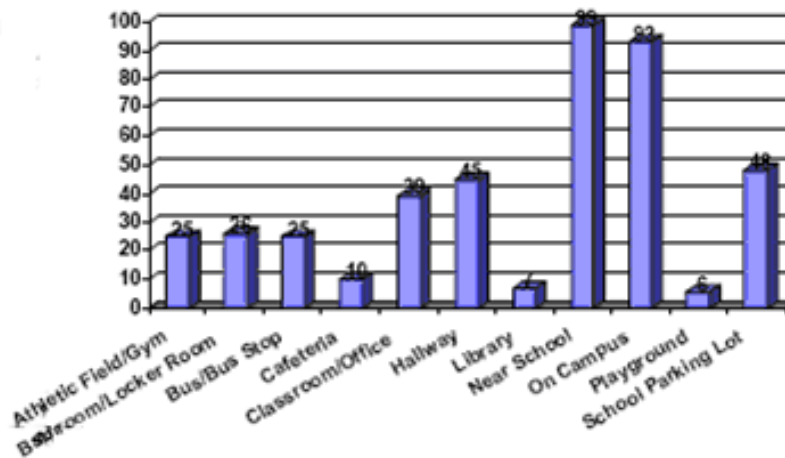


Figure 5. Location of deaths.

From “School-Associated Violent Deaths Report,” National School Safety Center, 2004, <http://www.nssc1.org/savd/savd.pdf>.

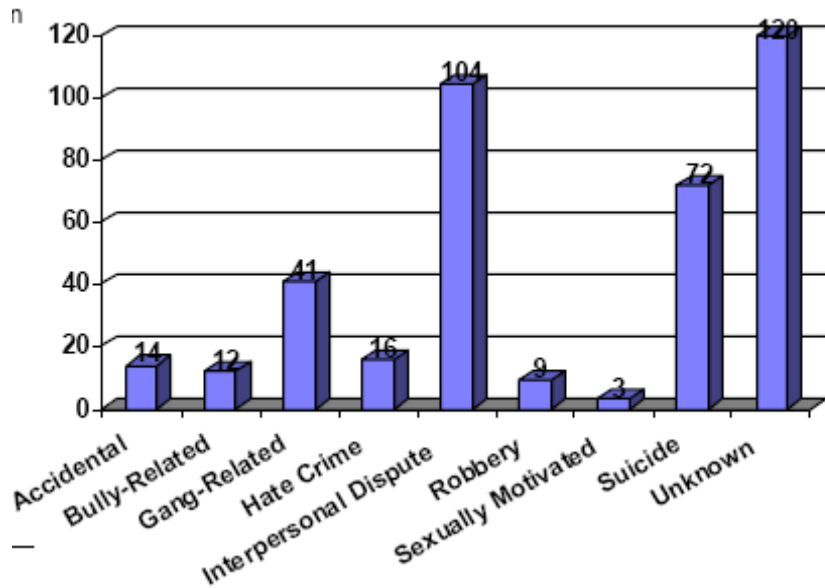


Figure 6. Reason for death.

From “School-Associated Violent Deaths Report,” National School Safety Center, 2004, <http://www.nsscl.org/savd/savd.pdf>.

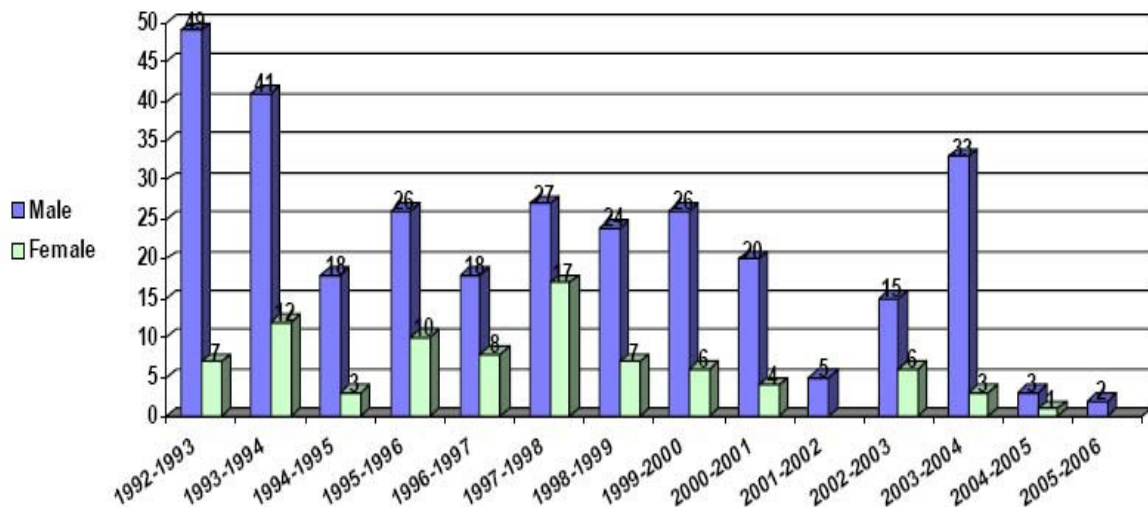


Figure 7. Victim's gender.

From “School-Associated Violent Deaths Report,” National School Safety Center, 2004, <http://www.nsscl.org/savd/savd.pdf>.

In reaction to these and other tragic, violent acts occurring in schools, national education organizations, such as the Board of Directors of the National Association of Secondary School Principals, have adopted position statements (see Appendix A) stressing the importance of students having a right to attend safe and secure schools. While attempting to meet the expectation of providing a school environment conducive to learning, school administrators increasingly search students and their belongings when presented with information that provokes suspicion. When school officials decide to search, they are often challenged in two areas: (a) the circumstances under which the search was conducted and (b) the admissibility of evidence garnered from the search. Because of the preceding two issues, administrators must at all times consider a students' Fourth Amendment rights which may compound the difficult decision of what, when, where and how to search students without violating their constitutional guarantees.

Adding to the legal complications is the fact that when a student violates school policy that is also a violation of the law, the offense could include addressing both school policy and the legal guidelines outlined by local, state, or federal law, which requires the involvement of law enforcement officials. Since the 1960s, the constitutional issue of search and seizure has been the subject of increasing litigation. In 1967, *In re Gerald Gault*,⁴² described later in this study, was heard by the nation's highest court to address the issue of due process for juveniles' constitutional rights. Since search and seizure is governed by the federal Constitution and, in some states, comparable state constitutional clauses, school officials need to have a sound understanding of the law and the how the Fourth Amendment applies to schools. Unfortunately, many administrators do not have such a grasp of the law, which can result in search and seizure actions that violate students' Constitutional rights.

⁴² *In re Gerald Gault*, 387 U.S. 1, 87 (1967).

Purpose of the Study

It is important for school officials to know and understand the legal guidelines governing student search and seizure as well as the potential legal liability that may result from unsupported searches. The primary purpose of this study was to increase readers' understanding of student rights related to search and seizure in the school environment by providing a systematic review and summary of relevant Supreme Court cases, post- *New Jersey v. T.L.O.* cases, commentary regarding search and seizure involving K-12 public schools, and the legal standards governing searches involving students. Its secondary purpose was to provide practical methods of applying search and seizure law to K-12 public school situations.

Guiding Questions

In *New Jersey v. T.L.O.*,⁴³ the Supreme Court departed from its previous policy, which was rooted in the Doctrine of Discretionary Educational Primacy.⁴⁴ This doctrine meant the Court would not interfere with school officials' discretion as long as refraining would not cause serious constitutional loss. In other words, the Supreme Court was yielding to the school's decisions. Five central questions have been established to guide this research. The conclusion of this dissertation will provide answers to the five guiding questions. Based upon case law, the answers are intended to provide a better understanding of school law, especially as it relates to search and seizure in K-12 public schools. The guiding questions are as follows:

1. Does the Fourth Amendment apply to student searches in public schools?
2. What types/methods of searches are legal?

⁴³ *New Jersey v. T.L.O.*, 469 U.S. 325

⁴⁴ P. Holeck, *Safety, Order and Discipline in American Schools* (University Heights, Minutemen Press, 1997) 205.

3. What is considered to be a reasonable search?
4. What guidelines should be used in search and seizure practices?
5. What things should be considered to make a search legal?

Definitions

Administrative Search: A search of public premises by a legal authority to for health, safety and security reasons.⁴⁵

De novo (Trial): A writ or order for another trial of a case that has been sent back from a higher court for a new trial.⁴⁶

Delinquent: Person who has been guilty of some crime, offense, or failure of duty or obligation.⁴⁷

Discretionary Review: Form of appellate review that is not a matter of right, but rather occurs only at the discretion of the appellate court.⁴⁸

Due Process: “The conduct of legal proceedings according to establish rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case”.⁴⁹

Exclusionary Rule: A rule that excludes or suppresses evidence obtained in violation of an accused person’s constitutional rights.⁵⁰

⁴⁵ *Black’s Law Dictionary*, 7th. ed. (St. Paul: West Group, 1999), 1351.

⁴⁶ *Id.* 1512.

⁴⁷ *Black’s Law Dictionary*, 6th. ed., 428.

⁴⁸ *Id.* 467.

⁴⁹ *Black’s Law Dictionary*, 7th ed., 516.

⁵⁰ *Id.* 587.

Hearing de novo: A reviewing court's decision of a matter anew that gives no deference to a lower court's findings. A new hearing of a matter, conducted as if the original hearing had not taken place.⁵¹

In Loco Parentis: The Latin phrase that literally means "in the place of parents." This means that school officials may discipline students as if the students were their own children.⁵²

In re: "In the matter of," designating a judicial proceeding (for example, juvenile cases) in which the customary adversarial posture of the parties is de-emphasized or nonexistent.⁵³

Individualized Suspicion: Individualized suspicion, also known as particularized suspicion, refers to suspicion that an individual has participated in or evidence exist of misconduct or may be in possession of contraband.⁵⁴

Interlocutory Appeal: An appeal of a matter that is not determinable of the controversy, but that is necessary for a suitable adjudication of the merits.⁵⁵

Miranda: Derives from the 1966 case of *Miranda v. Arizona*,⁵⁶ in which the Warren court required that police advise criminal suspects of their constitutional rights before interrogation.⁵⁷

Nexus: A causal link.⁵⁸

Nolo Contendere: Latin for "I do not wish to contend."⁵⁹

⁵¹ *Black's Law Dictionary*, 7th ed., 725.

⁵² *Id.* 791.

⁵³ Perry A. Zirkel et al., *A Digest of Supreme Court Decisions Affecting Education*, 3rd ed. (Bloomington: Phi Delta Kappa, 1995), 206.

⁵⁴ Myron Schreck, "The Fourth Amendment in the Public Schools: Issues for the 1990's and Beyond," *Urb. Law* 25 (Winter 1993): 117.

⁵⁵ *Black's Law Dictionary*, 6th ed., 815.

⁵⁶ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁵⁷ Kermit L. Hall, *The Oxford Guide to United States Supreme Court Decisions* (New York: Oxford University Press, 1999), 354.

⁵⁸ "Definition of Nexus," *Merriam-Webster Online Dictionary*, 2005. <https://www.merriam-webster.com/dictionary/nexus>

⁵⁹ *Black's Law Dictionary*, 7th ed., 1070.

Parens Patriae: Concept of the state's guardianship over persons unable to direct their own affairs, such as minors.⁶⁰

Police Officer: State officials who enforce the law.⁶¹

Probable Cause: Situation where the facts and circumstances within an officer's knowledge provides that officer with reason to believe that an offense has been or is being committed; a Fourth Amendment requirement that government officials must satisfy in order to secure a warrant to search.⁶²

Reasonable Suspicion: Lesser Fourth Amendment standard applying to searches and seizures of students and their property by school officials. Developed from by the Supreme Court in the *New Jersey v. T.L.O.* case.⁶³

School Officials: Public school administrators or their designees who deal with students in disciplinary matters.

Search: An examination of a person's body, property or other area that would reasonably be considered private.⁶⁴

Seizure: Forcible or secretive dispossession of something against the will of the possessor or owner.⁶⁵

Warrant (Search): A judge's written order authorizing police to search a place and to seize evidence.⁶⁶

⁶⁰ E. Edmund Reutter Jr., *The Law of Public Education*, 3rd ed. (Ventura: Foundation Press, 1985), 910.

⁶¹ *Black's Law Dictionary*, 7th ed., 1178.

⁶² *Id.* 1081.

⁶³ *New Jersey v. T.L.O.*, 469 U.S. 325.

⁶⁴ *Black's Law Dictionary*, 7th ed., 1351.

⁶⁵ *Id.* 1353.

⁶⁶ *Black's Law Dictionary*, 7th ed., 1353.

Writ of Certiorari: “To be more fully informed.” Writ issued by higher court at its discretion directing a lower court to deliver the records in a case for review.⁶⁷

Writ of habeas corpus: A writ employed to bring a person before a court, most frequently to ensure that the party’s imprisonment or detention is not illegal.⁶⁸

Methods of Research

For this dissertation, primary and secondary source research was conducted to locate cases and other relevant commentary pertaining to the Fourth Amendment and student rights related to elementary and secondary schools. The research process included a review of literature provided by various education associations (i.e., the Education Law Association, *Desktop Encyclopedia of American School Law*, NASSP, etc.), previous studies and dissertations, accepted legal research practices learned from my previous graduate work at Virginia Polytechnic Institute and State University (i.e. use of West Law), and professional and practical training gained from serving over 13 years as an educational administrator. For each source, key words were used to locate the information. The key words included *Fourth Amendment*, *School Law*, *Student Discipline*, *Search and Seizure*, and *Student Rights*. The following sources were used:

- **Statutes**, which refers to legislative law derived from actions of the legislature that produce either state or federal law.
- **The American Digest System**, a multi-volume set that indexes published court cases by legal topic and case name. Digests provide brief summaries of legal issues

⁶⁷ Id. 220.

⁶⁸ Id. 715.

in the court cases indexed and citations to the cases themselves, which are published in multi-volume sets called reporters.⁶⁹

- **Westlaw**, one of the leading online legal research services, providing the broadest collection of legal resources, news, business, and public records information available to authors and those working in law-related professions. Cases, statutes, and other legal documents published on Westlaw are editorially enhanced by West Group editors for more productive searching and research leads.⁷⁰
- **Find Law**, offers accessible information to enable everyone to better understand the law, make more informed legal decisions, and find quality legal help. It also provides the most comprehensive set of legal resources on the Internet for legal professionals, corporate counsel, law students, and businesses. These resources include web search utilities, cases and codes, legal news, an online career center, and community-oriented tools such as a secure document management utility, mailing list, message boards, and free e-mail.⁷¹
- **Deskbook Encyclopedia of American School Law**, an annually updated encyclopedia that includes a compilation of state and federal appellate court decisions that affect education.
- **American Jurisprudence**, a legal encyclopedia that provides an overview of a legal issue and supports it with case citations.

⁶⁹ The American West Digest System, <http://kenketchum.tripod.com/newyorkchristianlawlibrary/id18.html>.

⁷⁰ West Law, <http://legalsolutions.thomsonreuters.com/law-products/westlaw-legal-research/>.

⁷¹ Find Law, <http://company.findlaw.com/company-history/findlaw-corporate-information-press-company-background.html>.

- **The Oxford Guide to United States Supreme Court Decisions**, a book dealing with the constitutional and legal history involving the cases and decisions of the Supreme Court of the United States.
- **Black’s Law Dictionary**, a legal dictionary that provides definitions of legal terms with their pronunciations.
- **Education Law Association**, which houses legal materials and disseminates legal information via a variety of publications: ELA School Law Reporter, ELA Notes, Yearbook of School Law, and conferences.
- **Dissertations**, which are substantial academic paper written on an original topic of research, usually presented as one of the final requirements for the doctorate degree. In this case, previous dissertations related to search and seizure in schools were researched.
- **Textbooks**, defined as “a manual of instruction, a standard book in any branch of study.” Specifically, text involving school law.
- **Journals**, a publications such as a magazine or scholarly articles (e.g., scientific or academic) issued at stated intervals.
- **The Internet**, an electronic network providing access to millions of resources worldwide.
- **Personal Interviews**, which refer to a dialogue between at least two people in which one ask questions related to a topic or group of topics and the other answers.

Design of the Study

The second chapter of this study will introduce the legal aspects of the search and seizure issue as it relates to the Constitutional provisions of the Fourth Amendment, including the

following: Exclusionary Rule, Miranda, Special Needs Doctrine, Plain View Doctrine, Probable Cause, Chimel Rule, and relevant landmark Supreme Court cases. Chapter 3 will provide a review of landmark Supreme Court cases directly related to searches and seizures involving juveniles (students) and/or schools. The fourth chapter will include an examination of selected federal and state court cases related to searches and seizures, organized by type of search, in the following categories: police involvement in student searches, drug policy, random, locker, mass searches (metal detector), weapon, automobile searches, and canine (sniff) searches. Since state constitutional provisions may also govern student searches, I include state decisions in that chapter. In each category, where applicable, I have included a Commonwealth of Pennsylvania case to provide relevant case law for Pennsylvania administrators since I am currently a practicing school superintendent in the Commonwealth of Pennsylvania. Finally, Chapter 5 will provide a summary and conclusions.

Limitations

The scope of this study was limited to relevant Supreme Court cases, Supreme Court cases involving K-12 education, and post- *New Jersey v. T.L.O.* federal and state court decisions related to student searches and seizures in K-12 public schools. Conclusions were drawn based upon these limitations.

CHAPTER II: A REVIEW OF REVELANT SOURCES OF LAW AND SUPREME COURT CASES

Introduction

While “[c]ourt decisions throughout the years have established a common law of the school under which the teacher and the student have mutual responsibilities and obligations,” the courts have also “recognized that in order for teachers to address the diversity of expectations placed upon them, they must be given sufficient latitude in the control of the conduct of the school for an appropriate decorum and learning atmosphere to prevail.”⁷² While there is still much to define and learn regarding student privacy and how the Fourth Amendment applies to the school setting, several relevant court cases have been decided that provide some understanding of the relevant constitutional provisions and school application.

Constitutional Provisions

While somewhat diminished since the 9/11 tragedy, Americans still enjoy and expect a great deal of privacy compared to citizens in other countries. The Constitution of the United States has served as one of the main guarantors of this right, which is strongly enforced by the courts. Most relevant to this dissertation is the Fourth Amendment, which provides citizens the right to be secure from unreasonable search and seizure. While the Fourth Amendment was written for the general public, the courts have made some decisions on how this Amendment applies to school settings and have generally affirmed that students do not shed their rights when entering a school.⁷³

⁷² Alexander and Alexander, 306–307.

⁷³ *Tinker v. Des Moines*, 393 U.S. 503 (1969)

Fourth Amendment

The Fourth Amendment provides for “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”⁷⁴ Thus, the Fourth Amendment has two specific clauses: the Reasonableness Clause and the Warrant Clause.

Reasonableness Clause and Warrant Clause

The Reasonableness Clause of the Fourth Amendment applies to all searches and seizures, and the Warrant Clause—which specifies the requirements for obtaining a constitutionally valid warrant—indicates that prior approval by a judge or magistrate must be obtained before a search takes place. Logically, the two clauses are interrelated. The U.S. Supreme Court has held, with very few exceptions, searches and seizures by the state conducted without warrants are unreasonable. In recent years, the Supreme Court has also clarified circumstances under which the Fourth Amendment does not apply. Legal situations that fall outside the scope of the Fourth Amendment include investigative methods such as “consent searches,” electronic surveillance with the consent of one party to the conversation, searches by private citizens, and searches of places and objects when a person has no reason to expect privacy.⁷⁵

In the area of electronic surveillance (which has significantly increased since 9/11), states cannot normally grant more power to police officers than allowed by the federal government, but

⁷⁴ U.S. Const. amend. IV.

⁷⁵ Schreck, 117.

there are lesser restrictions on consent and different definitions of the term “private” (example: email) under the wiretapping law.⁷⁶ Pennsylvania law 18 Pa. Cons. §5703, which specifically mentions “electronic or computer,” requires all parties to consent, and this is possibly one of the most stringent laws in all the states. While electronic surveillance is not a direct part of this study, Appendix B has been included as an informational resource.

In general, searches and seizures that either do not meet either the reasonableness clause or the warrant clause standard could be deemed violations of the Fourth Amendment and result in the application of the exclusionary rule.

Exclusionary Rule

The exclusionary rule was first established in the 1914 case of *Weeks v. United States*⁷⁷ and applied to states via *Mapp v. Ohio*.⁷⁸ The rule holds that evidence that has been illegally obtained cannot be legally admitted in court. Originally, the rule only applied to federal officials. In *Mapp v. Ohio*,⁷⁹ however, the Supreme Court expanded the *Weeks* doctrine (exclusionary rule), banning illegally seized evidence. Thirty years ago, the courts were in general (but not unanimous) agreement that evidence illegally seized by school officials may not be used against students in a criminal or juvenile delinquency hearing. However, recent case law indicates a significant shift in how the exclusionary rule applies to schools. In fact, the Supreme Court has ruled that evidence seized illegally by school officials may be used in a trial, and the lower courts are now allowing the admission of illegally seized evidence.

⁷⁶ Tom O’Connor, “Search and Seizure: A Guide to Rules, Requirements, Tests, Doctrines, and Exceptions,” North Carolina Wesleyan College, 2004, <http://faculty.ncwc.edu/toconnor/405/405lect04.htm>.

⁷⁷ *Weeks v. United States*, 232 U.S. 383 (1914).

⁷⁸ *Mapp v. Ohio*, 367 U.S. 643 (1961).

⁷⁹ *Id.* 654–655.

The intent of the exclusionary clause is to prevent the admission of illegally seized evidence.⁸⁰ In *T.L.O.*, however, the Court didn't consider if the exclusionary rule was appropriate for searches conducted by school officials:

In holding that the search of T.L.O.'s purse did not violate the Fourth Amendment, we do not implicitly determine that the exclusionary rule applies to the fruits of unlawful searches conducted by school authorities. The question whether evidence should be excluded from a criminal proceeding involves two discrete inquiries: whether the evidence was seized in violation of the Fourth Amendment, and whether the exclusionary rule is the appropriate remedy for the violation. Neither question is logically antecedent to the other, for a negative answer to either question is sufficient to dispose of the case. Thus, our determination that the search at issue in this case did not violate the Fourth Amendment implies no particular resolution of the question of the applicability of the exclusionary rule.⁸¹

The court, in other words, left unresolved the question of if the exclusionary rule applies to the evidence found during an unlawful search in public schools.

The answer to this question is, "both yes and no." If the obtained evidence is going to be used in a criminal prosecution, the exclusionary rule will be litigated with the question of its application determined by the court. If the evidence is to be used for disciplining the student under school rules, the exclusionary rule does not apply.⁸² While the exclusionary rule primarily applies to Fourth Amendment protections against illegal search and seizure, it also applies to

⁸⁰ *Weeks v. United States*, 232 U.S. 383.

⁸¹ *New Jersey v. T.L.O.*, 469 U.S. 325 at Footnote 3.

⁸² Lawrence Rossow and Jacqueline Stefkovich, *Search and Seizure In the Public Schools*, 2nd ed. (Topeka: NOLPE No. 54, 1995).

Fifth Amendment protections against self-incrimination. The *Weeks v. United States*⁸³ case unmistakably recognized the basis for the exclusionary rule with the self-incrimination clause of the Fifth Amendment. The Fifth Amendment states,

No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.⁸⁴

However, the Fifth Amendment protection against self-incrimination only applies to criminal proceedings and not to school disciplinary proceedings. The testimony given by a student in a school disciplinary hearing for example, “can later be used in a criminal proceeding, although a student may then object to the use of statements made at the school hearing.”⁸⁵ Given the Fifth Amendment directly pertains to law enforcement officials, it may apply to school situations when police officers are involved in the search, questioning, and detention of a student. One conclusion that administrators may draw is that, rather than deliberating on the law, school administrators should focus on providing students and staff with a safe and orderly school environment within the guidelines established by the school district’s policies and procedures.

While the *Mapp v. Ohio* decision expanded the exclusionary rule, a 1995 case, *Arizona v. Evans*,⁸⁶ provided a modern day application of the exclusionary rule and technology. Evans was

⁸³ *Weeks v. United States*, 232 U.S. 383.

⁸⁴ U.S. Const. amend, V.

⁸⁵ Vacca and Bosher, 297–298.

⁸⁶ *Arizona v. Evans*, 511 U.S. 1 (1995).

mistakenly detained due to an error in the police computer that indicated an outstanding warrant for his arrest. As a result of the arrest, the police searched his vehicle and found drugs. Evans argued that because the warrant was incorrect, the search was illegal. The state court agreed and the U.S. Supreme Court reversed the decision. In deciding the case, the Court considered three different factors:

1. They decided that the exclusionary rule was created to stop police misconduct. In this case, the Court found that no misconduct had occurred.
2. The Court also decided that, because there is no evidence that record keeping employees were inclined to ignore the Fourth Amendment, the computer error was probably a result of pure human error rather than an attempt to undermine the rights of individuals.
3. Without evidence that extending the exclusionary rule to mistakes made by record keeping employees would change police behavior, there was no reason to believe that finding for Evans in this case would make a police officer more accurate. After all, they determined, the officer was just doing his job.⁸⁷

In *New Jersey v. T.L.O.*,⁸⁸ the New Jersey Court believed the Supreme Court of the United States (in cases heard before the *T.L.O.* Supreme Court decision) made it clear the exclusionary rule is equally relevant “whether the public official who illegally obtained the evidence was a municipal inspector, a firefighter, school administrator, or law enforcement official.” The Court also concluded, “if an official search violates constitutional rights, the

⁸⁷ “The Exclusionary Rule in a Computer-Driven Society: The Case of *Arizona v. Evans* (1995),” Landmark Supreme Court Cases, Summer 2002, <http://www.landmarkcases.org/mapp/society.html#outcome>.

⁸⁸ *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

evidence is not admissible in criminal proceedings”.⁸⁹ One method of gaining evidence by police is to question suspects. When being questioned by the police about a crime, citizens have a specific right to be informed of their legal rights related to answering the questions.

Miranda

When police are involved in questioning someone about a criminal offense, they are required to inform the person of their rights and to provide a warning that notifies the person of the potential use of the information against them in a court of law. This “miranda warning,” named so for the 1966 case, *Miranda v. Arizona*,⁹⁰ means that if the police fail to advise a person of their right to remain silent, and the person confesses, the confession cannot be introduced as evidence in the trial. The *Miranda v. Arizona*⁹¹ case involved Ernesto Miranda, who was arrested for armed robbery and stealing \$8 from a bank worker. While in custody, by written confession, he admitted to the robbery as well as to kidnapping and rape of an 18-year-old woman. After being convicted, Miranda’s lawyers appealed, stating he was not aware the Fifth Amendment protected him from self-incrimination. Upon review by the Supreme Court, the conviction was overturned and the court established that those accused of a crime have a right to remain silent and that prosecutors may not use statements made by defendants while in custody against them unless the accused have been advised their rights, often referred to as Miranda Rights. To be Mirandized, a person must be warned of at least the following prior to questioning, “that he has the right to remain silent, that anything he says can be used against him in a court of law, that he

⁸⁹ *State in Interest of T.L.O.* (1983); and *New Jersey v. T.L.O.* (1985). “Should the Exclusionary Rule Apply to Searches Conducted by School Officials in a School Setting?” Landmark Supreme Court Cases, Summer 2002, <http://www.landmarkcases.org/newjersey/apply.html>.

⁹⁰ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁹¹ *Ibid.*

has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.”⁹²

Schools employ police officers, often referred to as School Resource Officers, or SROs, and these SROs have to be knowledgeable about *Miranda* requirements when they are involved in, or are present during, the questioning of a student. When a student is in custody or believes they are in custody, the *Miranda* requirement applies. In the *Interest of John Doe* case,⁹³ a ten-year-old student was told to report to the faculty room, where the school’s SRO questioned him regarding sexually touching a female student. The question presented before the court was whether *Doe* was in custody when he talked to the SRO, which would have required a *Miranda* warning. The court in *Interest of John Doe* gave the following statement:

We are persuaded that under these circumstances a child ten years of age would have reasonably believed that his appearance at the designated room and his submission to questioning was compulsory and that he was subject to restraint which, from such a child’s perspective, was the effective equivalent of arrest.⁹⁴

The *Miranda* warning, in other words, was required.

Further, according to The U.S. Supreme Court’s ruling in *Stansbury v. California*,⁹⁵ a person questioned by police officers after being “taken into custody or otherwise deprived of his freedom of action in any significant way” must first “be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a

⁹² *Ibid.*

⁹³ *In the Interest of John Doe*, 948 P.2d 166 (Ct. App. Idaho, 1997).

⁹⁴ *Ibid.*

⁹⁵ *Stansbury v. California*, 114 S. Ct. 1526 (1994).

right to the presence of an attorney, either retained or appointed.” Statements elicited in noncompliance with this rule may not be admitted for certain purposes in a criminal trial.⁹⁶

Another issue related to police or SRO being present during questioning of students involves the question of what constitutes the *Miranda* warning requirement. In the *Interest of J.C.*⁹⁷ case, a high school student was sent to the office because he had allegedly been smoking marijuana. When the assistant principal questioned him, with the sheriff deputy present, he admitted that he was in possession of marijuana. The court ruled that since the school official questioned him and the deputy was only present, then no *Miranda* was required. In this case, the school official was not acting as an agent of the police. The court did articulate that questioning by a law enforcement officer after an individual has been taken into custody, which leaves the impression that one is unable to leave or deprived of freedom, does require a *Miranda* warning. “As a general rule, where a student is detained and a law enforcement officer participates in the interrogation, *Miranda* warnings should be given, if his confession is to be admissible.”⁹⁸

The Fourth Amendment is applicable to searches conducted by school officials because “school officials act as representatives of the State, not merely as surrogates for the parents.”⁹⁹ However, the Supreme Court’s *T.L.O.* decision provided the guidelines governing searches by public school authorities: “the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject.”¹⁰⁰ The Court ruled, neither the warrant requirement, nor the probable cause standard was appropriate. Instead, the reasonableness standard applies to searches of students’ bodies and belongings by school authorities. A search

⁹⁶ Id. Footnotes 1–3.

⁹⁷ *In the Interest of J.C.*, 591 So.2d 315 (Florida Dist. Ct. App., 4th Dist., 1992).

⁹⁸ Id. Footnote 4.

⁹⁹ *New Jersey v. T.L.O.*, 469 U.S. 325, 333-337 (1985).

¹⁰⁰ Id. 337-343.

must meet the reasonableness standard at its inception. In other words, there must be “reasonable grounds for suspecting the search will turn up evidence the student has violated or is violating either the law or the rules of the school.”¹⁰¹

The scope of the school search must also be reasonably connected to the circumstances that initiated the search and “not excessively intrusive in light of the age and sex of the student and the nature of the infraction.”¹⁰²

In applying these rules, the Court upheld the search of a student’s purse as a reasonable act needed to determine whether the student accused of violating a school rule, by smoking in the lavatory, possessed cigarettes. The search for cigarettes, which uncovered evidence of drug activity, was held admissible in a prosecution under the juvenile laws.¹⁰³

Certain circumstances and environments create a need for flexibility to provide protection and appropriate supervision. The school setting, at times, has been identified as such a place, one with unique needs to provide a safe and secure environment.

Special Needs Doctrine

The U.S. Supreme Court has determined the government has a significant interest in protecting the welfare of all people. It has also recognized that children’s constitutional rights are limited and that intrusions on those rights may be justified by a “compelling state interest.” The Supreme Court has found a search is reasonable when an important governmental need, beyond the normal needs of law enforcement, makes the warrant and probable cause requirements

¹⁰¹ *New Jersey v. T.L.O.*, 469 U.S. 325, 337-343 (1985).

¹⁰² *Ibid.*

¹⁰³ “U.S. Constitution: Fourth Amendment, Annotations,” *FindLaw*, 2005, <http://caselaw.lp.findlaw.com/data/constitution/amendment04/04.html#5>.

impracticable and the government's interest outweighs the individual's privacy interest.¹⁰⁴ For instance, the "special needs doctrine" enables states (school officials) to circumvent the warrant and probable cause requirements of the Fourth Amendment when certain requirements are met. The "special needs" doctrine has often been applied in suspicionless drug testing cases.

Several non-education cases set the foundation for decisions related to the "special needs" doctrine. In the 1989 case, *Treasury Employees v. Von Raab*,¹⁰⁵ the court ruled, The Service's testing of employees who apply for promotion to positions directly involving the interdiction of illegal drugs, or to positions that require the incumbent to carry firearms, is reasonable despite the absence of a requirement of probable cause or of some level of individualized suspicion.¹⁰⁶

Also in 1989, *Skinner v. Railway Labor Executives' Ass'n*,¹⁰⁷ the court majority found, the lack of individualized suspicion required to conduct blood, breath and urine testing for railroad employees to determine drug and alcohol content did not make intrusions unreasonable as, to the extent transportation and similar restrictions were necessary to procure the testing, the *interference was minimal given the employment context for railroad employees*.¹⁰⁸

In the 1997 case of *Chandler v. Miller*,¹⁰⁹ the court provided the following statement related to position and job requirement for special needs establishment:

Alleged incompatibility of unlawful drug use with holding high state office *did not establish special need* for drug testing of candidates for state office as required to depart

¹⁰⁴ *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822 (2002).

¹⁰⁵ *Treasury Employees v. Von Raab*, 489 U.S. 656 (1989).

¹⁰⁶ *Id.* 667-677.

¹⁰⁷ *Skinner v. Railway Labor Executives' Assn*, 109 S.Ct. 1402, U.S. Cal. (1989).

¹⁰⁸ *Ibid.*

¹⁰⁹ *Chandler v. Miller*, 117 S. Ct. 1295 (1997).

from Fourth Amendment's requirement of individualized suspicion for search; there was no evidence of drug problem among state's elected officials, those officials typically did not perform high-risk, safety-sensitive tasks, and required certification immediately aided no interdiction effort.¹¹⁰

In *T.L.O.*, the Supreme Court concluded the Fourth Amendment does not require school officials to have a warrant prior to searching a student who is under their supervision because they felt the warrant requirement was not suitable for a school environment.¹¹¹ Namely, the state must articulate a "special need" for the search or seizure, after which the court will balance the governmental interest against the individual's privacy interests. Under this doctrine, federal courts have upheld warrantless, suspicionless drug-testing programs as applied to certain groups of minors.¹¹²

Plain View Doctrine

Another aspect of search and seizure of evidence without a warrant is the doctrine of "plain view."¹¹³ The plain view doctrine states, "For a warrantless seizure of an object in plain view to be valid, two conditions must be satisfied in addition to the essential predicate that the officer did not violate the Fourth Amendment in arriving at the place from which the object could be plainly viewed." The object must be readily visible and the police officer must have a right to be present.¹¹⁴

¹¹⁰ *Ibid.*

¹¹¹ David Badanes, "Earls v. Board of Education: A Timid Attempt to Limit Special Needs from Becoming Nothing Special," *St. John's L. Rev.* Vol. 75: Iss, 4 Article 8 (2001)

¹¹² Shannon D. Landreth, "An Extension of the Special Needs Doctrine to Permit Drug Testing of Curfew Violators," *U.ILL.L. Rev.* Vol 2001, no. 5 (2001):1247.

¹¹³ *Arizona v. Hicks*, 480 U.S. 321 (1987).

¹¹⁴ *Horton v. California*, 496 U.S. 128 (1990).

Under the Fourth Amendment, the observation of that which is in plain view does not constitute a search. Under the “plain view” doctrine, police officers may seize an object without a warrant if

- they are lawfully in the position to view the object;
- the object’s incriminating character is immediately apparent; and
- they have a lawful right of access to the object.

If the observations are made from a position to which the officer has not been expressly or implicitly invited, the intrusion is unlawful unless executed pursuant to a warrant or one of the established exceptions to the warrant requirement is met. Although inadvertence is characteristic of most plain view seizures, it is not a necessary condition.¹¹⁵

For example, a 1982 ruling in *Washington v. Chrisman*¹¹⁶ held that marijuana seeds and pipe evidence seized by police lawfully in a dorm room was allowable since these were in open view. This ruling indicates that school officers are affected by the plain view doctrine.

However, the plain view doctrine is limited by the probable cause requirement (discussed in the next section), which mandates that officers must have probable cause to believe items in plain view are contraband before they can search or seize them.¹¹⁷ For example, if a police officer is lawfully in a position to observe a car, inadvertently discovers drugs on the seat, and it is immediately apparent the officer has found evidence (i.e., an illegal substance), the officer may legally confiscate the drugs without a warrant because they were in plain view. Similarly, we can apply this to school resource officers using the probable cause standard. If the item is in

¹¹⁵ 68 Am. Jur. 2d Searches and Seizures § 101 (2004).

¹¹⁶ *Washington v. Chrisman*, 455 U.S. 1 (1982).

¹¹⁷ “U.S. Constitution: Fourth Amendment, Annotations.”

plain view and there is reasonable suspicion the item is contraband (i.e., a violation of school rules or illegal), then it may be seized.

The plain view doctrine may be summarized as follows. First, officials must be in a place where they have a right to be. Second, the intrusion into an area protected by the Constitution must be a valid intrusion. Valid intrusions for police include search incident to arrest, stop and frisk, executing a search warrant, hot pursuit, and exigent circumstances. Third, officials must actually “see“ the item, although the other four senses—taste, touch, smell, and hearing—can often be used to establish probable cause. Fourth, officials must have probable cause to believe the object they see is subject to seizure, and this must be “immediately apparent” to them without their moving the item (unless there is justification to move the object other than just to determine if it is seizable). Finally, the discovery of the item of evidence must be inadvertent; in other words, there must have been no probable cause to believe the item would be where it was discovered.¹¹⁸ While inadvertence is typical, it is not necessarily a required part of the doctrine.

Probable Cause

The specific meaning of “probable cause” is somewhat uncertain. Most debates have focused on the differences between “more probable than not” and “substantial possibility”. In *Draper v. United States*,¹¹⁹ it was noted, that “in dealing with probable cause, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act”¹²⁰ The “more probable than not,” involves the fundamentals of certainty and technical

¹¹⁸ Tom O’Connor, “Probable Cause, Lecture #6, JUS 315 Criminal Investigation,” North Carolina Wesleyan College, Spring 2004, <http://faculty.ncwc.edu/toconnor/315/315lect06.htm>.

¹¹⁹ *Draper v. United States*, 358 U.S. 307, 313 (1959).

¹²⁰ *Brinegar v. United States*, 338 U.S. 160, 175 (1949).

knowledge. The Supreme Court case law indicates that rumor, mere suspicion, and even “strong reason to suspect” are not comparable to probable cause. The common textbook definition of “reasonable man” states, “probable cause is where known facts and circumstances, of a reasonably trustworthy nature, are sufficient to justify a man of reasonable caution or prudence in the belief that a crime has been or is being committed.”¹²¹

There are, of course, other definitions, and Appendix C provides more detailed information related to the sources of probable cause as described by Dr. Tom O’Connor of North Carolina Wesleyan College.¹²² *Carroll v. United States*¹²³ is one of the precedent setting cases regarding probable cause related to searches. An applicant for a warrant (usually a police officer) must present facts that are adequate enough to enable the magistrate to determine probable cause.¹²⁴ Probable cause is determined according to “the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.”¹²⁵

A “search” is considered an intrusion of privacy, a hunt to find something. The 1967 *Katz v. United States*¹²⁶ provided a definition of privacy (expectation of privacy). *Katz* states an “individual must have subjective expectation of privacy and second the expectation must be one that society is prepared to recognize as reasonable”.¹²⁷ Because of such issues of privacy, the subject of electronic surveillance has received much attention recently and has resulted in a new set of rules. As discussed previously and outlined in Appendix B, states generally cannot give police more authority than allowed by the federal government when regarding the use of

¹²¹ *Draper v. United States*, 358 U.S. 307, 313 (1959).

¹²² O’Connor, “Probable Cause.”

¹²³ *Carroll v. United States*, 267 US 132 (1925).

¹²⁴ *Ibid.*

¹²⁵ *Brinegar v. United States*, 338 U.S. 160, 175 (1949).

¹²⁶ *Katz v. United States*, 389 U.S. 347 (1967).

¹²⁷ *Ibid.*

technology. There are, however, lower restrictions on consent and different definitions of private (ex: email) under wiretapping law, plain view (discussed earlier), and the Chimel Rule, which refers to things in the immediate control of a suspect.¹²⁸

Chimel Rule

The Chimel rule comes from *Chimel v. California*,¹²⁹ a case in which police ransacked a house while serving an arrest warrant on Ted Chimel. After taking Mr. Chimel into custody, the police decided to search the entire house after being told not to by Mr. and Mrs. Chimel. The search of the entire house was illegal. The Chimel Rule allows for a warrantless search if it is incidental and simultaneous to a lawful arrest, such as when officers are serving an arrest warrant without a search warrant. Only the area that is a part of the person's immediate control can be searched. The search can be conducted for evidence that has nothing to do with the warrant for arrest. Also, a "protective sweep search" for hidden attackers (closets or closed doors, for example) is appropriate for dwelling areas. Ralph Strickland of the North Carolina Justice Academy provides the following guiding principles:¹³⁰

1. "You may search that person for weapons and evidence of a crime (automatically and with only probable cause to arrest; probable cause to search is not required)."
2. "You may then handcuff your prisoner, and *prior to moving him from the location of the arrest*, you may search the area under the "immediate control" of the arrestee: his *lunge* area. This "lunge" area will be determined on a case-by-case basis and younger, more agile and fleet of foot arrestees will have a greater lunge

¹²⁸ O'Connor, "Probable Cause."

¹²⁹ *Chimel v. California*, 395 U.S. 752 (1969).

¹³⁰ Ralph Strickland Jr., "Do You Remember? Refreshing Your Memory of Past Judicial Decisions," *North Carolina Criminal Justice Academy* 1, no. 5 (June 1994): 5.

- area than older, less agile arrestees. When you search the lunge area you will be searching for weapons and evidence. In Mr. Chimel’s case, had the officer only searched the lunge area of Mr. Chimel (instead of his *whole* house) there would not have been an illegal search problem.”
3. “During the search of the area and objects under the immediate control of your arrestee, you may search all open and closed containers in that area. Nevertheless, you may not open a *locked* container without consent, a real emergency, or a search warrant, as decided in *State v. Thomas*. ”¹³¹

The cases previously referenced are all important precedent setting decisions. However, the next section will review selected Supreme Court cases to provide a look at significant case law that is specifically relevant to the establishment of the rights of children.

Relevant Juvenile Supreme Court Cases

Significant progress in the recognition of constitutional rights for children occurred between 1948 and 1966. During that period, the Supreme Court considered five cases involving the rights of juveniles. The resulting benefits of these cases for children included (a) being afforded the same constitutional rights as adults, particularly due process and (b) the extension of those rights to include the schoolhouse. *Haley v. Ohio*¹³² represents the Supreme Court’s initial review of a juvenile justice case involving procedural due process. John Harvey Haley a 15-year-old [African-American] boy was convicted of murder in the first degree committed during a robbery. While in custody, Haley was interrogated for five hours by police without warning of his constitutional rights and without having the benefit of the advice of friends, family, or legal

¹³¹ *State v. Thomas*, 343 S.E. 2d 588 (N.C. Ct. App., 1986).

¹³² *Haley v. State of Ohio*, 352 U.S. 596 (1948).

counsel. There were some contradictions in the testimonies of witnesses when they described what happened while Haley was in custody. However, evidence was introduced that supported Haley's claim that he was beaten while in custody. Haley's clothes were torn and bloodstained and, when his mother saw him five days after his arrest, he was bruised and skinned. Since the police testified to the contrary, the Court put aside the controversial evidence.

The evidence revealed that five or six police personnel took turns questioning Haley without offering him legal counsel. After being shown the alleged confessions of two other juveniles charged in the case, Haley confessed. Police stenographers typed a confession in question and answer form and asked Haley to sign it. At no time during the course of events was Haley ever advised of his right to counsel. From the moment of his arrest on October 19th, Haley was held without visitation or access to his lawyer or mother. He was not taken before a magistrate and formally charged with a crime until October 23rd, three days after the confession was signed.

The trial court, after a preliminary hearing on the voluntary character of the confession, allowed the confession to be admitted in evidence over Haley's objection that it violated his rights under the Fourteenth Amendment. Haley's case was reviewed by the Ohio Supreme Court, which upheld the conviction. Upon review by the Supreme Court, it was determined the undisputed evidence suggested that force or coercion was used to extract the confession. The Supreme Court decided not to permit the judgment of conviction to stand even though, without the confession, there might still have been sufficient evidence for submission to the jury. With a 5 to 4 vote, the U.S. Supreme Court reversed the Ohio Supreme Court's decision, making the confession of guilt inadmissible.¹³³

¹³³ *Haley v. State of Ohio*, 352 U.S. 596 (1948).

The Supreme Court decided another set of cases related to children's rights, *Brown v. Board of Education I*¹³⁴ and *Brown v. Board of Education II*,¹³⁵ in 1954 and 1955. School administrators do not normally relate the *Brown v. Board I* or *Brown II* cases to search and seizure. However, they are being included in this discussion because they opened the doors to the federal court for children whose constitutional rights had been violated, resulting in the admission that separate but equal facilities are inherently unequal. The *Brown I* case involved thirteen families who challenged a Kansas school district's education system because they believed the education their children were receiving was not equal to the education that white children received.

During the initial hearings, the U.S. District Court of Kansas court agreed that inequality did, indeed, exist for students attending black schools when compared to the students at white schools. However, the District Court failed to act upon the requested relief because "there was no person or official who could be sued to bring remedy due to a Kansas statute granting almost total immunity to those who worked for the government"¹³⁶ and because of the previous ruling in *Plessy v. Ferguson*¹³⁷ by the Supreme Court, which allowed separate but equal systems for blacks and whites. In response to the U.S. District Court's decision, the National Association for the Advancement of Colored People (NAACP) appealed to the Supreme Court.

The Supreme Court combined five cases from Delaware, Kansas, South Carolina, Virginia, and the District of Columbia under the heading of *Brown v. Board of Education*, because each of the other four cases sought similar legal remedy. A young NAACP lawyer by the name of Thurgood Marshall argued the case on behalf of *Brown* under the premise that state

¹³⁴ *Brown v. Board of Education of Topeka, Shawnee County, KS*, 347 U.S. 483 (1954).

¹³⁵ *Brown v. Board of Education of Topeka, Shawnee County, KS*, 349 U.S. 294 (1955).

¹³⁶ *Oliver L. Brown et.al. v. the Board of Education of Topeka (KS) et.al.* (1951).

¹³⁷ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

and federal constitutional guarantees mean nothing if a state legislature can pass a law that allows the U.S. Constitution to be ignored. The Supreme Court agreed to hear the case and, on May 17, 1954, Chief Justice Warren delivered the opinion of the Court, saying,

The courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system.¹³⁸

During this period of transition, the courts will retain jurisdiction of these cases.¹³⁹

Brown II required the school districts to provide full implementation of the 1954 decision to admit the students to public schools on a racially nondiscriminatory basis with all deliberate speed.¹⁴⁰ However, “all deliberate speed” was given various interpretations by each school system, which resulted in a very slow implementation process.

In a 1966 case, *Kent v. United States*,¹⁴¹ the concept of *parens patriae*, which refers to the state’s guardianship over minors unable to direct their own affairs, was challenged. While Kent, a minor, was interrogated by the District of Columbia police, he admitted that he had participated in various offenses such as rape, housebreaking, and robbery. The District of Columbia’s juvenile court waived its jurisdiction rights, allowing Kent to be tried in District Court. A document submitted as part of the case stated the waiver had been issued after a full

¹³⁸ *Brown v. Board of Education of Topeka*, Shawnee County, KS, 347 U.S. 483 (1954).

¹³⁹ *Brown v. Board of Education*, 349 U.S. 294, 300–301 (1954).

¹⁴⁰ *Brown v. Board of Education of Topeka*, Shawnee County, KS, 349 U.S. 294 (1955).

¹⁴¹ *Kent v. United States*, 383 U.S. 541 (1966).

investigation, but the trial court actually failed to rule or grant Kent's lawyer request to have a hearing to access Kent's social and probationary records. Kent was indicted in District Court on several different counts. Kent's attorney motioned to dismiss the indictment on the grounds the issued waiver was invalid. The motion was denied, and Kent was found guilty of various serious charges and sentenced to a minimum of 30 years.

Kent appealed to the Court of Appeals for the District of Columbia. The Court of Appeals affirmed the conviction. On a *writ of certiorari*, the U.S. Supreme Court reversed the decision and sent the case back to the District Court for a *de novo* hearing on the issue of the waiver. The Supreme Court reasoned that because the Juvenile Court failed to grant a hearing to allow Kent's legal counsel access to the requested records and to state the reasons for ordering the waiver, the waiver was invalid. Judge's ruling with the minority actually felt the judgment should have been vacated and returned the case to the Court of Appeals, holding that Kent should have been granted a hearing as part of his due process rights guaranteed by the Fifth Amendment.¹⁴²

While the cases discussed thus far address constitutional issues for juveniles, *In Re Gault*¹⁴³ is considered the case that afforded individual juveniles the same constitutional rights and privileges as adults. Gerald Gault was a 15-year-old who had a history of minor troubles with the juvenile authorities in Arizona. In this case, Gerald was charged with making obscene telephone calls. While in the custody of the police, he was questioned in route to the police station. Because of his history of deviant behavior, the juvenile justice system in Arizona sentenced Gerald to remain in detention until his twenty-first birthday. Gerald's parents appealed to the U.S. Supreme Court following a judgment of the Supreme Court of Arizona, which dismissed the petition for "*writ of habeas corpus*" filed to secure the release of their son. United

¹⁴² Ibid.

¹⁴³ *In Re Gerald Gault*, 387 U.S. 1 (1967).

States Supreme Court Justice Fortas wrote for the majority saying, “A juvenile has a right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to privilege against self-incrimination.”¹⁴⁴ In addition, other justices ruling with the majority noted that,

A child and his parents or guardian must be notified, in writing, of specific charges or factual allegations to be considered at a juvenile delinquency hearing, and such written notice must be given at earliest practicable time and in any event sufficiently in advance of hearing to permit preparation. Due process of law requires notice of the sort we have described—that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding.¹⁴⁵

The judgment was reversed and cause remanded back to the lower court with directions.¹⁴⁶

This case was significant because, had Gerald been treated as an adult, he would have received a less severe sentence than the one he received by being treated as an incorrigible juvenile. The Supreme Court felt that Gerald had been treated in an unreasonable fashion because neither Gerald nor his family was afforded due process. This Supreme Court decision became the first case quoted as addressing the individual constitutional rights of juveniles in criminal court.

In 1969 and 1975, two Supreme Court cases had a direct impact on the relationship between schools and students as related to possible dangerous actions in the public school environment. As discussed in Chapter I, in *Tinker v. Des Moines School District*,¹⁴⁷ three Des

¹⁴⁴ Ibid.

¹⁴⁵ Id. 33.

¹⁴⁶ *In Re Gerald Gault*, 387 U.S. 1 (1967).

¹⁴⁷ *Tinker*, 393 U.S. 503.

Moines public school pupils were suspended from school for wearing black armbands to protest the United States policy in Vietnam. The students sought minimal damages and an injunction against a regulation that banned the wearing of armbands. The District Court dismissed the complaint ruling the regulation was within the School Board's power, despite not finding any substantial interference with the conduct of school activities. The Eighth Circuit Court of Appeals upheld the District Court's decision, but the Supreme Court reversed it and sent the case back to the lower court. The Supreme Court's decision established that schools could not deny students their freedom of expression when it did not interrupt the school's operations or activities. Most significantly, *Tinker* established that students do not shed their constitutional rights "at the schoolhouse gate."¹⁴⁸

In 1975, *Goss v. Lopez*¹⁴⁹ established the right of procedural due process for students. Students who are facing disciplinary action that could result in suspension or expulsion have rights under the due process clause. The case was an appeal by public school administrators in Columbus, Ohio. The appeal was submitted in order to challenge the decision a panel of three federal court judges who ruled that several high school students in the Columbus school system were denied due process as required by the Fourteenth Amendment when they were temporarily suspended from school without a hearing, before or after the suspension, to determine the facts and to respond to the alleged school violations. As a result, the students filed suit to have all information regarding the suspensions removed from their records.

The Supreme Court upheld the District Court's ruling, finding that students who are facing disciplinary action (suspension) are protected by the due process clause of the Constitution, which, in the school environment, requires the school to provide both a fair process

¹⁴⁸ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

¹⁴⁹ *Goss v. Lopez*, 419 U.S. 565.

and a procedure that allows the student to hear what they are being accused of and an opportunity to present evidence and object to the proposed disciplinary action. The Court determined that when sanctions effectively deny students access to education, students are deprived of protected property rights, and thus, must be provided due process protections. The protections include the right to receive written or oral notice of the charges against them. Additionally, the student has to, at minimum, have the right to present his or her version of what happened before being suspended or excluded for ten days or less, and a more formal procedure needs to be in place for exclusions of more than ten days. Specifically, the court stated the following:

We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witness to verify his version of the incident.¹⁵⁰

¹⁵⁰ Id. 583.

CHAPTER III: A REVIEW OF REVELANT SUPREME COURT
SEARCH AND SEIZURE CASES

Introduction

Repeatedly, the Supreme Court of the United States has been called upon to clarify the protections afforded to citizens by the Fourth Amendment. Justice Brandeis, in his dissenting opinion in *Olmstead v. United States*, declared the significance of the Fourth Amendment by saying, “The makers of our constitution conferred, as against the government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man.”¹⁵¹ From 1789 to 1850, federal and state courts ignored issues related to education.¹⁵² Previously, it had been the Court’s position that matters involving juveniles were within the jurisdiction of the states. The Supreme Court had a long-standing unofficial policy, referred to as the Doctrine of Discretionary Educational Primacy¹⁵³ stating, “the Court would not interfere with school discretion when to refrain would not cause serious constitutional loss. Furthermore, in matters of discretion, the courts do not substitute their discretion for that of the school.”¹⁵⁴

During the 61-year period before 1850, the Supreme Court held there was no federal constitutional significance for the Court’s intervention since juveniles had no constitutional rights.¹⁵⁵ Only twice before 1966 did the Supreme Court become involved in matters related to juvenile justice. In 1948 and 1962, in *Haley v. Ohio*¹⁵⁶ and *Gallegos v. Colorado*,¹⁵⁷ respectively,

¹⁵¹ *Olmstead v. United States*, 277 U.S. 438 (1928).

¹⁵² John C. Hogan, *The School, the Courts, and the Public Interest*, 2nd ed. (Lexington: Lexington Books, 1985), 9–10.

¹⁵³ Holeck, 205. Note: No School Attorney arguing a case should presume knowledge of this doctrine by the court. It should be cogently presented.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Haley v. State of Ohio*, 332 U.S. 596 (1948).

¹⁵⁷ *Gallegos v. Colorado*, 370 U.S. 49 (1962).

the Court considered procedural due process cases involving juveniles being brought before the courts by the state because the juveniles were being tried under adult criminal court sanctions with the potential for death sentences. As mentioned earlier, in 1954, the Supreme Court decided to hear *Brown v. Board of Education I*,¹⁵⁸ the first case ever heard by the Supreme Court that was initiated by children to secure their equal rights as afforded by the Constitution. In the *Brown I* decision of 1954, the courts recognized the value of education and a child staying in school. From 1985 until 2006, there have been three landmark cases heard by the Supreme Court of the United States involving search and seizures in public schools: *New Jersey v. T.L.O.* (1985), *Vernonia School Dist. 47J v. Acton* (1995), and *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls* (2002).

Landmark Supreme Court Search and Seizure Cases

New Jersey v. T.L.O.

Since 1967, various courts have heard many cases regarding the searching of students and their property. As stated in Chapter I, the first significant search and seizure case heard by the U.S. Supreme Court was *New Jersey v. T.L.O.*¹⁵⁹ This case involved two girls found smoking in a school bathroom. One girl admitted to smoking while the other (T.L.O.) denied she was smoking. The school administrator asked to see T.L.O.'s purse to check for cigarettes. The assistant principal opened her purse and found several cigarettes. As he proceeded to remove the cigarettes, he noticed rolling paper, which is usually associated with marijuana use. When he examined the purse more closely, he also found a small amount of marijuana, a pipe, plastic bags, a large sum of money, an index card with a list of names appearing to be an IOU list, and

¹⁵⁸ *Brown v. Board of Education*, 349 U.S. 294 (1955).

¹⁵⁹ *New Jersey v. T.L.O.*, 469 U.S. 325.

two letters indicating T.L.O.'s marijuana use. The assistant principal then notified T.L.O.'s parents and called the police. As a result of this incident, the State of New Jersey filed delinquency charges in juvenile court against T.L.O.¹⁶⁰

The issue brought before the court was T.L.O.'s contention her Fourth Amendment rights were violated. She requested the evidence be suppressed because she was unlawfully searched. The Juvenile Court denied the motion and concluded the Fourth Amendment did not apply to searches by school administrators. Instead, the court held that school officials may conduct a search of a student in an effort to maintain school discipline or enforce school policy if they have reason to suspect a crime has been or is being committed. T.L.O. appealed to New Jersey Supreme Court.

The New Jersey Supreme Court found the search to be unreasonable because it was conducted by a government official (the assistant principal) without her consent or probable cause. The New Jersey Supreme Court also ruled that T.L.O.'s Fifth Amendment right against incriminating herself had been violated when she was questioned without being given her "Miranda" rights to silence. The New Jersey Supreme Court articulated two grounds for its decision. First, it held that since her possession of cigarettes was not illegal and did not violate school rules, it should have no influence on the accusation that she was smoking in the restroom. Second, the Court felt the principal had no reason to suspect T.L.O. of having cigarettes in her purse but had only a hunch.¹⁶¹

Upon review by the U.S. Supreme Court, the New Jersey Supreme Court's decision was reversed. While the Supreme Court generally concurs with the application of the exclusionary rule to school officials, it affirmed the validity of the evidence, with the majority of the Justices

¹⁶⁰ Ibid.

¹⁶¹ *State in Interest of T.L.O.*, 94 N.J. 331 (1983).

feeling the special requirements placed upon school officials to maintain order in school and the initial search for cigarettes was supported by the reasonable suspicion standard based upon the report given to the Assistant Principal. The discovery of the rolling papers then justified the further searching of the purse since such papers are commonly used with marijuana. The United States Supreme Court found the New Jersey Supreme Court's decision to exclude evidence from T.L.O.'s juvenile delinquency proceedings on Fourth Amendment grounds was wrong and the search resulting in the discovery of the marijuana dealing by T.L.O. was reasonable.¹⁶²

Reasonableness Standard

Today, *New Jersey v. T.L.O.* is the standard by which the reasonableness of a search is determined in case law related to search and seizures in schools. In an attempt to balance the individual student's rights to be free from unreasonable searches and seizure against the desire to have safe and secure school environments, the court established the "reasonableness standard." Acknowledging the higher probable cause standard that police must follow is too restrictive for schools, the court felt that reasonable suspicion should be an appropriate standard for school officials. A two-pronged test for the reasonableness standard arose from *T.L.O.*: (a) the search must be justified initially by a reasonable suspicion and (b) the scope and conduct of the search must be reasonably related to the circumstances giving rise to the search. Therefore, school administrators must take such things as the student's age, sex, and the type of offense into account before conducting a search.¹⁶³

¹⁶²*New Jersey v. T.L.O.*, 469 U.S. 325.

¹⁶³*Ibid.*

Vernonia School District 47J v. Acton

The second landmark search and seizure case was *Vernonia School District 47J v. Acton*.¹⁶⁴ In this case, teachers and administrators in an Oregon public school district noticed a sharp increase in student drug use and disciplinary problems. The school district was particularly concerned about an increase in drug use and by the fact that student athletes were leading in increased drug involvement which could increase the risk of sports-related injuries. After a school parents' meeting, where parents gave unanimous approval to a proposed urinalysis drug testing policy for student athletes, the school board implemented the policy. The policy stated that (a) all students wishing to participate in interscholastic athletics had to sign a form agreeing to the test and to have their parents' written consent to the testing, (b) athletes would be tested at the beginning of the season for their sport, and (c) random testing of 10% of the athletes would be conducted weekly during the athletic season. However, a seventh grade student was not allowed to participate in the school district's football program because the student and his parents refused to sign the consent forms. The student and his parents filed a suit seeking declaratory and injunctive relief from enforcement of the drug testing policy on the grounds the policy violated the Fourth Amendment and a comparable provision of the Oregon Constitution.¹⁶⁵

After the United States District Court in Oregon dismissed the suit, the United States Court of Appeals for the Ninth Circuit, expressed the policy did violate the Fourth Amendment and the Oregon constitutional provision, reversing the District Court's judgment. The Ninth Court of Appeals held that a student's interest in participating in interscholastic activities did not

¹⁶⁴*Acton v. Vernonia School Dist 47J*, 515 U.S. 646 (1995).

¹⁶⁵*Acton v. Vernonia School Dist 47J*, 796 F. Supp. 1354 (D. Or., 1992).

diminish that student's reasonable expectation to be free from a required, suspicionless urinalysis. The school district appealed to the United States Supreme Court.

The U.S. Supreme Court ruled the drug testing policy did not violate the student's Fourth Amendment right to be free from unreasonable searches because the government's interest outweighed the individual's interest. The school district's drug problems were significant enough to show a need to address these problems. Not only were student athletes included with the drug users but, as the District Court found, athletes were often the leaders of the drug culture.¹⁶⁶ The Court conducted a fact-specific balancing review of the level of intrusion on the students' Fourth Amendment rights versus a legitimate governmental interests and found the policy was reasonable under the circumstances, taking into account the following three conditions.

First, there is a lower expectation of privacy for the students, particularly student athletes. Second, the severity of the need to deter drug use, which was addressed by the search, was in the government's interest. Even though the Court has not required evidence of a particularized or pervasive drug problem before the government can legally conduct suspicionless drug testing, its decision was based on the special needs doctrines decided in *Treasury Employees v. Von Raab*.¹⁶⁷ In *Von Raab*, the courts emphasized the "special needs" of the public school, reflected in the "custodial and tutelary" power that schools exercise over students, and also noted schoolchildren's diminished expectation of privacy.¹⁶⁸

Third, the relative unobtrusiveness of the search was taken in account. Given the additional tests to which student athletes are already subject, "legitimate privacy expectations are even less [for] student athletes, since they normally suit up, shower, and dress in locker rooms

¹⁶⁶ *Acton v. Vernonia School Dist 47J*, 796 F. Supp. 1354, 1357.

¹⁶⁷ *Treasury Employees v. Von Raab*, 489 U.S. 656 (1989).

¹⁶⁸ U.S. Const. amend, IV.

that afford no privacy, and since they voluntarily subject themselves to physical exams and other regulations above and beyond those imposed on non-athletes.”¹⁶⁹ Significant to this case was the fact that there was no individual suspicion and the concurring justices noted that participation in athletics, an extra-curricular activity, was voluntary.¹⁷⁰

Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls

The third case, *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*,¹⁷¹ involved the Tecumseh Oklahoma School District adopting a student activities drug testing policy requiring middle and high school students to agree to urinalysis testing in order to participate in extracurricular activities. The policy was only required for students involved in extracurricular activities sanctioned by the Oklahoma Secondary Schools Activities Association (OSSAA). A group of high school students challenged the constitutionality of the school’s suspicionless urinalysis drug testing policy, alleging the policy violated the Fourth Amendment. The United States District Court for the Western District of Oklahoma upheld the school district’s policy, and the students appealed.

The decision was reversed by United States Court of Appeals for the Tenth Circuit. However, after granting a *writ of certiorari*, the Supreme Court held that a policy requiring students who participate in competitive extracurricular activities to be drug tested was a reasonable means to further the school district’s interest in preventing and deterring drug use by students and did not violate Fourth Amendment. In this context, a search may be reasonable when it is supported by “special needs” beyond the normal need for a police officer.

¹⁶⁹ Ibid.

¹⁷⁰ *Acton v. Vernonia School Dist 47J*, 796 F. Supp. 1354.

¹⁷¹ *Board of Education v. Earls*, 536 U.S. 822.

Since such a “reasonableness” analysis cannot ignore the schools’ responsibility for students, a requirement of individualized suspicion may not be needed. In supporting the suspicionless drug testing of athletes, applying *Vernonia’s* guidelines to this somewhat similar but different case, the Court also found that Tecumseh’s Policy was constitutional because the students impacted by the Policy had a limited expectation of privacy.¹⁷² Each student was required to abide by OSSAA rules, faculty monitored students adherence to the various rules outlined by the clubs and activities. While these type of regulations diminish a student’s expectation of privacy, the Court concluded the invasion of students’ privacy was not substantial, given the minimally intrusive type of sample test collection and the limited use of the results.¹⁷³

The level of intrusion caused by collecting urine samples depends upon how the sample is monitored. Under the Policy, a faculty member waited outside a closed restroom stall for the student to provide a sample and also listened for the normal sounds of urination to guard against tampering and ensure an accurate chain of custody of specimens. The procedure was almost identical to the “negligible” intrusion allowed in *Vernonia*. The Policy also required the test results to be kept separate from a student’s other records in confidential files and only on a “need to know” basis, released to school personnel. Moreover, the test results were not turned over to any law enforcement, nor did it lead to any discipline or have any academic consequences. The only penalty for a failed drug test was a reduction in the student’s privilege to participate in extracurricular activities.¹⁷⁴ Finally, the Court concluded the Policy served the District’s interest in protecting students’ well-being (health and safety). Preventing drug use by school children is

¹⁷² Id. 2564–2565.

¹⁷³ Id. 2565–2566.

¹⁷⁴ Id. 2566–2567.

an important governmental concern, and the health and safety risks identified in *Vernonia* were applied to Tecumseh's children.

The school district also presented evidence of drug use at Tecumseh schools, so the record in this case provided direct testimonial and other evidence of drug abuse. For example, the school board president testified that marijuana use had been reported in the classroom at Tecumseh High. Three teachers testified they heard students talking about marijuana use, that they suspected that several students in their classes were abusing drugs, and they had reported students for drug use. Students', including the respondents' themselves, also acknowledged drug use in Tecumseh schools. Lindsay Earls stated, during a nationally televised program that there is "a widespread drug problem" at Tecumseh High. Daniel James testified that he had seen "about twelve" students under the influence of illegal drugs, was aware of others who had abused such drugs, and knew of students who have entered drug rehabilitation programs. In addition, school counselors met with students to discuss drug use more than 40 times between 1997 and 2000, and drug dogs "hit" on students or their vehicles several times between 1997 and 1999.¹⁷⁵

However, it is important to note that a demonstrated drug abuse problem is not always necessary to establish the validness of a testing program, even though some showing of a problem does help support an assertion of a special need for a suspicionless search program, as indicated in *Chandler v. Miller*.¹⁷⁶ Also, the finding in the *Treasury Employees v. Von Raab*¹⁷⁷ case indicates there is not a requirement for a particularized or pervasive drug problem before the government can conduct suspicionless drug testing. In the context of safety and administrative procedures, a search not supported by probable cause may be considered reasonable when

¹⁷⁵ "Statement 2a-b," *FindLaw*, 2005, http://supreme.lp.findlaw.com/supreme_court/briefs/01-332/01-332.mer.ami.usa.html.

¹⁷⁶ *Chandler v. Miller*, 520 U.S. 305.

¹⁷⁷ *Treasury Employees v. Von Raab*, 489 U.S. 656.

“special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable.”¹⁷⁸

T.L.O., *Vernonia*, and *Earls* are three of the most significant Supreme Court cases related to search and seizure in schools. However, many cases have been heard that did not rise to the level of Supreme Court review, as these three, but are just as significant in providing guidance and understanding of search and seizure in the school environment. The following cases were selected using the resources identified in Chapter I. Broken down by topical area, the selected post-*T.L.O.* cases provide insight into how the courts view searches and seizures in the school setting.

¹⁷⁸ Alexander and Alexander, 410

CHAPTER IV: POST-*T.L.O.* FEDERAL AND STATE SEARCH AND SEIZURE CASES
IN K-12 EDUCATION

Police Involvement in Searches

The *T.L.O.* decision does not specifically address the standard to be used when police are involved in school searches. Indeed, the Court avoided deciding the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies. With the increase of police officers, security and school resource officers in public schools, the regular interaction between school officials and law enforcement officials has increased significantly, thus creating a larger constitutional dilemma for schools than the Court likely anticipated in 1985.¹⁷⁹ In the matter of *Josue T.*,¹⁸⁰ Judge Apodaca found,

This case presents a question of first impression in New Mexico—Does the Fourth Amendment to the Federal Constitution require probable cause for a full-time, commissioned police officer assigned to a public high school as a resource officer to lawfully search a student during school hours, when the search is conducted at the request of a school official?¹⁸¹

A review of court cases indicates the courts have generally decided to apply the *T.L.O.* standard when law enforcement officials are involved in the search and seizure process with school officials. The analysis of court cases show they fall into three categories.

¹⁷⁹ Jason E. Yearout, “Individualized School Searches and the Fourth Amendment: What’s A School District To Do?” *Wm. & Mary Bill Rts. J.* Vol 10, Iss. 2 (2002): 495.

¹⁸⁰ *In re Josue T.*, 989 P.2d 431 (Ct. of App. N.M., 1999).

¹⁸¹ *Ibid.*

First, the T.L.O. ruling applies to searches initiated by school officials or having minimal police involvement.¹⁸² Second, the standard of “reasonableness under the circumstances“ established in T.L.O. has also been applied to school resource officer, who on their own initiative search a student during school hours on school grounds, in furtherance of the school’s education-related goals.¹⁸³ Third, some courts have ruled that probable cause applies in cases in which “outside“ police officers initiate a student search as part of their own investigation, or in which school officials act at the request of “outside“ police officers.¹⁸⁴

What is clear is that the standard may vary depending upon the nature of police involvement. Law enforcement personnel may legally search students on school grounds when requested to do so by the school staff if the search is conducted under reasonable circumstances. A search has to be (a) reasonable under the circumstances, (b) justified at its inception, (c) not exceed the scope of its purpose, and (d) not be overly intrusive in light of a student’s age and sex. If the police initiate and carry out the search, or a school official conducts a search at the request of law enforcement, the investigation will most likely be deemed a search governed by the Fourth Amendment standard of probable cause¹⁸⁵ However, police may make a warrantless search if developing or demanding circumstances make it likely that someone will be hurt or if evidence could be destroyed while they are waiting for a warrant.

¹⁸² See also *Cason v. Cook*, 810 F.2d 188, 191-92 (8th Cir.1987); *J.A.R. v. State*, 689 So.2d 1242, 1243 (Fla. Dist. Ct. App., 1997); and *In re Interest of Angelia D.B.*, 211 Wis.2d 140, 564 N.W.2d 682, 688 (1997).

¹⁸³ See also *People v. Dilworth*, 169 Ill.2d 195, 214 Ill. Dec. 456, 661 N.E.2d 310, 317 (1996); and *In re S.F.*, 414 Pa.Super. 529, 607 A.2d 793, 794 (1992).

¹⁸⁴ *In re Josue T.*, 989 P.2d 431, 2A{18}. See also *Tywayne H.*, 1997-NMCA-015 10, 123 N.M. 42, 933 P.2d 251; *F.P. v. State*, 528 So.2d 1253, 1254-55 (Fla. Dist. Ct. App., 1988).

¹⁸⁵ *Zamora v. Pomery*, 639 F.2d 662 (10th Cir., 1981); and *People v. Overton*, 24 N.Y.2d. 522 (N.Y., 1969).

Nevertheless, absent dangerous or urgent circumstances, no amount of probable cause can validate a warrantless search, and these rules apply equally inside and outside of a school.¹⁸⁶ Additionally, searches involving a police officer performing a supporting role to a school administrator who is acting in the interest of school safety to conduct a search would be considered reasonable for a person trying to supervise a school and governed by the reasonable suspicion standard.

Federal Case(s)

In the 1996 case of *People v. Dilworth*,¹⁸⁷ a fifteen-year-old student at the Joliet Township High School's Alternate School was convicted of unlawful possession of drugs. On November 18, 1992, two teachers asked the Joliet Township school police officer to search a student for possession of drugs. The teachers informed the school liaison officer they had overheard Dilworth telling other students that he had sold some drugs and would bring more with him to school the following day. The next day, the school officer searched the student in his office and found nothing. He then escorted the student to his locker. While at the locker, the officer noticed a flashlight in the student's hand and immediately thought it might contain drugs. He grabbed the flashlight from the student, unscrewed the top, and observed a bag containing a white chunky substance underneath the flashlight batteries. The substance later tested positive for the presence of cocaine.

In court, the school police officer stated that he had two reasons for seizing and searching the flashlight. First, he was suspicious the flashlight contained drugs. Second, he believed that it was a violation of school rules to possess a flashlight on school grounds because a flashlight is a

¹⁸⁶ Dovieta, Mary Pat, "Police Officers in Public Schools: What Are the Rules?" *Colo. Law.*, November 27, 1998, 79.

¹⁸⁷ *People v. Dilworth*, 661 N.E.2d 310.

blunt instrument. The school's disciplinary guidelines, which every student is required to be informed of when they enroll, prohibited the possession of "any object that can be construed to be a weapon." The school police officer admitted, however, that students were never specifically informed that flashlights were prohibited. In addition, he did not consider a flashlight to be contraband "per se."¹⁸⁸ In the school's handbook, on a page entitled "Alternate School Search Procedures," the policy stated,

To protect the security, safety, and rights of other students and the staff at the Alternate School, we will search students. This search may include the student's person, his/her belongings, and the school locker. Search procedures may result from suspicions generated from direct observation or from information received from a third party. Search is done to protect the safety of students. However, if in the process any illegal items or controlled substances are found in a search, these items and the student will be turned over to the police.¹⁸⁹

Following a bench trial in the Will County circuit court, Dilworth was convicted of unlawful possession of a controlled substance (cocaine) with intent to deliver while on school grounds. Earlier, the circuit court had denied Dilworth's motion to suppress the evidence. After an appeal, the appellate court reversed the conviction, finding that his motion to suppress the evidence should have been granted. The Supreme Court then reversed the appellate court's decision, holding the reasonable suspicion standard should be applied in a case involving a full-time police officer at a school. It must be noted that the dissenting judges felt the majority judges

¹⁸⁸ Ibid.

¹⁸⁹ Id. 199.

made an error in their ruling by ignoring other federal cases stating the probable cause standard should apply to police officers.¹⁹⁰

The case of *James v. Unified School District No. 512*¹⁹¹ involved a Kansas school police officer who received an anonymous telephone call from a parent informing him that a student brought a gun to school in the parent's vehicle. The officer informed the school administrators, who detained the student. The student was allowed to call his parents, and the officer and administrator obtained permission from the parent and the student to search the student's car. During the search, the officer discovered a loaded gun and then arrested the student. The officer advised the student of his Fifth Amendment rights and his right to refrain from making any statements, as required by *Miranda v. Arizona*.¹⁹² When the school district decided to suspend the student for the remainder of the school year, the student sued in federal district court, claiming his constitutional rights had been violated and asked for a temporary restraining order allowing him to remain in school.

The questions at hand were whether the student's constitutional rights were violated by the search, whether he should be allowed to return to school, and whether school officials should be granted immunity from their actions. The federal court denied the student's request, considered the school district's motion for pretrial judgment, and granted the school officials' immunity. The federal court agreed with the school and police officials that they had no prior knowledge of any evidence that would lead to personal liability and that supervisors cannot be held strictly liable for constitutional rights violations. The court stated there was no civil rights

¹⁹⁰ *People v. Dilworth*, 661 N.E.2d 310.

¹⁹¹ *James by and through James v. Unified School Dist No. 512*, 959 F. Supp. 1407 (D. Kan., 1997).

¹⁹² *Miranda v. Arizona*, 384 U.S. 436.

remedy for failure to advise a suspect of his criminal procedural rights in a timely manner under the Fifth Amendment.¹⁹³

Commonwealth of Pennsylvania and Other State Case(s)

In the case *In the Interest of S.F.*,¹⁹⁴ S.F. and two other students were observed in the hallway of Charles Carroll High School by a School District of Philadelphia police officer in plainclothes who had been employed by the District for four years and who had made fifteen to twenty narcotics arrests during that time. Officer Stone observed S.F. from approximately fifteen feet away holding a clear plastic bag in his right hand and a wad of loose bills in his left hand. Upon seeing Stone, S.F. stuffed the plastic bag in his right-hand side jacket pocket, shoved the money into his pants pocket, and became noticeably nervous. Stone, who could not see the contents of the clear plastic bag because of the way it was being held, approached S.F. and asked him to step into an office.

Before this incident, Stone had received information from approximately six or seven different people, including students and teachers that S.F. had been flashing large sums of money around. Several people had made comments to Stone concerning narcotics, and Stone asked the vice principal of the school to accompany him into the office with S.F. Once inside the office, Stone asked S.F. to empty his jacket pocket. S.F. removed some articles from his pocket, none of which was the clear plastic bag. Stone then reached into the defendant's jacket pocket and pulled out two plastic bags, one containing twenty vials and another containing ten. The officer proceeded to call the Philadelphia police and asked for a wagon to transport the defendant to the

¹⁹³ *James by and through James v. Unified School District No. 512*, 959 F. Supp. 1407.

¹⁹⁴ *In the Interest of S.F.*, 607 A.2d 793 (Pa. Super. Ct., 1992).

narcotics unit at the Philadelphia Police Administration Building. Later, \$108 was taken from S.F.'s person.

After a hearing, the trial court denied the student's motion to suppress the cocaine as evidence, stating the officer had reasonable suspicion under the totality of the circumstances to believe the student was involved in the possession of drugs, a violation of school rules, and, therefore, the officer's search of the student was justified and did not violate his constitutional right to privacy.¹⁹⁵

In 1995, in *State of New Hampshire v. Drake*,¹⁹⁶ a New Hampshire school administrator received an anonymous call advising him that a particular student would be carrying drugs to school that day. Previously, the student had been suspected of dealing drugs in the school. Upon arrival, the principal called the student to his office and asked him to empty his pockets, which contained drug paraphernalia. He then asked him to open his book bag, in which he discovered several bags of marijuana. The police were called and, upon further searching, found additional drugs and a semi-automatic weapon in the student's bag. State charges were filed against the student. During the state's trial court, the student asked for the evidence to be suppressed because the search violated his Fourth Amendment rights since a search warrant and probable cause requirements were not met. The motion was denied and the student was convicted on two drug possession counts and one felony charge for firearm possession. The student appealed to the Supreme Court of New Hampshire.

The issue in question was whether the student's Fourth Amendment rights were violated because probable cause requirements were not met when police were included in the process.

¹⁹⁵ Ibid.

¹⁹⁶ *State of New Hampshire v. Drake*, 662 A.2d 265 (N.H., 1995).

The New Hampshire Supreme Court ruled the Fourth Amendment warrant and probable cause requirements were particularly unsuited for public school officials in view of their need to protect other students and maintain school discipline and order. Public school administrators are not required to meet the same standards as law enforcement officers because of their greater responsibility for the care of students and their special need to maintain order in schools, as discussed in the *New Jersey v. T.L.O* decision. The school official's actions were ruled reasonable because the search was initiated and led by school officials.¹⁹⁷

*In the Interest of Angelia*¹⁹⁸ was filed because a school official initiated a search that included a school police officer based upon a tip. A Wisconsin high school student told the assistant principal he had seen a knife in Angelia's backpack on campus. He also claimed that she might have access to a gun. The assistant principal contacted a school police officer with the information, and the officer searched her jacket and pants. After she denied carrying a weapon, the officer found a knife in her waistband. The state filed a juvenile delinquency petition against the student for carrying a concealed weapon, and the student filed a suppression motion, claiming the search was highly intrusive and lacked probable cause. The court granted the suppression motion, and the state appealed to the Court of Appeals of Wisconsin, which certified the case for review by the Supreme Court of Wisconsin.

The student argued the search conducted by a school police officer required evaluation under the probable cause standard of the Fourth Amendment and not the reduced reasonable suspicion standard established by the U.S. Supreme Court for searches by school administrators. However, the court determined that police officers who work with or at the direction of school administrators should not be subject to the probable cause standard due to their need to protect

¹⁹⁷ Ibid.

¹⁹⁸ *In the Interest of Angelia D.B.*, 564 N.W. 2d 682.

student safety, since school administrators are responsible for the safety, welfare, and education of students. School police officers who perform student searches requested by school officials are, similarly, advancing the cause of student welfare and safety. The search, in this case, had been reasonably related to the suspected offense and was no more intrusive than necessary. Therefore, the court reversed the motion to suppress the knife as evidence.¹⁹⁹

Police involvement in searches of students in the school environment creates a complicated situation that becomes more problematic as school districts are increasing their usage of security or safety officers. When trying to understand which standard applies—probable cause or reasonable suspicion—the subsequent police involvement variable chart presented by Lawrence Rossow and Jacqueline Stefkovich from the monograph “Search and Seizure in the Public Schools”²⁰⁰ provides a useful tool for school officials to use in the decision making process.

¹⁹⁹ Ibid.

²⁰⁰ Rossow and Stefkovich.

Table 3

Police Involvement Variables

Search and Seizure in the Public Schools

Presence of several of these will make it more likely the probable cause standard will control	If these variables predominate then the reasonableness standard is more likely to control
Police & Probable Cause	School Official & Reasonableness
1. Police request to be present	1. School request for police presence
2. Police gather facts	2. School official are fact finders
3. Police make the decision to search	3. School decides that a search is to be conducted
4. Police direct search activities	4. School directs the what, who and how of the search
5. Police actually do searching	5. School Officials perform search
6. Criminal prosecution is contemplated	6. Only school discipline contemplated

From Lawrence F. Rossow and Jacqueline A. Stefkovich, *Search and Seizure in Public Schools*, 2nd ed., NOLPE Monograph Series No. 54, Topeka: NOLPE, 1995.

In short, if school officials request police presence with limited involvement, decide to search, direct the search, perform the search, and have school discipline and order as the primary motive for their actions, then the reasonableness standard will most likely apply. If the police request the search, decide to search, direct the search, actively participates in the search, or have criminal action as the possible intent of the search, then the probable cause standard will most likely apply.

Drugs: Testing, Possessing and Policy

Drug testing is viewed as a search of an individual's body for evidence of drug use. The most common test involving schools is urinalysis. In 1995, *Vernonia* provided the first ruling by the court regarding drug testing in schools. Beyond drug testing as a prerequisite for participation

in certain activities, since the *Vernonia* ruling, the drug testing of individual students has been upheld when supported by reasonable suspicion. To date, however, no court has approved drug testing for the general student population.

Federal Case(s)

While *Vernonia v. Acton* is one of the most highly recognized cases related to school drug testing, *Willis by Willis v. Anderson Community School Corporation*²⁰¹ is another significant case. It addressed an Indiana school district that was involved in adopting a student drug testing policy. The testing policy called for the following: (a) a drug tests when individualized suspicion of drug use existed and (b) drug testing when a student was guilty of fighting, habitual truancy, possessing tobacco products, or violating other school policies resulting in a three-day suspension. Willis, a student who was suspended for fighting, refused to take the drug test so the school issued another suspension. Willis filed action against the school district in federal district court asserting the policy violated his Fourth and Fourteenth Amendment rights.

The issue in this case was whether it was a violation of students' constitutional rights to have a policy for drug testing without a causal "nexus," meaning a causal link between the offense and suspicion of drug use. The Federal District Court ruled for the school district, but the 7th U.S. Circuit Court of Appeals reversed the decision because the policy did not provide for "individual suspicion," which could only be determined on a case-by-case basis.²⁰²

²⁰¹ *Willis by Willis v. Anderson Community School Corporation*, 158 F.3d 415 (7th Cir., 1998).

²⁰² *Ibid.*

Commonwealth of Pennsylvania or Other State Case(s)

The 1998 case of *Commonwealth v. J.B.*²⁰³ involved school police and a suspicion of drug use. A Philadelphia public school police officer was on patrol in Martin Luther King High School, where he encountered a student, J.B., in the hallway while classes were changing. J.B. was staggering, seemed confused and after repeated questioning, appeared to have slurred speech. Since he did not smell of alcohol, the school police officer suspected drug use and escorted J.B. to the in-house police office, where he ordered J.B. to empty his pockets. The officer discovered a small bag of marijuana and a pocketknife in the cuff of J.B.'s pants. As required, the officer turned the items over to the Philadelphia Police Department, as a result the Commonwealth began delinquency proceedings. At a suppression hearing, a municipal court judge suppressed the seized evidence, but the Court of Common Pleas reversed the suppression order. At the trial, J.B. was adjudicated delinquent and sentenced to fifteen months of non-reporting probation. J.B. filed a petition for a *writ of certiorari*, which was denied by the court, so he appealed to the Pennsylvania Superior Court.

J.B.'s appeal to the Pennsylvania Superior Court stated the school police officer violated J.B.'s rights protecting him against unreasonable search and seizure and that no reasonable suspicion had been established prior to the search. The Superior Court decided that individual searches of students in public schools that are conducted by school officials, including school police officers, require the reasonable suspicion standard under the Pennsylvania Constitution. Since the school police officer had reasonable suspicion to conclude that J.B. was under the

²⁰³ *Commonwealth v. J.B.*, 719A.2d 1058 (Pa. Super. Ct., 1998).

influence of a controlled substance and his search of J.B. was reasonably related to his suspicion, the Superior Court affirmed the order denying the writ of *certiorari*.²⁰⁴

In a Colorado case, *Lopez v. Trinidad School District No. 1*,²⁰⁵ a Colorado school board adopted a policy that required school officials to drug test any extracurricular activity student who was suspected of drug or alcohol use. A student found violating the policy would be subject to progressive disciplinary action based upon successive violations. If a student's urinalysis test were found positive, the student would be required to participate in a district sponsored assistance program. Lopez, a student in marching band, objected to the testing policy and filed suit in state court claiming his constitutional rights had been violated.

The state court upheld the program. On appeal to the Colorado Supreme Court, the testing program was overturned because the school system failed to justify the program on the basis of safety concerns since it produced no evidence of drug related injuries to band participants.²⁰⁶ This case is similar to the *Vernonia* case (discussed earlier) involving student participation in extracurricular activities. The factors that caused the Colorado Supreme Court to overturn the lower court's decision were: (a) unlike *Vernonia*, there was a lack of safety concerns, (b) the band members were required to take a class for credit, and (c) the *Vernonia* case was upheld partly because it involved students' voluntary participation.

Searches Involving Weapons

Weapon searches are unique in that they are usually more aggressive and often include or involve police officers because they have a high degree of danger associated with them. Searches for weapons are often conducted based upon an anonymous tip, observation, or policy that was

²⁰⁴ Ibid.

²⁰⁵ *Lopez v. Trinidad School Dist No. 1*, 963 P.2d 1095 (Colo., 1998).

²⁰⁶ Ibid.

implemented to address an identified safety concern, or as a result of an indication by a metal detection device.

Federal Case(s)

Another relevant and significant search and seizure case, *Seal v Morgan*,²⁰⁷ involved a zero tolerance policy related to weapons. The defendant, Dustin Seal, was found guilty under the Knox County, TN school system's zero tolerance policy of bringing a knife onto school property. The knife, which was placed in the car's glove compartment by Seal's friend, was found after a teacher was told that Seal and his friend were drinking. Both boys denied the charge and Seal agreed to a search of his mother's car. When the car was searched, a two inch knife, a bottle of antibiotic pills prescribed for Seal, and two cigarettes were found but no alcohol. Seal was then permanently expelled from the school system, with the board citing their "Zero Tolerance Policy."

The expulsion was upheld by the district court. On appeal to the Sixth U.S. Circuit Court of Appeals ruled that without evidence that Seal knew the knife was in the car, expelling him was "irrational", and the court held, in a 2-1 decision, that a policy of suspending or expelling a student for weapons possession without regard to whether the student knowingly or consciously possessed the weapon does not satisfy even the rational relation test. The court observed, "[n]o student can use a weapon to injure another person, to disrupt school operations, or, for that matter, any other purpose if the student is totally unaware of its presence." The dissenting judge argued the school's policy was not irrational and that "[i]n addition to their duty to educate, schools act *in loco parentis*."²⁰⁸ Significant to this case was the court's majority articulating the

²⁰⁷ *Seal v. Morgan*, 229 F.3d 567 (6th Cir., 2000).

²⁰⁸ *Ibid*.

need to connect the decision to discipline a student with intent and with having knowledge of the weapon.

Commonwealth of Pennsylvania or Other State Case(s)

*In Re D.E.M.*²⁰⁹ involved a Shillington Borough Police officer who went to Governor Mifflin Middle School to inform the principal and the assistant principal he received an anonymous tip that D.E.M. had a gun on school property. The officer then left. The middle school had a policy to investigate anything that may jeopardize the safety and well-being of staff and students. Each school year, students received a copy of the school's behavior code, which specifically prohibited the students from being in possession knives and/or firearms on school grounds. The principal called D.E.M. to his office and asked him if he had anything on him that violated school rules. D.E.M. answered he did not. He was then asked to empty his book bag. He did, and nothing was found. When D.E.M. was then asked to empty his pockets, he became agitated and scared.

A sheathed knife was found in one pocket. He was then asked if he had a gun in school, to which he answered "yes" and stated that it was in his coat in P.Q.'s locker. P.Q. was called to open his locker and the principal searched D.E.M.'s coat. The principal found a loaded gun in the jacket pocket. Pennsylvania State law required school officials to report findings of any firearm to law enforcement. In accordance with its policy, the school contacted Shillington Borough Police and gave them the gun and knife. Police arrested D.E.M. charged him with possession of a weapon on school grounds, carrying a firearm without a license, possession of a firearm by a minor, and altering or destroying identification marks.

²⁰⁹ *In Re D.E.M.*, 727A.2d 570 (Pa. Super. Ct., 1999).

D.E.M. filed a pre-trial motion to suppress the evidence discovered by school officials. During the suppression hearing, the principal and assistant principal were found to be acting as police “agents” because of the police tip and they did not provide a *Miranda* warning prior to their search. The motion to suppress the physical evidence was granted. The Commonwealth appealed to the Pennsylvania Superior Court on the basis that suppressing the physical evidence would hinder the prosecution. The Superior court reversed the lower court’s decision and sent the case back for trial. The lower court then decided school officials did not act as “agents” of the police when they detained and questioned the student and that *Miranda* warnings were not required to be offered by school officials because they only need reasonable suspicion. Additionally, in determining the reasonableness of the search, it was concluded the search was justified at its inception and reasonable in scope under the circumstances.²¹⁰

In *State of Florida v. J.A.*,²¹¹ a Florida School Board had an open campus policy for its high schools. In response to an increase in weapons confiscation from students and reports of on-campus homicides and aggravated batteries, the Board instituted a random search policy. The policy allowed searches of students in their classrooms with a hand-held metal detector. Students who refused to be searched were subject to other disciplinary actions.

When a team entered a classroom while conducting a search, a security officer observed students passing a jacket to the rear of the class. The security officer confiscated the jacket and found a gun in the pocket. The jacket was turned over to police and charges were filed against the student who owned the jacket. The student filed a motion in state court to suppress evidence of the firearm on grounds there had been no probable cause for the search. The State Court ruled the search was a “police search” subject to Fourth Amendment probable cause standard, not an

²¹⁰ Ibid.

²¹¹ *State of Florida v. J.A.*, 679 So.2d 316 (Fla. Dist. Ct. App., 1996).

“administrative search,” thus allowing the suppression of the evidence. On appeal by the school district, the Appeals Court ruled the lower court improperly ruled on the search. The Appeals Court noted the Supreme Court has approved random searches in the school environment when such a search furthers a valid administrative purpose. The school board policy was minimally intrusive into student privacy based on the legitimate need to deter and curtail the presence of weapons and violence in school.²¹²

Strip Searches

Targeted searches, such as strip searches, have been considered very intrusive, and they present the most infringement on student privacy. A strip search does not necessarily result in a person being nude. Removing garments in a manner that that does not leave the person nude is sometimes referred to as a partial strip search. The common link between a partial strip search and a full strip search is that both require the student to remove some garments, leaving some portion of the body exposed. It is important to note the more clothes removed, the more intrusive the search will be considered when evaluating the student’s constitutional rights. Additionally, how the search was conducted will also be considered when determining legality. The federal courts haven’t expressly prohibited strip searches in public schools. The courts have stated, “We are of the view that as the intrusiveness of the search intensifies the standard Fourth Amendment reasonableness approaches probable cause even in a school context.”²¹³ However, some state laws have ruled strip searches to be unlawful.

²¹² Ibid.

²¹³ *M.M. v. Anker*, 607 F.2d 588 (2d Cir., 1979).

Federal Case(s)

In *Cuesta v. School Board of Miami-Dade County*,²¹⁴ a female high school student was arrested for distributing a pamphlet containing an essay in which the author “wondered what would happen if he shot the principal, the school’s teachers, or other students.”²¹⁵ The pamphlet also contained a graphic of the principal with a dart through his head. The student was arrested and taken to jail. Based upon a policy requiring a strip search of newly arrested felons, she was strip searched by Metro-Dade County staff. The student later sued, claiming that she was subjected to an unconstitutional search. Significant to this case was the fact the search action was performed as part of the arrest and its normal procedures. The Eleventh Circuit noted that due to the “serious security dangers” in pretrial detention facilities, strip and visual body cavity searches of arrestees do not require probable cause.

Additionally, The Eleventh Circuit began its analysis with the balancing test established by the Supreme Court case *Bell v. Wolfish*,²¹⁶ for evaluating the constitutionality of strip searches. The balancing test is a test of reasonableness. When considering the balancing test, the court considers the need for the search compared to the degree of invasion of the individual’s personal rights:

The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts

²¹⁴ *Cuesta v. School Bd. of Miami-Dade County, Fla.*, 285 F. 3d 962 (11th Cir., 2002).

²¹⁵ *Ibid.*

²¹⁶ *Bell v. Wolfish*, 441 U.S. 520, (1979).

must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.²¹⁷

The Eleventh Circuit Court of Appeals concluded the student's constitutional rights were not violated because reasonable suspicion existed to conduct the search due to the violent and threatening language and pictures in the pamphlet, which was the reason for the student's arrest.²¹⁸ The Eleventh Circuit made it clear the officers who conducted the strip search were aware of the contents and violent nature of the pamphlet.²¹⁹

In *Williams by Williams v. Ellington*,²²⁰ a female student alleged her Fourth Amendment rights were violated when she was strip-searched without probable cause as part of the school's investigation into allegations that she was taking drugs at school. A student told the principal she witnessed Williams and a friend taking drugs in class. The principal first made sure the student reporting the incident had no hostility towards Williams to rule out any underhanded motives and then launched an investigation over multiple days. He spoke to several of Williams's teachers who validated her strange behavior and reported a note Williams had written referring to her using drugs. The principal also acquired information from the school's counselor, the student's aunt, and the friend's father, all expressing concern that both students may be taking drugs. The principal took action when the student complained a second time that Williams was using drugs in class.

The Sixth Circuit Court of Appeals found reasonable suspicion existed for the strip search of Williams. Basing their decision on *T.L.O.*'s analogy to the reasonable suspicion

²¹⁷ Id. 569.

²¹⁸ *Cuesta v. School Bd. of Miami-Dade County, Fla.*, 285 F. 3d 962 (11th Cir., 2002).

²¹⁹ Judge C. Ashley Royal, "Expanding the Scope of Suspicionless Drug Testing in Public Schools," *Mercer L. Rev.* 54, no. 1304 (Summer 2003): 15.

²²⁰ *Williams by Williams v. Ellington*, 936 F.2d 881, 882-889 (1991).

standard used in *Terry v. Ohio*,²²¹ they wrote, “We can correlate the allegations of a student, implicating a fellow student in unlawful activity, to the case of an informant’s tip, which by itself meets the threshold for reasonable suspicion. While there is concern that students will be motivated by malice and falsely implicate other students in wrongdoing, that type of situation would be analogous to [an] anonymous tip. Because the tip lacks reliability, school officials would be required to further investigate the matter before a search or seizure would be warranted”.²²² However, the Sixth Circuit Court of Appeals affirmed the lower court’s dismissal of the suit because, in addition to the “tip” from another student which the principal found was not due to malice, he did acquire additional evidence during his investigation, including suspicions by Williams’s family that she was using drugs.²²³

Cornfield by Lewis v. Consolidated High School Dist. No. 230 (“District 230”),²²⁴ involved Brian Cornfield a behavioral disorder program student at Carl Sandburg High School. On March 7, 1991, a teacher’s aide in the program found Cornfield outside the school in violation of school rules. She reported the infraction to Cornfield’s teacher and the Dean. The aide also alerted them to her suspicion that Cornfield appeared “too well-endowed.” Another teacher and teacher’s aide corroborated the observation of an unusual bulge in Cornfield’s crotch area. Neither staff member took any action at that time. The following day, however, while boarding the school bus home, Cornfield was taken aside by the teacher and Dean. The teacher had observed the unusual bulge in the crotch area of Cornfield’s sweatpants. Believing the sixteen-year-old Cornfield was “crotching” drugs, both the teacher and Dean asked Cornfield to follow them to the Dean’s office. When accused of their suspicion, Cornfield became agitated

²²¹ *Terry v. Ohio*, 392 U.S. 1 (1968).

²²² *Williams by Williams v. Ellington*, 936 F.2d 881, 882–889 (1991).

²²³ *Ibid.*

²²⁴ *Cornfield by Lewis v. Consolidated High School Dist. No. 230*, 991 F. 2d 1316 (7th Cir. 1993).

and began yelling obscenities. At Cornfield's request, the Dean telephoned the student's mom to seek consent for a search. The parent refused to give consent.

The Dean and teacher still proceeded with the search. Believing a pat-down search would be ineffective in detecting drugs, they escorted Cornfield to the boys' locker room to conduct a strip search. After checking to make sure no one was in the locker room, they locked the door. The teacher stood about fifteen feet from Cornfield and the Dean stood on the opposite side, approximately ten to twelve feet away. They had Cornfield remove his street clothes and put on a gym uniform. Both men visually inspected his body and physically inspected his clothes. A body cavity search was not conducted. Neither staff member found any drugs or any other contraband. Afterwards, the school bus was recalled, and took Cornfield home.

Alleging the search violated his Fourth, Fifth, and Fourteenth Amendment rights, Cornfield brought legal action under 42 U.S.C. § 1983 against District 230, against the school board, the teacher and Dean in their professional and individual capacities. After filing of affidavits, the district court granted summary judgment in favor of the teacher and Dean in their individual capacities, a decision they reviewed *de novo*. Upon review, the U.S. Seventh Circuit Court of Appeals held the strip search was reasonable under the Fourth Amendment. They found the two staff members formed a reasonable suspicion from a combination of several corroborating statements about a significant bulge and Cornfield's previous comments to his teacher about the usage and dealing of drugs. They noted that "as the intrusiveness of the search of a student intensifies, so too does the standard of the Fourth Amendment reasonableness".²²⁵ As stated in *Doe v. Renfrow*,²²⁶ a pre-T.L.O. case, "[s]ubjecting a student to a nude search is

²²⁵ Id. 1321

²²⁶ *Doe v. Renfrow*, 475 F.Supp. 1012 (N.D. Ind., 1979).

more than just the mild inconvenience of a pocket search; rather, it is an intrusion into an individual's basic justifiable expectation of privacy."²²⁷

In *Oliver v. McClung*,²²⁸ junior high students sued the Jay County School Corporation school board, superintendent, principal, and teachers, stating the students were victims of an illegal search in violation of their constitutional rights and state law. On March 4, 1994, immediately following their physical education class, two female students reported to their gym teacher four dollars and fifty cents (\$4.50) was missing from the locker room. The teacher informed the principal of the girls' allegation of possible theft. The principal decided to conduct a search of the students and their lockers. He asked two female staff members to assist him in the search. The principal then told all the girls in the gym class to remain in the gym and directed the girls to go into the locker room in pairs. Once inside, the principal and two female staff searched the girls' lockers and book bags. They also instructed the girls to remove their shoes and socks in an effort to uncover the missing money.

A female staff then suggested that the girls could hide the money in their bras, and asked the principal if he wanted the girls' bras searched. The principal decided to do so and ordered the female staff members to escort the girls to another part of the locker room and perform the search. All of the "strip searches" were conducted in a similar fashion, although the specific details of each one varied. At some point later that same day, McClung concluded the search had been a mistake. He spent that evening and the rest of the weekend contacting the parents of all the students who were subjected to the search in order to report what had taken place. On the following Monday morning, McClung met with the girls and apologized. The students filed suit asserting the search was unreasonable and, therefore, a violation of their Fourth Amendment

²²⁷ *Cornfield by Lewis v. Consolidated High School Dist. No. 230*, 991 F. 2d 1319–1321.

²²⁸ *Oliver v. McClung*, 919 F. Supp. 1206 (N.D. Ind., 1995).

rights. Both the school officials and the students filed a motion for summary judgment on a variety of issues.

In the final rulings, the District Court held the following: (a) the students failed to provide evidence of a pattern or series of incidents sufficient to impose liability on the school board based upon custom or practice of such unconstitutional conduct; (b) under Indiana law, the principal was not a policymaker for the school board and, therefore, the principal and school board could not be held liable for the principal's allegedly unconstitutional search; (c) strip searching seventh grade girls to recover \$4.50 was not reasonable under the circumstances and, thus, the principal and teachers were not entitled to qualified immunity, which is consistent with the standards set forth in *T.L.O.*; (d) under Indiana law, the students failed to establish false imprisonment; (e) the material issue of fact as to whether students established claim of battery under Indiana law precluded summary judgment; (f) under Indiana law, the students' claim for emotional damages did not require showing that emotional distress was accompanied by and resulted from physical injuries; and (g) students claim for intentional infliction of emotional distress failed, and no evidence existed to show the school officials actually intended to inflict emotional damage, as required by law.²²⁹

In *Thomas, et al. v. R.G. Roberts, et al.*,²³⁰ school officials, the school district, and the county were sued because they conducted a strip search of elementary school children, absent particularized suspicion, following the theft of some money. When a fifth-grade teacher noticed that an envelope containing \$26 was missing from her desk, she obtained permission from the assistant principal to conduct strip searches of all the children in her class. A male police officer conducted the searches on the boys, and the female teacher performed the searches on the girls.

²²⁹ *Oliver v. McClung*, 919 F. Supp. 1206 (N.D. Ind., 1995).

²³⁰ *Thomas, et al. v. R.G. Roberts, et al.*, 323 F.3d 950 (11th Cir., 2003).

The search was only visual, with no reported touching. It consisted primarily of the students dropping their pants and lifting their skirts and/or shirts. Several of the student's parents sued the school district and school officials, claiming the searches were unconstitutional. They also argued that school officials were not entitled to qualified immunity since they had "fair warning" that particularized suspicion was necessary before the school could strip search a student.

The school officials initially received a summary judgment from the United States District Court for the Northern District of Georgia on all claims, and the students' appealed to the 11th Circuit Court of Appeals. The district and officials argued there was no case law prior to October 1996 (the date of the strip searches in this case) that would have fairly and clearly warned them that a mass strip search of elementary students under those circumstances was unconstitutional. They further asserted the "unlawfulness" of the search was not so obviously a Fourth Amendment violation that clarifying case law was necessary. The 11th Circuit Court of Appeals affirmed the lower court's decision. On appeal to the United States Supreme Court, the case was sent back for reconsideration.

On remand, the Court of Appeals held (a) strip searches of schoolchildren, which were conducted without individualized suspicion, were unreasonable, (b) individual school defendants and officers were entitled to qualified immunity, (c) the district was not liable for unconstitutional strip searches based on inadequate training or supervision theory, and (e) the county could be held liable under the law for its officer's unconstitutional conduct. The court considered the prior cases cited by the parents, but determined the facts were so different that the cases "would not in 1996 give a school official fair, much less clear, warning the search conducted here would be unlawful."²³¹ According to the court, the search did not rise to a level

²³¹ *Thomas, et al. v. R.G. Roberts, et al*, 323 F.3d 950 (11th Cir., 2003).

“so egregious as to alert the officials that such conduct is unconstitutional even without case law.”²³² Though the 11th Circuit found the search unconstitutional, it did not consider the conduct so egregious as to deny the school officials the benefit of qualified immunity. The court, therefore, dismissed that case against the school officials.²³³

Commonwealth of Pennsylvania or Other State Case(s)

In *Cales v. Howell Public School*,²³⁴ a high school student filed a civil rights action alleging she was subjected to an illegal search. Cales, a fifteen-year-old student, was seen ducking behind a car in the school parking lot when she should have been attending class. When she was questioned by school security, she presented a false name. Because of the suspicious behavior, the assistant principal ordered a female assistant principal to search the student. The search included the student’s purse, jeans, which were removed, and viewing of the student’s bra without touching. No drugs were found. The search was deemed illegal based upon the following finding, “a school administrator does not have the right to search a student because the student acts in such a way as to create a reasonable suspicion that he or she has violated some rule or law; rather, the burden is on the administrator to establish that student’s conduct is such that it creates reasonable suspicion that a specific rule or law has been violated and that a search could reasonably be expected to produce evidence of that violation; if the administrator fails to carry such burden, any subsequent search necessarily falls beyond the parameters of the Fourth Amendment.”²³⁵

²³² Ibid.

²³³ Ibid.

²³⁴ *Cales v. Howell Pub. Sch.*, 635 F. Supp. 454 (E.D. Mich., 1985).

²³⁵ *Id.* 456.

Mass and Random Searches

Secondary prevention efforts involve school officials' attempting to find contraband materials before they are used or brought into the building. These procedures typically involve school officials searching more than one student at a time (mass search) without individualized reasonable suspicion. School wide drug searches of inanimate objects by dogs are a common type of mass search conducted in schools, and they are discussed separately as part of the canine (sniff) search section. Given the lack of individualized suspicion, the legality of the search is often linked to the school's documented need to promote safety and order.

Federal Case(s)

*Rhodes v. Guarricino*²³⁶ involved a random search by a school administrator while students were on a trip. Prior to leaving on the school-sponsored trip, students were provided with a brochure that specifically notified the participants they would be subjected to room checks. Each student signed a pledge to avoid alcohol and drugs. The trip brochure also advised, "Any behavior discrepancies, either direct or by close association, will be dealt with through standard School Disciplinary Codes and Procedures."²³⁷ Participation in the trip was purely voluntary.

On Friday, March 20, the principal returned to his hotel. In order to get to his room, he had to walk past Rhodes' room, and a large group of students was congregated in the hallway outside of Rhodes' rooms. The principal smelled a strong odor of marijuana permeating the area of the hallway. He then contacted hotel security, inquired whether he could gain access to these rooms because he suspected the presence of marijuana. The principal proceeded to search the

²³⁶ *Rhodes v. Guarricino*, 54 F.Supp.2d 186 (S.D.N.Y., 1999).

²³⁷ *Ibid.*

majority of the twenty rooms occupied by the students on the trip. He went into each room with hotel security employees using a hotel security passkey. This search ultimately uncovered an undisclosed amount of marijuana in one student's room along with a bottle of alcohol found in a drawer of the plaintiff's room. The smoke detector in the room was disconnected and two burning, scented candles were found. Rhodes and the other student were sent home early and later suspended for three days.

In this case, the student claimed his Fourth Amendment rights were violated because the room search, which revealed alcohol and large amounts of marijuana, was conducted by the principal-chaperone during a class trip, which violated the student's right to be free from unreasonable searches and seizures. The court held the students had no legitimate reason to expect complete privacy in their rooms. Further, it was deemed reasonable for the principal to search the rooms based upon the detection of marijuana smoke and the gathering of students.²³⁸

Commonwealth of Pennsylvania or Other State Cases

Later, in the 2004 Pennsylvania Superior Court case, *In the Interest of A.D.*,²³⁹ two female Wyoming High School students reported money was missing from their purses upon returning from participating in gym activities. The two students had left their purses on the gym bleachers while participating in class. Other students, including A.D., were not engaged in the activities and remained seated in the bleachers. Upon the participants return to the bleachers, one student reported twenty-two dollars (\$22) was missing from her purse as well as a paper with her social security number written on it. Another student reported missing sixty-one dollars (\$61). The physical education teacher separated the students who had been participating in activities on

²³⁸ Ibid.

²³⁹ *In re A.D.*, 844 A.2d 20 (Pa. Super. Ct., 2004).

the gymnasium floor from those students seated in the bleachers. He then called the assistant principal, who contacted a sergeant at the Exeter Borough Police Department.

The assistant principal, accompanied by a police sergeant, arrived at the gymnasium and spoke with the victims. The assistant principal then individually escorted each of the six male students who had been seated in the bleachers to a private area and searched their pockets and book bags. After the assistant principal completed searching the male students, he requested a female hall monitor to assist him with searching the female students. The hall monitor reported that one of the girls, A.D., appeared very upset, and she suggested they search her first. The assistant principal subsequently found eighty-three dollars (\$83) rolled up in A.D.'s book bag along with one of the student's missing social security information and a movie ticket stub belonging to the other student. The sergeant remained outside of the area where the assistant principal conducted the searches and did not participate in the searches. During the subsequent court hearing, A.D. challenged the legality of the search, which the court denied. A.D. then appealed.

The Pennsylvania Superior Court denied the appeal and upheld the lower court's ruling the search was legal because "the school official's particularized search of a small group of students, undertaken with individualized suspicion that one of them had committed a theft, does not violate either the United States or [the] Pennsylvania Constitution."²⁴⁰ The school official was not an agent of the police, the search was justified at inception, and the scope of the search was reasonable and appropriate.²⁴¹

²⁴⁰ Id. 28.

²⁴¹ *In re A.D.*, 844 A.2d 20 (Pa. Super. Ct., 2004).

In *A.S. v. State of Florida*,²⁴² a middle school assistant principal observed four students huddled in a group. One student was seen with money in his hand and another fiddling in his pocket. All four were taken to the principal's office and searched. The student who had been fiddling in his pocket was found to have a small amount of marijuana in his wallet. As a result, the student was charged with committing a delinquent act based on the offense of possession of less than twenty grams of marijuana in violation of Florida Statutes (1995) section 893.13(6)(b). The trial court denied the student's motion to suppress the evidence. The student entered a plea of *nolo contendere*, specifically reserving the right to appeal the ruling on the motion to suppress.

The assistant principal testified that she saw a group of boys huddled together, one with money in his hand, and A.S. "fiddling" in his pocket. The assistant principal could not say that she saw contraband of any type or any exchange occurring while she watched the boys. The issue in this case was whether the school officials' search of A.S.'s belongings was based on reasonable suspicion. The Court concluded the search failed both parts of the test derived from *T.L.O.* First, the action was not justified at its inception and, second, the search was not reasonably related in scope to the circumstances to justify the action. The presence of money in the hand of one boy and the appellant "fiddling" in his pocket was not enough to amount to reasonable suspicion.²⁴³

Searches of Student Automobiles

The courts have found that schools do not have free privileges to search a student's automobile. In fact, in *In Re South Carolina*,²⁴⁴ the Court stated, "The student's expectation of privacy in a school locker is considerably less than he would have in the privacy of his home or

²⁴² *A.S. v. State of Florida*, 693 So. 2d 1095 (Fla. Dist. Ct. App., 1997).

²⁴³ *Ibid.*

²⁴⁴ *In re South Carolina*, 583 So.2d 188, 191 (Miss., 1991).

even his automobile.”²⁴⁵ However, because the right to park on school property is something given by the school, previous court cases have indicated there should be reasonable suspicion when deciding to search a student’s automobile and that searches of student vehicles supported by reasonable suspicion are acceptable. Additionally, the amount of access a student has to their car during the day may be a factor in determining if establishing individual reasonable suspicion is necessary. Usually, the greater the access, the lower the individualized suspicion requirement. With a written school policy, it is reasonable to expect the search would stand up in court.

Federal Case(s)

In *Anders v. Ft. Wayne Community Schools*,²⁴⁶ Anders was a sophomore at Northrop High School in Fort Wayne, Indiana. Anders left the school building during his lunch period to go to his car to look for an art project. Northrop High School has written rules that a student must have a pass before going to his or her vehicle during the school day. Anders did not have a pass. When a school security officer observed Anders in the parking lot, his car was searched, giving rise to the lawsuit, filed on March 6, 2000. Anders challenged the search of his car and the Fort Wayne Community Schools’ implied consent policy. During the 1999-2000 school year, Jerrod Anders had applied for a parking permit, as required of all students wishing to drive to school, and the pass was issued to Anders. The terms of the *Fort Wayne Community Schools Student Rights and Responsibilities & Behavior Code* bound him to the terms of the implied consent policy, which he challenged in the suit. The relevant code section states as follows:

Authorized school personnel may conduct a search of a student, locker, and book bag, student possessions/belongings, or automobile if they have reasonable suspicion for a

²⁴⁵ Ibid.

²⁴⁶ *Anders ex rel. Anders v. Fort Wayne Community Schools*, 124 F.Supp.2d 618 (N.D. Ind., 2000).

search. A student who requests parking privileges gives implied consent for a search (1999-2000 Fort Wayne Community Schools Student Rights and Responsibilities & Behavior Code, p. 3).

Anders' complaint alleged that both the policy and the search were unconstitutional and violated his Fourth and Fourteenth Amendments rights, as well as an unconstitutional violation of Article 1 § 11 of the Indiana Constitution.

Ft. Wayne Community Schools maintained that although the implied consent policy was in effect at the time of Anders' search, it was never relied upon to justify the search of his car. Instead, they contended that Anders' vehicle search was justified by a reasonable suspicion created by Anders' conduct in combination with activities that had been taking place in the Northrop High School parking lot during the weeks leading up to the search. Approximately a week before the challenged search, numerous complaints were lodged by Northrop High School staff concerning students smoking in the parking lot. The assistant principal recognized the problem, notified security, and asked that security address the issue. As a result, several students were caught smoking in the parking lot during the week leading up to the search. At the time the search of Anders' car took place, the police officer was a nine-year veteran of the Fort Wayne Police Department and had worked as part-time school security guard for eight years. The officer was working in the Northrop High School parking lot and had positioned himself between cars in the lot so the he could see students as they exited the building during the lunch period.

After about thirty-five minutes at that location, the officer observed Anders walking briskly through the lot toward the school entrance. The officer had not seen Anders exit the building and, therefore, assumed that Anders had been outside for some time. When questioned by the officer inside the school building, Anders admitted that he did not have a pass to be

outside. He told the officer that he had gone to his car to retrieve an art project that he thought was in the car, but the project was not there. At that point, the officer became suspicious that Anders had violated several regulations and asked Anders to accompany him to his automobile, where he performed a search that led to the cigarettes being found.

Using the standard set in *New Jersey v. T.L.O.*, the court found the officer had reasonable suspicion the student was violating school rules. Since the student had violated the school rule requiring a pass, the court ruled the officer had a reasonable basis for believing the student could also be violating other school rules. The court also found the officer was entitled to draw on circumstances existing at the school in the weeks immediately preceding the student's apprehension. These circumstances were deemed to meet the standard for reasonable suspicion described by the Supreme Court in *T.L.O.*²⁴⁷

Commonwealth of Pennsylvania or Other State Case(s)

*Commonwealth v. Williams*²⁴⁸ involved a student who was convicted in the Court of Common Pleas, Allegheny County, Criminal Division, of weapons offenses, and the student appealed. The Superior Court held that school police officers acted without authority when they opened the defendant's vehicle, which was parked on the city street off of school property, and searched its interior, seizing weapons and turning them over to city police. The decision was vacated and remanded.

On September 18, 1997, the Chief of the School Police for the City of Pittsburgh School District was called to the general area of Brashear High School to investigate possible truant activity. On a City of Pittsburgh street adjacent to school property, but off school property, the

²⁴⁷ *Anders ex rel. Anders v. Fort Wayne Community Schools*, 124 F.Supp.2d 618 (N.D. Ind., 2000).

²⁴⁸ *Commonwealth v. Williams*, 749 A. 2d 957 (Pa. Super., 2000).

Chief found two truant students and directed those students to proceed directly to school. While investigating the truant students, the Chief had an encounter with a car whose three occupants stopped and looked at him, made a U-turn, gave him the proverbial finger, and left the area. The Chief then located the car, parked on a City of Pittsburgh street a block or two away from where the incident occurred, off school property, and confronted the vehicle's three occupants, who indicated to him they were late for school because they had missed the bus. He instructed them to proceed directly to the school, which they did. The Chief also notified school personnel and asked the students be held until the matter could be resolved.

The Chief returned to the parked vehicle and peered into it. Inside, the chief saw on the back floor, in plain view, a sawed-off shotgun that was partially wrapped in clothing and a shotgun shell. City of Pittsburgh Police was called to the scene to investigate. However, without waiting for City Police to arrive, other Pittsburgh School Police who had already arrived at the scene joined the Chief in opening the car. With the driver's side door open, the School Police Officers could observe the barrel of a revolver protruding from under the driver's seat, so they looked under the seat, where they recovered two more revolvers. In total, the School Police Officers recovered from the parked car three loaded revolvers in addition to the loaded sawed-off shotgun, doing so without a warrant and without awaiting the arrival of City of Pittsburgh Police. The School Police turned the weapons over to City Police, who arrived approximately five minutes later.

Williams was charged by the trial court with various weapons offenses, and denied his motion to suppress the evidence. The trial judge found the Chief's actions, although they occurred outside the school premises, were within the purview of his duties as a School Police Officer and that his observation of the sawed-off shot gun, which was clearly contraband, was

valid under the plain view doctrine. Further, the trial judge found the removal of the guns from the vehicle by School Police Officers was proper. Citing *Commonwealth v. Cass*, 551 Pa. 25, 709 A.2d 350 (1998), and *Commonwealth v. J.B.*, 719 A.2d 1058 (Pa. Super., 1998), the trial court stated there was a two-step analysis to determine whether the School Police Officers acted properly in conducting the search. First, the Chief would have to be justified in conducting the search at its inception and second, the search conducted by the Chief must have been reasonably related in scope to William's conduct.²⁴⁹ The trial court concluded the Chief's search was justified because his plain view observation of the sawed-off shotgun in the back seat of the car from which the three truant students had just emerged gave him reasonable suspicion, and actual physical evidence the students were violating the law. The trial court also reasoned the search was reasonably related in scope to William's conduct.²⁵⁰

*Covington County v. G.W.*²⁵¹ was a 2000 Mississippi Supreme Court case involving a high school student suspended for possession of alcohol on school grounds. A teacher at Seminary Attendance Center in the Covington County School District sent a note to the Assistant Principal during school hours advising him that a student had informed her that G.W., a 17-year-old minor, was drinking beer in the school parking lot. The note was then delivered to the principal. The principal and a school security officer went to the parking lot and found empty beer cans in the back of G.W.'s truck. Upon request, G.W. unlocked his automobile and allowed the principal and the officer to search his truck. Seven unopened bottles of beer were found in a locked toolbox. Upon questioning by the principal, G.W. admitted the beer was his and that he had purchased the beer in Covington County. G.W., however, did not appear to be under the

²⁴⁹ *Commonwealth v. Williams*, 749 A. 2d 957 (Pa. Super., 2000).

²⁵⁰ *Ibid.*

²⁵¹ *Covington County v. G.W.*, 767 So.2d 187 (Miss., 2000).

influence on the morning of the incident. G.W.'s mother was immediately notified, and G.W. was suspended for five days.

Later, the school district's central office mailed a letter to G.W. and his parents notifying them of his expulsion hearings. On December 17, 1998, the School Board conducted the hearing and expelled G.W. for the rest of the school year. G.W. was to be placed in an alternative school to finish his last semester and would be allowed to graduate with his senior class. G.W. filed a petition for appeal and injunctive relief with the Chancery Court, Covington County. The Chancery Court granted G.W.'s request and entered a temporary restraining order prohibiting the School Board from expelling G.W. until a final decision was reached.

On May 20, 1999, the chancellor found the school did not provide proper notice, as outlined in the school's handbook, and ordered that G.W. be placed back in school. The school district appealed to the Mississippi Supreme Court, which ruled on three issues: (a) the student's procedural due process rights were not violated; (b) school officials did not need a warrant to search student's vehicle; and (c) hearsay was admissible in suspension proceedings. The Mississippi Supreme Court reversed the lower court's ruling.²⁵²

Searches of Lockers

Before *T.L.O.*, the courts allowed random locker checks and locker investigations by school officials were not regarded by most courts as searches. Courts commonly reasoned that because a locker is jointly controlled by the student and the school, students' do not have a reasonable expectation of privacy, at least not from school officials.²⁵³ The school owns the lockers; therefore, they could be periodically searched for safety and health reasons. The *T.L.O.*

²⁵² *Covington County v. G.W.*, 767 So.2d 187 (Miss., 2000).

²⁵³ *People v. Overton*, 229 N.E.2d 596; 249 N.E.2d 366 (N.Y., 1969).

decision did not address whether students have reasonable expectations “of privacy in lockers, desks, or other school property provided for the storage of school supplies,”²⁵⁴ but the court in *T.L.O.* did note that students must be given privacy to carry personal items on school grounds.²⁵⁵ After the *T.L.O.* decision, the Courts have held the reasonableness standard does apply to locker searches.²⁵⁶

During the 1990s, the courts began to hold that students have an expectation of privacy with respect to their lockers and schools must establish reasonable suspicion to search lockers because students store personal items in them.²⁵⁷ In *State v. Jones*,²⁵⁸ where school officials found marijuana in a student’s jacket pocket during an annual locker cleanout, the court stated, “Students’ legitimate expectation of privacy in the contents of their school lockers may be impinged upon for reasonable activities by the school in furtherance of its duty to maintain a proper educational environment.”²⁵⁹ Because of the uncertainty in these cases, some school districts attempted to reduce this concern by declaring in their student handbooks that no privacy rights exist in lockers and lockers may be searched at any time without notice. Book bags and other private items carry a more restrictive requirement, but they can be searched when there is a need based upon safety or a policy that has been developed that appropriately notifies students of the possibility of being searched.²⁶⁰

²⁵⁴ Yearout, 495.

²⁵⁵ *New Jersey v. T.L.O.*, 469 U.S. 339.

²⁵⁶ *State v. Michael G.*, 748 P.2d 17 (N.M., 1987).

²⁵⁷ Schreck, 117.

²⁵⁸ *State v. Jones*, 666 N.W.2d 142 (Iowa, 2003).

²⁵⁹ Alexander and Alexander, 491.

²⁶⁰ Holeck, 514–515.

Commonwealth of Pennsylvania or Other State Case(s)

In the case of *In the Interest of Dumas*,²⁶¹ Dumas, attending Academy High School was observed getting a pack of cigarettes from his locker and giving a cigarette to another student. The teacher who observed him informed the assistant principal. The assistant principal (AP) approached both students, took the cigarette and then the pack from Dumas. The AP then proceeded to search Dumas's locker. Inside he found a jacket with another pack of cigarettes and some marijuana. Dumas was charged, in a delinquency petition, for possession of a controlled substance.

The issue in this case was whether evidence seized during a search by the AP was admissible in a delinquency proceeding. The Court of Common Pleas, Juvenile Division, Erie County, granted a motion to suppress the marijuana seized from the student's locker, and the Commonwealth of Pennsylvania appealed. Balancing the student's legitimate expectation of privacy in their school locker with the school's need to maintain order and discipline, the Superior Court of Pittsburgh held that, (a) a student has a legitimate expectation of privacy in school lockers and (b) a warrantless search of student's locker where marijuana was discovered was not reasonable and, thus, was invalid. Although the assistant principal had reasonable grounds to believe the search would provide evidence the student had violated the school rules of possessing cigarettes, once the assistant principal took the cigarettes from the students, it was not reasonable to suspect more cigarettes would be found in the locker. The assistant principal testified he suspected Dumas of being involved with drugs, but was not able to provide any reason for his suspicion. The assistant principal further stated it was because of this suspicion, he decided to search the locker.

²⁶¹ *In Interest of Dumas*, 515 A.2d 984, (Pa. Super. Ct., 1986).

The concurring opinion stated,

A search of an individual student's school locker to determine whether the locker contains cigarettes or other non-permitted materials violated the student's privilege against unreasonable searches and seizures when the school official conducting the search did not have a reasonable and articulable basis to believe that the search would uncover evidence that the law or the rules of the school were violated or being violated.²⁶²

Furthermore, although the assistant principal suspected the student of being involved with marijuana, the assistant principal was unable to provide any reasons for the suspicion. The Superior Court affirmed the lower court's ruling.²⁶³

In *Commonwealth v. Carey*,²⁶⁴ an assistant principal was told by a teacher that two students reported that another student, Carey, had shown them a gun and brought it to school as a result of a brawl. Neither a search of the accused student nor a retrace of his steps through a cafeteria and a classroom turned up the gun the two students reported seeing. On the basis of the school administrators' preexisting knowledge of Carey's Friday afternoon brawl and the two students' eyewitness reports of seeing a gun in the accused student's hands, along with the failure to find the gun on the student or in the vicinity of his most recent whereabouts, a search conducted of the student's locker produced a gun.

Carey was found guilty of unlawful possession of a firearm after a bench trial in District Court. He sought a *de novo* trial before a jury of six in the Lowell Division of the District Court. In that proceeding, Carey's attorney filed a motion to suppress both a sawed-off rifle discovered

²⁶² Id. at 298–99, 515 A.2d at 986.

²⁶³ *In Interest of Dumas*, 515 A.2d 984.

²⁶⁴ *Commonwealth v. Carey*, 554 N.E.2d 1199 (Mass., 1990).

in a warrantless search of his high school locker and his statement to a police officer acknowledging the gun was his. Carey filed an application for an interlocutory appeal that was allowed by the Supreme Judicial Court, and the case was transferred from Appeals Court. The Supreme Judicial Court, held that (a) the assistant principal, who was told that morning by a respected teacher that two students had reported Carey had shown them a gun and brought it to school as a result of brawl, thus creating “reasonable suspicion” and justifying a search of the student’s locker, and (b) the motion judge’s finding that defendant, who was 17 years and 10 months old at the time of arrest, was fully apprised of his *Miranda* rights, understood them, and made a knowing, intelligent, and voluntary waiver was supported by evidence. The decision was affirmed.²⁶⁵

Thirteen years later, in *State v. Jones*,²⁶⁶ teachers and administrators at Muscatine High School conducted an annual pre-winter break cleanout of the lockers assigned to each student in the school. Three to four days before the cleanout, the students were asked to report to their lockers at an assigned time to open them so a faculty member could observe their contents. The general reason for the cleanout was the health and safety of students and staff and to help maintain the school’s supplies.

Of the 1,700 students attending the high school, approximately 1,400 complied with the locker cleanout procedure. One of the 300 students who failed to comply was the Jones. The next day, two building aides went to the lockers that had not been checked the day before. Acting based upon the adopted rules and regulations of the school board, the aides opened each locker to inspect the contents. The aides did not have the names of the students assigned to the lockers during the inspection. One of the lockers they opened contained: a blue nylon coat. In an effort to

²⁶⁵ Ibid.

²⁶⁶ *State v. Jones*, 666 N.W.2d 142.

determine ownership and look for trash, supplies, or contraband, one of the aides checked the coat and found a small bag of what appeared to be marijuana in the pocket. The aide returned the coat to the locker and contacted the school's principal.

After crosschecking the locker number with records kept by the administration, the principal determined the locker belonged to the Jones. The principal and aides then went to the student's classroom and escorted him to his locker. The student was asked to open the locker and whether anything in the locker "would cause any educational or legal difficulties for him." The student replied, "No." The principal then removed the coat from the locker. The student grabbed the coat and struck the principal across the arms in order to break free and escape. The principal gave chase, then captured and held the student until the police arrived. The police retrieved the bag and determined that it contained marijuana.

Jones, who was charged with possession of a controlled substance in violation of Iowa state law, filed a motion to suppress the marijuana evidence, claiming the search violated his right to be free from unreasonable search and seizure as guaranteed by the Fourth Amendment of the United States Constitution and Iowa Constitution. The District Court granted his motion to suppress, ruling school officials did not have reasonable grounds for searching the student's coat. The State filed a motion requesting the judge reconsider his decision. The motion was denied. The State then sought a discretionary review from the Supreme Court of Iowa, which was granted. In its conclusion statement, the Supreme Court of Iowa court found that,

Although students are not stripped of constitutional protections in the school context, those protections must be balanced against the necessity of maintaining a controlled and disciplined environment in which the education of all students can be achieved. Thus, while students maintain a legitimate expectation of privacy in the contents of their school

locker, that privacy may be impinged upon for reasonable activities by the school in furtherance of its duty to maintain a proper educational environment. The search of the student's locker was permissible in light of these principles, and the district court's grant of a motion to suppress evidence obtained during the search was in error.²⁶⁷

The decision was reversed and remanded by the Iowa Supreme Court.²⁶⁸

Metal Detector Searches

With the increase in concerns for weapons and other metal objects that may be used as weapons, some school districts have implemented the use of metal detectors as a condition for entering the school building. Furthermore, the use of metal detectors to conduct searches, even though there is no suspicion or consent to a search, is permitted, as decided in *Illinois v. Pruitt*.²⁶⁹ When asking the question, "Does the Fourth Amendment to the United States Constitution require responsible school officials to blink at the threat that guns and gun violence may pose within their schools?," the question that is really being asked is, "Does the Fourth Amendment bar school officials from using metal detectors and suspicionless searches to curb the threat and to ensure a safe learning environment?"²⁷⁰ In the *Journal of Law and Education*, Robert Johnson argues that it does not because (a) students do bring illegal weapons to school, (b) metal detectors do detect weapons and help schools to disarm students, (c) disarming students reduces the threat of violence, and (d) the courts have repeatedly approved the constitutionality of weapon-related suspicionless student searches conducted with metal detectors, and these

²⁶⁷ Id. 150.

²⁶⁸ *State v. Jones*, 666 N.W.2d 142.

²⁶⁹ *Illinois v. Pruitt*, 152 Ill.2d 504 (1996).

²⁷⁰ Perry Zirkel, "Are the Public Schools "Detectably" Safe?" *J.L. & Educ.* 29 (April 2000): 193-195.

decisions are fully consistent with the school-related decisions of the United States Supreme Court.²⁷¹

A variety of devices are being used for these types of searches, from standing metal detectors similar to those found in government facilities to hand-held versions. The major challenge facing schools is that this type of search does not include individualized suspicion. Metal detectors merely detect metal so they do not intrude upon a student's privacy. The investigation that is conducted following a metal detection alert constitutes a search and must be based upon reasonable suspicion, not just on the metal detector alert. To address the requirement of having reasonable suspicion to search based upon the alert from a metal detector, schools should develop an appropriate policy that notifies students they may be subjected to a progressive search to determine why the alert went off.²⁷²

Federal Case(s)

In *People v. Parker*,²⁷³ a Chicago police officer was part of a unit that conducted random metal detector operations inside Chicago area high schools. The mission of the six police officers and one sergeant unit was to prevent students from entering schools with weapons. On April 12, 1995, the officer was inside Bogan High School, where two metal detectors were set up. There were signs posted at the school stating that any person on the premises was subject to a search. Parker, a 16-year-old, entered the school, looked in the direction of students lined up to go through the metal detectors and turned away to leave school. A police officer stopped Parker and identified himself. He then told Parker he would have to go through the metal detector, to which Parker responded by raising his shirt and saying, "Someone put this gun on me." After Parker

²⁷¹ Ibid.

²⁷² Holeck, 528.

²⁷³ *People v. Parker*, 672 N.E.2d 813 (Ill. App. Ct., 1996).

raised his shirt, the officer could see the handle of a semiautomatic pistol. The officer retrieved the weapon and arrested Parker.

After a hearing, the trial court granted Parker's motion to nullify the arrest and suppress the evidence. The trial court found that Parker could have innocently turned away for a number of reasons unrelated to the metal detectors. On appeal, the State argued there was no search conducted because the defendant did not go through the metal detector and was not patted down. Parker argued the stop that led to the discovery of the gun was illegal, thus, the discovery of the gun was fatally tainted by an unconstitutional stop. The issue at hand was whether the stop had been constitutional. The court determined the apprehension constituted a seizure and was not reasonable, concurring with the state court's ruling and reasoning that Parker could have been leaving for innocent reasons. The police did not have reason for individual suspicion or evidence of an immediate danger to safety, nor had they conducted the search at the direction of a school official based upon the reasonable suspicion standard.²⁷⁴

Commonwealth of Pennsylvania or Other State Case(s)

*In Interest of F.B.*²⁷⁵ involved students attending University High School in Philadelphia. Students were restricted from bringing weapons or drugs to school. Students found in possession of weapons or drugs, were arrested. Letters were sent home during the year advising parents and students of the policy. To enforce the policy, the School District of Philadelphia hired police officers who conducted metal detector scans and bag searches. Signs were posted throughout the school informing students of the searches. When entering the school, students were directed into the gym area where they formed lines and individually stepped up to a table. Once at the table,

²⁷⁴ Ibid.

²⁷⁵ *In Interest of F.B.*, 658 A.2d 1378 (Pa. Super Ct., 1995).

the students would empty their pockets and hand over their jackets and any bags they were carrying. While an officer searched the student's belongings, students were told to proceed to the end of the table where they were scanned by a metal detector. Every student was searched in this manner until the gymnasium became too crowded, at which time school administrators randomly selected students to be searched.

On April 22, 1994, a student stepped up to the table and produced a Swiss-type folding knife. As a result of the knife being discovered, the student was escorted to a holding area, where he was arrested for possessing a weapon on school grounds. The student filed a motion to suppress the seized evidence. The trial court denied the student's motion and adjudicated him delinquent. The student had already been placed on probation after prior court involved issues, and the court ordered the juvenile remain on probation. An appeal was filed.

On appeal, the student contended the trial court was wrong in denying his suppression request because the police searched him without reasonable suspicion or probable cause to believe he had violated any school rules. He argued the search violated his rights against unreasonable searches and seizures under both the United States and Pennsylvania Constitutions. The Superior Court of Philadelphia held the search was reasonable, and thus did not violate the juvenile's Fourth Amendment rights.²⁷⁶

Administrative searches done as part of general procedure and process to ensure safety are considered reasonable when the intrusion involved in the search is not greater than necessary to satisfy the government's interest that justified the search. The court in situations like this, felt school's interest in ensuring security for its students far outweighed the privacy rights of students searched and arrested for carrying weapons. This is particularly true when schools employing

²⁷⁶ *In Interest of F.B.*, 658 A.2d 1378 (Pa. Super Ct., 1995).

police officers who conduct metal detector scans and bag searches of students for weapons inform students and parents of the search policy and students and/or visitors are searched as part of uniform procedures, as illustrated in this case. No individualized suspicion is necessary to search the student at school for weapons where the student's privacy interest was minimal in light of prior notice and the expectation of privacy was not subject to the discretion of the official. The search of the student at school for weapons was reasonable and did not violate Fourth Amendment rights because (a) the search was justified at its inception given the high violence rate in local schools, (b) the search was part of a regulatory plan to ensure the safety of all students, and (c) the searches were all conducted in a uniform manner.

The following year, *In Interest of S.S.*²⁷⁷ was decided. This case involved William Penn High School in Philadelphia, where S.S. was charged with possession of a weapon on school grounds. On September 28, 1994, S.S., upon entering the school, was instructed by security to place his coat and book bag on a table as part of the search process. S.S. was scanned with a metal detector, and his belongings were patted down. The employee felt what he called a bulge resembling a knife in S.S.'s coat and called for his supervisor to witness the search of S.S.'s coat pocket. Students entering school that day were led to the gym and subjected to the same scan and pat down procedure. The search revealed a box cutter, and S.S. was later transferred to the police.

Philadelphia police arrested S.S. without a warrant and charged him with possession of a weapon on school grounds. On April 20, 1995, S.S. filed a pretrial motion to suppress the evidence. The motion was denied, and S.S., was found guilty of possession of a weapon on

²⁷⁷ *In Interest of S.S.*, 452 Pa. Super. 15, 680 A.2d 1172 (Pa. Super., 1996).

school grounds and was placed on probation. S.S. filed a motion to reconsider the verdict and/or grant post-verdict relief. The motion was denied and S.S. appealed.

The appeal by S.S. asserted that (a) searches without individualized suspicion can be justified only where they are strictly limited in scope and procedural safeguards are present and (b) the school did not provided evidence to establish a general need for such searches, and (c) school district police were not following established guidelines while conducting the search. While not based on an individualized suspicion, the Superior Court No. 2345 in Philadelphia held the search was reasonable, given the search was conducted in the same manner for all students. The search was justified due to the high rate of violence in area schools, so individual suspicion was not required under the circumstances.²⁷⁸

Canine (Sniff) Searches

The majority of courts consider a canine sniff of a person a search. Even prior to *T.L.O.*, the Tenth Circuit Court of Appeals, in *Zamora v. Pomeroy*,²⁷⁹ ruled the use of dogs in the sniffing of lockers to be legal. However, direct searches (sniffing) of students have been ruled illegal by the courts because of their high degree of intrusiveness. Based upon the standards developed in *T.L.O.*, individual suspicion and a high risk to the safety and welfare of students and staff are required to justify a canine search of a student, but a canine sniff of property is not considered a search under the Fourth Amendment, so there does not need to be prior reasonable suspicion. A positive alert from a trained canine provides reasonable suspicion to the presence of drugs, and the reaction of the canine gives the officer probable cause for a warrant at the police

²⁷⁸ *In Interest of S.S.*, 452 Pa. Super. 15, 680 A.2d 1172 (Pa. Super., 1996).

²⁷⁹ *Zamora v. Pomeroy*, 639 F.2d 662.

level and reasonable suspicion for school officials to search a student or their property at the school level.

Federal Case(s)

In 1990, a California high school student filed *B.C. Powers v. Plumas Unified School District*,²⁸⁰ alleging that a dog sniff violated his constitutional rights. The school, in conjunction with the sheriff department, conducted a search of students' belongings when there was no specific identified drug problem. The sheriff's drug-sniffing dog sniffed students as they passed and alerted officials that drugs were possibly present on one of the students, not the plaintiff, as they left the classroom in preparation for the search of students' belongings. The deputy accompanied the dog while he sniffed the students' belongings in the vacant classroom. They did not find any drugs in the students' belongings.

When the students proceeded to return to the room and passed the dog, he again alerted officials of the same student, who was not the plaintiff. The student was taken to another location and searched. No drugs were found to be present. The plaintiff, B.C., sued the district asserting the search was unlawful. The federal district court agreed with the student that the search was unreasonable on the grounds the school lacked individual suspicion and the sniffing of students as they vacated the room was highly intrusive. In addition, the school did not have any prevailing government interest at the time since there was no evidence of a drug problem.²⁸¹

²⁸⁰ *B.C. through Powers v. Plumas Unified School Dist.*, 192 F.3d 1260 (9th Cir., 1990).

²⁸¹ *Ibid.*

Commonwealth of Pennsylvania or Other State Case(s)

In *Commonwealth v. Cass*,²⁸² the school's principal had announced the school would be undergoing a safety inspection and that all students were to remain in their classrooms. The safety inspection was really a sweep search for drugs involving the use of police officers and canines. The dogs were led past the school's lockers and searches were conducted of the lockers when the dogs indicated a suspicion of illegal drugs. The search resulted in the discovery of marijuana, a pipe, a roach clip, and rolling papers in the locker of Cass, who was suspended for ten days, and criminal charges were filed against him for possession of marijuana and of drug paraphernalia. Cass filed suit to suppress the evidence of criminal charges based on the Fourth Amendment and Article 1 Section 8 of the Pennsylvania Constitution,²⁸³ which provides protections against unreasonable search and seizure.

The school's principal initiated the search based upon information given by other students regarding drug use in the school; observations by teachers of students' suspicious activities, such as passing small packages between themselves in the school hallways; increase in the use of the school's drug counseling program; calls of concern from parents; and the discovery that students were in possession of large sums of money while on school grounds. The principal admitted he had no specific information regarding Cass and that the search was general. The school had created a written policy regarding searches, and the policy was issued to students on two occasions, once at the beginning of the school year and once six weeks before the search. On review, the trial court granted the motion to suppress the evidence. The Superior Court affirmed the trial court's decision, and the Supreme Court of Pennsylvania granted the

²⁸² *Commonwealth v. Cass*, 709 A.2d 350 (Pa. Commw. Ct., 1998).

²⁸³ Article 1 Section 8 of the Pennsylvania Constitution.

Commonwealth's petition for appeal. The Supreme Court reversed the decision, ruling that a school required "reasonable suspicion," and not the more stringent standard of "probable cause," when conducting a search.²⁸⁴

In 1995, another case involving a canine search was *State of Louisiana v. Barrett*.²⁸⁵ The case involved a Louisiana school board that maintained a written policy allowing drug detection teams to use dogs for periodic random drug searches of public schools. One high school principal followed the policy by selecting six classes for random searches. As the drug dog teams went through the classrooms, students were asked to empty their pockets and to leave the room. A dog sniffed a student's wallet and alerted the team, and the principal searched the wallet and found \$400 before deciding to search the student's book bag. The drug officer asked for and was given permission by the student to search his car. In the car, they found marijuana. The state filed criminal charges against the student. In the process, the student moved to have the evidence suppressed because he felt that it was illegally obtained.

The issue in this case was whether the search of the student's belongings was legal or illegal. The state court denied the student's request for suppression, and the student appealed to the U.S. First Circuit Court of Appeals. The court upheld the denial by the lower court. The court reasoned that while the use of a dog for sniffing personal effects does not constitute a search, examination of the student's wallet does constitute a search. The dog provided probable cause to search the student's wallet, and the Supreme Court has upheld random searches of students in school. There was probable cause to search the wallet and book bag because of the dog's

²⁸⁴ Ibid.

²⁸⁵ *State of Louisiana v. Barrett*, 683 So.2d 331 (La. Ct. App., 1996).

response. The student was not in the custody of the officer when he was asked to open the car for a search, and his permission was legally obtained.²⁸⁶

Seven years later, in *Marner ex rel Marner v. Eufaula City School Board*,²⁸⁷ police officers, in conjunction with school officials, conducted a drug search operation at Eufaula High School, whereby dogs were used to identify cars in which drugs might be located. The dogs used in this search employed a method wherein they sat by the car in which the odor of illegal narcotics was detected. The canine handlers who participated in the search were law enforcement officials from the Department of Corrections at Easterling Corrections Center in Clio, Alabama. The School Resource Officer and two Assistant Principals were the school officials participating in the search.

If one of the drug-sniffing dogs alerted on a car, that car would be marked with yellow evidence tape and the car decal or license number recorded. The student whose car a dog had alerted would then be summoned to the parking lot, where a search of the car would be conducted by the law enforcement officers. During the search of the parking lot, a drug dog signaled an alert on Marner's car. Following this alert, police evidence tape was used to flag Marner's car. His tag number was recorded and run through the NCIC, which revealed the owner of the car was a Dr. Marner. Marner, the plaintiff, was called to the parking lot to unlock his car.

Marner's car was subsequently searched and an Exact-O knife blade was found. The blade had been seen through the window on the console in the front of the car before the search. In addition to the Exact-O knife, officials found a large pocketknife in the pocket of a jacket in the back seat of the car. The Code of Student Conduct of the Eufaula School Board includes, among the major offenses, possession of a weapon, as follows:

²⁸⁶ Ibid.

²⁸⁷ *Marner ex rel. Marner v. Eufaula City School Bd*, 204 F.Supp.2d 1318 (M.D. Ala., 2002).

Possession of weapons: (possession means on one's person, in one's property, locker or vehicle). Weapons include but are not limited to the following: knife, irrespective of the blade length, or any other item that utilizes a razor blade or other blade, replacement or fixed or metal fingernail file. The administrative options for such major offenses include immediate suspension, referral to law enforcement, investigation to see if expulsion is warranted, expulsion, and long-term alternative school placement.

The principal of Eufaula High School suspended Marner from school for three days and required him to attend alternative school for 45 days at the beginning of the next school year. The last penalty was given because the pocketknife and the Exact-O blade were in violation of school rules.

At the trial, the plaintiff argued the dog could have been alerting on an odor from a nearby car. Law enforcement officials testified they observed the dog alerting on Marner's car in an unusual manner two times. Marner argued that because no narcotics were found in the car, there was a question as to whether the dog actually alerted on the car. Officials testified that odors on or in the car can linger after the substance has gone. Other cars were alerted on by the dogs during the search, and these cars also contained no illegal narcotics but contained items such as a knife. The court found the evidence was overwhelmingly credible that the dog alerted on Marner's car.

The principal explained that because there was no evidence that Marner had intended to harm anyone with the weapons, he did not recommend that Marner be expelled by the school board. The principal also testified that five students whose cars were found to contain items such as a knife and a billy club were similarly given three days' suspension and 45 days of alternative school. Marner's Fourth Amendment unreasonable search claim was based on the contention that

the drug-sniffing dog did not alert on his car, but on a car near it.²⁸⁸ No real evidence was presented to this effect, and the court ruled the search was reasonable because a search by school officials is justified if there are “reasonable grounds for suspecting the search will turn up evidence the student has violated or is violating either the law or the rules of the school.”²⁸⁹

²⁸⁸ *Marner ex rel. Marner v. Eufaula City School Bd*, 204 F.Supp.2d 1318 (M.D. Ala., 2002).

²⁸⁹ *Id.* 1325.

CHAPTER V: CONCLUSIONS, SUMMARY AND RECOMMENDATIONS

In 1985, the United States Supreme Court set new standards and guidelines for the search and seizure of students in schools with the *T.L.O. v. New Jersey* decision. As mentioned earlier, it also left several questions unanswered. Since that time, courts at the state and federal levels have been asked to determine the scope of Fourth Amendment protections in schools. Over the last twenty years, these decisions have helped clarify what constitutes a reasonable search by school officials. The cases reviewed in this study provide the basis for my conclusions, summary, and recommendations.

Conclusion Related to Searches Considered Reasonable

In interpreting what meets Fourth Amendment protections for reasonableness related to searches in public schools, the Court drew partially upon its analysis in *Terry v. Ohio*:²⁹⁰

The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. Each case requires a balancing of the need for the particular search against the invasion of personal rights that the search would entail.

Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it was conducted.²⁹¹

To remember and quickly recall what should be considered when deciding to search and if it would be reasonable, Dr. Jacqueline Stefkovich developed the TIPS formula.²⁹² TIPS is an acronym for the following:

²⁹⁰ *Terry v. Ohio*, 392 U.S. 1 (1968).

²⁹¹ *Ibid.*

²⁹² Lawrence F. Rossow and Jacqueline A. Stefkovich, "Search and Seizure in the Public Schools," NOLPE Monograph Series No. 54 (Topeka: NOLPE, 1995), 10.

T = Thing, the thing which the searcher is seeking. Consideration must be given to what is being looked for (i.e., a gun or cigarette). Generally, the higher the danger, the lower the reasonable standard.

I = Information, the sufficiency of information or informant which led the searcher to believe the search was necessary. The information must be from a reliable source, and who it comes from can make a difference.

P = Place or Person, the place or person of the search (i.e., a locker, car or a person). The place or person being searched has a direct bearing on the scope of the search.

S = Search, the measure used to actually search. The courts have found that a search should not be excessively intrusive in light of age, sex, and the nature of the infraction.

Conceptual Model

Tinker v. Des Moines made it clear that “even given the special circumstances that often accompany the school environment, [n]either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”²⁹³ Because *Tinker* acknowledged that students have rights that are explicitly and implicitly guaranteed by the Constitution, school administrators must know what constitutes a legal or illegal search and seizure. In *Wood v. Strickland*²⁹⁴ Justice White addressed educators’ need to know educational law:

An act violating students’ constitutional rights can be no more justified by ignorance or disregard of settled indisputable law on the part of one entrusted with supervision of students’ daily lives than by the presence of actual malice.

²⁹³ *Tinker* 393 U.S. 503.

²⁹⁴ *Wood v. Strickland*, 420 U.S. 308 (1975).

The concept, as shown in Figure 8, is somewhat simple. The Fourth Amendment provides citizens the right to be free from unreasonable search and seizure. The Legislation, Federal, State, and Local courts derive their power and/or make their decisions based upon the protections declared in Fourth Amendment. School district policy should be based upon Legislative and Court decisions, and district policy should then direct and govern administrative actions taken by school-based administrators when performing administrative searches and seizures in schools.

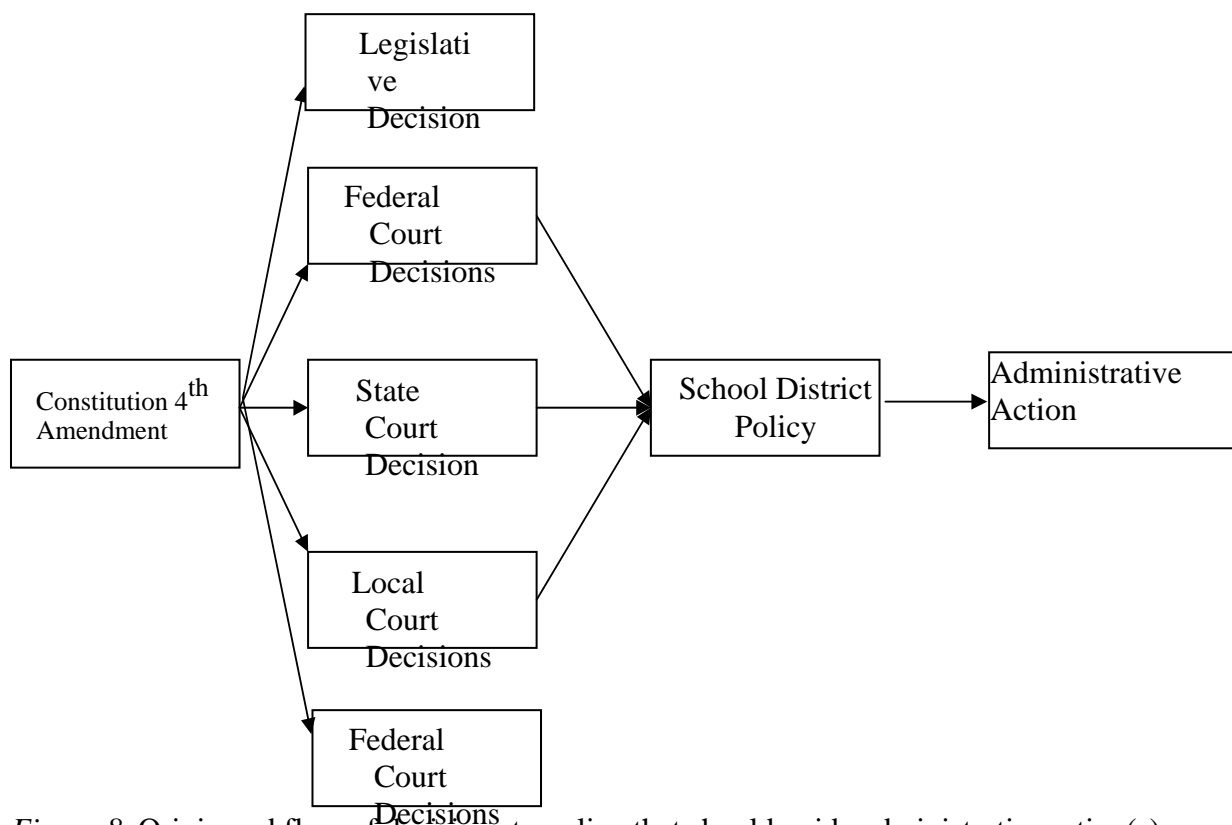


Figure 8. Origin and flow of decisions to policy that should guide administrative action(s).

Conclusions Related to the Guiding Questions

I. Does The Fourth Amendment Apply To Student Searches In Public Schools?

The Supreme Court answered the question of whether the Fourth Amendment applies to student searches in the case of *New Jersey v. T.L.O.*²⁹⁵ First, the Justices ruled that school personnel are subject to the Fourth Amendment's ban on unreasonable searches and seizures. Then the Justices ruled that school personnel are bound by the exceptions to the Amendment's requirements. School officials are subject to the standard of reasonable suspicion rather than probable cause. School personnel are not required to have a warrant.²⁹⁶

The U.S Supreme Court has interpreted the Fourth Amendment to include a number of exceptions that permit suspicionless and warrantless searches. One such exception, the "special needs" doctrine (*Chandler v. Miller*²⁹⁷) permits government agents to conduct "suspicionless searches" even under limited circumstances when an official has no articulated suspicion of a violation of law. The Fourth Amendment allows a search when the state has a special needs interest unrelated to law enforcement that outweighs the individual's privacy interest, as in *Ferguson v. City of Charleston*.²⁹⁸ The special needs doctrine becomes active any time a governmental agency (e.g., a public school) conducts random drug searches as a means to achieve a social good.²⁹⁹

²⁹⁵ *New Jersey v. T.L.O.*, 469 U.S. 325.

²⁹⁶ Vacca and Boshier, 252.

²⁹⁷ *Chandler v. Miller*, 520 U.S. 305.

²⁹⁸ *Ferguson v. City of Charleston*, 121 S. Ct. 1281 (2001).

²⁹⁹ Richard L. Wiener, Walter Reichman, and Ayanna Cummings, "Judicial Notebook: Drug Test in Public Institutions," *Monitor on Psychology* Vol. 32, no. 5 (June 2001).

II. What Are The Types/Methods Of Searches?

In general, there are three types of legal searches: search of inanimate objects, search of persons, and administrative searches. The objects included in the inanimate search category include (but are not limited to) student lockers, desks, luggage, and the contents of lockers and desks (for example, bags, purses, backpacks, and binders). A person/personal search consists of actions such as asking the person to empty their pockets, pat downs, sniff searches, strip searches, and searches of belongings on a person. It is important to note the more personal or close to the person's body the search becomes, the more the reasonable suspicion standard requirement increases. The third, administrative searches, are primarily sweep searches of persons or buildings. Administrative searches may include searches of groups of people when a "special need" exists to prevent a dangerous situation or the governmental interest outweighs the individual's right to privacy. This may include searches for weapons or drugs.

III. What Is Considered A Reasonable and Legal Search?

Whatever the court determines is considered a reasonable and legal search:

Determining the reasonableness of any search involves a two-fold inquiry: first, one must consider 'whether the...action was justified at its inception;' second, one must determine whether the search as actually conducted "was reasonably related in scope to the circumstances which justified the interference in the first place." 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 the search will turn up evidence the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when 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.³⁰⁰

In determining the legality of searches conducted in public school setting in the absence of individualized suspicion, an analysis of *Earls* indicates the courts should consider three factors: “1) the nature of privacy interest allegedly compromised by the search, 2) character of the intrusion imposed by the search, and 3) nature and immediacy of the school’s concerns.”³⁰¹

IV. What Guidelines Should Be Used In Search And Seizure Practices?

The Supreme Court’s decision in *New Jersey v. T.L.O.* set the standards by which searches will be considered legal. As previously noted, the constitutional validity of a search is determined at two levels. The first level involves considering if the search is justified at its inception. The second concerns the reasonableness of the search.³⁰² In other words, the type of search must not be excessively intrusive. Based upon case law, the following guidelines can be used to govern search and seizure practices:

- A. Students have a right to privacy of their persons, papers, and effects.
- B. In determining whether a search is reasonable, the courts will consider the magnitude of the offense and extent of the intrusiveness on the student’s privacy (see Appendix E).
- C. Establishing reasonable suspicion to justify the inception of a search requires that school official have some evidence regarding the particular situation, including,

³⁰⁰ Robert Boonin, “The Constitutional Constraints of Dealing with Drug Abuse in Schools,” *Mich. B. J.* (November 1989): 1080–1081.

³⁰¹ Alexander and Alexander, 422.

³⁰² *Ibid.*

possibly, a background of the student that would lead to the conclusion that something is hidden in violation of school rules.

- D. A search must be supported by specificity as to the offense and a particularized knowledge as to where the illegal contraband is located as well as of the identity of the offending student.³⁰³

When involving canines (dogs) in a search of inanimate objects, several other guidelines should be instituted in addition to those listed above. The courts view the use of a canine in this capacity as an informant source of information that creates reasonable suspicion. The standards for conducting a canine search of inanimate objects should include the following:

- A. Canine Agency reports to office or calls ahead of time to set up an appropriate time to visit;
- B. A school resource officer (or an administrator) accompanies the search team;
- C. Administrator issues school-wide search procedure announcement.
 - 1. The procedure for conveying intercom instructions is as follows:
 - a. students in the hallways report to class immediately;
 - b. teachers lock classroom doors;
 - c. no student is allowed to leave or enter class;
 - d. wandering students are referred to the office; and
 - e. classroom instruction is continued until further notice.
- D. Administrator guides the agent around the open areas of the school. The areas that are sniffed should be randomly chosen, with no specific agenda in mind.
- E. Students should be removed from areas that are to be searched.

³⁰³ Ibid.

F. It is permissible to ask students to leave items such as binders and book bags in the area that is to be searched.

G. Items should be secure and safe during the student's absence from their belongings.

If the dog alerts on a locker, automobile, or personal items, the following procedures should be followed:

A. Call the student in;

B. Explain the alert;

C. Ask if the student is aware of the presence of any contraband or illegal substance;

D. Ask the student's permission to search the item or area; if the student does not give permission, the administrator must establish a sufficient level of reasonable suspicion before continuing with the search; and

E. Conduct the search.

If as a result of the search contraband is discovered, then the following should occur:

A. Escort the student to the office;

B. Inform the student's parents;

C. Enforce school discipline according to the student code of conduct; and

D. Collaborate with law enforcement if the contraband constitutes a criminal violation.

The use of a canine (dog) in a search of a person (student) requires a higher standard.

When a canine actually sniffs an individual, the courts view this as a search. In *Horton v.*

Goose Creek Indep. Sch. Dist.,³⁰⁴ the courts ruled the sniffing of a person has a relatively high

³⁰⁴ *Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470, 477 (5th Cir., 1982)

degree of intrusiveness. The courts will consider the procedure, age, sex, and intrusiveness of the search. There should be individualized suspicion to support this type of search.

V. What Things Should Be Considered To Make A Search Legal?

Searches are generally legal when the following apply:

- A. There is reasonable suspicion the student is breaking a school rule or law based upon the facts or information obtained about the situation;
- B. The student consents to the search—while this is not necessary in all types of searches, it highly desirable when the search involves the student’s body, but student consent to conduct the search does not take the place of reasonable suspicion (coercion);
- C. A person charged with maintaining the safety, order, and discipline in the school conducts the search;
- D. The type of search is appropriate to the type of offense;
- E. Law enforcement assists in the search at the request the school official;
- F. Law enforcement requests the search and they possess a search warrant or probable cause if the police provide information that leads to reasonable suspicion, and a school official conducts the search;
- G. If an emergency or dangerous situation exists that meets the higher standard for the level intrusiveness; and
- H. The school official explains to the student why the search is being conducted.

Summary

The Fourth Amendment protects citizens from unreasonable searches and seizures. What is considered unreasonable depends upon the context in which the search is being performed and

who is conducting the search. The Supreme Court has held school officials to the lower standard of reasonable suspicion versus probable cause. The search must be reasonable at its inception; in addition, the scope must not be excessive or exceed what is necessary under the given circumstances to conduct the search. As the school official moves forward in his or her efforts to provide a safe and orderly school environment, the following should be remembered.

- Anonymous tips can be the basis of a search if all circumstances, taken together, would lead the average reasonable person in the searcher's position to conduct such a search.
- **Pocket contents** may be carefully dumped onto a table or floor to allow close examination without risking inappropriate contact, but since there is expectation of privacy, there is a higher degree of reasonable suspicion.
- The expectation of privacy with **lockers** is limited since the school owns the lockers, so it is highly recommended that school officials communicate the school district's policy regarding locker searches in advance.
- A **strip search** occurs the moment a student is ordered to remove or rearrange clothing that will reveal a part of the body that would normally be covered, and this type of search should be supported by a high reasonable suspicion, almost rising to the level of probable cause.
- **Clothing** that can be removed without losing modesty should be removed to avoid the searcher touching the body, but when it becomes necessary to touch the student in an investigative search, there should be clearly articulable facts to support that action.

- With **canine (dog) searches**, it is important to remember the dog does not actually search anything, and the dog should not be allowed to intrude upon the individual's privacy. While canines have been found to be accurate up to eighty-five percent of the time, they are not allowed to actually sniff the students without individualized suspicion since they are sometimes wrong. An active dog can create a traumatic experience for a student. The sniffing of automobiles and lockers is permissible since the dog merely informs a person about the quality of the air near a particular person or piece of property.
- **Metal detectors** are devices that detect the ion content in the area of the detector as certain things or people (usually, the student) pass through their field. The detector indicates the probable presence of dense metal. Since there is not necessarily something suspicious about having dense metal, there is not a clear indication of possession of a weapon or some other illegal object. Thus, a search conducted based solely on the metal detector alert is unreasonable unless there is a written policy that states that students may be subject to a metal detection and that causing it to alarm will result in a search until the reason for the alarm is found.
- When **police officers** initiate a search, the officer needs a warrant even if the school official cooperates. However, generally, when the school official initiates the search and calls upon the police officer for assistance, the police officer does not need a warrant.
- Finally, **automobiles** are a challenge for school officials because they provide another location for students to conceal illegal items. Typically, schools need to adopt specific policies that outline the schools authority to search vehicles parked

on the school's property. There is not any right of privacy for automobiles on school property because it is not required for a student's education. Simply stated, the owner of the property, the school, has the right to outline the conditions under which students may use the school's parking lot. It is recommended that the school provides students with notice by adopting and communicating a policy that automobiles parked on school property are subject to search under reasonable suspicion standards.

Appendix F provides a short quiz on school search and seizures as it relates to schools. Dr. David Alexander, Professor at Virginia Polytechnic Institute and State University, created the questions to test your basic understanding and knowledge of search and seizure practices in public schools. Readers are encouraged to take the short quiz to check their comprehension of the material covered in this dissertation. Appendix G, which immediately follows, provides the answers to the quiz.

Recommendations for Further Research

Clearly, the challenges of managing school safety and adhering to the protections guaranteed to students by the Fourth Amendment continue to evolve. Each year, new decisions are rendered in both state and federal courts that provide additional case law governing student searches and seizures in schools. Continued case law reviews, and research that includes a regional and national survey to assess school officials' knowledge and understanding of the law, is highly recommended. Information gathered from these surveys should be used to determine what type of professional development school officials need and should receive about the Fourth Amendment and how it applies to schools. Additionally, it would be helpful to assess the methods by which the school administrators acquire their knowledge of school law and student's

Fourth Amendment rights. This research information could be used to determine what types of professional development school officials need and should receive regarding search and seizure and how it applies in the school setting.

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APPENDIX A: NASSP POSITION STATEMENT

Statement of *The National Association of Secondary School Principals* on Safe Schools

February 3, 2000

Whereas, every student has a right to attend a school that is safe and secure, one that is free of fear and conducive to learning;

Whereas, everyone, whether a participant or observer, has a right to attend school co-curricular activities, without fear of verbal and or physical violence to themselves and others;

Whereas, the public sees safe schools as an issue requiring attention;

Whereas, reliable data indicate that students are safer at school than away from school; and, Whereas, the causes for violence are multiple; be it therefore

Resolved by the Board of Directors of the National Association of Secondary School Principals that:

- school administrators must implement “zero tolerance” policies consistently, fairly and responsibly; (“Zero Tolerance” means a school or district policy mandating consistently applied processes and consequences for various student offenses [i.e., violence, tobacco, alcohol, drugs, and weapons]); and
- principals must use the school’s student leadership groups and student meetings to obtain ideas to develop a safe and caring school environment; and
- school leadership teams must conduct school safety audits, share findings with staff, students, school partners and the community, and provide student and staff training for school safety; and
- schools must implement prevention, intervention, apprehension and counseling programs to combat possession of weapons and curb violent behavior; and

- schools must engage parents and community members to develop and implement programs that create violence prevention strategies; and
- school districts must establish violence prevention curriculum, grades K-12; and
- school districts must promote collaboration to ensure continuity in policies and practices; and
- parents have a responsibility to monitor and control their children's viewing and listening habits of media products; and
- schools partner with parents, law enforcement, public and private social service agencies, and other agencies to develop programs and services to foster caring schools and communities; and
- schools partner with the news media to ensure responsible reporting about school safety issues; and
- advertisers take responsible steps to screen the programs they support on the basis of their violent and profane content; and
- The Federal Communications Commission continues its efforts to monitor and provide oversight of broadcasters' programming during prime time and children's viewing hours.

Approved by the NASSP Board of Directors February 3, 2000, San Antonio, Texas

APPENDIX B: FEDERAL ELECTRONIC SURVEILLANCE LAWS

Federal law includes all interstate calls, and there are several sources of authority for electronic surveillance in the U.S. The Wire and Electronic Communications Interception and Interception of Oral Communications Act (formally known as the “Title III” Wiretap Act, 18 U.S.C §§ 2510- 2520) typically requires a court order issued by a judge who must decide that there is probable cause to believe that a crime has been, is being, or is about to be committed. Wiretaps can also be ordered in suspected cases of terrorist bombings, hijackings, and other violent activities that are crimes. The government can wiretap in advance of a crime being perpetrated, and judges seldom deny government requests for wiretap orders.

Wiretapping of aliens and citizens in the U.S. is allowed under the 1978 Foreign Intelligence Surveillance Act (“FISA”, 50 U.S.C 1801 et seq). For U.S. citizens and permanent resident aliens, there must also be probable cause to believe that the person is engaged in activities that “may” involve a criminal violation. Suspicion of illegal activity is not required in the case of aliens who are not permanent residents. No legislative limits on U.S. government electronic eavesdropping carried out overseas.

The Electronic Communications Privacy Act of 1986 (“ECPA”, 18 U.S.C 2701), sets standards for access to cell phones, email, and other electronic communications and to transactional records (e.g., subscriber identifying information, logs, toll records). The pens register and trap and trace device statute, enacted as part of ECPA. (18 U.S.C 3121 et seq), governs real-time interception of “the numbers dialed or otherwise transmitted on the telephone line to which such device is attached.”

In 1994, Congress adopted the digital telephony law, or Communications Assistance for Law Enforcement Act (“CALEA”, Public Law 103–414, 47 U.S.C. 1001–1010). CALEA was

intended to preserve law enforcement wiretapping capabilities by requiring telephone companies to design their systems to ensure a basic level of government access.

In the wake of the September 11th terrorist attacks, Congress passed legislation significantly broadening the scope of federal electronic surveillance laws. H. R. 3162 (the USA PATRIOT Act), signed by President Bush on October 26, adds terrorism offenses, computer fraud, and abuse offenses to the list of predicates for obtaining Title III wiretaps. H.R. 3162 also permits roving wiretaps under the Foreign Intelligence Surveillance Act of 1978 (FISA) in the same manner as they are permitted under Title III wiretaps. Pursuant to H.R. 3162, intelligence information obtained from wiretaps may be shared with law enforcement, intelligence, immigration, or national security personnel. Recipients can use the information only in the conduct of their duties and are subject to the limitations in current law covering unauthorized disclosure of wiretap information.

H.R. 3162 also expands the use of traditional pen register or traps and trace devices that capture the telephone numbers of incoming callers so that they apply not just to telephones but also to Internet communications, so long as they exclude “content.” These devices may now also be used under FISA without having to show that the telephone covered was used in communications with someone involved in terrorism or intelligence activities that may violate U.S. criminal laws. Multi-jurisdictional warrants may be obtained for wiretapping purposes, making it easier to track criminals across borders.

Source: Tom O’Connor, “Search and Seizure: A Guide to Rules, Requirements, Tests, Doctrines, and Exceptions,” North Carolina Wesleyan College, Summer 2002, <http://faculty.ncwc.edu/toconnor/405/405lect04.htm>.

APPENDIX C: SOURCES OF PROBABLE CAUSE

The basic thrust of the law in this area is that there are some sources of probable cause that need to be supplemented by other sources, and then there are some sources that are good enough by themselves. There is no need to adhere to a totality of circumstances test or a checklist format (e.g., 4 out of 10 possible sources equals probable cause). The law makes ample use of precedents set in other areas of procedural and evidence law.

Most of the sources can be categorized into four groups:

Observation—These are things that the police officer obtains knowledge of via the senses: sight, smell, hearing; but this category also included the kinds of inferences to be made when the experienced police officer is able to detect a familiar pattern (of criminal activity) that contains a series of suspicious behaviors (e.g., circling the block twice around an armored car unloading at a bank).

Expertise—These are the kinds of things that a police officer is specially trained at, such as gang awareness and identification, recognition of burglar tools, the ability to read graffiti and tattoos, and various other techniques in the general direction of knowing when certain gestures, movements, or preparations tend to indicate impending criminal activity.

Circumstantial Evidence—This is evidence that points the finger away from other suspects or an alibi and, by a process of elimination, the only probable conclusion to be drawn is that the person or things left behind is involved in crime.

Information—This is a broad category that includes informants, statements by witnesses and victims, and announcements via police bulletins, broadcasts, and those given roll call. One can collapse these categories down to two, direct and indirect:

I. Direct Sources of Probable Cause (Officer sources of knowledge)

FLIGHT—Attempting to flee, evade, or elude is evidence in law of a presumption of guilt. It is not by itself sufficient for probable cause, but it is surely going to result in a chase situation and custodial detention of some sort. In the case of *Wong Sun v. U.S.* (1963) covered suspects who run out the side or back door is sufficient for establishing probable cause; however, there have been other cases in which suspicious behavior, like dropping packages or using phones but not talking, have held up.

FURTIVE MOVEMENTS—“Furtive” means secretive or concealing, and the law requires a totality of circumstances here. The movement cannot possibly be construed as an innocent gesture (e.g., looking both ways before crossing the street). Nervousness alone is not sufficient, as the law recognizes the right of people to be nervous or fearful around police. The movement also cannot be a possible sign of a mental condition. There must be something secretive given the time, setting, weather, and audience. It would be best if the furtive movements were identifiable with a particular type of crime.

OBSERVATION OF REAL EVIDENCE—“Real” evidence is demonstrative evidence (Exhibit A) that speaks for itself. Most of the time, these kinds of things are in plain view, but binoculars and cameras are allowed, as well as normal extensions of the senses, except such items as a portable microscope to analyze the grass for fibers. Fresh footprints are a good example, and the list includes imprints, impressions, models, diagrams, sketches, photographs, video, and computer animation.

ADMITTED OWNERSHIP—This involves, for example, a type of consent in which a person, for instance, accidentally empties the contents of their purse or pockets, and the police ask them if they own something, they say “yes,” and then the police look inside the thing and

find contraband. In these circumstances, police are said to have had probable cause for the search and seizure.

FALSE OR IMPROBABLE ANSWERS—This is not normally a basis of probable cause alone, but it tends to trigger subsequent police inquiry or action. Examples might include a person being asked who a car belongs to and responding “my cousin” without know their cousin’s name or a girlfriend answering the door and saying that the apartment is rented under her boyfriend’s name, but she does not know what kind of car her boyfriend drives.

PRESENCE AT A CRIME SCENE or IN A HIGH-CRIME AREA—The two of these are actually somewhat different. Police have more powers at crime scenes to commandeer something, but in high-crime areas this source of probable cause is definitely not sufficient by itself, and it would probably be an example of nullification under the void-for-vagueness doctrine applicable to loitering. There are a couple of rules, however. The “joint possession” rule means that everyone in the house is subject to search and seizure if the drugs and/or contraband are in a prominent location. The totality of circumstances test applies in high-crime areas where (a) the neighborhood has to have a notorious reputation, (b) there is a typical sequence of events, (c) there is flight or attempted flight, and (d) furtive movements are present.

ASSOCIATION WITH KNOWN CRIMINALS—This is not sufficient by itself for probable cause, except with some crimes, like conspiracies, counterfeiting, food stamp fraud, etc., where it is probable that others are involved or benefiting from the criminal activity. Association with a known drug dealer can also be incriminating in some cases. The most common case would involve somebody acting as security or a lookout for another, and this would be part of the experienced police officer standard.

PAST CRIMINAL CONDUCT—An officer’s personal knowledge of a suspect’s past would be considered more likely to establish probable cause than just knowing they had a rap sheet. The officer would most likely have to know fairly intimate details of the person’s life (perhaps by having previously arrested or interrogated them). In most cases, however, knowledge of this information is considered by the law to be relevant, but not sufficient.

FAILURE TO PROTEST—This is, again, a presumption. Innocent people will react more strongly to various police actions that are incriminating. It definitely cannot be used alone as a basis of probable cause, but the interesting thing about it is that the police have it both ways: A person who is acting extremely submissive or extra “nice” might also be someone who has something to hide.

II. Indirect Sources of Probable Cause (Hearsay Evidence)

Hearsay is any second-hand information. The most common situation involves informants.

The history of Informant Law has evolved from the following standards:

Aguilar test (1964)—A two-prong test requiring that the affidavit spell out the underlying circumstances of how the informant gained their knowledge and a statement of the informant’s veracity, or record of truthfulness.

Spinelli test (1969)—A three-prong test requiring all the elements of Aguilar plus an assessment of how accurate the information from the informant might be from a police perspective. Is it against the informant’s best interests, for example, to tell the police?

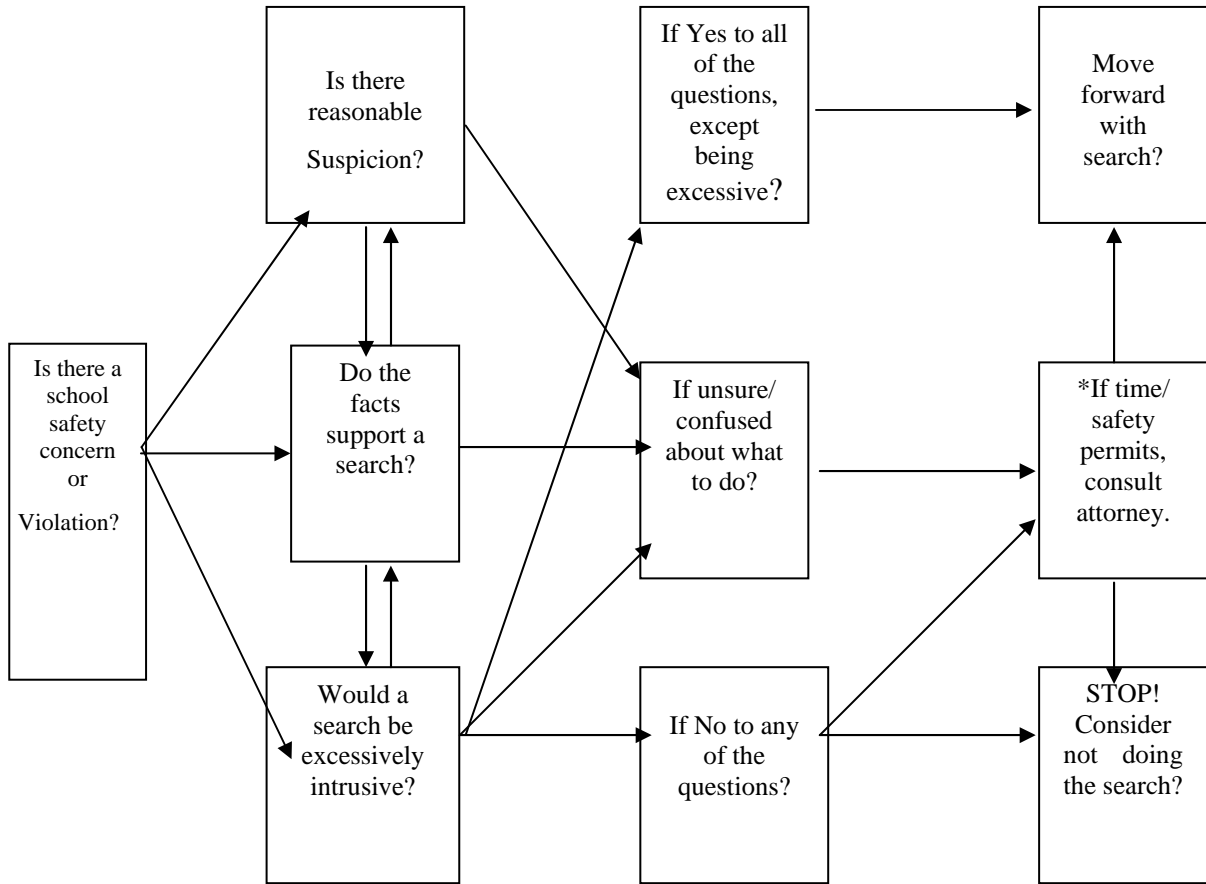
Gates test (1983)—This replaces both the Aguilar-Spinelli tests with a totality of circumstances test, requiring the police to think both like an offender as well as like a reasonable individual (i.e., a subjective and objective test).

Source: Tom O'Connor, "Probable Cause," North Carolina Wesleyan College, Spring 2004, <http://faculty.ncwc.edu/toconnor/315/315lect06.htm>.

[1] *Carroll v. United States*, 267 US 132 (1925).

APPENDIX D: DECISION MATRIX

Search and Seizure Decision Making Chart



This chart is designed to provide a visual look at the decision making process that a school official should go through when deciding if and when to engage in a search of a student or his/her property.

*If the situation is not a serious safety issue at that time, proceed to seek input from the school solicitor.

APPENDIX E: REASONABLE STANDARD SEARCH AND SEIZURE GUIDING
QUESTIONS

- I. Reasonable suspicion. Is the search justified at inception?
 - A. List specific, reliable information or facts that lead you to believe the initiation of a search would turn up evidence of contraband that is in violation of a school rule or a law.
 - B. How was the information acquired? (List names, times, and dates)
 - C. Describe the seriousness of the infraction based on the guidelines established in the student code of conduct.
 - D. What is the benefit or interest to the school for the initiation of this search?

- II. Reasonable in Scope. Balance between the *extensiveness of grounds* (the reasons determined to conduct a search) and the *degree of intrusion* (the type of search being conducted). The method of the search is not to be excessively intrusive in light of the age and sex of the student and the nature of the infraction.
 - A. Who or What is being searched? Age Sex
 - B. What contraband is being searched for?
 - C. Where is the contraband expected to be found?
 - D. Explain the intrusiveness of search.

Source: Lawrence F. Rossow and Jacqueline A. Stefkovich, *Search and Seizure in Public Schools*, 2nd ed, NOLPE Monograph Series No. 54 (Topeka: NOLPE, 1995).

APPENDIX F: PRACTICAL LAW EXERCISE - QUIZ

Circle the answer (reasonable or Unreasonable) you believe would be rendered by the court in each scenario. The answers to the questions can be found on the last page of this section.

1. An assistant principal observed a student in the hall when class was in session. The administrator knew the student because he had disciplined him on three or four occasions. When the assistant principal requested a hall pass, the student ignored the request and continued walking. When a second request was made for the hall pass, the student clutched his book bag, became excited and aggressive. The assistant principal finally stopped the student and ascertained that the student was returning from the parking lot where thefts had recently taken place. The assistant principal then searched the student's bag and found a .22 caliber pistol.

Circle One: Reasonable or Unreasonable

2. The principal announced he had discovered an instance of defacement of school property and directed the teachers to search book bags, pockets, and pocketbooks for magic markers. Later, a teacher informed the principal that she had observed a student with a radio "walkman." The principal again ordered all students searched. Later, a teacher smelled marijuana in the empty hallway. The principal ordered another search.

Circle One: Reasonable or Unreasonable

3. A reliable student told the school administrator that a particular student was selling marijuana in the school parking lot. The administrator searched the locker and car of the student.

Circle One: Reasonable or Unreasonable

4. Before students could go on a band trip, parent chaperones conducted a pre-departure luggage search.

Circle One: Reasonable or Unreasonable

5. A student observed by a security guard in parking lot at a time she was required to be in class. She "ducked" behind a car to avoid detection and then gave a false name to the guard. The student was taken to the principal and made to dump her purse contents on a desk. Improper "re-admittance slips" were found. She was then required to remove her jeans, and then bend over so that a visual inspection of her brassiere could be made.

Circle One: Reasonable or Unreasonable

APPENDIX G: PRACTICAL LAW EXERCISE - ANSWERS

1. Reasonable – search was justified because there was reasonable suspicion based upon previous thefts in the parking lot, prior knowledge of the student, student behavior.
2. Unreasonable – search not justified because it lacked specificity or knowledge as to where the item might be located.
3. Reasonable – search was justified because reasonable suspicion based upon student information provided to administrator.
4. Reasonable – depending upon school policy and procedures, past history of violations, etc. The search can be considered unreasonable without the above items.
5. Unreasonable – the search was excessively intrusive based upon the magnitude of the offense, strip search was not supported by a strong degree of suspicion beyond the issue of cutting class.

APPENDIX H: RELATED AMENDMENTS TO THE CONSTITUTION

Amendment I. Ratified 12/15/1791.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment IV. Ratified 12/15/1791.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V. Ratified 12/15/1791.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV. Ratified 7/9/1868.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.
3. No person shall be a Senator or Representative in Congress, or elector of President and Vice- President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Source: U.S. Constitution Online, <http://www.usconstitution.net/const.html#Am1>.