

Search & Seizure

Updates

T.L.O. is still the standard!

(1) Was the search justified at its inception?

(2) Was the search, as conducted, reasonable based on item sought?

Factors: Age, gender, item sought, evidence against

Cell Phones

- Riley v. California, Supreme Court
- Why seized?
- Seizure generally Ok if in violation of policy on use or possession, not search.
- Generally no to search of phone itself
- Policy on retention of seized items? What do you do if office broken into and expensive phones stored are stolen?

Chaney v. Fayette County Pub. Sch.
977 F. Supp. 2d 1308 (N.D. Ga. 2013)

- Teacher creates PP on Internet Safety
- Uses bikini photo of 17 year old student
- Obtained from student's FB account
- Student sued based on 4th Amendment
- Ct said NO, student relinquished privacy
- Friends of friends could access photo

Canine searches



Florida v. Harris

133 S.Ct. 1050 (2013)

- Car pulled over for expired plates
- Suspicious behavior so dog brought in
- Meth found
- Defendant claimed search no good because dog's certification had expired!
- Totality of the Circumstances!



. Burlison v. Springfield Public Sch 708 v. 1034 (8th Cir. 2013)

- Canine search by sheriff's office in cooperation with school district
- Searched objects not students
- Students not in the room, and never physically close to the dog.
- Court said OK, because written policies and procedures were reasonable!

Khachatourian v. La Puente Unified (9th Circuit) unpublished

- Routine scheduled canine search hit on teacher's desk and gun & knife found
- Court said no expectation of privacy in classroom because he was on notice as the school regularly conducted canine searches for drugs and weapons.

Faber v. Monticello Central

2013 WL 2450057 (S.D.N.Y. 2013)

- Student brought to office – disruptive and accused of being high
- Instructed to empty pockets
- Court said reasonable based on FACTS
- Accused of being high, admitted taking medication that creates that effect, created reasonable suspicion to conduct MINIMALLY INVASIVE SEARCH

In re: G.M. v. State of Alabama 142 So. 3d 823 (Ala, 2103)

- Alleged cell phone violation – metal detector used and hit on back pocket which included wallet of EM
- Searched wallet and found bags of cocaine
- GM summoned b/c EM said he was with him earlier.
- Principal found cocaine in his wallet.
- Principal based search on hunch GM was involved in gangs and others who had drugs on school grounds. Ct said NO

State v. A.J.C.,
363 P.3d 1195 (OR, 2014)

- Locker searched based on student's tip that AJC was bring gun to school to shoot her and other students.
- Then searched backpack and found gun and bullets
- Findings – Possible presence of gun is “immediate threat” to safety and nature of contraband reduces need for deeper investigation to support higher level of reliability. Targeted threat and search limited to parts of backpack where gun could be found.

Vehicle Searches – J.P. v. Millard Public, 830 N.W. 2d 453 (Neb. 2013)

- LP parked on private street near school
- Went to truck w/o permission to get book and got his wallet and sweatshirt
- AP then searched JP's person, backpack and wallet found cell phone and keys
- AP then searched truck for drugs and found paraphernalia and suspended
- Ct ruled for student because Neb. Law says only search off school property if belonged to or used by school or if at an off-campus school-sponsored event

Strip Searches



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Herrera v. Santa Fe Public Schools 2013 WL 3462484 (D.N.M. 2013)

- School Prom and Graduation searches.
- Private company hired to conduct
- Dumped items out of purse and pat down including arms, stomach and shaking breasts
- Ct ordered injunction on pat downs but not less intrusive searches.

Doe v. Champaign Comm. Unit 4 2015 WL 3464076 (C.D. Ill., 2015)

- Student in Alternative School
- Marijuana odor in classroom & hallway, prior to student arriving.
- Principal search backpack, and coat, had him take off shirt, unbuckle belt and remove shoes and socks. Nothing found and no one else searched. Principal said coat smelled of marijuana and searched to keep safe.
- Case settled after four years for \$75,000 paid to student!

Gray v. Great Valley Sch. Dist.

2015 WL 1566656 (E.D. Pa., 2015)

- 16 year old female student with past history of being bullied and abused
- Left PE went and took an Ibuprofen, and teacher saw her through crack in stall
- Forcibly removed from class and brought to where (social worker was - Explain)
- Physically confronted, placed hands in pockets and fondled buttocks and inner thigh, then put hands in front pockets
- Ordered to remove bra, refused and forcibly patted down upper chest and under bra.
- Similar to Safford

Seizures

People & Property

- Restraint must be Reasonable
- Depends on circumstances
 - Age
 - Gender
 - Size
 - Control
 -

Corporal Punishment

- B.B.V.Appleton Area School, 2013 WL 3972250 (E.D.Wis., 2013)
- Teacher terminated for abuse
- Force fed, squeezed back of neck, laid on top of student & choked a student (SPED)
- Must show (1) force obviously excessive under the circumstances, (2) reasonably foreseeable serious bodily harm.
- Arbitrary, egregious and conscience- shocking.
- Neither student showed visible harm, or injury and court found NOT conscious shocking.

Payne v. Peninsula School

2013 WL 4676041 (W.D. Wash, 2013)

- Teacher used a safe room to deescalate
- Parents agreed after stipulation door stayed open, adult with student and not used for disciplinary reasons.
- Parents said door wedged shut, covered the window, let student alone until he defecated and then made him clean up.
- Parents removed to homeschool
- Ct said violation of 4th & 14th Amendment
- No immunity for teacher, supervisors were aware of use and failing to train teacher was a failure to act. Ct. also found negligent training, and supervision and failure to prevent harm.

K.P. v. State

129 So. 3d 1121 (Fla. Ct. App. 2013)

- Anonymous tip about gun
- SRO and AP went to class and took book bag and student to office
- SRO opened bag and found loaded semi-automatic gun. Moved to suppress
- Ct said – expectation of privacy is reduced in school setting and gov't interest in protecting vulnerable children is heightened when suspicion of guns exists
- Tip gave names and school that added to reliability and search was only moderately intrusive.

In re L.A.W.

348 P.3d 1005 (Nev. 2015)

- Alternative School for Behavior issues
- Behavior Contract -- “7. I realize I am subject to random searches by the administration”
- Random search found marijuana in backpack
- Issues, was there another option to LAW?
- Oregon Court found “last chance” school could make random search a condition.
- This court disagreed and said education too important and no benefit from conditioning education on a denial of Constitutional right

Summary

- Have a clear policy
- Search only where contraband could be found
- What facts or factors do you have when decision to search takes place.
- What are you searching for?
- Strip Searches are generally a bad idea.