PUBLIC SCHOOL LAW
STUDENT SEARCH AND SEIZURE IN K-12 PUBLIC SCHOOLS

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SCHOOL LAW

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By

Dana T. Bedden

(ABSTRACT)

School officials are constantly challenged to perform a myriad of 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 need 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.

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 step-father, Frank Taylor, who encouraged me and looked forward to the conclusion of this dissertation but passed away before its completion – I kept my promise!
AUTHOR’S ACKNOWLEDGEMENTS

I gratefully acknowledge my advisors Dr. Alexander and Dr. Salmon. Thank you! In addition, to my other committee members, Dr. Janosik, and Dr. Ruffin, thank you for your time, encouragement, and confidence. You have helped make this an enjoyable and productive experience.

A special thanks to my mother and step-father who taught me that education was important, pushing me to perform in grade school so I could be the first in our family to attend college. You gave more to me than I could ever describe.

I wish to acknowledge my wife Ava, and three children Daniel, Avanna, and Diana who gave up time and energy to support me in this process and deserve equal shares in the credit.

Finally, I acknowledge God and my church family who reminded me that all things are possible when you put your trust in Christ.
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CHAPTER I: INTRODUCTION

School administrators are responsible for providing a safe and orderly school environment that is conducive to learning. To provide this environment, administrators are sometimes required to address disruptive or unsafe behavior that is a violation of the law as well as school policy and may require the searching of students and their belongings. Dealing with inappropriate behavior or actions that are violations of school policy and the law create a complex situation that requires sound decision-making when deciding 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 document 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 the relevant case law.

In Loco Parentis

School officials have and continue to operate under the doctrine of in loco parentis which means “in place of a parent.” 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.

Because of this doctrine, administrators had previously been afforded many of the same rights and privileges given to parents regarding safety, discipline, and the general care of children. 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, the 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

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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, how they relate to schools, and narrowed the application of in loco parentis. Alexander and Alexander states that the courts have 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, 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.

In Lander v. Seaver, the Supreme Court of Vermont pointed out that the power of the teacher over a student is not coextensive with that of the parent. 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.”

When a student violates a school rule which is also a violation of 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 taken by law enforcement officials is often done to address a violation that may be considered a criminal act. In both situations, violation of policy or law, the student is entitled to due process. Courts have consistently ruled that a student is entitled to due process when he/she may be subject to certain exclusions from school. A student has a right to a notice of the allegations and the right to a hearing (administrative) to hear evidence against him/her, and present their own evidence. In Goss v. Lopez, the court stated that there are procedural processes and minimum requirements for notice and a hearing, specifically, 1) “students facing

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6Alexander & Alexander, 308.
7Richardson v. Braham, 249 N. W. 557 (Neb., 1933).
8Lander v. Seaver, 32 Vt. 114 (1859).
9Id.
10Interview with Mike Levin, Levin Legal Group, PA (2005).
temporary suspension from a public school have property and liberty interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment, 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 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.

It is important to note that unlike being in court with very formal procedures, the 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* that students have rights which 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 property. The Court declared that “students in school as well as out of school are ‘persons’ under the constitution. The Tinker decision ushered in a new era, the “era of student rights”, which changed the previous judicial view that attendance at public schools is a privilege and not a right. Tinker also said that a denial of freedom of expression may be justified by a reasonable forecast of substantial disruption. Approximately twenty years later, two other U.S. Supreme Court cases brought clarification and balance to the new thinking.

*Bethel School District v. Fraser* and *Hazelwood School District v. Kuhlmeier* balanced the legal standard back in favor of school officials. *Fraser*, a 17-year-old honor student gave a nominating speech on behalf of a classmate who was campaigning for vice president of the student government. School officials accused *Fraser* of using sexual innuendos and metaphors. and

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12Id. 735-737.
13Id. 738-741.
15Id. 511.
17Id. 367.
disciplined Fraser for giving a lewd and indecent speech that violated school policy. The Supreme Court upon hearing the case, by 7-2 vote ruled in favor of the school district. This decision reversed the Ninth Court of Appeals which had indicated that his speech was no different than the wearing of the armband in Tinker. However, the Supreme Court ruled that unlike Tinker, the penalties imposed in this case were unrelated 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.”

In the Hazelwood case, two articles were removed from the student newspaper by direction of the school principal. The school principal objected to the content involving pregnancy experiences of three school students and the impact of divorce on children. Three student staff members of the school’s student newspaper filed suit in federal court for violation of their freedom of expression. The District Court denied the students’ request. Later, the Eighth Circuit of Appeals reversed the District Court’s decision which had decided in favor of the school administration. Upon review of the case by the Supreme Court, the Eighth Circuit court’s decision was reversed by a vote of 5-3. The majority ruling felt 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.

The two decisions, Bethel and Hazelwood together granted school officials considerable discretion in deciding matters of student expression whether the context of the activity is curricular in nature or where the school’s sponsorship is evident and where the school’s official imprimatur (official license to print or publish) is present as in Hazelwood. In short, Tinker says that denial of student expression must be justified by reasonable forecast of substantial disruption; Bethel says students’ lewd and indecent speech is not protected by the First Amendment, and Hazelwood ruled schools could regulate the content of school-sponsored newspapers.

21Id.
When considering the issue of student rights, one of the most significant issues is the deprivation of student rights as a result of a search and seizure. New Jersey v. T.L.O. was the landmark case in which the United States Supreme Court found the prohibition 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 claim the parents' immunity from the Fourth Amendment's strictures.”

Second, the case established the standard of reasonable suspicion instead of probable cause as the basis for school administrators when conducting searches and seizures. The standard of reasonable suspicion provided a more flexible standard for school administrators to use as they conduct searches when compared to the standard of probable cause for law enforcement officials. In *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, Justice Breyer’s concurring opinion further clarified the modified view of the Supreme Court related to *in loco parentis* and the need for a more flexible standard with the following statement:

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

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24Id. 336.
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 falls adequately to carry out its responsibilities may well see parents send their children to private or parochial school instead—with help from the State.26

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 address the following: 1) does the exclusionary rule apply to an unlawful search in school, particularly saying, 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.27

2) do students have privacy rights related to lockers, desks, etc.; and 3) do standards change if police are involved? However, New Jersey v. T.L.O. did say that a search by school officials is constitutionally permissible if: 1) reasonable suspicion exists, 2) search is not excessively intrusive, and 3) it is necessary to have individualized suspicion at the inception before a search takes place?28

26Id. 840.
Statement of the Problem and Statistics

As incidents of school violence appear to become more frequent and severe, public perception is at the point where many citizens believe that schools are unsafe and administrators lack the power to control inappropriate student activity. As administrators develop safety and security procedures, they are provided limited guidance by the Supreme Court regarding the application of the Fourth Amendment to a school setting. As statistics differ on the closeness 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 entrusted with ensuring the safety of students and staff. One measure of the safety in America’s public schools is the amount of violence on school campuses. In 1999–2000, 71% of public elementary and secondary schools experienced at least one violent incident. Approximately 1.5 million violent incidents occurred in about 59,000 public schools that year. Thirty-six percent of public schools reported at least one violent incident to police or other law enforcement personnel during the 1999–2000 school years. Of the 1.5 million violent incidents that occurred at school, around 257,000 were reported to the police. 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.29

Because of increased resources, technological improvements and media industry growth, newspapers, televisions, radios, etc. 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, but is not limited to theft, the use of weapons, drugs, explosive devices and other forms of violence. While, the 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, that there is more violence than what really exists. The 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, searching students.

In 2000, the U.S. Department of Education gathered national statistics about weapons in schools for its first annual report on school safety. These statistics do reveal weapon problems

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exist in a growing number of public schools. For example, 5 percent of twelfth-grade students reported being purposely injured with a weapon while they were in school during the prior twelve months; 12% of twelfth-grade students reported being threatened with injury with a weapon.\textsuperscript{30}

On November 29, 2004, a report issued by the Justice Department and the Department of Education titled, “Indicators of School Crime and Safety”,\textsuperscript{31} 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 crime. Also, the report stated that in 2002, students 12 to 18 years old were more likely to be victims of serious violent crime away from school than at school.

The report also said that in the 12 months from July 1999 to June 2000, 16 students were victims of homicide at their schools. This represents 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, including 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 questioned said they had been 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 that 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 had at least one drink of alcohol on school property 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.

As for violence involving teachers, the study 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 against teachers and 90,000 violent crimes against teachers. In 1999, a total of 9% of all


teachers were threatened with injury by a student, and 4% were physically attacked by a student, according to the report. On the positive side, from 1993 to 2003 the number of high school students who reported carrying 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 with 5%. Physical fighting on school property declined significantly, from 16.2% in 1993 to 12.8% in 2003. A similar significant linear trend was detected among all subgroups.

Conclusion, school safety is a concern, however, *no significant changes* were detected in the prevalence of being threatened or injured with a weapon on school property between 1993-2003 overall or among female, male, Hispanic, 10th-, and 12th-grade students. A significant linear increase during 1993-2003 was detected among white and 9th-grade students. There was a decline among black students, being threatened or injured with a weapon on school property from 1993-1999 and then an increase through 2003. The number of 11th-grade students, being threatened or injured with a weapon on school property declined during the 1993-1999 period and then remained level through 2003. The number of 11th-grade students, being threatened or injured with a weapon on school property declined during the 1993-1999 period and then remained level through 2003. 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 ages 12–18 were victims of theft, violent crime, and serious violent crime at school from 1992-2002.

32Id.
Figure 1. Trends in victimizations.


Even with the positive movement towards a decline in school violence, school safety remains an issue for public schools 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 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 attempted to pass several acts designed to withhold federal funds to states that did not implement the legislation on educational issues. These actions were the federal government’s unsuccessful attempt to influence how states and public education officials addressed school violence. The following table lists two of the laws passed by the federal government targeted at reducing school violence, but were ruled unconstitutional by the courts.
Table 1

*Federal Laws Targeting School Violence*\(^{35}\)

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

<table>
<thead>
<tr>
<th>Law</th>
<th>Purpose And Result</th>
</tr>
</thead>
</table>
| 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). **Ruled Unconstitutional**  
| 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 that the school environment is a safe place for children. However, the schoolhouse is still a microcosm of society. 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 in an effort to maintain a safe and orderly environment for learning. The map in Figure 2\(^{36}\) taken from the American Schools Safety Archives shows the location of some of the serious and violent acts committed at various schools around the nation from 1997 to 2004.


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 that there are still a large number of serious and deadly acts being committed in schools.

Table 2

_Incidents of School Violence Since 1997_

_National School Safety Center's Report on School Associated Violent Deaths_37

<table>
<thead>
<tr>
<th>Date</th>
<th>Incident</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-19-1997</td>
<td>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.</td>
</tr>
<tr>
<td>10-9-1997</td>
<td>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.</td>
</tr>
</tbody>
</table>

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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.

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.

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 school teacher 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 flag pole 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 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.

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.

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.

The bar graph in Figure 3\textsuperscript{38} 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. During the thirteen-year period, there were 266 high school deaths, an average of 20.46 deaths per year.

Figure 3. Deaths by school type.

The next figure 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.

Additional data from the same report illustrated below in figures 5-7 were collected in the following areas: location of deaths, reasons for death, and victim’s gender.
Figure 5. Location of deaths.

Figure 6. Reason for death.
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 expressed their concern by adopting position statements (see Appendix A) stressing the importance of students having a right to attend safe and secure schools.\(^3^9\) 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: 1) the circumstances under which the search was conducted, and 2) 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 difficulty decision of what, when, where and how to search students without violating their constitutional guarantees.

As mentioned earlier, adding to the confusion 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, thus involving law

enforcement officials. Since the 1960’s, the constitutional issue of search and seizure has been the subject of increasing litigation. In 1967, In re Gerald Gault,\textsuperscript{40} described later in this study, was heard by the nation’s highest court to address the issue of due process for juveniles’ constitutional rights. Because 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 case law and the constitutional application of the Fourth Amendment to schools. Unfortunately, many administrators do not, resulting in search and seizure actions that violate students’ constitutional rights.

**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 is to increase the readers understanding of student rights related to search and seizure in the school environment by providing a systematic review of relevant Supreme Court cases, post-*New Jersey v. T.L.O.* cases and commentary related to search and seizure involving K-12 public schools and the legal standards governing searches involving students. The secondary purpose is to provide some practical methods of applying search and seizure law to K-12 public school situations.

**Guiding Questions**

In *New Jersey v. T.L.O.*,\textsuperscript{41} the Supreme Court departed from its previous policy, which was rooted in the Doctrine of Discretionary Educational Primacy.\textsuperscript{42} This doctrine meant that 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 no longer gave judicial deference, the Court yielding to the school’s opinion or wishes. Five central questions have been established to guide the research. The conclusion will provide answers to the five guiding questions listed below. Based upon case law, the answers are intended to help provide a better understanding of school law, especially as it relates to search and seizure in K-12 public schools. The guiding questions are:

\textsuperscript{40}In re Gerald Gault, 387 U.S.1, 87 (1967).
\textsuperscript{41}New Jersey v. T.L.O. (1985).
\textsuperscript{42}Holeck, 205.
i. Does the Fourth Amendment apply to student searches in public schools?

ii. What types/methods of searches are legal?

iii. What is considered to be a reasonable search?

iv. What guidelines should be used in search and seizure practices?

v. What things should be considered to make a search legal?

Definitions

Administrative Search: A search conducted by a school administrator, usually an assistant principal or principal.43

De novo: A second time. A writ for summoning a jury for the second trial of a case that has been sent back from above for a new trial.

Delinquent: Person who has been guilty of some crime, offense, or failure of duty or obligation.44

Discretionary Review: Form of appellate review which is not a matter of right, but rather occurs only at the discretion of the appellate court.45

Due Process: Law in the regular course of administration through courts of justice, according to those rules and forms that have been established for the protection of private rights.46

Exclusionary Rule: A rule that excludes or suppresses evidence obtained in violation of an accused person’s constitutional rights.47

Hearing de novo: A reviewing court’s decision of a matter anew, giving no deference to a lower court’s findings. A new hearing of a matter, conducted as if the original hearing had not taken place.48

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.

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.49

47Id. 587.
**Individualized Suspicion:** Individualized suspicion, also known as particularized suspicion, refers to suspicion that a particular individual has engaged in misconduct or may be in possession of contraband or evidence of misconduct.\(^{50}\)

**Interlocutory Appeal:** An appeal of a matter which is not determinable of the controversy, but which is necessary for a suitable adjudication of the merits.\(^{51}\)

**Miranda:** Derives from the 1966 case of Miranda v. Arizona,\(^{52}\) in which the Warren court required that police must advise criminal suspects of their constitutional rights prior to interrogation.\(^{53}\)

**Nexus:** A causal link\(^{54}\)

**Nolo Contendre:** Latin for “I do not wish to contend.”\(^{55}\)

**Parens Patriae:** Concept of the state’s guardianship over persons unable to direct their own affairs. For example, minors.\(^{56}\)

**Police Officer:** State officials who enforce the law.\(^{57}\)

**Probable Cause:** Situation where the facts and circumstances within an officer’s knowledge and of which he has reasonable caution in believing that an offense has been or is being committed. Fourth Amendment requirement that government officials must satisfy in order to secure a warrant to search.\(^{58}\)

**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 *New Jersey v. T.L.O.* case.\(^{59}\)

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

**Search:** An examination of a man’s house…or of his person…with a view to the discovery of contraband or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which he is charged.\(^{60}\)

\(^{50}\)Schreck, Myron, The Fourth Amendment In The Public Schools: Issues for the 1990’s And Beyond, 25 Urb. Law, 117 (Winter, 1993).


\(^{58}\)Id. 1081.


Seizure: Forcible or secretive dispossession of something against the will of the possessor or owner.⁶¹

Warrant (Search): An order in writing, issued by a justice or other magistrate, in the name of the state, directed to a sheriff, constable, or other officer, authorizing him/her to search for and seize any property that constitutes evidence of the commission of a crime, contraband, the fruits of a crime, or things otherwise criminally possessed; or property designed or intended for use or which is or has been used as a means of committing a crime. A warrant may be issued upon an affidavit or sworn oral testimony.⁶²

Writ of Certiorari: Latin meaning, “to be more fully informed.” Writ issued by higher court at its discretion, directing lower court to deliver the record in the case for review.⁶³

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.⁶⁴

Methods of Research

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. Education Law Association, Desktop Encyclopedia of American School Law, NASSP, etc.), previous studies and dissertations, accepted legal research practices learned from previous graduate work at Virginia Polytechnic Institute and State University (i.e. use of West Law), professional and practical training gained from serving over thirteen 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:

- **Statute** refers to legislative law derived from actions of the legislature producing either state or federal law.

- **The American Digest System** is a multi-volume set that indexes published court cases by legal topics and case names. Digests provide brief summaries of legal issues in the court cases indexed and citations to the cases themselves, which are published in

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⁶¹Id. 1363.
⁶³Id. 220.
⁶⁴Id. 715.
multi-volume sets called reporters. There are several digest sets, each indexing different courts: “regional” digests index court cases from groups of neighboring states, *West’s Federal Practice Digest* indexes cases in federal courts, and the *U.S. Supreme Court Digest* indexes only U.S. Supreme Court cases. The American Digest System indexes all published federal and state appellate court cases in two parts: 10-year cumulative indexes called “Decennial” digests and monthly “General” digest volumes for years since the last 10-year accumulation.

- **Westlaw** is one of the leading online legal research services, providing the broadest collection of legal resources, news, business and public records information to authors and those working in law-related profession. Westlaw helps legal professionals conduct their research easier and faster. At the root of the success of Westlaw is its content which includes cases and statutes, administrative materials, law reviews and treatises, attorney profiles, news and business information, and forms. With nearly 15,000 databases, more than 1 billion public records, more than 6,800 news and business publications from Dow Jones Interactive, and more than 700 law reviews, Westlaw is one of the most trustworthy and convenient online resources for legal professionals in the world. Moreover, cases, statutes, and other legal documents published on Westlaw are editorially enhanced by West Group editors for more productive searching and research leads. These enhancements include such West Group exclusives as West topic and key numbers, head notes, and notes of decisions.

- **Find Law** is the highest-trafficked legal Web site, providing the most comprehensive set of legal resources on the internet for legal professionals, businesses, students, and individuals. 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.

- **Deskbook Encyclopedia of American School Law** is an annually updated encyclopedia that includes a compilation of state and federal appellate courts decisions that affect education.

- **American Jurisprudence** is a legal encyclopedia that provides an overview of a legal issue and supports it with case citations.
• **The Oxford Guide to United States Supreme Court Decisions** is a book dealing with the constitutional and legal history - the cases and decisions of the Supreme Court of the United States.

• **Black’s Law Dictionary** is a legal dictionary which provides definitions with pronunciations.

• **Education Law Association** 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** are a substantial academic paper written on an original topic of research, usually presented as one of the final requirements for the doctorate. In this case, previous dissertations related to search and seizure in schools.

• **Textbooks** are defined as "a manual of instruction, a standard book in any branch of study". Specifically text involving school law.

• **Journals** are any publication issued at stated intervals, such as a magazine or the record of the transactions of a learned society (a scientific or other academic journal).

• **Internet** is an electronic network providing access to millions of resources worldwide.

• **Personal Interview** is a dialogue between at least two people in which one ask questions and the other answers related to a topic or group of topics.

**Design of 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 review landmark Supreme Court cases directly related to search and seizure involving juveniles (students) and/or schools. The fourth chapter will examine selected federal and state court cases related to search and seizure organized by the 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. Because state constitutional provisions may also govern student searches, I have included state decisions. In each category where applicable, I will include 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

This study will be 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 search and seizure in K-12 public schools. Conclusions drawn are based upon these limitations.
CHAPTER II: A REVIEW OF RELEVANT SOURCES OF LAW AND SUPREME COURT CASES

Introduction

“Court decisions throughout the years have established a common law of the school under which the teacher and the student have mutual responsibilities and obligations.” However, “the courts have 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”.65 While there is still much to define and learn regarding student privacy and the application of the Fourth Amendment in the school setting, several relevant court cases were decided that provide some understanding of the 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 guarantee of rights and is strongly enforced by the courts. Relevant to this paper is the Fourth Amendment which provides the right to be secure from unreasonable search and seizure. While written for the general public, the Courts have made some of the connections of how this Amendment applies to school settings and answered with a strong affirmation that students do not shed their rights when entering the school.

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.”66 Thus, the Fourth Amendment contains two discrete clauses: the Reasonableness Clause and the Warrant Clause.

66U.S. Const. amend. IV.
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. Logically, the two clauses are interrelated. The U.S. Supreme Court has held that, with very few exceptions, searches and seizures by the state conducted without warrants are unreasonable. In recent years, the Supreme Court has also clarified the 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 as to which a person has no reason to expect privacy.

In the area of electronic surveillance (which has significantly increased since 9/11), states cannot generally give their officers more power than the federal government allows when it comes to technology, but there are loosened restrictions on consent and different definitions of the term private (e.g., email) under the wiretapping law. Pennsylvania law 18 Pa. Cons. §5703 which specifically mentions “electronic or computer”, requires all parties to consent, thus possibly having one of the toughest laws of all states. While electronic surveillance is not a direct part of this study, Appendix B - Federal Electronic Surveillance Law has been included as an informational resource.

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

Exclusionary Rule

The exclusionary rule states that evidence illegally obtained cannot be legally admitted in court. The rule was first established by the 1914 case of Weeks v. United States and made applicable to the states via Mapp v. Ohio. Originally, the rule only applied to federal officials.
In *Mapp v. Ohio*, 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 the application of the exclusionary rule to schools. In fact, the Supreme Court has ruled that evidence seized illegally by school officials may be used. A large number of the lower courts are now allowing the admission of illegally seized evidence.

The intent of the exclusionary clause is to prevent the admission of illegally seized evidence. In *T.L.O.*, the Court did not consider whether the exclusionary rule is the appropriate remedy for a search 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.

Does the exclusionary rule apply to the fruits of an unlawful search in the public school? Yes and no. If the evidence is going to be used to prosecute criminally, the exclusionary rule will be litigated with the question of application being determined by the court. If the evidence is to be used for disciplining the student under school rules, the exclusionary rule does not apply. While the exclusionary rule primarily applies to Fourth Amendment protections against illegal search and seizure, it also applies to the Fifth Amendment protections against self-incrimination. The *Weeks* case clearly identified the basis for the exclusionary rule as the self-incrimination clause of the Fifth Amendment. The Fifth Amendment states:

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71Id. 654-655.
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.75

“The Fifth Amendment protection against self-incrimination does not apply to school disciplinary proceedings; it applies only to criminal proceedings. The testimony given by a student in a school disciplinary hearing can later be used in a criminal proceeding, although a student may then object to the use of statements made at the school hearing.”76 Given that the Fifth Amendment directly pertains to law enforcement officials, it may apply to school situations when law enforcement officers are involved in the search, questioning and detention of a student. Conclusion for administrators, rather than deliberating on the law, school administrators should focus on providing students and staff a safe and orderly school environment within the guidelines established by the school district’s policies and procedures.

While Mapp v. Ohio expanded the exclusionary rule, a 1995 case, Arizona v. Evans77 provided modern day application of the exclusionary rule and technology. Evans was mistakenly detained due to an error in the police computer which 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 looked at three different things.

1. They decided that the exclusionary rule was created to stop police misconduct. In this case, the Court said 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

74Lawrence Rossow & Jacqueline Stefkovich, Search and Seizure In the Public Schools, (NOLPE, 2d., 1995).
75U.S. Constitutional Amendment V.
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.78

In *New Jersey v. T.L.O.*,79 the New Jersey Court reasoned that the Supreme Court of the United States (prior cases before *T.L.O. Supreme Court decision*) made it quite clear that the exclusionary rule is equally applicable "whether the public official who illegally obtained the evidence was a municipal inspector, a firefighter, or school administrator or law enforcement official." The New Jersey Court concluded, "that if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings."80 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 provide a warning that notifies the person of the potential to use the information against them in a court of law. This is called a Miranda warning, named for the 1966 case, *Miranda v. Arizona*.81 This means that if the police fail to inform a suspect of his or her right to remain silent, and the suspect confesses, the confession cannot be introduced as evidence in the suspect's trial. The case, *Miranda v. Arizona*,82 involved Ernesto Miranda who was arrested for stealing $8 from a bank worker and charged with armed robbery. While in police custody he signed a written confession to the robbery, kidnapping and raping an 18-year-old woman 11 days before the robbery. After the conviction, his lawyers appealed, on

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82 Id.
the grounds that Miranda did not know he was protected from self-incrimination by the Fifth Amendment. Upon review by the Supreme Court, the conviction was overturned and the court established that the accused have the right to remain silent and that prosecutors may not use statements made by defendants while in police custody unless the police have advised them of their rights, commonly called the Miranda Rights. To be Mirandized, a person must be read the following:

1. You have the right to remain silent and refuse to answer questions. Do you understand?
2. Anything you do say may be used against you in a court of law. Do you understand?
3. You have the right to consult an attorney before speaking to the police and to have an attorney present during questioning now or in the future. Do you understand?
4. If you cannot afford an attorney, one will be appointed for you before any questioning if you wish. Do you understand?
5. If you decide to answer questions now without an attorney present you will still have the right to stop answering at any time until you talk to an attorney. Do you understand?
6. Knowing and understanding your rights as I have explained them to you, are you willing to answer my questions without an attorney present?

Schools employ police officers who are often referred to as School Resource Officers or SROs. School and law enforcement officials have to be knowledgeable about Miranda requirements when police officers or SROs are involved in the questioning 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, a ten-year-old student was told to report to the faculty room where he was questioned by the school’s SRO regarding sexually touching a female student. The question presented before the court was whether Doe was in custody when he talked to the SRO, thus was a Miranda warning required?

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

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83In the Interest of John Doe, 948 P.2d 166 (Ct. App. Idaho, 1997).
arrest.” The Miranda warning was required. The U.S. Supreme Court ruled in Stansbury v. California, 84 “a person questioned by law enforcement 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 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.”85

Another issue related to police or SRO being present during questioning involves the question of what is the Miranda warning requirement? Interest of J.C., 86 a high school student was sent to the office because he had allegedly been smoking marijuana at school. When he was questioned by the assistant principal with the sheriff deputy present, he admitted he was in possession of marijuana. The court ruled that since he was questioned by the school official and the deputy was only present, then no Miranda was required. In this case, the school official was in control and not acting as an agent of the police. The court did articulate that questioning by a law enforcement officer after a person has been taken into custody, having the feeling you are 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.”87

The Fourth Amendment applies to searches conducted by public school officials because “school officials act as representatives of the State, not merely as surrogates for the parents.”88 However, the Supreme Court’s T.L.O. decision set forth the principles governing searches by public school authorities. “the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject.”89 Neither the warrant requirement, nor the probable cause standard, is appropriate, the Court ruled. Instead, a simple reasonableness standard governs all searches of students’ persons and effects by school authorities. A search must be reasonable at its inception, i.e., there must be “reasonable grounds for suspecting that

85 Id. Footnotes 1-3.
86 In the Interest of J.C., 591 So.2d 315 (Florida Dist. Ct. App., 4th Dist., 1992).
87 Id. Footnote 4.
89 Id. 326.
the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." 90

The scope of school searches must also be reasonably related to the circumstances which initiated the search and “not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” “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.” 91

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 that may have special needs in order to provide a safe and secure environment.

Special Needs Doctrine

The U.S. Supreme Court has determined that 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 says a search is reasonable when an important governmental need, beyond the normal need for law enforcement, makes the warrant and probable cause requirements impracticable, and the government's interest outweighs the individual's privacy interest. 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. The 1989 case, Treasury Employees v. Von Raab, 92 the court ruled that the “United States Customs Service's suspicionless drug testing of employees applying for promotion to positions involving interdiction of illegal drugs or requiring them to carry firearms was reasonable under the Fourth Amendment; government's compelling interest in safeguarding

borders and public safety outweighed diminished privacy expectation in respect to intrusions occasioned by urine testing program, which was carefully tailored to minimize intrusion.”

Also in 1989, *Skinner v. Railway Labor Executives' Ass'n*, said “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.” The 1997 case, *Chandler v. Miller* 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 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.”

In *T.L.O.*, the Supreme Court concluded that the Fourth Amendment does not require school officials to obtain a warrant before searching a student who is under their authority because they felt the warrant requirement was not suited for a school environment. 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.

*Plain View Doctrine*

Another aspect of search and seizure of evidence without a warrant is the doctrine of “plain view”. The plain view doctrine states that objects falling in the “plain view” of an officer who has a right to be in the position to have that view are subject to seizure without a warrant or that if the officer/official needs a warrant or probable cause to search and seize his lawful observation will provide grounds. *American Jurisprudence*, Second Edition states, “Under the

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93 Id. 677, 1397.
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:

- the officers are lawfully in the position from which they view the object
- the object's incriminating character is immediately apparent
- the officers 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. A 1982 ruling in *Washington v. Chrisman*, held that marijuana seeds and pipe evidence seized by an officer lawfully in a dorm room was allowable since it was 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 (discussed in the next section) requirement: which mandates that officers must have probable cause to believe that items in plain view are contraband before they may search or seize them. 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 that the officer has found evidence (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 by using the probable cause standard. If the item is in plain view and there is reasonable suspicion that the item is contraband (a violation of school rules or illegal), it may be seized.

The plain view doctrine may be summarized as follows: first, officials must be in a place in which you 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. 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 that the object they see is subject to seizure and this must be "immediately apparent" to them without

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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 was no probable cause to believe the item would be where it was discovered. It is important to note that the inadvertence is usually the case, but not necessarily a required part of the plain view doctrine.

**Probable Cause**

The precise meaning of "probable cause" is somewhat uncertain. Most academic debates over the years have centered on the differences between "more probable than not" and "substantial possibility". The former, “more probable than not” involves the elements of certainty and technical knowledge. The latter, “substantial possibility”, involves the elements of fairness and common sense. There are more adherents of the latter approach, but how do you define common sense. Supreme Court case law has indicated that rumor, mere suspicion, and even "strong reason to suspect" are not equivalent to probable cause. The reasonable man definition; common textbook definition 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. (reasonable man definition; common textbook definition)

There are of course, other definitions, 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. *Carroll v. United States* is one of the precedent setting cases regarding probable cause related to search. An applicant for a warrant (usually a police officer) must present facts that are sufficient to enable the magistrate to make a determination of probable cause. Probable cause is to be determined according to “the factual and practical

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100 Tom O’Connor, North Carolina Wesleyan College, Probable Cause, Lecture #6, JUS 315 Criminal Investigation, Spring, 2004 at [http://faculty.ncwc.edu/toconnor/315/315lect06.htm](http://faculty.ncwc.edu/toconnor/315/315lect06.htm)
102 Tom O’Connor, North Carolina Wesleyan College, Probable Cause, Lecture #6, JUS 315 Criminal Investigation, Spring, 2004 at [http://faculty.ncwc.edu/toconnor/315/315lect06.htm](http://faculty.ncwc.edu/toconnor/315/315lect06.htm)
104 *Id.*
considerations of everyday life on which reasonable and prudent men, not legal technicians, act.”

A "search" is in many ways an intrusion of privacy, a quest for something. Therefore, the 1967 *Katz v. United States*\(^{106}\) definition of privacy (expectation of privacy) prevails. *Katz* states that only things a person clearly expects or deems private are protected; anything on display or in a public place is not protected. Consequently, because of issues of privacy, the area of electronic surveillance has received much attention recently and has a new set of rules. As discussed previously and outlined in Appendix B, states cannot generally give their officers more power than the federal government allows when it comes to technology. There are however, loosened restrictions on consent and different definitions of private (e.g., email) under wiretapping law, plain view (discussed earlier) and the Chimel Rule, which refers to things under the immediate control of a suspect.\(^{107}\)

*Chimel Rule*

The Chimel rule comes from *Chimel v. California*,\(^{108}\) a case where police literally 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 incidental (simultaneous) to a lawful arrest, i.e. serving an arrest warrant without a search warrant. Only the area under a suspect’s immediate control can be searched, and this can be for evidence that has nothing to do with the cause for arrest. Also a "protective sweep search" is appropriate for dwelling areas, such as closets or closed doors for hidden attackers. Ralph Strickland of the North Carolina Justice Academy provides the following guiding principles:\(^{109}\)

1. You may search that person for weapons and evidence of crime 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

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\(^{107}\)Tom O’Connor, North Carolina Wesleyan College, Probable Cause, Lecture #6, JUS 315 Criminal Investigation, Spring, 2004 at http://faculty.newc.edu/toconnor/315/315lect06.htm
the "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 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.110

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 of time, the Supreme Court considered five cases involving the rights of juveniles. The resulting benefits of these cases for children included: 1) being afforded the same constitutional rights as adults, particularly, due process, and 2) the extension of those rights to include the schoolhouse. Haley v. Ohio111 represents the Supreme Court’s initial review of a juvenile justice case involving procedural due process. John Harvey Haley was a 15-year-old [African-American] boy convicted of murder in the first degree committed during a robbery. While in custody, Haley was interrogated for five hours, by police officers working in shifts, without warning of his constitutional rights and without his having the benefit of the advice of friends, family, or 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. Because 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 his arrest on October 19th, Haley was held without visitation and access to his lawyer or mother. He was not taken before a magistrate and formally charged with a crime until the twenty-third, 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 that the undisputed evidence suggests 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 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 admission of guilt inadmissible.

Another set of cases related to children’s rights, *Brown v. Board of Education I*112 and *Brown v. Board of Education II*,113 were decided by the Supreme Court 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 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 that 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 and because of the previous ruling in *Plessy v. Ferguson* by the Supreme Court which allowed separate but equal systems for blacks and whites. In response to the U.S. District Courts 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 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 and federal constitutional guarantees mean nothing if a state legislature can pass a law that will allow 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. During this period of transition, the courts will retain jurisdiction of these cases.

*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. Of course, history shows that “all deliberate speed” had various interpretations by each school system which resulted in a very slow implementation process.

In the 1966 case, *Kent v. United States*, 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

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114 *Oliver L. Brown et al. v. the Board of Education of Topeka (KS) et al.* (1951).
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 that the waiver had been issued after a full investigation, but the trial court actually failed to rule or grant Kent’s lawyer his 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 because the waiver that was issued 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 and remanded the case to the District Court for a hearing of de novo 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 state the reasons for ordering the waiver, then the waiver was invalid. Judges ruling with the minority actually felt the judgment should have been vacated, and remanded the case to the Court of Appeals. Kent should have been granted a hearing as part of his due process rights guaranteed by the Fifth Amendment.

While the cases discussed thus far address constitutional issues for juveniles, In Re Gault is considered the case that afforded individual juveniles the same constitutional rights and privileges as adults. Gerald Gault was a 15-year-old with 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 en 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 after a judgment of the Supreme Court of Arizona, which dismissed the petition for “writ of habeas corpus” filed to secure release of their 15-year-old son, who had been committed as a juvenile delinquent. United 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.” In addition, other Justices ruling with the majority noted that:

118Id.
119In Re Gerald Gault, 387 U.S. 1 (1967).
A child and his parents or guardian must be notified, in writing, of specific charges or factual allegations to be considered at 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.\textsuperscript{120}

The judgment was reversed and cause remanded back to the lower court with directions.\textsuperscript{121}

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 thus became the first case quoted as addressing individual constitutional rights of juveniles in criminal court.

In 1969 and 1975, two Supreme Court cases had a direct effect on the relationship between schools and students as it relates to possible dangerous actions in the public school environment. As discussed earlier in chapter one, \textit{Tinker v. Des Moines School District},\textsuperscript{122} three public school pupils in Des Moines, Iowa, were suspended from school for wearing black armbands to protest the Government's policy in Vietnam. The students sought nominal damages and an injunction against a regulation that banned the wearing of armbands. The District Court dismissed the complaint on the grounds that the regulation was within the Board's power, despite the absence of any finding of substantial interference with the conduct of school activities. The Eighth Circuit Court of Appeals upheld the District Court’s decision. The Supreme Court reversed and remanded 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 significant was that \textit{Tinker} established that students do not shed their constitutional rights “at the schoolhouse gate.”

\textit{Goss v. Lopez}\textsuperscript{123} in 1975 established the right of procedural due process for students. Students who are facing disciplinary action that may result in suspension or expulsion are

\begin{itemize}
  \item\textsuperscript{120}Id. 33.
  \item\textsuperscript{121}In Re Gerald Gault, 387 U.S. 1 (1967).
  \item\textsuperscript{122}Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).
\end{itemize}
protected by the due process clause. The case was an appeal by administrators of the Columbus Public School System in Ohio. The appeal was submitted to challenge the decision of a three-judge federal court, declaring 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 their high schools without a hearing either 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 references to the suspensions removed from their records.

The Supreme Court upheld the District Court’s ruling. 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 and procedure that allows the student to hear what they are being accused of and an opportunity to present evidence and objection 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. These protections include the right to receive written or oral notice of the charges against the student. Additionally, the student has to at the minimum have the right to present his or her version of what happened prior to being suspended for exclusions of ten days or less. A more formal procedure needs to be in place for exclusions of more than ten days. Specifically, the courted 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.124

124Id. 583.
CHAPTER III: A REVIEW OF RELEVANT SUPREME COURT SEARCH AND SEIZURE CASES

Introduction

The Supreme Court of the United States has repeatedly 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.”

From 1789 to 1850, federal and state courts ignored issues related to education. 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 Primacy, which meant, “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”.

During the 61-year period before 1850, the Supreme Court felt there was no federal constitutional significance for the Court’s intervention since juveniles had no constitutional rights, both involving children’s liberty. Only twice prior to 1966 did the Supreme Court get involved in matters related to juvenile justice. In 1948 and 1962, the Supreme Court considered procedural due process cases involving juveniles being brought before the courts by the state in *Haley v. Ohio* and *Gallegos v. Colorado* 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*, 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

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

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 previously, the first significant search and seizure case heard by the U.S. Supreme Court was New Jersey v. T.L.O.133 This case involved two girls who were found smoking in a public school bathroom. One girl admitted smoking while the other (T.L.O.) denied smoking. The school administrator asked to see T.L.O.’s purse to check if she had cigarettes. When the assistant principal opened her purse, he found several cigarettes and as he reached 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 amount of money, an index card with a list of names appearing to be an IOU list, and two letters indicating T.L.O.’s marijuana use. The administrator 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.134

The issue brought before the court was T.L.O.’s contention that her Fourth Amendment rights had been violated. She requested that the evidence be suppressed because she was unlawfully searched. The Juvenile Court denied the motion and concluded that the Fourth Amendment did apply to searches by school administrators but held that a school official may properly conduct a search of a student’s person in an effort to maintain school discipline or enforce school policy if the official has reasonable suspicion that a crime has been or is in the process of being committed. T.L.O. appealed to New Jersey Supreme Court.

The New Jersey Supreme Court found the search to be unreasonable because the search of T.L.O.’s purse 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 pointed to two grounds for its decision. First, it held that the possession of cigarettes was not illegal because it did not violate school rules, thus having no influence on the accusation that she was smoking in the restroom. Second, the Court felt the principal had no reason to suspect that T.L.O. had cigarettes in her purse, but had only a hunch.\footnote{State in Interest of T.L.O., 94 N.J. 331 (1983).}

Upon review by the U.S. Supreme Court, the New Jersey Supreme Court’s decision was reversed. While the U.S. Supreme Court concurs with the exclusionary rule application to school officials, allowing evidence because the majority of the Justices felt 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 that evidence from T.L.O.’s juvenile delinquency proceedings on Fourth Amendment grounds was erroneous. The search resulting in the discovery of the evidence of marijuana dealing by T.L.O. was reasonable.

**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 search and seizure against the desire to have a safe and secure school environment, the court established the “reasonableness standard”. Acknowledging that the higher probable cause standard that police must follow as being too restrictive for schools, the court felt reasonable suspicion should be an appropriate standard for school officials. In the reasonableness standard, a two-pronged test arose from *T.L.O.* which states: 1) the search must be justified initially by a reasonable suspicion and 2) that the scope and conduct of the search must be reasonably related to the circumstances that gave rise to the initial search. Therefore, school administrators must take such things as the student’s age and sex, and the nature of the offense into account before conducting a search.\footnote{New Jersey v. T.L.O. (1985).}
Vernonia School District 47J v. Acton

The second landmark search and seizure case was Vernonia School District 47J v. Acton. Teachers and administrators in an Oregon public school district observed a sharp increase in student drug use and disciplinary problems. Because drug use increased the risk of sports-related injuries, the school district was particularly concerned that student athletes were the leaders of the increased drug involvement. After a school parents’ meeting during which the parents gave their unanimous approval to a proposed urinalysis drug testing policy for student athletes, the school board implemented the policy. The policy stated that: 1) all students wishing to participate in interscholastic athletics had to sign a form consenting to the testing and had to obtain their parents’ written consent to the testing, 2) athletes would be tested at the beginning of the season for their sport, and 3) random testing of 10 percent of the athletes would be conducted weekly during the athletic season.

A seventh grade student was denied participation in the district’s football program because the student and his parents refused to sign the testing 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 that the policy violated the Federal Constitution’s Fourth Amendment and a comparable provision of the Oregon Constitution. After the United States Oregon District Court dismissed the suit, Acton v. Vernonia School District, the United States Court of Appeals for the Ninth Circuit, expressing the view that the policy violated the Fourth Amendment and the Oregon constitutional provision, reversed the District Court’s judgment. The Ninth Court of Appeals felt that a student’s interest in participating in interscholastic activities did not diminish a student’s reasonable expectation to be free from required, suspicionless urinalysis. The school district appealed to the United States Supreme Court.

The U.S. Supreme Court ruled that 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 severe enough to demonstrate a need to address such problems. Not only were student athletes included among the drug users but, as the District Court found, athletes were often the leaders of the drug

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The Court conducted a fact-specific balancing of the intrusion on the children’s Fourth Amendment rights against the promotion of legitimate governmental interests. The policy was reasonable under the circumstances, taking into account the following three conditions.

First, there is a decreased expectation of privacy with regard to students, particularly student athletes. Second, the severity of the need met by the search was the government’s interest in deterring drug use even though the Court has not required a particularized or pervasive drug problem before allowing the government to conduct suspicionless drug testing because of special needs as decided in *Treasury Employees v. Von Raab*.140 The courts have 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.141 And third, the relative unobtrusiveness of the search, given the additional test student-athletes are already subject to, "legitimate privacy expectations are even less [for] student athletes, since they normally suit up, shower, and dress in locker rooms that afford no privacy, and since they voluntarily subject themselves to physical exams and other regulations above and beyond those imposed on non-athletes."142 Significant to this case was the fact that there was no individual suspicion and that the concurring justices noted that participation in athletics, an extra-curricular activity was voluntary.143

*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*,144 involved the Tecumseh Oklahoma School District adopting a student activities drug testing policy that required all middle and high school students to consent to urinalysis testing for drugs in order to participate in any extracurricular activity. The policy had been applied only to competitive extracurricular activities sanctioned by the Oklahoma Secondary Schools Activities Association. A group of high school students challenged constitutionality of school’s suspicionless urinalysis drug testing policy, alleging that the policy violated the Fourth Amendment.

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142 Id.
The United States District Court for the Western District of Oklahoma upheld the school district’s policy, the students appealed. The United States Court of Appeals for the Tenth Circuit reversed the lower court’s decision. After granting *writ of certiorari*, the Supreme Court held that policy requiring all students who participated in competitive extracurricular activities to submit to drug testing was a reasonable means of furthering the school district’s important interest in preventing and deterring drug use among its students and therefore did not violate Fourth Amendment for the following reasons: 1) in the public school context, a search may be reasonable when supported by “special needs” beyond the normal need for law enforcement. Because the “reasonableness” inquiry cannot disregard the schools’ responsibility for children, a finding of individualized suspicion may not be necessary. In upholding the suspicionless drug testing of athletes, applying *Vernonia*’s principles to the somewhat different facts of this case demonstrates that Tecumseh’s Policy is also constitutional,\(^\text{145}\) 2) the Court concluded that the students affected by this Policy have a limited expectation of privacy. Each student must abide by OSSAA rules, and a faculty sponsor monitors students for compliance with the various rules dictated by the clubs and activities. Such regulation further diminishes the schoolchildren’s expectation of privacy,\(^\text{146}\) 3) the Court concluded that the invasion of students’ privacy is not significant, given the minimally intrusive nature of the sample collection and the limited uses to which the test results are put.

The degree of intrusion caused by collecting a urine sample depends upon the manner in which production of the sample is monitored. Under the Policy, a faculty monitor waits outside the closed restroom stall for the student to produce a sample and must listen for the normal sounds of urination to guard against tampered specimens and ensure an accurate chain of custody. This procedure is virtually identical to the “negligible” intrusion approved in *Vernonia*. The Policy clearly requires that test results be kept in confidential files separate from a student’s other records and released to school personnel only on a “need to know” basis. Moreover, the test results are not turned over to any law enforcement authority. Nor do the test results lead to the imposition of discipline or have any academic consequences. Rather, the only consequence of a failed drug test is to limit the student’s privilege of participating in extracurricular

\(^{145}\text{Id. p. 2564-2565.}\)
\(^{146}\text{Id. p. 2565-2566.}\)
activities.\textsuperscript{147} 4) finally, the Court concluded that the Policy effectively serves the School District’s interest in protecting its students’ safety and health.

Preventing drug use by school children is an important governmental concern. The health and safety risks identified in \textit{Vernonia} apply with equal force to Tecumseh’s children. The School District also presented evidence of drug use at Tecumseh schools. “The record in this case provided direct testimonial and other evidence of such abuse. For example, a school board president testified that marijuana use has been reported in the classroom at Tecumseh High. Three teachers testified that they heard students talking about marijuana use, that they suspected that several students in their classes were abusing drugs, and that they had reported students for drug use. Students’ also-including respondents’ themselves-have 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 have abused such drugs, and knows 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.\textsuperscript{148}

However, a demonstrated drug abuse problem is not always necessary to the validity of a testing regime, even though some showing of a problem does shore up an assertion of a special need for a suspicionless general search program as indicated in \textit{Chandler v. Miller}.\textsuperscript{149} Also, \textit{Treasury Employees v. Von Raab}\textsuperscript{150} indicates that there is not a requirement for a particularized or pervasive drug problem before allowing the government to conduct suspicionless drug testing. In the context of safety and administrative regulations, a search unsupported by probable cause may be reasonable when special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable.

\textit{T.L.O.}, \textit{Vernonia}, and \textit{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 review, the Supreme Court, as these three, but are just as significant in providing guidance and understanding related of search and seizure in the school environment. The following cases were selected using the resources identified in the methods of research section.

\textsuperscript{147}Id. p. 2566-2567.
\textsuperscript{148}FindLaw, Statement 2a-b, \url{http://supreme.lp.findlaw.com/supreme_court/briefs/01-332/01-332.mer.ami.usa.html}
\textsuperscript{149}Chandler v. Miller, 520 U.S. 305 (1997).
Broken out by topical area, the selected post-*T.L.O.* cases provide insight into how the courts view searches and seizures in the school setting.

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. 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.”

A review of court cases indicates that the courts have decided to apply the T.L.O. standard when law enforcement officials are involved in the search and seizure process with school officials.

In the matter of Josue T. Judge Apodaca said, “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?” The analysis of court cases appear to fall into three categories. First, the T.L.O. standard has been applied in cases in which a school official initiates the search or in which the police involvement is minimal. Second, the "reasonable under the circumstances" standard established in T.L.O. also has been applied where a school resource officer, on his or her own initiative and authority, searches a student during school hours on school grounds, in furtherance of the school's education-related goals. Third, some courts have held 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 behest of "outside" police officers.

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152 In re Josue T., 989 P.2d 431 (Ct. of App. N.M., 1999).
What is clear is that the standard may vary depending upon the nature of the involvement. Law enforcement or school resource officers may lawfully search a student on school grounds at the behest of a school official as long as the search is reasonable under the circumstances. A search has to be reasonable under the circumstances, justified at its inception, not exceed the scope of its purpose, and 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 behest of the law enforcement official, the investigation will most likely be viewed as a search governed by the Fourth Amendment standard of probable cause. However, police may make a warrantless search if developing or demanding circumstances make it likely that someone will be hurt or evidence could be destroyed while waiting for a warrant.

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. Additionally, it seems that searches involving a police officer acting in 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 1996, in the case of *People v. Dilworth*, a 15-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 school liaison police officer (a Joliet Township police officer assigned full-time to the school) to search a student for possession of drugs. The teachers informed the school liaison police officer that they had overheard Dilworth telling other students that he had sold some drugs and would bring more drugs with him to school the following day. The next day, the school liaison police 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 that it might contain drugs. He grabbed the flashlight from student, unscrewed the top and observed a bag containing a white chunky

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substance underneath the flashlight batteries. The substance later tested positive for the presence of cocaine.

In court, the school liaison police officer stated that he had two reasons for seizing and searching the flashlight. First, he was suspicious that the flashlight contained drugs. Second, he believed it was a violation of school rules to possess a flashlight on school grounds because a flashlight is a blunt instrument. The school’s disciplinary guidelines, of which every student must be informed when they enroll, prohibited the possession of “any object that can be construed to be a weapon”. The school liaison 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.” 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 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.\(^{159}\)

Following a bench trial in the circuit court of Will County, Dilworth was convicted of unlawful possession of a controlled substance (cocaine) with intent to deliver while on school property. The circuit court had earlier denied Dilworth’s motion to suppress the evidence. On appeal, the appellate court reversed the conviction, finding that his motion to suppress the evidence should have been granted. The Supreme Court reversed the appellate court’s decision, holding that 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 that the majority judges made an error in their ruling and ignored other federal cases that state the probable cause standard should apply to police officer searches.\(^{160}\)

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\(^{159}\)Id. 199.

\(^{160}\)People v. Dilworth, 661 N.E.2d 310 (Ill., 1996).
The case of *James v. Unified School District No. 512*\(^{161}\) involved a Kansas school police resource officer who received an anonymous telephone call from a parent informing him that a student had brought a gun to school in the parent’s vehicle. The officer informed the school administrators and they detained the student. The student was allowed to call his parents. The officer and administrator obtained permission from the parent and student to search the 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*.\(^{162}\) The school district decided to suspend the student for the remainder of the school year. The student sued in federal district court saying his constitutional rights were violated. The student asked for a temporary restraining order requiring him to remain in school.

The questions at hand was whether the student’s constitutional rights were violated by the search, should he be allowed to return to school, and should school officials 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 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 are no civil rights remedies for failure to timely advise a suspect of his criminal procedural rights under the Fifth Amendment.\(^{163}\)

*Commonwealth of Pennsylvania and Other State Case(s)*

In the case *In the Interest of S.F.*,\(^{164}\) S.F. and two other students were observed in the hallway of Charles Carroll High School by a plainclothes police officer (Stone) for the School District of Philadelphia who had been employed by the District for four years and made 15 to 20 narcotics arrests during that time. Stone observed S.F. from approximately 15 feet away. He had 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 could not see the contents of the clear plastic bag because of the way it was being held. Stone approached S.F. and asked him to step into an office.

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Prior to 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 S.F. Stone asked the vice principal of the school to accompany him into the office. 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 of which contained 20 vials and another, which contained 10 vials. The officer then proceeded to call the Philadelphia police and asked for a wagon to transport the defendant to the Narcotics Unit at the Philadelphia Police Administration Building. Later, $108 was taken from defendant’s person.

After a hearing, the trial court denied the student’s motion to suppress the cocaine, 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’s person was justified and did not violate his constitutional right to privacy.

In 1995, *State of New Hampshire v. Drake*, a New Hampshire school administrator received an anonymous call advising him that a particular student would be carrying drugs to school that day. The student had been previously 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 and 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 state trial court, the student defendant asked for the evidence to be suppressed because the search violated his Fourth Amendment rights because 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 here is whether the student’s Fourth Amendment rights were violated because probable cause requirements were not met when police were included in the process. The New Hampshire Supreme Court ruled that the Fourth Amendment warrant and probable cause requirements were particularly unsuited for public school officials in view of their need to

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protect other students and maintain school discipline and order.\textsuperscript{166} Public school administrators are not bound by the same requirements as law enforcement officers because of their greater responsibility for the care of students and the special need to maintain order in schools as discussed in \textit{New Jersey v. T.L.O}. The school official’s actions were ruled reasonable because the search was initiated and led by school officials.

\textit{In the Interest of Angelia}\textsuperscript{167} was filed because a school official who initiated a search that included a school police liaison officer and was based upon a tip. At a Wisconsin high school, a student informed an assistant principal that he had seen a knife in a female student’s backpack on campus. He also claimed that she might have access to a gun. The assistant principal contacted a school police liaison officer with the information, and the officer searched her jacket and pants. After she denied carrying a weapon, he 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 that the search was highly intrusive and lacked the required probable cause. The court granted the suppression motion and the state appealed to the Court of Appeals of Wisconsin. The court of appeals certified the case for review by the Supreme Court of Wisconsin.

The student argued that the search conducted by a school police liaison 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 that work with or at the direction of school administrators should not be subject to the reasonable cause standard due to the need to protect student safety, since school administrators are responsible for the safety, welfare and education of all students. Police liaison officers who perform student searches at the request of a school official are similarly advancing the cause of student welfare and safety.\textsuperscript{168} The search in this case had been reasonably related to the suspected offense and no more intrusive than necessary. Therefore, the court reversed the motion to suppress the knife as evidence.

Police involvement in searches of students in the school environment creates a complicated situation. It also becomes more problematic as school districts are increasing their

\textsuperscript{166}Id.
\textsuperscript{167}\textit{In the Interest of Angelia D.B.}, 564 N.W. 2d 682 (Wis., 1997).
\textsuperscript{168}Id.
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”\(^\text{169}\) may be a useful tool for school officials to use in the decision making process.

Table 3

*Police Involvement Variables

*Search and Seizure In the Public Schools*

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

From Lawrence Rossow & Jacqueline Stefkovich, *Search and Seizure In the Public Schools*, (NOLPE, 2d., 1995).

In short, if the school official requests police presence with limited involvement, decides to search, directs the search, performs the search, and has 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, directs, the search, actively participates in the search, or has criminal action as the possible intent of the search, then the probable cause standard will most likely apply.

\(^{169}\text{Lawrence Rossow & Jacqueline Stefkovich, Search and Seizure In the Public Schools, (NOLPE, 2d., 1995).}\)
**Drugs: Testing, Possessing and Policy**

Drug testing is viewed as a search of an individual’s body. The most common test involving schools is urinalysis. In 1995, *Vernonia* provided the first ruling by the court on the issue of drug testing by schools. Beyond drug testing as a prerequisite for participation in certain activities, drug testing of individual students have been upheld when supported by reasonable suspicion since the *Vernonia* ruling. To date, 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*\(^{170}\) is another significant case which involved an Indiana school district was involved in adopting a student drug testing policy. The testing policy called for the following: 1) a drug tests when individualized suspicion of drug use existed, and 2) when a student was guilty of fighting, habitual truancy, possessing tobacco products or violating other school policies that resulted in a three-day suspension. Willis, a student, was suspended for fighting and refused to take the drug test. The school then issued another suspension. Willis filed action against the school district in federal district court asserting that the policy was a violation of his Fourth and Fourteenth Amendment rights.

The issue in this case was whether it was a violation of students’ constitutional rights (Fourth and Fourteenth Amendments) 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. The 7\(^{th}\) 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.\(^{171}\)

**Commonwealth of Pennsylvania or Other State Case(s)**

In 1998, *Commonwealth v. J.B.*\(^{172}\) involved school police and a suspicion of drug use. A public school police officer employed by the Philadelphia school board 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

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\(^{170}\) *Willis by Willis v. Anderson Community School Corporation*, 158 F.3d 415 (7\(^{th}\) Cir., 1998).

\(^{171}\) Id.

\(^{172}\) Id.
have slurred speech. Since there is no 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 J.B. appealed.

J.B. appealed to Pennsylvania Superior Court stating that the school police officer violated his 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, which are conducted by school officials, including school police officers, are subject to a reasonable suspicion standard under the Pennsylvania Constitution. Because the school police officer had reasonable suspicion to suspect J.B. was under the 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*.173

In a Colorado case, *Lopez v. Trinidad School District No. 1*,174 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 to be in violation of 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 saying his constitutional rights were being 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.175 This case is similar to the *Vernonia* (discussed earlier) case involving student participation in extracurricular activities. The factors that caused the Colorado Supreme Court to

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173Id.
overturn the lower court’s decision were: 1) unlike Vernonia, there was a lack of safety concerns, 2) the band members were required to take a class for credit, and 3) the Vernonia case was upheld partly because it involved students’ voluntary participation.

**Searches Involving Weapons**

Weapon searches are unique in that they usually elicit searches that are 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, policy that was 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**, made a strong statement about “Zero Tolerance Policies”. Seal v. Morgan 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 consented to a search of his mother’s car for alcohol. When the car was searched no alcohol was found, but a knife longer than two inches, a bottle of antibiotic pills prescribed for Seal, and two cigarettes were found. Seal was then permanently expelled from the school system with the board citing their “Zero Tolerance Policy”.

The decision was upheld by the district court and upon appeal, the Sixth U.S. Circuit Court of Appeals ruled that, without evidence that Dustin 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 that the school’s policy was not irrational and that “In addition to their...
duty to educate, schools act *in loco parentis.*" Significance to this case was the court’s majority articulating the need to connect the decision to discipline a student with intent and having knowledge of the weapon.

*Commonwealth of Pennsylvania or Other State Case(s)*

*In Re D.E.M.* involved a Shillington Borough Police officer who went to the Governor Mifflin Middle School to inform the principal and the assistant principal that he had received an anonymous tip that D.E.M. had a gun on school property. The officer then left. Governor Mifflin Middle School had an established policy to investigate all rumors concerning anything that may jeopardize the health, safety, or welfare of the students and faculty. At the beginning of each school year, students received a copy of Governor Mifflin Middle School’s behavior code, which specifically prohibits the possession of knives and/or firearms on school property. The principal called D.E.M. to his office and asked him if he had anything on him that was against school rules. D.E.M. answered no. He was then asked if he would empty his book-bag. He did and nothing was found. D.E.M. was then asked to empty his pockets and 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 D.E.M.’s coat was searched by the principal. The principal found a loaded gun in the jacket pocket. Pennsylvania State law requires school officials to report the discovery of any firearm to local law enforcement officials. In accordance with its policy, the school contacted the Shillington Borough Police Department and turned the gun and knife over to them. D.E.M. was arrested and charged with possession of a weapon on school property, carrying a firearm without a license, possession of a firearm by a minor, and altering or obliterating identification marks.

D.E.M. filed a pre-trial motion to suppress the physical evidence found by the school officials. The suppression hearing found that the principal and assistant principal were acting as “agents” of the police because of the police tip, and they should have provided 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 on suppression and sent the case back for trial. The court decided that the school

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179*Id.*

officials did not act as agents of the police when they detained or questioned a student and *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 that the search was justified at its inception and reasonable related in scope to the circumstances.  

In *State of Florida v. J.A.*, 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.

A search team entered a classroom while conducting a search, a security officer observed students passing a jacket to the rear of the room. 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 that 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 “administrative search,” thus suppressing the evidence. On appeal by the school district, the Appeals Court ruled the lower court improperly ruled on the search. The Appeals Court noted that the Supreme Court has approved random searches in the school environment when the 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.

*Strip Searches*

Targeted searches, such as strip searches have been considered very intrusive and present the most infringement on student privacy. A strip search does not necessarily result in a person being nude. Removing of garments 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 and leaves some portion of the body

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180 Id.
182 Id.
exposed. It is important to note that 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 have not expressly prohibited strip searches in public schools. The courts have said, “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.” however, some state laws have ruled strip searches to be unlawful.

Federal Case(s)

In Cuesta v. School Board of Miami-Dade County, a high school student was arrested for distributing a pamphlet that contained an essay in which the author “wondered what would happen if he shot the principal, the school’s teachers, or other students.” The pamphlet also contained a graphic of the school principal with a dart through his head. The student was arrested and taken to jail where she was strip-searched, pursuant to a Metro-Dade County policy requiring the strip search of all newly arrested felons. The student later sued claiming that she was subjected to an unconstitutional strip search. Significant to this case was the fact that the search action was performed as part of the arrest and 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 started its analysis with the balancing test established by the Supreme Court in Bell v. Wolfish for assessing 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 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.”

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186Id. at 569
The Eleventh Circuit Court of Appeals concluded that the student’s constitutional rights were not violated because the officers had reasonable suspicion to search based upon the violent and threatening language and imagery contained in the pamphlet which was the basis for student’s arrest. The Eleventh Circuit made clear that the officers who conducted the strip search were aware of the contents and violent nature of the pamphlet.\(^\text{187}\)

In *Williams by Williams v. Ellington*,\(^\text{188}\) the plaintiff, a teenage girl, claimed that her high school violated her Fourth Amendment rights by strip searching her without probable cause as part of an investigation into allegations that she had been consuming drugs at the school. A fellow student first alerted the principal to the problem by claiming that she had witnessed the plaintiff and a friend ingesting drugs in class. The principal verified that the accusing student had no animosity towards the plaintiff, ruling out any ulterior motives of the accuser, and then launched a multi-day investigation of the plaintiff. He approached several of the plaintiff’s teachers, who corroborated her strange behavior and reported a note that the plaintiff wrote in which she referred to drug use. The principal also collected information from the school’s guidance counselor, the plaintiff’s aunt, and the friend’s father, all of whom expressed concern that both students may have been taking drugs. The principal acted only when the student who first made the allegation again approached him and complained for the second time that the plaintiff was ingesting drugs in class.

The Sixth Circuit Court of Appeals held that reasonable suspicion — the standard set forth in *T.L.O.* did exist for the strip search in *Williams*. Based upon *T.L.O.*’s analogy to the reasonable suspicion standard set forth in *Terry v. Ohio*,\(^\text{189}\) 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. Yet, when “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,” which does not establish reasonable suspicion in the absence of further investigation. The Sixth Circuit Court of Appeals upheld the lower court’s dismissal of the plaintiff’s suit because in addition to the complaining student’s “tip”, which the principal determined was not borne of malice, the

\(^{187}\)Royal, Judge C. Ashley, Expanding The Scope of Suspicionless Drug Testing In Public Schools, 54 Mercer L. Rev. 1304 p. 15 (Summer, 2003).


\(^{189}\)Terry v. Ohio, 392 U.S. 1 (1968).
principal uncovered strong evidence during his ensuing investigation, including the suspicions of
the plaintiff’s family that she was using drugs.

_Cornfield by Lewis v. Consolidated High School Dist. No. 230_ involved Brian
Cornfield a behavioral disorder program student at Carl Sandburg High School. A teacher's aide
in that program, found Cornfield outside the school building in violation of school rules on
March 7, 1991. When 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 defendant took any action at that time. The following day Cornfield was boarding the
bus home when the teacher and Dean took him aside. The teacher himself 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 accompany them
to the Dean’s office to investigate further. When confronted with their suspicion, Cornfield grew
agitated and began yelling obscenities. At Cornfield's request, the Dean telephoned the minor's
mother to seek consent for a search. She refused.

The Dean and teacher nevertheless proceeded with the search. Believing a pat-down
search to be excessively intrusive and ineffective at detecting drugs, they escorted Cornfield to
the boys' locker room to conduct a strip search. After making certain that no one else was present
in the locker room, they locked the door. The teacher then stood about fifteen feet from
Cornfield, and the Dean was standing on the opposite side, approximately ten to twelve feet
away, while they had him remove his street clothes and put on a gym uniform. Both men visually
inspected his naked body and physically inspected his clothes. Neither man performed a body
cavity search. They found no evidence of drugs or any other contraband. Afterwards the school
bus was recalled, and it took Cornfield home.

Alleging that the search violated his Fourth, Fifth, and Fourteenth Amendment rights,
Cornfield brought legal action under 42 U.S.C. § 1983 against Consolidated High School District
No. 230 (“District 230”), the parent organization of Carl Sandburg High School, and against the
teacher and Dean in their professional and individual capacities. After the filing of affidavits, the
district court granted summary judgment in favor of the teacher and Dean in their individual
capacities, a decision that they reviewed _de novo_. Upon, the U.S. Seventh Circuit Court of

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190Cornfield by Lewis v. Consolidated High School Dist. No. 230, 991 F. 2d 1316 (7th Cir. 1993)
Appeals held that strip search was reasonable under Fourth Amendment. They found that 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."\textsuperscript{191} As stated in \textit{Doe v. Renfrow},\textsuperscript{192} a pre-T.L.O. case, “[s]ubjecting a student to a nude search is more than just the mild inconvenience of a pocket search; rather it is an intrusion into an individual's basic justifiable expectation of privacy.”\textsuperscript{193}

In \textit{Oliver v. McClung},\textsuperscript{194} junior high students brought action against the Jay County School Corporation school board, superintendent, principal, and teachers, alleging they were victims of illegal search in violation of constitutional rights and state law. On March 4, 1994, immediately following their physical education class, two female students reported to their gym teacher that 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. He then directed 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.

One of the 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 conduct such a search and ordered the female staff members to take the girls to another part of the locker room to 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 that 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. As a result of the search, the students filed suit asserting that the search was unreasonable and therefore a violation of their Fourth Amendment right along with several other actions for

\textsuperscript{191}Id. 1321  
\textsuperscript{192}Doe v. Renfrow, 475 F.Supp. 1012 (N.D. Ind., 1979)  
\textsuperscript{193}Cornfield by Lewis v. Consolidated High School Dist. No. 230, 991 F. 2d 1319-1321 (7th Cir. 1993)
recourse. Both the school officials and students filed a Motion for Summary Judgment on a variety of issues.

In the final rulings, the District Court held: (1) the students’ failed to present evidence of such pattern or series of incidents sufficient to impose liability on school board based upon custom or practice of such unconstitutional conduct; (2) under Indiana law, the principal was not policymaker for the school board and, therefore, principal and school board could not be held liable for the principal's allegedly unconstitutional search; (3) strip searching seventh-grade girls in effort to recover allegedly stolen $4.50 was not reasonable under the circumstances and, therefore, principal and teachers were not entitled to qualified immunity; this is consistent with the standards set forth in T.L.O. (4) under Indiana law, the students failed to establish false imprisonment; (5) material issue of fact as to whether students established claim of battery under Indiana law precluded summary judgment; (6) under Indiana law, students' claim for emotional damages did not require showing that emotional distress was accompanied and resulted from physical injuries; and (7) students claim for intentional infliction of emotional distress failed, no evidence existed to show that the school officials actually intended to inflict emotional damage as required by law.

In Thomas, et al. v. R.G. Roberts, et al., the school officials, the school district and county were sued because they conducted a strip search of elementary children following the theft of some money, absent particularized suspicion. A fifth-grade teacher noticed an envelope containing $26 was missing from her desk; she obtained permission from the assistant principal to conduct strip searches of all of 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. The search was only visual with no reported touching. It consisted primarily of the students dropping their pants, lifting their skirts and/or shirts. Several of the student's parents sued the school district and related officials, claiming the searches were unconstitutional. They also contended that the 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 defendants’ initially received 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 that 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 that the "unlawfulness" of the search was not so obviously a Fourth Amendment violation that clarifying case law was unnecessary. The 11th Circuit Court of Appeals affirmed the lower courts decision. On appeal to the United States Supreme Court, the case was remanded for reconsideration.

On remand, the Court of Appeals held that: (1) strip searches of schoolchildren, which were conducted without individualized suspicion, were unreasonable; (2) individual school defendants and officer were entitled to qualified immunity; (3) district was not liable for unconstitutional strip searches based on inadequate training or supervision theory; and (4) county could be held liable under 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 that the search conducted here would be unlawful." According to the court, the search did not rise to a level "so egregious as to alert the officials that such conduct is unconstitutional even without case law." Though the 11th Circuit found the search was 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.

Commonwealth of Pennsylvania or Other State Case(s)

In Cales v. Howell Public School, a high school student brought a civil rights action, alleging that 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 a school security official, she gave 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, “School administrator does not have the right to search a student because the student acts in such a way as to create a reasonable

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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.”

Mass and Random Searches

Secondary prevention procedures involve school officials’ attempts to seize contraband materials before they can be used. 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 random search conducted in schools and is 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)

In *Rhodes v. Guarricino*, the case involved a random search by an administrator while on a school trip with students. Prior to leaving on a school-sponsored trip, students were provided with a brochure that specifically notified the participants that they would be subjected to “room checks.” Each student also 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.” 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 was required to walk past Rhodes’ room. A large group of students was congregated in the hallway outside of Rhodes’ rooms. The principal smelled a strong odor of marijuana that permeated the area of the hallway. He then contacted hotel security, inquiring whether he could gain access to these rooms because he suspected the presence of marijuana. The principal proceeded to search the majority of the twenty rooms occupied by the students on the trip. He entered each room with hotel security employees using a hotel security passkey in order to gain

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197Id. 456.
access. This search ultimately uncovered an undisclosed amount of marijuana in one student’s room along with a bottle of alcohol that was 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 from the trip and were suspended from school for three days.

In this case, the student claimed that his Fourth Amendment rights were violated because the room search, which revealed alcohol and significant quantities 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 that the students had no legitimate reason to expect complete privacy in their rooms. Further, it was reasonable for the principal to search the rooms based upon the detection of marijuana smoke and the gathering of students. 199

Commonwealth of Pennsylvania or Other State Cases

In the 2004 Pennsylvania Superior Court case, *In the Interest of A.D.*, 200 two female Wyoming High School students reported that money was missing from their purses following their participation in gym class. The two victims had left their purses on the gymnasium bleachers during their participation in class activities. Other students, including A.D., who were not participating in the gym activities had remained seated in the bleachers. Upon returning to the bleachers, one victim reported that twenty-two dollars ($22) was missing from her purse, as well as a piece of paper with her social security number written on it. The other victim reported missing sixty-one dollars ($61). The physical education teacher separated the students who had been participating in activities on the gymnasium floor from those students seated in the bleachers. He then called the assistant principal, who in turn 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, where he searched their pockets and book bags. After the assistant principal had searched each of the six male students, he summoned 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 suggested they search her

199Id.
first. The assistant principal subsequently found eighty-three dollars ($83) rolled up in A.D.’s book bag, along with one of the victim’s missing social security information and a movie ticket stub belonging to the other victim. 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. appealed.

The Pennsylvania Superior Court also denied the appeal and upheld the search as 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.”201 The school official was not an agent of the police, the search was justified at inception and the scope the search was reasonable and appropriate.

In _A.S. v. State of Florida_,202 a middle school assistant principal observed four students huddled in a group. One student was observed 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 section 893.13(6)(b), Florida Statutes (1995). 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 dispositive motion to suppress.

The assistant principal testified that she saw a group of boys huddled together, one with money in his hand and appellant “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 appellant’s belongings was based on a reasonable suspicion. The Court concluded that 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.203 The presence of money in the hand of one boy and the appellant “fiddling” in his pocket is not enough to amount to reasonable suspicion.

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201Id. 28.
203Id.
Searches of Student Automobiles

Schools do not have free privileges to search a student’s automobile. In fact, in In Re South Carolina,204 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 even his automobile.” However, because the right to park on school property is something given by the school, previous court cases have clearly indicated that there should reasonable suspicion when deciding to search a student’s automobile. 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 individual reasonable suspicion is necessary. The greater the access, then usually the lower the individualized suspicion requirement. With a written school policy, it is reasonable to expect that the search would stand up in court.

Federal Case(s)

In Anders v. Ft. Wayne Community Schools,205 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. 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 challenged 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. 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 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, pg. 3).

204In re South Carolina, 583 So.2d 188, 191 (Miss., 1991).
Anders’ complaint alleges that both the policy and the search were unconstitutional violations of the Fourth and Fourteenth Amendments to the United States Constitution, 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 contend 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 prior to the challenged search, numerous complaints were lodged by Northrop High School staff concerning students smoking in the school 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 challenged by Anders’ complaint. 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 he could see students who exited the building during the lunch period.

After about thirty-five minutes at that location, the officer spotted Anders walking briskly through the lot toward the school entrance. The officer had not seen Anders exit the building and, therefore, assumed that he had been outside for some time. When questioned by the officer inside the school building, Anders admitted 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 as it turned out, it 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 that the officer had reasonable suspicion that the student was violating school rules. Because the student had violated the school rule requiring a pass, the court ruled that the officer had a reasonable basis for believing that the student could also be violating other school rules. The court also found that the officer was entitled to draw on circumstances existing at the school in the weeks immediately

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prior to the student’s apprehension. The circumstances surrounding this situation met the standard for reasonable suspicion described by the Supreme Court in *T.L.O.*

*Commonwealth of Pennsylvania or Other State Case(s)*

*Commonwealth v. Williams*\(^\text{206}\) involved a student who was convicted in the Court of Common Pleas, Allegheny County, Criminal Division, of weapons offenses, and he appealed. The Superior Court, held that school police officers acted without authority when they opened 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 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 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 that they were late for school because they had missed the bus. He instructed them to proceed directly to school, which they did. The Chief also notified school personnel and asked that 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 a 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, all without a warrant and without awaiting the arrival of City of Pittsburgh Police. The

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School Police turned the weapons over to City Police, who arrived approximately five minutes later.

As a result, Williams was charged with various weapons offenses, the trial court denied his motion to suppress the physical evidence. The trial judge found that the Chief 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, 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 that there is a two-step analysis for whether the School Police Officers acted properly in conducting a 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. The trial court concluded that 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 that the students were violating the law. The trial court also reasoned that the search was reasonably related in scope to William’s conduct.

*Covington County v. G.W* was a 2000 Mississippi Supreme Court case involving a high school student, who was 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 (automobile). 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 that the beer was his and that he had purchased the beer in Covington County. G.W., however, did not appear to be under the influence on the morning of the incident. G.W.'s mother was immediately notified, and G.W. was suspended for five days.

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\(^{20}\)Covington County v. G.W., 767 So.2d 187 (Miss., 2000).
Later, the school district’s central office mailed a letter to G.W. and his parents notifying them of expulsion proceedings. On December 17, 1998, the School Board conducted the hearing and expelled G.W. for the remainder 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. The Mississippi Supreme Court ruled on three issues: (1) the student's procedural due process rights were not violated; (2) school officials did not need warrant to search student's vehicle; and (3) hearsay was admissible in suspension proceedings. The Mississippi Supreme Court reversed the lower courts ruling.

Searches of Lockers

Prior to *T.L.O.*, the courts allowed random locker checks. Locker investigations by school officials were not regarded by most courts as searches. Courts commonly reasoned that because the locker is jointly controlled by the student and the school, the student did not have a reasonable expectation of privacy, at least not from school officials.\(^{208}\) The school owns the lockers; therefore, they could be periodically searched for safety and health reasons. After the *T.L.O.* decision, the Courts have held that the reasonableness standard does apply to locker searches.\(^{209}\) The *T.L.O.* decision did not answer whether students have reasonable expectations "of privacy in lockers, desks, or other school property provided for the storage of school supplies,"\(^{210}\) the court in *T.L.O.* did note that students must be given privacy to carry personal items on school grounds.\(^{211}\)

However, during the 1990s, the courts have held that students have an expectation of privacy with respect to their lockers and that schools must establish reasonable suspicion to search the lockers because students store personal items in their lockers.\(^{212}\) In *State v. Jones*,\(^{213}\)

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\(^{211}\) *New Jersey v. T.L.O.*, 469 U.S. at 339.
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.” Because of the uncertainty, some school
districts attempt to reduce this concern by declaring in their student handbooks that no privacy
rights exist in lockers and those lockers may be searched at any time without notice. Book bags
and other private items of the such carry a more restrictive requirement, but can be searched
when there is a need based upon safety or a policy has been developed that appropriately notifies
students of the possibility of being searched.214

*Commonwealth of Pennsylvania or Other State Case(s)*

*In Interest of Dumas,*215 Dumas a student at Academy High School, was observed getting
a pack of cigarettes from his school locker and giving one of the cigarettes to another student.
The teacher who observed this immediately notified the assistant principal. The assistant
principal approached the students, took the cigarette from the other student and took a pack of
cigarettes from the person of Dumas. The assistant principal then searched the locker. Inside a
jacket he found another pack of cigarettes which contained some marijuana. Dumas was charged
in delinquency petition with possession of controlled substance.

The issue in this case was whether evidence seized from a school locker during a search
by a school official is admissible in a delinquency proceeding. This precise issue had not been
decided by a Pennsylvania appellate court. The Court of Common Pleas, Juvenile Division, Erie
County, granted motion to suppress the marijuana seized from the student’s locker and the
Commonwealth of Pennsylvania appealed. The Superior Court of Pittsburgh in1985, having
balanced the student's legitimate expectation of privacy in his or her school locker with the
school's need to maintain order and discipline held that: 1) student has legitimate expectation of
privacy in school lockers, and 2) 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 for believing the initial search of student would provide evidence that the
student had violated the school rules by possessing cigarettes, once the principal had seized the

213 State v. Jones, 666 N.W.2d 142 (Iowa, 2003).
214 Hokeck, 514-515.
cigarettes from the student’s hands, it was not reasonable to suspect that there would be more cigarettes in the locker. The assistant principal testified that he suspected Dumas of being involved with drugs; he was unable to state any basis for this suspicion. The assistant principal further stated that it was because of this suspicion that he decided to search the locker.

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"216 Furthermore, although the assistant principal suspected the student of being involved with marijuana, the assistant principal was unable to articulate any reasons for that suspicion. The Superior Court affirmed the lower courts ruling.217

In Commonwealth v. Carey,218 an assistant principal, was told by a teacher that two students reported that another student, Carey, had shown them a gun he had brought 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 report of a seeing a gun in the accused student’s hands, along with the failure to find the gun on the student or in 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 in a warrantless search of his high school locker and his statement to a police officer, acknowledging that the gun was his. Carey filed an application for interlocutory appeal that was allowed by the Supreme Judicial Court and the case was transferred from Appeals Court. The Supreme Judicial Court, held that: 1) the assistant principal, who was told that morning by a respected teacher that two students had reported to the teacher that Carey had shown them a gun he had brought to school as a result of brawl, thus creating “reasonable suspicion” and justifying

216Id at 298-99, 515 A.2d at 986.
a search of the student’s locker, and 2) 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 which was supported by evidence. The decision was affirmed.219

Thirteen years later, in *State v. Jones*,220 teachers and administrators at Muscatine High School conducted an annual pre-winter break cleanout of the lockers assigned to each student in the school. The students were asked, three to four days before the cleanout, to report to their locker at an assigned time to open it so a faculty member could observe its contents. The general purpose of the cleanout was to ensure the health and safety of the 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 plaintiff. The next day, two building aides went around to the lockers that had not been checked the day before. Acting pursuant to rules and regulations adopted by the school board, the aides opened each locker to inspect its contents. The aides did not know the names of the students assigned to the lockers they were inspecting. One of the lockers they opened contained only one item: a blue, nylon coat. In an effort to 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 aides returned the coat to the locker and contacted the school’s principal.

After cross-checking the locker number with records kept by the administration, the principal determined that the locker belonged to the plaintiff. The principal and aides then went to student’s classroom and escorted him to his locker. The student was asked to open the locker and was asked if 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, struck the principal across the arms in order to break free and escape. The principal gave chase, captured and held the student until the police arrived. The police retrieved the bag and determined that it held marijuana.

The student was later charged with possession of a controlled substance in violation of Iowa state law. The student then filed a motion to suppress the marijuana evidence claiming that the search violated his right to be free from unreasonable search and seizure as guaranteed by the

219Id.

220Id.
Fourth Amendment of the United States Constitution and Iowa Constitution. The District Court granted the motion to suppress. It found that the school officials did not have reasonable grounds for searching the student’s coat. The State filed a motion requesting the judge reconsider and change his decision. The motion was denied. The State then sought discretionary review from the Supreme Court of Iowa, which was granted.

During the conclusion statement, the 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.” The decision was reversed and remanded by the Iowa Supreme Court.

**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 search students, although there is no suspicion or consent to a search, is permitted as decided in *Illinois v. Pruitt*. 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?” one finds that 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?” In the *Journal of Law and Education*, Robert Johnson says no because: 1) students do bring illegal weapons to school; 2) metal detectors do detect weapons and help schools to disarm students; 3) disarming students reduces the threat of violence; and 4) the courts have repeatedly approved the constitutionality of weapon-related suspicionless student searches conducted with metal detectors, and that these

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221 Id. 150.
decisions are fully consistent with the school-related decisions of the United States Supreme Court.224

A variety of devices are being used from the hand-held version to standing metal detectors similar to those found in government facilities. The major challenge facing schools is that this type of search does not have 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 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 that they may be subjected to a progressive search to determine why the alert went off.225

**Federal Case(s)**

In *People v. Parker*,226 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 that stated that any person on the premises was subject to a search. Parker, a 16-year-old, entered the school. Parker looked in the direction where the students were lined up to go through the metal detectors and turned around to leave the school. The officer stopped Parker and identified himself as a police officer. 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 raised his shirt, the officer could see the handle of a semiautomatic pistol. The officer then 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 turned around for any number of innocent reasons unrelated to the metal detectors.227 On appeal, the State argued that there was no search because the defendant did not go through the metal detector and was not patted down. Parker argued that the stop was illegal and that the stop led to the discovery of the gun. Thus, the

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224Id.
225Holeck, 528.
227Id.
discovery of the gun was fatally tainted by the unconstitutional stop. The issue at hand was whether the stop had been constitutional. The court determined that 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.\textsuperscript{228} The police had no individual suspicion, no evidence of an immediate danger to safety or conducted the search at the direction of a school officials based upon the reasonable suspicion standard.

\textit{Commonwealth of Pennsylvania or Other State Case(s)}

\textit{In Interest of F.B}\textsuperscript{229} involved students at University High School in the City of Philadelphia which prohibits students from bringing weapons or drugs onto school property. If students are found in possession of these items, they are arrested. Letters are sent home throughout the year informing parents and students of this policy. To enforce this policy, the Philadelphia school district employs police officers to conduct in-house metal-detector scans and bag searches of the students at University High School. Signs are posted on the front door and throughout the school notifying the students of these searches. Upon entering University High School, the students are led into the gymnasium where they form lines and, one by one, step up to a table. Once at the table, each student empties his pockets and surrenders his jacket and any bags he may be carrying. While an officer searches the student's belongings, the student is told to step to the end of the table where he is scanned by a metal detector. If no drugs or weapons are found, the student is permitted to retrieve his belongings. Every student is searched in this manner until the gymnasium becomes too crowded, at which time school administrators randomly select students to be searched.

During this process on April 22, 1994, a University High School student, stepped up to the table and emptied his pockets. He discarded a Swiss-type folding knife. As a result of the knife being discarded, the student was escorted to a holding room where he was placed under arrest for possessing a weapon on school property. The student filed a suppression motion seeking to suppress the evidence seized. The trial court denied the student's motion and adjudicated him delinquent. The student had been placed on probation after prior adjudications of delinquency. Thus, the court ordered that the juvenile remain on probation. An appeal was filed.

\textsuperscript{228}Id.
\textsuperscript{229}In Interest of F.B., 658 A.2d 1378 (Pa. Super Ct., 1995).
On appeal, the student contended that the trial court erred in denying his suppression motion because the police searched him without reasonable suspicion or probable cause to believe that he had violated any school regulation. He argued that the search violated his rights against unreasonable searches and seizures under both the United States and Pennsylvania Constitutions. The student was arrested for possessing weapon at school following uniform search conducted as part of school-wide search for weapons. The Superior Court of Philadelphia in 1994 held that search was reasonable, and thus did not violate the juvenile's Fourth Amendment rights.

Administrative searches conducted as part of general regulatory scheme to ensure public safety are considered reasonable when intrusion involved in the search is no greater than necessary to satisfy the governmental interest that justified the search. The court felt that a school's interest in ensuring security for its students far outweighs the privacy rights of students searched and arrested for carrying weapons. This is particularly true when school employed police officers conducting 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 was necessary to search the student at school for weapons where the student's privacy interest was minimal in light of prior notice and his expectation of privacy was not subject to discretion of the official. Search of student at school for weapons was reasonable, and thus did not violate his Fourth Amendment rights because: 1) the search was justified at inception because of high violence rate in local schools, 2) the search was part of regulatory plan to ensure safety of all students, and 3) the searches were conducted in a uniform manner.

The following year, In Interest of S.S230 was decided. This case involved William Penn High School in Philadelphia where S.S. was charged with a delinquent act of possession of a weapon on school property. On September 28, 1994, S.S., a student of William Penn High School, was instructed by a security employee of the school, upon entering the school to remove his coat and to place his book bag on a table as part of a student-wide search. S.S. was then scanned with a metal detector and his belongings were patted down. The employee felt what he described as a bulge resembling a knife in S.S.'s coat and he called his supervisor to act as a witness while he conducted a search of the coat pocket. All of the students who entered the

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school that day were led to the gymnasium and were subjected to the same scan and pat down procedure. The search revealed a box and later transferred him to the police.

On September 28, 1994, S.S. was arrested without a warrant by Philadelphia law enforcement authorities and charged with the delinquent act of possession of a weapon on school property. On April 20, 1995, S.S. filed a pretrial motion requesting the suppression of physical evidence. On May 1, 1995, the motion was denied and S.S. was found appellant guilty of the delinquent act of possession of a weapon on school property and placed on probation. On June 9, 1995, 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: 1) searches without individualized suspicion can be justified only where they are strictly limited in scope and procedural safeguards are present, 2) the school did not provide evidence to establish a general need for such searches and that school district police were not following established guidelines while conducting the search. The Superior Court, No. 2345 Philadelphia held that search was reasonable, though not based on individualized suspicion; search was conducted in same manner as to all students. The search was justified due to the high rate of violence in area schools and individual suspicion was not required under the circumstances.

Canine (Sniff) Searches

A canine sniff of a person is considered a search by the majority of courts. Even prior to T.L.O., the Tenth Circuit Court of Appeals in Zamora v. Pomeroy231 ruled the use of dogs in exploratory sniffing of lockers to be legal. However, direct searches (sniffing) of students have been ruled illegal by the courts because of the high degree of intrusiveness. Based upon the standards developed in T.L.O, it appears that individual suspicion and high risk to the safety and welfare of students and staff are required to justify a canine search of a student A canine sniff of property is not a search under the Fourth Amendment. There does not need to be prior reasonable suspicion before the canine sniff. A positive alert from a trained canine gives reasonable suspicion to the presence of drugs. The reaction of the canine gives the handler probable cause for a warrant at the police level and reasonable suspicion for school officials to search a student or their property.

Federal Case(s)

In 1990, *B.C. Powers v. Plumas Unified School District*\(^2\) was a suit filed by a California high school student 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 that the search was unlawful. The federal district court agreed with the student that the search was unreasonable. The search was unreasonable because the school lacked individual suspicion and that 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.

Commonwealth of Pennsylvania or Other State Case(s)

In *Commonwealth v. Cass*,\(^3\) the school’s principal had announced that 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 lockers where 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. Cass was suspended for ten days and criminal charges were filed against him for possession of marijuana and possession 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’s protections against unreasonable search and seizure.

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The school’s principal initiated the search based upon information given by other students regarding drug use in the school; observations by teachers of suspicious activity by students, such as passing small packages between themselves in the school hallways; increased 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 a general search. The school had a written policy regarding searches and the policy was issued to students on two occasions, once at the beginning of the school year and six weeks prior to the search.

The trial court granted the motion to suppress the evidence concluding that the search did not meet that standard. The Superior Court affirmed the lower decision of the trial court and the Supreme Court of Pennsylvania granted the 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” in conducting a search.234

In 1995, another case involving a canine search was State of Louisiana v. Barrett.235 A Louisiana school board maintained a written policy that allowed 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 by drug dogs. 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. The principal searched the wallet and found $400 and then searched 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. During the process, the student moved to have the evidence suppressed because he felt it was illegally obtained.

The issue in this case was whether the search of the student’s belongings was legal or illegal. The student’s request for suppression was denied by the state court 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 that use of a dog 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

234Id.

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dog’s 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.\textsuperscript{236}

Seven years later in \textit{Marner ex rel Marner v. Eufaula City School Board},\textsuperscript{237} law enforcement officials, 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 whereby 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. Additionally, the School Resource Officer and two Assistant Principals were the school officials participating in the search.

The law enforcement officers followed a procedure whereby 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 upon 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. After the dog alerted, police evidence tape was used to flag Marner’s car. His tag number was then recorded and was run through the NCIC. The NCIC revealed that the owner of the car was 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 blade was found. The blade had been seen through the window before the search, on the console in the front of the car. In addition to the Exact-O knife on the front console, 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:

\begin{itemize}
\item 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
\end{itemize}

\textsuperscript{236}Id.
\textsuperscript{237}Marner ex rel. Marner v. Eufaula City School Bd, 204 F.Supp.2d 1318 (M.D. Ala., 2002).
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 which were found in Marner’s car in violation of school rules.

At trial, the plaintiff argued that the dog could have been alerting on an odor from a nearby car. Law enforcement officials testified that they observed the dog alerted on Marner’s car in an unusual manner two times. Marner argued that because no narcotics were found in the car, there is 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 which also contained no illegal narcotics, but which contained items such as a knife. The court found that 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 a car near it. No real evidence was presented to this effect. The court ruled that the search was reasonable because a search by school officials is justified if there are “reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.”

238 Id. 1325.
CHAPTER V: CONCLUSIONS, SUMMARY AND RECOMMENDATIONS

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

Conclusion Related to Searches Considered Reasonable

In interpreting what meets the Fourth Amendment protections for reasonableness related to searches in public schools, the Court drew partially upon its analysis in *Terry v. Ohio*.239 “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.”

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.240 TIPS is an acronym for the following:

T = Thing, the thing after 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 lead to the searcher to believe the search was necessary. The information must be from a reliable source and whom it comes from can make a difference.

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P = Place or Person, the place or person of the search (i.e. locker, car or 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 said the search should not be excessively intrusive in light of the age, sex and 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.” 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*, 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.

The concept as shown in Figure 8 is somewhat simple. The Fourth Amendment provides 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 upon the protections declared in Fourth Amendment. School district policy should be based upon the Legislative and Court decisions. District policy should then direct and govern administrative actions taken by school-based administrators when performing administrative searches and seizures in schools.

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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 during the case, New Jersey v. T.L.O.\textsuperscript{243} 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.\textsuperscript{244}


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*\(^{245}\) 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, which outweighs the individual's privacy interest, as in *Ferguson v. City of Charleston*\(^{246}\). The special needs doctrine becomes active anytime a governmental agency (e.g., a public school) justifies random drug searches of students as a means to achieve a social good.\(^{247}\)

**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 pockets, pat downs, sniff searches, strip searches and searches of belongings on a person. It is important to note that the more personal or closer to the person’s body the search becomes, 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 the “special need” exist 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

\(^{245}\)Chandler v. Miller, 520 U.S. 305 (1997).
or other school official will be "justified at its inception" when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. 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."248

In determining legality of searches conducted in public school setting in absence of individualized suspicion, an analysis of Earls indicates the courts 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.”249

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 mentioned, the constitutional validity of a search is determined at two levels. The first level involves the considering if the search is justified at inception. The second concerns the reasonableness of the search.250 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 for guiding questions.
C. To establish reasonable suspicion justifying the inception of a search requires that the school official have some evidence regarding the particular situation, including possibly the 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 to a particularized knowledge as to where the illegal contraband is located as well as to the identity of the offending student.251

251Id.
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:

A. Canine Agency reports to office or calls ahead of time to set up an appropriate time to visit.
B. School resource officer (or an administrator) accompanies search team.
C. Administrator issues school-wide search procedure announcement.
   1. The procedure for conveying intercom instructions is:
      a. students in hallway report to class immediately
      b. teachers lock classroom doors
      c. no student allowed to leave or enter class
      d. wandering students referred to the office
      e. continue classroom instruction until further notice
D. Administrator guides the agent around the open areas of the school.
   (Note: 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
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

What happens if he dog provides an alert? If the dog alerts on a locker, automobile or personal items:

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

Using a canine (dog) in a search of a person (student) creates 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.*, 690 F.2d 470, 477 (5th Cir., 1982), the courts ruled that sniffing of a person has a relatively high 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:

A. There is reasonable suspicion that the student is breaking a school rule or law based upon the facts or information obtained about the situation.
B. 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. 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; they possess a search warrant or probable cause. If the police provide information that leads to reasonable suspicion, and the school official conducts the search.
G. If an emergency or dangerous situation exists that meets the higher standard for the level intrusiveness.
H. The school official explains to the student why the search is being conducted.

Summary

The Fourth Amendment protects each of us from unreasonable search and seizure. What is considered unreasonable depends upon the context in which the search is being performed and

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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 as one, would lead the average reasonable person in the searcher’s position to do such a search.
- **Pocket contents** may be carefully dumped onto a table or floor to allow close examination without risking inappropriate contact. There is expectation of privacy so there is a higher degree of reasonable suspicion.
- The expectation of privacy with **lockers** is limited. The school owns the lockers. It is highly recommended that school officials communicate in advance the school districts policy regarding locker searches.
- **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. This type of search should be supported by a high reasonable suspicion, almost probable cause.
- **Clothing** which can be removed without losing modesty should be removed to avoid the searcher touching the body. When it becomes necessary to touch the student in an investigative search, there should be clearly articulable facts to support action.
- With **canine (dog) searches**, it is important to remember that the dog does not actually search anything. 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. The dog merely informs the 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 (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 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. The questions are designed to test your basic understanding and knowledge of search and seizure practices in public schools. Each reader is encouraged to take the short quiz to check your comprehension of the material covered in this document. Appendix G immediately follows and 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 continues to evolve as time passes. Each year new decisions are rendered in both state and federal courts that provide additional case law governing student search and seizure in schools. Continued case law review 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 in 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 are crimes. The government can wiretap in advance of a crime being perpetrated. 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 (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 of unauthorized disclosure of wiretap information.

H.R. 3162 also expands the use of traditional pen register or traps and trace devices (captures 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.

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's no need to adhere to a totality of circumstances test, or 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 (4) groups:

**Observation** -- These are things that the police officer obtains knowledge of via the senses: sight, smell, hearing; but this category would also include 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 things 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 which includes informants, statements by witnesses and victims, and announcements via police bulletins, broadcasts, and at roll call. One can collapse these categories down to two (2) into direct and indirect:

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

   **FLIGHT** -- Attempting to flee, evade or elude, is in evidence law a presumption of guilt. It's not by itself sufficient for probable cause, but it's surely going to result in a chase situation and custodial detention of some sort. The case of Wong Sun v. U.S. (1963) covered suspects who run out the side or back door as sufficient for probable cause, however, and 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 (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 cannot also be possibly the 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 (binoculars and cameras are allowed as well as normal extensions of the senses, but you can't use a portable microscope to analyze the grass for fibers, e.g.). 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, say, accidentally empties the contents of their purse or pockets, and the police ask them if they own something, and they say "yes", and then the police look inside it and find contraband, they 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 the car belongs to, and they say "my cousin" but they don't know their cousin's name. Or, a girlfriend answers the door and says the apartment is rented under her boyfriend's name, but she doesn't 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 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's a typical sequence of events; (c) there's 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's 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 would 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:
Aguilar test (1964) -- A two-prong test requiring 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 Aguilar-Spinelli tests with a totality of circumstances test, requiring the police to think both like an offender as well as a reasonable man (subjective and objective test).

Source: Tom O'Connor, North Carolina Wesleyan College, Probable Cause, Lecture #6, JUS 315 Criminal Investigation, Spring, 2004 at http://faculty.ncwc.edu/toconnor/315/315lect06.htm

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) versus 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.

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