



Student Search and Seizure

Presented by:
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FOURTH AMENDMENT

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.

“PROBABLE CAUSE” REQUIRED FOR POLICE OFFICERS

In the context of warrantless searches, probable cause exists “when reasonably trustworthy facts and circumstances within the knowledge of the officer on the scene would lead a man of reasonable prudence to believe that the instrumentality ... or evidence of a crime will be found.”

“LESSER STANDARD” FOR SCHOOL PERSONNEL

“Perhaps the best that can be said generally about the required knowledge component of probable cause for a law enforcement officer's evidence search is that it raise a ‘fair probability’ or a ‘substantial chance’ of discovering evidence of criminal activity. The lesser standard for school searches could as readily be described as a moderate chance of finding evidence of wrongdoing.”

BUT... WHAT ABOUT SROs?

School officials initiate the search or police involvement is minimal =
REASONABLE SUSPICION

School police or resource officer acting on their own initiative and
authority in furtherance of school purpose = REASONABLE SUSPICION

Outside police officers initiate a search or where school officials act
on the behest of outside police officers = PROBABLE CAUSE

THE TEST

"Under ordinary circumstances, a search of a student by a teacher or other school official will be justified at its inception when there are **reasonable grounds** for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. 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."

**REASONABLE SUSPICION =
KNOWLEDGE + NEXUS**

**Knowledge = strength of the
evidence indicating illicit
activity**

**Nexus = strength of the
evidence indicating “that the
specific ‘things’ to be
searched for and seized are
located on the person”**

“MAY I
SEARCH
YOUR
CAR?”

- There is no need to establish reasonable suspicion for a search if the student ***consents***.
- However, consent must be ***freely and voluntarily given***. Coercion, express or implied, violates consent.

“WHAT DO WE HAVE HERE?”

- It is not a **search** for purposes of the 4th Amendment if something is seen in **plain view**.
 - **Plain view** is defined as:
 1. Initial intrusion is lawful
 2. Incriminating nature of object is immediately apparent
 - Plain view can establish reasonable suspicion for a search.
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FAIR GAME

- Finding one item during a search can provide justification to expand the scope of a search.
 - *For example:* Finding a lighter in the front of a backpack and proceeding to find the cigarettes in the student’s pocket.
 - Looking for one item and discovering another illegal or impermissible item is lawful.
 - *For example:* Searching a student’s car for drugs and discovering weapons.
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Which of the following would not support reasonable suspicion?

Student stumbles into class and the teacher smells alcohol on his breath.

Teacher sees a student with a knife shaped bulge in her pocket.

Group of students whisper while walking past the principal.

CAN WE SEARCH A STUDENT'S...

- Locker?
 - Backpack?
 - Body?
 - Car?
 - Cell phone?
-

Desks, lockers, District-provided technology, and similar items are the property of the District and are provided for student use as a matter of convenience. District property is subject to search or inspection at any time without notice. Students have no expectation of privacy in District property. Students shall be fully responsible for the security and contents of District property assigned to them. No student shall place or keep in a desk, locker, District-provided technology, or similar item any article or material prohibited by law, District policy, or the Student Code of Conduct. Students shall be responsible for any prohibited item found in District property provided to the student.

SCHOOL DISTRICT PROPERTY: FNF(LOCAL)

LOCKERS

Student Handbook / Student Code of Conduct should alert students and parents that they do not have an **expectation of privacy** when using district-owned property such as a locker.

It is advisable to include a “consent to search” form in the Student Handbook / Student Code of Conduct.

BACKPACK/PURSE

- Property of the student = expectation of privacy
 - Abandoned or unclaimed* bag = no legitimate expectation of privacy
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HYPOTHETICAL:

While approaching a group of students a teacher has reasonable suspicion are engaging in the sale and purchase of drugs, the students scatter and a backpack is left behind. Can the teacher search the bag?

A) YES

B) NO

BODY (PAT-DOWN)

- Students have a legitimate expectation of privacy in their person.
 - School officials may search a student's outer clothing and pockets by establishing individualized reasonable suspicion (or securing the student's voluntary consent).
 - A pat-down should be reasonable in scope and not overly intrusive under the circumstances.
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BODY (STRIP SEARCH)

- While reasonable suspicion is based on a moderate chance of finding wrongdoing, when the search is of the student's underwear, additional requirements apply.
 - A strip search of a student is impermissibly intrusive unless the school officials reasonably suspect either that the object of the **search is dangerous or that it is likely to be hidden in the student's underwear.**
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BODY

Best Practices:

- Conduct search in private with a witness
- Have administrator of same gender conduct search
- Provide training to staff on parameters of conducting search
- Notify parents/have parent present

Alternative:

- Consider involvement of law enforcement
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CAR

- A car, like a locker, bookbag, or purse, is one of the few places in which a student can transport contraband to school and keep it concealed from school officials' view.
 - A student whose car is searched while it is parked on school grounds is entitled to no greater an expectation of privacy than a student whose locker or bookbag was searched.
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CELL PHONE

“Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans ‘the privacies of life.’”

CELL PHONE

- Texas Education Code § 37.082 (Possession of Paging Device) allows school districts to adopt a policy prohibiting students from possessing a “paging device” while on school property or while attending a school-sponsored or school-related activity on or off school property.
- The policy can establish disciplinary measures and allow the district to charge the owner (or their parents) an administrative fee not to exceed \$15 to reclaim the device.

“Paging device” means a telecommunications device that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers a communication to the possessor.

CELL PHONE

- If possession of a cell phone or use during school hours is prohibited, a school district can search for and/or seize a cell phone.
 - For example, in *Klump v. Nazareth Area School District*, a student's cell phone fell out of his pocket and the teacher confiscated it based on the school's policy against use or display during school hours.
 - However, searching a seized cell phone is a bit trickier.
 - In *Klump*, the **initial seizure** was held by the court as justified under the reasonable suspicion standard. However, when the teacher and assistant principal proceeded to then **go through the phone** and **call nine other students, access the student's text messages and voicemails**, and **send messages without identifying themselves**, the court held the search was not "justified at its inception."
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CELL PHONE

- *General knowledge* of student's discipline history is **not** enough to justify a search. Searching a phone requires **substantial suspicion** such as first-hand observations or reports of wrongdoing from credible sources.
 - *Suspicion of wrongdoing*, such as cheating via images or text messages, can provide a much more solid basis for searching a cell phone than simply violating school policy against having phone out during school hours.
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A bus driver looks in the rearview mirror and sees a student taking pictures of girl's chests when they aren't looking. Can the school confiscate the student's phone?

A) YES

B) NO

Can the school look at the student's camera roll?

A) YES

B) NO

Can the school look through the student's text messages to see if he sent the pictures to other students?

A) YES

B) NO

CAN WE USE A...

- Metal Detector?
- Dog?

METAL DETECTOR

- A self-standing walk-through metal detector is considered the least intrusive option for student searches, and will pass constitutional muster, so long as everyone is required to pass through it.
 - Remember, if a student’s body, purse, bookbag, or backpack registers a “hit” on a walk-through metal detector, that “hit” is sufficient to create a reasonable suspicion and give school officials the green light to extend the search.
 - Policy, notice, and signage can assist in supporting the permissibility of metal detectors.
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METAL DETECTOR (HANDHELD)

- The use of hand-held metal detectors is inherently more intrusive, because of the proximity to the body.
 - Generally, before using a hand-held on a student or their backpack school officials should have reasonable suspicion that the student possesses contraband.
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DRUG DOGS

- A student has **no expectation of privacy** in qualities that are exposed to public observation, including observation by sight, smell, or sound.
 - Trained dogs' sniffing bags, cars, and lockers does **not** constitute a search under the Fourth Amendment.
 - The alert of a trained dog to a locker or car provides reasonable cause for a search of a student's bag, car, or locker.
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DRUG DOGS

- Trained dogs' sniffing of students **does** constitute a search and requires individualized reasonable suspicion.
 - “A dog's sniffing technique-i.e., sniffing around each child, putting his nose on the child and scratching and manifesting other signs of excitement in the case of an alert-is intrusive.”
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AND WHAT ABOUT...

- Drug testing?
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DRUG TESTING

- Blood, urine, and breath tests constitute a search for purposes of the 4th Amendment.
 - A school district is permitted to drug test based on individualized reasonable suspicion.
 - Given the intrusive nature of a drug test, any drug test administered should be limited in scope.
 - *For example:* If the test is initiated based on suspicion of alcohol use, the scope should not be expanded to a full drug panel.
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DRUG TESTING – FNF(LEGAL)

Whether a particular search is reasonable is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. Thus, the reasonableness of a random student drug-testing policy is determined by balancing the following factors:

1. The nature of the privacy interest compromised by the drug-testing policy.
 2. The character of the intrusion imposed by the drug-testing policy.
 3. The nature and immediacy of the governmental interests involved and the efficacy of the drug-testing policy for meeting them.
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WHAT LIABILITY DO I FACE?

POTENTIAL FALLOUT OF UNLAWFUL SEARCH:

- Civil rights lawsuit
 - 42 U.S.C. § 1983 makes liable “[e]very person” who, under color of state law, violates federal constitutional rights. For this purpose, municipal entities like the school district qualify as “persons.”
 - Public outcry
 - Disciplinary action
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QUALIFIED IMMUNITY

- Government officials who perform discretionary functions are entitled to the defense of **qualified immunity**, which shields them from suit as well as liability for civil damages, if their conduct does not violate “clearly established statutory or constitutional rights of which a reasonable person would have known.”
 - An official's conduct is **not** protected by qualified immunity if, in light of clearly established pre-existing law, it was apparent the conduct, when undertaken, would be a violation of the right at issue.
 - The Supreme Court has held qualified immunity may never be extended to officials who conduct unlawful warrantless searches.
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QUESTIONS?

THANK YOU

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