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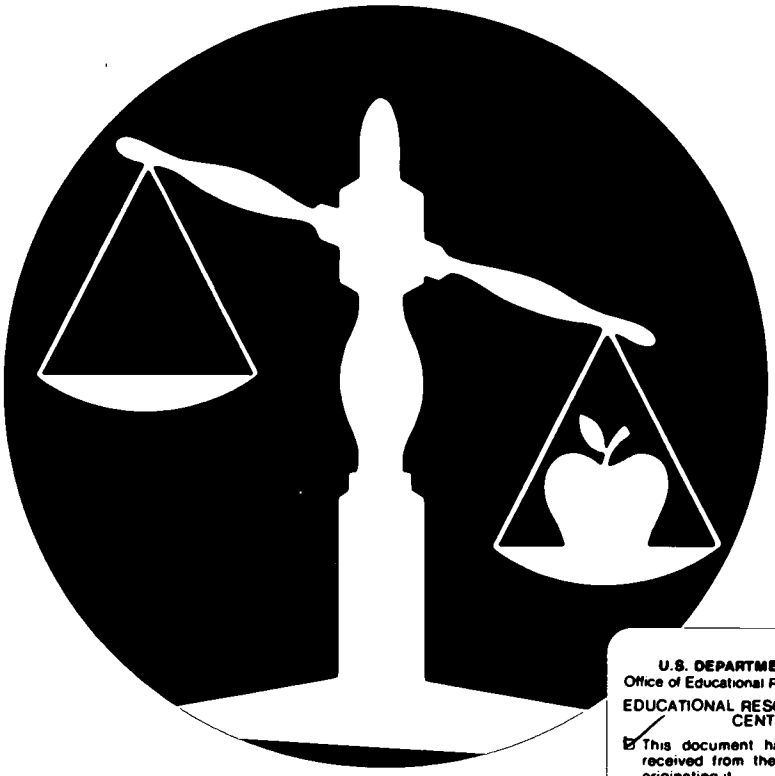
ABSTRACT

With the alarming increase in drugs and weapons on American school campuses, teachers and school officials have stepped up their efforts to search lockers, other school property, and sometimes the students themselves. School officials must remember that any search of a student creates a Fourth Amendment issue. Thus, it is important to know the language and meaning of the amendment as defined by the case of "New Jersey v. T.L.O." The issue is: What is a reasonable search? This guidebook examines factors that determine a reasonable search; presents the decisions of recent court cases; and explains issues involving the nature of the contraband, student consent, and imminent danger. It also discusses issues involved in conducting various searches: locker, vehicle, strip searches; searches by various officers and searches of visitors; metal detectors; drug testing; and surveillance. The handbook provides guidelines for conducting a successful search and offers a search-and-seizure checklist for fact-gathering and analyzing the Fourth Amendment as applied to a school search. Appendices contain sample school board policies, state statutes, and an article that reviews key court cases related to school-violence policies. (Contains 11 references.) (LMI)

STUDENT SEARCHES AND THE LAW



AN ADMINISTRATOR'S GUIDE TO CONDUCTING LEGAL SEARCHES ON SCHOOL CAMPUSES

NATIONAL SCHOOL SAFETY CENTER

STUDENT SEARCHES AND THE LAW

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STUDENT SEARCHES AND THE LAW

With the alarming increase of drugs and weapons on American school campuses, teachers, administrators and other school officials have, of necessity, stepped up their efforts to search lockers, other school property and, sometimes, students themselves. Disputed searches are regularly challenged in state courts, and a few, most notably the 1985 landmark case of *New Jersey v. T.L.O.*,[1] have been settled by the U.S. Supreme Court.

Despite court-imposed safeguards on students' constitutional rights, schools still have greater leeway in conducting searches than do police officers. In many cases, law enforcement officers must have a warrant and meet a "probable cause" standard to conduct a search. The Fourth Amendment, which protects citizens against unlawful and unreasonable searches, originally set forth these two requirements. School officials, however, have successfully demonstrated to the courts that such a stringent requirement would seriously impair the ability to maintain discipline and a safe school environment. Because of this, school officials are not required to obtain a warrant and are only obligated to meet a "reasonable suspicion" standard.

Students' rights

Before *T.L.O.*, the courts were divided on whether students at school had any Fourth Amendment rights. The *T.L.O.* Court, following the lead of *Tinker v. Des Moines Indep. Community Sch. Dist.*,[2] held that students remain free from unreasonable searches and seizures. The *Tinker* Court, hearing a First Amendment case, said that students do not shed their constitutional rights at the schoolhouse gate. *T.L.O.* agreed.

School officials must remember that any search of a student creates a Fourth Amendment issue. Thus, it is important to know the language and meaning of the amendment as defined by *T.L.O.* Not all searches are unconstitutional. Students are to be free from "unreasonable" searches and seizures. The issue then is, What is a reasonable search?

1. 469 U.S. 325 (1985).
2. 393 U.S. 503 (1968).

Factors determining a reasonable search

In *T.L.O.*, a teacher discovered T.L.O. and her companion smoking cigarettes in a high school lavatory in violation of a school rule. The teacher took the students to the principal's office, where they met with the assistant vice principal. T.L.O. denied that she had been smoking and claimed that she did not smoke at all. The assistant vice principal demanded to see her purse. Upon opening the purse, he found a pack of cigarettes and also noticed a package of cigarette rolling papers that are commonly associated with the use of marijuana. He then proceeded to search the purse thoroughly and found some marijuana, a pipe, plastic bags, a fairly substantial amount of money, an index card containing a list of students who owed T.L.O. money and two letters that implicated her in marijuana dealing. T.L.O. moved to suppress the seized evidence. The *T.L.O.* Court upheld the search.

Since *T.L.O.*, court decisions have helped to further define what constitutes an appropriate search based on reasonable suspicion. These decisions guide school administrators, teachers and security agents to conduct searches in a manner that is simultaneously nonintrusive and respectful of students' constitutional rights. Still, each new case poses its own particular nuances, and no school official, even if carefully following the standard established by *T.L.O.*, can be guaranteed that a student will not sue, and possibly win, in court. There is no formula for determining that a search is reasonable; each case has different facts and circumstances. Some of the factors to consider include:

- What are the specific facts used to justify the search?
- What was the scope and manner of the search?
- Where was the search conducted?

Court cases since *T.L.O.* have generally upheld the legality of searches, provided the searches were conducted in accordance with *T.L.O.'s* "two-prong" test: The search must be reasonable in inception and reasonable in scope. A look at the basic guidelines for student searches set down by the *T.L.O.* decision and the cases that followed is helpful. These guidelines comply with and clarify the "reasonable suspicion" standard:

- Searches must be based on reasonable suspicion that the student has violated school rules or the law.
- Those responsible for conducting the search must be able to clearly articulate which school rule or law has allegedly been violated and es-

tablish that the search is reasonable in its inception. To be reasonable in inception, the search must be based on information, facts or circumstances that would lead a reasonable person to conclude that a search will turn up evidence of the violation of a school rule or the law. A hunch ("I'll bet that Johnny is carrying drugs today.") is insufficient. Unreasonable surmises ("We think there is a gun on campus, and Johnny is carrying a calculator case, so the gun might be inside it.") are unacceptable. "Reasonable in inception" is a flexible standard, but the search still must be based on some type of evidence.

- The information that forms the basis of the search must be recent and credible and must connect the student to the violation. Recent courts have presumed that tips from students are reliable. In the absence of facts that indicate a student informant is lying, courts look favorably on students as sources of information to meet the reasonable in inception standard.[3]
- Searches must be reasonable in scope in light of the age and sex of the student and the nature of the infraction. Reasonable in scope has several applications. First, consider the size of the item for which you are searching. If you receive credible information that Jane has brought an AK-47 to school, a search that is reasonable in scope might include her locker; it would not include her purse. Although some might say that they were searching for bullets, no reasonable person would search for an AK-47 in her purse. Secondly, scope is also concerned with the intrusiveness of the search. No reasonable person would strip search a student to find a missing three dollars. A strip search, however, may be appropriate under circumstances which include drugs or weapons. Remember: More intrusive searches require more serious reasons for the search.

Conversely, school officials, though not obligated to obtain a warrant or meet the law enforcement "probable cause" standard, may be liable for violating students' constitutional rights if they:

- knew or should have known that their actions violated students' rights, or
- acted with malicious intent to deprive students of their rights.

Other factors (not mentioned in *T.L.O.*) to consider when conducting a

3. Joseph R. McKinney, *The Fourth Amendment and the Public Schools: Reasonable Suspicion in the 1990s*, 91 Educ. L. Rep. 455, 462 (1994).

search include:

- the student's age;
- the student's history and school record;
- the prevalence and seriousness of the problem in the school;
- the exigency requiring the search without delay;
- the school official's prior experience with the student; and
- the probative value and reliability of the information used as a justification for the search.[4]

School officials should be familiar with federal case law, state case law and state statutes. Familiarity with the federal standard announced in *T.L.O.* is not enough, because states have the right to grant greater rights than does the federal constitution. For example, even though the *T.L.O.* court declared that the standard to conduct a search is "reasonable suspicion," a state could decide to grant its students greater rights and make "probable cause" the search standard. In his concurring opinion in *State v. Lund*,[5] Judge Pollock of the New Jersey Supreme Court clarified the relationship between the federal and state constitutions when he said:

> The United State Supreme Court, charged as it is with establishing a basic level of protection for the entire nation, often is obliged to establish a lowest common denominator of such protection. The federalist system contemplates that state courts may grant greater protection to fundamental rights than is accorded under the federal constitution. When a state supreme court grants such protection, it does no more than fulfill its obligation to uphold its own constitution.[6]

States cannot decide to give fewer rights than are granted in the U.S. Constitution. For example, a state could not decide to allow searches under all circumstances. No matter the situation, "reasonable suspicion" is the minimal standard to be followed in conducting a search at school.

The Oregon Court of Appeals conducted a twofold analysis in a recent school search case.[7] Although the search was valid according to the

4. 2 James Rapp, *Education Law* (MB May 1994) §9.04[5][a].
5. 119 N.J. 35, 573 A.2d 1376 (1990).
6. *Id.* at 52-3, 573 A.2d 1376.
7. *State ex rel. Juvenile Dept. of Washington County v. DuBois*, 110 Or. App. 314, 821 P.2d 1124 (Or. Ct. App. 1991).

Fourth Amendment of the U.S. Constitution, the issue remained whether or not the search conducted at school was legal under the Oregon Constitution, which generally requires a search warrant and probable cause. The court held that the school had probable cause to conduct the search and met both the federal and Oregon state constitutional standards.

Recent court cases

Post-*T.L.O.* opinions have followed a common-sense approach to upholding or denying the legality of student searches. School administrators, teachers and security guards who find themselves in the position of conducting a student search should, above all, use good judgment and not search a student's belongings or person without meeting the "reasonable suspicion" standard. A few recent cases, similar in circumstance to the *T.L.O.* scenario, provide further illustration.

- In *Martinez v. Sch. Dist. No. 60*,[8] the Colorado Court of Appeals upheld the actions of a dance monitor who, upon seeing some students who were noticeably under the influence of alcohol, took them to a private office where he asked each of them to blow on his face.
- The New York Supreme Court, Appellate Division, upheld a search that was based upon an unusual thud produced when Gregory M. tossed his bag onto a metal cabinet. The court, in *Matter of Gregory M.*,[9] held that the security guard's response to the thud — rubbing his hand along the bag to feel for a gun — was "reasonable in inception."
- *State v. Moore*,[10] decided by the New Jersey Superior Court, Appellate Division, illustrates the aspect of reasonableness "under all the circumstances," which is the basis for both *T.L.O.* test prongs. The lower court had granted the student's motion to suppress evidence — drugs that were found during a search of his book bag. The appellate court upheld the search as reasonable in inception based on the following facts: a specific student reported to a guidance counselor that the defendant possessed a dangerous controlled substance, and the administrator knew that the defendant had previously been disciplined for possession of a dangerous controlled substance. This evidence was enough to satisfy the first prong of *T.L.O.*

8. 852 P.2d 1275 (Colo. Ct. App. 1992).
9. 184 A.D.2d 252, 585 N.Y.S.2d 193 (N.Y. App. Div. 1992), *appeal granted,* 81 N.Y.2d 708, 597 N.Y.S.2d 938, 613 N.E.2d 970 (1993), *aff'd*, 82 N.Y.2d 588, 606 N.Y.S.2d 579, 627 N.E.2d 500 (1993).
10. 254 N.J. Super. 295, 603 A.2d 513 (N.J. Super. Ct. App. Div. 1992).

School administrators should record every "fact"[11] that could be assessed by a court in determining whether or not the "reasonable in inception" requirement has been met. Information that comes from a tip should also be questioned. Questions to ask include:[12]

- Has the school official received reliable information from the tipster in the past?
- How did the tipster receive the information — through actual observation or from secondhand information?
- What is the relationship between the tipster and the accused student?

It is also important to remember that a search that might be reasonable in scope for one situation will not be appropriate under different circumstances. In *Coronado v. State*,[13] the Texas Criminal Appeals Court held that a search of Coronado's car, under the circumstances, was unreasonable. A week before the search in question, an assistant principal received information that Coronado had attempted to sell drugs to another student. Coronado was searched, but no drugs were found. The search in question occurred a week later when Coronado attempted to leave school. The assistant principal believed that Coronado was about to skip school. On that basis, he conducted a pat-down search as well as a locker search and a search of Coronado's car. The court held that a pat-down search for someone suspected of skipping school is reasonable in scope but that it is not reasonable in scope to search the person's locker or car. In essence, the court said that the earlier suspicion about drug sales was a separate incident and that the basis for the search in question was simply a suspicion that the student was skipping school. Thus, the search of Coronado's vehicle was considered excessive. The scope of the search must be directly related to the basis for that particular search.

State courts have fairly consistently followed the basic *T.L.O.* analysis. *In re Devon T.*[14] was a Maryland case in which a juvenile was adjudicated delinquent for possession of heroin with intent to distribute. The

11. This might include smells, behavior, physical appearance of the person searched, the location of the person during the time in question, etc.
12. John S. Aldridge & John A. Wooley, *Legal Guidelines for Permissible Student Searches in the Public Schools* at 50 (Schools Against Substance Abuse, Southwest Texas State University 1990).
13. 835 S.W.2d 636 (Tex. Crim. App. 1992), *rev'g* 806 S.W.2d 302 (Tex. Ct. App. 1991).
14. 85 Md. App. 674, 584 A.2d 1287 (Md. Ct. Spec. App. 1991).

opinion considered several issues and only briefly mentioned the search itself, which was conducted by a school security guard in the presence of the assistant principal. The court concluded that the guard had "abundant articulable suspicion" and upheld the search.[15]

The nature of the contraband

James Rapp, education law specialist, contends that school search cases are handled by the courts based on the nature of the contraband involved.[16] Narcotics are suspected in the bulk of school searches. Evidence of widespread drug abuse is important to show in assessing the reasonableness of a search. Concealed weapons also challenge the school administrator, and the need to search for them is widely appreciated by the courts. On the other hand, searching for stolen property usually requires a reliable report that something is missing and not just a report that someone had the opportunity to steal.[17] Searches for missing money have also been upheld, but Rapp emphasizes that, where the amount of money is small, a search will probably not be considered reasonable unless special concern over the loss is apparent.[18]

Student consent

The Fourth Amendment is not violated if a student consents to a search. Once a student consents to a search, the issue then becomes whether the consent was voluntary or the result of coercion. The consent cannot be the result of duress or coercion, express or implied, or any other form of undue influence. Students should be asked. Do not assume that a refusal to consent is evidence of wrongdoing. Parents should also be contacted. If the reasonable suspicion standard cannot be met and consent is not obtained, do not search. If the reasonable suspicion standard is met and the person will not consent to the search, proceed with the search. Consent to a search is not a requirement. It is simply good insurance.

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15. *Berry v. State* is similar to *In re Devon T.* The court spent almost no time analyzing the search. When it was considered, the *T.L.O.* analysis was followed and a search of the defendant's jacket for marijuana was upheld as reasonable.
16. 2 Rapp, *supra,* at § 9.04[8].
17. *Id.* at § 9.04[8][d].
18. *Id.* at § 9.04[8][e]. Rapp uses the illustration that class money was missing and student concern over it was apparent.

Written consent is helpful. In *Desilets on Behalf of Desilets v. Clearview Bd. of Educ.*,[19] the New Jersey Superior Court, Appellate Division, considered a case in which junior high students' parents were required to sign a search permission slip before their student went on a voluntary, recreational field trip to a picnic and campground. The permission slip contained a statement that hand luggage would be searched. Brien Desilet's mother read the search notice and signed the document. On the day of the trip, Brien's gym bag and food cooler were searched, along with the hand luggage of every other student. Nothing inappropriate was found. Students' persons and garments were not searched. Brien's parents sued the school board, superintendent and principal. The court focused on the fact that the hand luggage of all who went on the field trip was searched. No stigma was attached to the search, and anxiety was eliminated by the prior warning. The court noted that the search was conducted only if the student chose to bring hand luggage and, even then, the student could remove potentially embarrassing items. The court also rejected the notion that a district must show that the searches were a response to a large amount of contraband being taken on the field trips. The Desilets argued that, from 1978 to 1991, the policy had only turned up contraband in six instances. So few instances demonstrated that the need was not so great that it justified searches without individualized or particularized suspicion. The court rejected this reasoning on the basis that one of the prime purposes of a search is deterrence.

Imminent danger

Some administrators and security officers are hesitant to search a student even when they sense that they and others may be in imminent danger. This hesitation may be deadly. *Matter of Kevin P.*[20] is a case where a security officer at a Brooklyn high school observed Kevin P. entering the school in an area that was "off limits." The officer did not recognize Kevin P. as a student and requested that he produce a school identification card. When Kevin P. was unable to do so, the officer took him by the elbow in order to guide him toward the security office. The officer's hand made contact with an object which he believed to be a gun in Kevin P.'s waistband. The court concluded that the officer had every right to conduct the frisk that recovered a revolver.

19. 265 N.J. Super. 370, 627 A.2d 667 (N.J. Super. Ct. App. Div. 1993).
20. 186 A.D.2d 199, 587 N.Y.S.2d 730 (N.Y. App. Div. 1992).

It is possible to analyze *Matter of Kevin P.* using *T.L.O.*, but the court did not do this. It cited cases which referred to a typical stop-and-frisk scenario for law enforcement officers. Even officers who normally must have probable cause and a warrant to conduct a search can do a limited search without either of these under certain circumstances.

In *Terry v. Ohio*,[21] the United States Supreme Court held that where a reasonably prudent officer is warranted in believing that his safety or that of others is endangered, the officer may make a reasonable search for weapons if the person is believed to be armed and dangerous. Absolute certainty that a person is armed is not required, and the search can only be to ascertain the presence of weapons. Where there is a reasonable basis for believing that a person is carrying a weapon, administrators should not hesitate for a moment to search the potentially armed person. Even law enforcement officers who work the streets and are answerable to a higher search standard may conduct a limited search, short of probable cause, if they have reasonable grounds to believe that a person is armed and dangerous.

Illegal searches

Under no circumstances should school officials be careless or capricious in conducting student searches. School search policies must be closely followed. Evidence obtained through an illegal search will be suppressed. The Florida District Court of Appeals[22] suppressed the evidence of marijuana, using the same standard as the first requirement of *T.L.O.*[23] A teacher saw two students in an area that was allegedly "off limits," although there was no sign posted. There was nothing in writing stating that the area was "off limits," and this was not general knowledge among the student body. The teacher said that the two students' behavior was "suspicious" and that they seemed to be exchanging something. The teacher admitted that all he saw in one student's hand was an unlit cigarette. He could not even testify which student was holding it. He did not see or smell marijuana. Although the school's policy was not to

21. 392 U.S. 1 (1968).
22. *T.A. O'B. v. State*, 459 So. 2d 1106, 9 Fla. L. Weekly 2364 (Fla. Dist. Ct. App. 1984).
23. Even though this case preceded *T.L.O.*, the standard in Florida at that time was reasonable suspicion.

search for cigarettes, only to confiscate cigarettes if they were seen, the student was subjected to a pat-down search along with a search of his wallet. The teacher could not articulate what school rule or law he thought was being violated, nor could he point to any facts that would make a reasonable person believe that a search of the student's wallet would yield marijuana. A search is not justified because contraband is ultimately found.

Although state laws vary, school officials generally possess a good faith immunity from liability for actions taken while fulfilling their employment responsibilities. But damages against schools and school employees[24] have been awarded for unconstitutional searches — a violation of a person's civil rights. A school official can also be criminally prosecuted if the violation is willful.[25] The Fourth Amendment applies to all searches and seizures by school officials and is not limited to searches that lead to criminal proceedings.[26] A school official should never decide to search now and worry about the consequences later.

T.L.O. answered many questions for school officials, but it left just as many unanswered. For example, *T.L.O.* dealt with the legality of a search of a student's purse, but what about a student's desk, locker, car or body?

Locker searches

The key to legally conducting locker searches is found in both state law and school policy. Does the state or the school give exclusive possession and use of the locker to the student? Does the state or the school assert that the locker is school property and will be treated as such? For ex-

24. School officials can also be required to pay punitive damages if they violate a student's Fourth Amendment rights with deliberate indifference or reckless disregard.
25. 18 U.S.C. § 242 provides:
    > Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ... shall be fined not more than $1,000 or imprisoned not more than one year, or both ...
26. *See* Donald L. Beci, *School Violence: Protecting Our Children and the Fourth Amendment*, 41 Cath. U. L. Rev. 817, 825-6 (1992).

ample, does the school have regulations stating that lockers are school property? Do the regulations specify what can and cannot be kept in lockers? Do the regulations specify that, for health and safety reasons, lockers will be periodically searched for contraband? Does the school keep a master key or a record of the combinations of each lock? Does the school actually perform spot checks for compliance with the school policy? Does the school ask a student to sign a search consent form before using the locker?

Each of these questions relates to the Fourth Amendment "expectation of privacy" issue. Students have the right to be free from unreasonable searches and seizures. But how great can students' expectation of privacy be for school property that they are merely given permission to use? State laws vary on this question. Most adhere to the reasonableness standard that *T.L.O.* applied to a student's purse. But, even in these states, schools can heighten or lower students' expectation of privacy by how the locker policy is managed. If the school treats the lockers as if they were student property, then students will have a high expectation of privacy. Particularized facts would be required in meeting the reasonable suspicion standard and conducting a search. Custodial searches for health and safety reasons would be a violation of students' right of privacy.

S.C. v. State[27] illustrates a typical case involving locker searches. S.C. was adjudicated delinquent for keeping two guns in his school locker. The Mississippi Supreme Court held that a student in Mississippi has a reasonable expectation of privacy in his or her school locker. The court, however, also held that the standard for conducting a locker search is the reasonableness standard of *T.L.O.* The court found that the school district had met the standard and that the search of S.C.'s locker was reasonable.

The Wisconsin Supreme Court recently held that a student had *no* expectation of privacy in his locker. *In Interest of Isiah B.*[28] considered whether or not the random search of Isiah B.'s locker, which produced a gun and a bag of cocaine, was a violation of his Fourth Amendment

27. 583 So. 2d 188 (Miss. 1991).
28. 176 Wis. 2d 639, 500 N.W.2d 637 (1993), *cert. denied, Isiah B. v. Wisconsin*, 126 L. Ed. 2d 186, 114 S. Ct. 231, 62 U.S.L.W. 3250 (1993).

rights. The key evidence for the court was the school policy. The Milwaukee Public School System has a written policy retaining ownership and possessory control of school lockers, and notice of the locker policy is given to students. The policy states:

> School lockers are the property of Milwaukee Public Schools. At no time does the Milwaukee school district relinquish its exclusive control of lockers provided for the convenience of students. Periodic general inspections of lockers may be conducted by school authorities for any reason at any time, without notice, without student consent, and without a search warrant.

The court also emphasized that the school district took steps to reinforce the policy. Parents were apprised of the policy. The school had passkeys for the lockers, and students were prohibited from putting private locks on their lockers.

One fascinating part of the *Isiah B.* opinion is that, if schools are not proactive with a locker policy, students do have an expectation of privacy in their lockers. Thus, in Wisconsin, a student has no Fourth Amendment rights concerning a locker if the school takes the appropriate steps. If the school does not have a written policy regarding locker ownership, the Fourth Amendment applies.

Although this is not the law in most states, the practical implications are the same. If the school district asserts its custodial interest, expectations of privacy for students either do not exist (as in Wisconsin) or are lowered. There appears to be a presumption that schools grant students greater rights if the schools do nothing. Tennessee addresses this issue by requiring that "[a] notice shall be posted in the school that lockers and other storage areas are school property and are subject to search for drugs, drug paraphernalia, dangerous weapons or any property which is not properly in the possession of the student."[29]

It is also true that a state can give a student a greater expectation of privacy in a locker by requiring school officials to meet a probable cause standard before conducting a search. In *Com. v. Snyder*,[30] the Massachusetts Supreme Judicial Court found that a search of a student's locker

29. Tenn. Code Ann. § 49-6-4204 (1955-1994).
30. 413 Mass. 521, 597 N.E.2d 1363 (Mass. 1992).

that yielded three bags of marijuana was reasonable and had met the standard required by the U.S. Constitution. The court stated, however, that it was not clear whether or not the Massachusetts constitution required probable cause to conduct a locker search. Thus, this could have been a situation where the search was reasonable under the U.S. Constitution and unreasonable under the state constitution. The court did a sidestep and held that the school had actually met the probable cause standard and, thus, the search was reasonable under either federal or state law. This case illustrates the importance of knowing state law. One cannot rely exclusively on compliance with *T.L.O.*

Vehicle searches

Vehicle searches differ from locker searches since vehicles are not school property. Schools must adhere to the *T.L.O.* standard before conducting a search of student vehicles. In *State v. Slattery*,[31] the Washington Court of Appeals heard a case where a student's car was searched after the school's vice principal received information that the defendant was selling marijuana in the school parking lot. The administrator searched Slattery and found $230 in cash in small bills and a piece of paper with a telephone pager number on it. The administrator called security. After searching and finding nothing in Slattery's locker, security searched his car. The security officer found a pager and a notebook that had names with dollar amounts written next to the names. The trunk of the car was then opened, and a locked briefcase was found. Officials pried open the briefcase and found 80.2 grams of marijuana. Slattery conceded that it may have been reasonable to search him and his locker, but not his car or the locked briefcase. The court did a thorough analysis of the factors to be used in establishing reasonable grounds to conduct a search. One factor was the exigency to make a search without delay. After a consideration of all the factors, the court held that it was logical for the school to immediately search Slattery's car and briefcase. The search was not unreasonable in scope.

Although students' vehicles are not school property, they are frequently parked on school property. This creates an opportunity for the school to consider making parking on campus a privilege and not a right. Students

31. 56 Wash. App. 820, 787 P.2d 932 (Wash. Ct. App. 1990), *reh'g denied*, 114 Wash. 2d 1015, 791 P.2d 534 (1990).

should be required to obtain a parking pass before parking on school property. The pass should include a search consent. Under these circumstances, reasonable suspicion would not even be required since consent to the search has already been given. Without prior consent, the *T.L.O.* standard should be followed for cars parked on or adjacent to the campus. And, if a search is required, the school should take the appropriate steps to make sure that damage to the car is not incurred during the search.

Federal and state school zone statutes need to be considered in developing a vehicle search policy. The Federal Drug-Free School Zone[32] and Gun-Free School Zone[33] statutes create a school zone of 1,000 feet around school property. Enhanced penalties exist for drug and firearm violations occurring within the zone. State laws also create school zones in which violators can be given additional penalties in state court. Although these laws create drug-free and gun-free school zones, these zones are not considered to be school property. Vehicle searches conducted by school administrators should be confined to vehicles parked on school property. Searches of vehicles parked off school property, though within a school zone, should be left to law enforcement.

Strip searches

The ultimate expectation of privacy is that one's body will not be searched. Thus, strip searches are looked upon with greater scrutiny by the courts than the search of a person's purse, locker or car. Although the standard for conducting a strip search is *T.L.O.*, school personnel would be wise to have ample evidence and only strip search when the contraband in question is dangerous drugs or weapons. A strip search is considered so intrusive that the practical reality is that many courts will require a standard of evidence much nearer to probable cause than reasonable suspicion.[34]

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32. 21 U.S.C. § 860.
33. 18 U.S.C. § 922(q). *See also* §§ 921, 924.
34. Even though *T.L.O.* refrained from ruling on the issue of strip searches, most jurisdictions follow the *T.L.O.* analysis. But it should be noted that in *M.M. v. Anker*, 607 F.2d 588, 589 (2d Cir. 1979), a case which predates *T.L.O.*, the Second Circuit Court of Appeals upheld a district court ruling which said that, although reasonable suspicion is the standard for school searches, probable cause will be required when school officials conduct a strip search.

A "strip search," though an umbrella term, generally refers to an inspection of a naked individual, without any scrutiny of the subject's body cavities. A "visual body cavity search" extends to visual inspection of the anal and genital areas. A "manual body cavity search" includes some degree of touching or probing of body cavities.[35] Although strip searches may occasionally be necessary, school officials should never conduct a body cavity search. Law enforcement should be contacted if administrators feel that circumstances might require such a highly intrusive search.

Strip searches run the risk of failing prong two of the *T.L.O.* analysis. A search that is reasonable in scope must be one that is not excessively intrusive in light of the age or sex of the student or the nature of the infraction. A search of a nude student by an administrator or teacher of the opposite sex would violate this standard, as would a highly intrusive search in response to a minor infraction.

A good illustration of an illegal strip search is found in *State ex rel. Galford v. Mark Anthony B.*[36] Mark Anthony B. was a 14-year-old, eighth-grade student when teacher Cathy Galford discovered that $100 in cash was missing from her purse (which she had placed under her desk during a period of the school day when her classroom was empty). Galford reported the theft, and the incident was investigated by school social worker John Snyder. Snyder learned that Mark Anthony B. had been assigned to help the janitor with minor duties such as emptying trash cans and pencil sharpeners. It was likely that Mark Anthony B. had been in Galford's classroom alone. Snyder called Mark Anthony B. into the office, where he admitted being in the classroom by himself but denied taking the money. Snyder also asked Mark Anthony B. to pull out his pockets and roll down his socks, to display all the areas of his outer clothing where money might have been concealed. Snyder reported to the principal that he found nothing and concluded that the money, if on Mark Anthony B., could only be in his underwear. The principal took Mark Anthony B. into the boy's bathroom and asked him to take off his pants. Mark Anthony B. lowered them to his knees. The principal then asked Mark Anthony B. to pull his underwear open in the front and back. The missing $100 was in the back of the underwear. The court set

35. *See Security & Law Enforcement Employees v. Carey*, 737 F.2d 187, 192 (2d Cir. 1984).
36. 189 W. Va. 538, 433 S.E.2d 41 (W.Va. 1993).

forth the *T.L.O.* standard and held that, in the absence of exigent circumstances that necessitate an immediate search in order to ensure the safety of other students (e.g., when the presence of weapons or drugs are suspected), the warrantless strip search of a student by a school official is presumed to be "excessively intrusive" and thus unreasonable in scope.

In a Seventh Circuit Court of Appeals case, *Cornfield by Lewis v. Consolidated High Sch. Dist. No. 230*,[37] a 16-year-old student appeared "too well endowed." A teacher, teacher's aide and the school dean observed the unusual bulge in Cornfield's crotch and believed him to be concealing drugs in his crotch area. After being taken to the dean's office, Cornfield grew agitated and began yelling obscenities after being confronted. Cornfield's mother was telephoned, but she refused to consent to a search. Believing a pat-down search to be excessively intrusive and ineffective at detecting drugs, Cornfield was escorted to the boy's locker room. After the door was locked, Cornfield removed his street clothes and put on a gym uniform. His teacher and the dean, both males, observed his naked body and physically inspected his clothes. They did not perform a body cavity search. No contraband or evidence of drugs was found. The district court dismissed the case Cornfield brought against the teacher and the dean, and the Seventh Circuit upheld the dismissal. The court emphasized that relatively recent drug-related incidents at the school as well as personal observations of the unusual bulge in the student's crotch area created reasonable suspicion. The circumstances made the strip search reasonable in scope. Although students have substantial privacy interests, a flexible "reasonableness" standard allows the school administrator or court to weigh the interest of the school in maintaining order against those personal privacy interests.

Some strip searches pass constitutional muster. The United States District Court in southern Ohio dismissed a case[38] where a high school student who was strip searched by school administrators sued the school. School officials detected what they believed to be the odor of marijuana emanating from the student's person and observed that the student was acting "sluggish" and "lethargic" in a manner consistent with marijuana

37. 991 F.2d 1316 (7th Cir. 1993).
38. *Widener v. Frye*, 809 F. Supp. 35 (S.D. Ohio 1992) (the defendant's motion for summary judgment was granted), *aff'd without opinion*, 12 F.3d 215 (6th Cir. 1993).

use. The student was removed from the classroom and was asked to remove his jeans only, not his undergarments, and only in the presence of two male security guards. The student was never threatened or touched.

Searches by police officers

According to James Rapp, "[t]he general rule is that when a law enforcement officer instigates, directs, participates, or acquiesces in a search conducted by school officials, the officer must have probable cause for the search, even though the school officials acting alone would be treated as state officials subject to a lesser constitutional standard for conducting searches."[39] This is especially true where school officials are working with the police in conducting a criminal investigation.

There are exceptions to this rule, however, and not all forms of police participation in a school search will be deemed a search by the police. Several circumstances exist in which police may assist the school and the search not be one conducted by the police.[40] For example, police may provide information to the school which leads to a search. In one case, the police were on campus when the subsequent search was conducted, and the court still would not invalidate the search.[41] School officials may also call police to be present when officials conduct a search. The general principle to be followed is that the school must initiate and conduct the search with the police acting only as observers. If the school becomes an agent of the police in conducting a search, the higher probable cause standard will be required.

Searches by school security officers

School security officers, for purposes of this section, are law enforcement officers who work on a school campus.[42] The point of distinction from the preceding section is that these are officers who do not come onto the campus from the outside but regularly work with administrators in creating a safe and secure campus. The issue is: Are school security

39. 2 Rapp, *supra,* at § 9.04[6][b].
40. *Id.*
41. *In re P.E.A.*, 754 P.2d 382 (Colo. 1988).
42. This section will not differentiate those school security officers who wear uniforms from those who do not, those who carry firearms from those who do not, or those who have arrest powers from those who do not.

officers to be treated like police officers who need probable cause and a warrant to conduct a search? Or, since they regularly work with administrators, should these security officers only be held to the reasonable suspicion standard?

Although the majority rule is that they will need probable cause if they are trained police officers, jurisdictions are split on this topic. In *A.J.M. v. State*,[43] the Florida District Court of Appeals held that a school resource officer must have probable cause where he or she directs, participates or acquiesces in a search conducted by school officials. The court reasoned that school resource officers are police officers who, according to state law, must have probable cause to conduct a search. The fact that they happen to work on a school campus is irrelevant.

The California Court of Appeals came to the opposite conclusion. *In re Alexander B.*[44] considered a search of several students by Officer James Beauregard, a school security officer employed by the Los Angeles Unified School District Police Department. Officer Beauregard was a trained law enforcement officer, employed by the school district to work on school campuses. The court stressed that this search was conducted by a law enforcement officer at the explicit request of the dean of students. This was not an occasion in which the school officer was acting as an agent of the police.

Since *T.L.O.* specifically refrained from addressing this issue, school districts should consider state law before determining an appropriate search policy involving school security officers. If there is any doubt about the required evidentiary standard, school security officers should merely assist school officials in conducting a search and not take the lead.

Searches by probation officers

Students who are placed on probation by the court lose many of the protections and privileges enjoyed by their classmates. Under terms of their probation, students may have to agree to searches for virtually any reason.

43. 617 So. 2d 1137, 18 Fla. L. Weekly 1241 (Fla. Dist. Ct. App. 1993).
44. 220 Cal. App. 3d 1572, 270 Cal. Rptr. 342 (Cal. Ct. App. 1990).

A sample probation "search term" might read as follows: You shall now consent to a search at any time, by a law enforcement officer or your probation officer, of your person, possessions, vehicle and area where you sleep.

Many terms of probation also assert that probationers are responsible for attending school, making progress toward graduation, and behaving themselves. In the best possible scenario, probation officers will establish contact with school administrators to remain aware of a probationer's progress and behavior. If school administrators know that a student is on probation but have not been contacted by the probation officer, administrators should call the officer personally to make this valuable connection.

If school administrators suspect a probationer of violating school rules and believe a search is needed, they should, if possible, call the student's probation officer. School administrators should allow the probation officer, who is trained to handle potentially violent situations and has sweeping search powers, to conduct the needed search. If school officials determine to search a student who is on probation, they must follow the law as it is applied to any other student. A search consent in the probationer's terms of probation does not apply to the school officials.

Searches using drug-sniffing dogs

The United State Supreme Court has refused to hear several major federal circuit court cases on the use of drug-sniffing dogs to conduct searches. School administrators should check with the school's counsel and decide what approach is appropriate in their jurisdiction.

In *Doe v. Renfrow*,[45] the Seventh Circuit Court of Appeals held that the sniffing of a student by a dog did not constitute a search. Approximately 2,700 junior and senior high school students were made to sit in their classrooms while police officers with trained dogs went up and down the rows. If a dog "alerted"[46] to a student, the student was further searched. One girl was strip searched after a dog "alerted." She sued the district.

45. 631 F.2d 91 (7th Cir. 1980), *reh'g denied*, 635 F.2d 582 (7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1981).
46. Pointed in a manner that indicated the presence of contraband.

The court held that the sniff was not a search and that the further search of a student's possessions based on a dog's "alert" was reasonable. But even this court held that the strip search was unreasonable and constituted a serious invasion of the student's rights.

Two Fifth Circuit Court of Appeals cases take a more cautious approach. In *Horton v. Goose Creek Indep. Sch. Dist.*,[47] the court distinguished the sniffing of persons, which it considered a search, and the sniffing of lockers and cars, which it did not consider a search. Lockers and cars are in plain view, so they can be sniffed under any circumstances.[48] The dogs must be proven to be reliable if the sniff of those items becomes the basis for a search. On the other hand, a *T.L.O.* approach is taken to the sniffing of persons. The sniff of a person must be reasonable and based on individual suspicion. The "reasonable in inception" prong of *T.L.O.* must be met before subjecting the person to a sniff. Since the sniff itself is a search, an administrator cannot make a search and then use the evidence found during the search as the basis for justifying the search.[49]

Another case that arose in the Fifth Circuit, *Jones v. Latexo Indep. Sch. Dist.*,[50] goes even further than *Horton* in holding that the sniffing of vehicles is also a search. The *Jones* court concluded that the sniffing of all of the students' cars was unreasonable. Since the students had no access to their cars during the school day, the school's interest in the sniffing of cars was minimal and would require the school to follow a *T.L.O.* analysis before conducting a search.

In using dogs to conduct sniff "searches," the following questions should be asked and guidelines followed:

- Is a sniff itself considered to be a search in this jurisdiction? If it is, *T.L.O.*'s Fourth Amendment principles apply.
- What sniff searches, if any, in this jurisdiction can be conducted with-

47. 690 F.2d 470 (5th Cir. 1982), *reh'g denied*, 693 F.2d 524 (5th Cir. 1982), *cert. denied, Goose Creek. Consol. Indep. Sch. Dist. v. Horton*, 463 U.S. 1207 (1983).
48. *See also Jennings v. Joshua Indep. Sch. Dist.*, 877 F.2d 313 (5th Cir. 1989), *reh'g, en banc, denied*, 952 F.2d 402 (5th Cir. 1992).
49. An interesting case where the Illinois Court of Appeals itself does this is *People v. Taylor*, 253 Ill. App. 3d 768, 625 N.E.2d 785 (Ill. App. Ct. 1993), *appeal denied*, 155 Ill. 2d 574, 198 Ill. Dec. 551, 633 N.E.2d 13 (1994).
50. 499 F. Supp. 223 (E.D. Tex. 1980).

out creating a Fourth Amendment issue? Searches of persons, student possessions, lockers or cars?
- A dog's alert is never enough to warrant a student strip search.
- Reliability of dogs must be well-established before use in schools. Test results on individual dogs will be required if the case proceeds to court.

Searches using metal detectors

There is no question about the legality of using a metal scanning device if the *T.L.O.* standard has been met. If an administrator has reasonable suspicion to conduct a search, a scanner should viewed as a tool to conduct the search. In fact, metal detectors can help a school official to meet the *T.L.O.* requirement of being reasonable in scope. The use of these devices in searching for metal objects is certainly less intrusive than, for example, a pat-down search.

The controversial aspect of these devices is that they are frequently used to conduct "suspicionless" searches. Some schools require students to submit to a metal detector search to enter the school. All students or a randomly selected number of students are chosen to be searched. The search is not based on evidence about an individual but on the group as a whole. The *T.L.O.* court explicitly refused to state that individual suspicion is required to conduct a search on a school campus even though the *T.L.O.* case was one involving individualized suspicion. Thus, courts have asked, Can a search be reasonable under all the circumstances if there is evidence that weapons are coming into the school, even if that evidence does not point to an individual as the culprit?

The trend seems clear. Random or blanket searches through the use of metal detectors are acceptable as long as there is no evidence that the school used the search as a ruse to go after certain individuals or to target certain ethnic groups. As long as the school does not violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, the search will probably be upheld.

In *People v. Dukes*[51] the Criminal Court for the City of New York held that the search of a student's bag that uncovered a switchblade knife was reasonable. The court considered this to be an administrative search. The

51. 151 Misc. 2d 295, 580 N.Y.S.2d 850 (N.Y. Crim. Ct. 1992).

theory is that any member of the group or class may be the agent who could cause a dangerous event to take place. An administrative search is upheld as reasonable when the intrusion involved in the search is no greater than necessary to satisfy the governmental interest underlying the need for the search. In other words, in determining whether the search is reasonable, the courts balance the degree of the intrusion, including the discretion given to the person conducting the search, against the severity of the danger posed. Two common examples of administrative searches are the use of a magnetometer or scanning device at a public building, such as a court or library, and the highway checkpoint for drunk drivers.

In a California Attorney General Opinion on the use of metal detectors in schools,[52] the attorney general concluded that under at least two separate legal theories, schools may use metal detectors to deter the presence of weapons. According to the opinion, metal detector searches are warranted under the reasonableness standard of *T.L.O.* as well as the administrative search doctrine. Under either theory, appropriate procedures may be employed that advance the substantial government issues at stake and minimize the degree of intrusion into student privacy issues. The opinion concluded that individualized suspicion is not a prerequisite under either theory.

Even though the California Attorney General Opinion concludes that the reasonable application of metal detector policies does not violate the Fourth Amendment *as a matter of law*, local school officials are the appropriate authorities to decide on the use of metal detectors *as a matter of policy*. Local officials must decide whether to use metal detectors based on the unique circumstances in their school.

The attorney general recommends that certain procedures be followed if a school decides to use metal detectors.[53] The first procedure is a finding of necessity. School officials should be able to demonstrate to a court why a metal detector deterrence system is necessary in their school.

The second recommended procedure is the adoption of an administrative plan by school policymakers to govern the application of a metal detector search by local school officials. A uniform, established procedure will

52. 75 Op. Att'y Gen. 155 (1992).
53. *Id.* See the synopsis of the opinion prepared by the California Attorney General's office.

minimize the opportunity for school officials to exercise arbitrary discretion. Even random searches may be permissible as long as neutral criteria for conducting the search are established.

The third recommendation includes a series of procedures that school districts may employ to safeguard the minimal intrusion of the privacy of students during a metal detector search. These include:

- giving advance notice of the search;
- requesting all students to empty their pockets and belongings of all metal objects before the search;
- requesting a second walk-through when the metal detector is activated;
- using a hand-held magnetometer, if available, to focus on and discover the location of the metal source if a second activation results;
- expanding the scope of the search if the activation is not eliminated or explained. If no less restrictive alternatives remain available, a limited pat-down might then be necessary;
- asking the student to proceed to a private area for any greater subsequent intrusion,
- conducting any expanded search, such as a frisk or a request to open purses or bookbags, by school officials of the same sex as the students searched.

Contraband that is in plain view

The plain-view doctrine states that a person gives up the expectation of privacy with that which is left out in plain view. If a school administrator walks by a student's car which is parked in the school parking lot and sees a gun lying on the seat, a search has not been conducted. No Fourth Amendment issue arises until the car is opened and the gun is seized. In this case, the reasonableness standard of *T.L.O.* was met;. the seizure of the gun became reasonable in its inception when the administrator saw the gun.

In *Horton v. California*,[54] the U.S. Supreme Court held that inadvertence is not a necessary condition of a legitimate plain-view seizure. A school official does not violate a student's Fourth Amendment rights by

54. 496 U.S. 128 (1990).

intentionally looking in the window of a car or into an open locker to see what is in plain view. The basic requirements of a plain-view seizure include:

- The school official must have a right to be in the place from which the object is in plain view. In the above example, the school administrator was not violating the student's Fourth Amendment rights by being in the parking lot.
- The object's incriminating character must be "immediately apparent." A gun on the seat of a student's car would naturally incriminate the owner; a bookbag would not.
- The person who seizes the contraband must have a lawful right of access to the object itself. For example, a fellow student does not have this right; a school administrator does.

General observation of locations and student possessions is an important school safety tool. Although students will usually hide contraband, sometimes they will inadvertently leave something out in the open. School administrators should seize contraband that is in plain view. If the contraband itself is not visible, the guidelines of *T.L.O.* must be followed.

Drug testing

While urinalysis is the most controversial physical examination or test sometimes utilized by schools, others do exist. Involuntary blood tests, administration of a breathalyzer and the use of powders to determine theft are also available. Courts are hesitant to encourage use of these types of tests in a school setting.[55] Courts also tend to find urine tests more intrusive than the use of a breathalyzer.[56] This should be considered in meeting the "reasonable in scope" standard of *T.L.O.*

Courts distinguish between voluntary and mandatory drug testing. Since voluntary tests are given with student consent, no Fourth Amendment issues ensue. Courts treat mandatory testing differently than voluntary testing, depending on whether the tests are used as a precondition of school enrollment or participation in extracurricular activities. In

55. 2 Rapp, *supra,* at § 9.04[7][j][i].
56. *Id.* at § 9.04[7][j][ii].

Odenheim v. Carlstadt-East Rutherford Regional Sch. Dist.,[57] the Superior Court of New Jersey struck down a school district policy that required all students enrolled in the district to undergo a urine test for medical purposes. A urine test is considered to be a search, and *T.L.O.* rules out this procedure. It is not reasonable under all the circumstances. The court called this policy "an attempt to control student discipline under the guise of a medical procedure."

Although courts are split on drug testing as a precondition for participation in extracurricular activities,[58] many approve of drug testing simply because these activities are voluntary. State law mandates school attendance; it does not require a student to play basketball or be a cheerleader. The Ninth Circuit Court of Appeals recently overturned a urinalysis program, stating that "Children, students, do not have to surrender their right to privacy in order to secure their right to participate in athletics."[59]

Surveillance as a search tool

Surveillance can be conducted by direct observation or through the use of cameras, wiretapping or the recording of conversations. Cameras are being used more frequently to monitor areas of the campus and/or activity on school buses. Only a few cases consider the larger issue of surveillance.[60] It should be remembered that both a camera and the naked eye are only tools. The question still remains, Has the *T.L.O.* standard been met?

The argument can be made that surveillance is not the same as a search. For example, if a student has the handle of a gun protruding from his belt, a search is not at stake. The gun was in plain view. It was observed. However, even though no search was conducted for the gun, it was seized. Seizure of the gun requires adherence to *T.L.O.* Therefore, if sur-

57. 211 N.J. Super. 54, 510 A.2d 709 (1985).
58. *Schaill v. Tippecanoe County Sch. Corp.*, 864 F.2d 1309 (7th Cir. 1988) (plan upheld which required all athletes and cheerleaders to sign a random urinalysis consent form); *Brooks v. East Chambers Consol. Indep. Sch. Dist.*, 730 F. Supp. 759 (S.D. Tex. 1989) (random drug testing plan struck down), *aff'd without opinion*, *Brooks v. East Chambers County Sch.*, 930 F.2d 915 (5th Cir. 1991).
59. *Acton v. Vernonia Sch. Dist. 47J*, 23 F.3d 1514 (9th Cir. 1994).
60. *See* 2 Rapp, *supra*, at § 9.04[7][h] and [i].

veillance leads to a seizure of contraband, *T.L.O.* guidelines must be followed. Thus, surveillance should not be considered unreasonable unless a hidden camera or observer is placed where most people would expect privacy or *T.L.O.* is violated when a seizure actually occurs. Even then, one United States District Court held that it was reasonable to conduct surveillance of a boy's restroom through the use of a two-way mirror.[61] The use of wiretapping or the recording of conversations should be conducted only in accordance with state law.[62]

Policy development and student notice

School administrators should develop written search and seizure policies. The policies should be published and copies given to each student and parent or guardian before the beginning of the school year. A written and published policy will be considered when a court is trying to determine whether or not a search was reasonable. In *Commonwealth v. Carey*,[63] the Supreme Judicial Court of Massachusetts stated that the advance notice of a published policy is critical in determining the reasonableness of a search. A published policy provides the student with an opportunity to limit the effect of the intrusion by not keeping highly personal materials in the locker provided by the school. Notice diminishes the student's expectation of privacy. The Wisconsin Supreme Court held that a school policy in which the school maintains possessory control of the lockers plus notice to students equals no expectation of privacy in a locker.[64]

In *Zamora v. Pomeroy*[65] the Tenth Circuit Court of Appeals upheld the search of a locker that uncovered marijuana. The school district developed a policy based on both state and district board of education written policy that prohibited the sale, possession, transportation or use of marijuana on school premises. The policy had a provision with regard to search of lockers, which said that general searches of school property, including lockers and school buses, could be conducted at any time, with

61. *Stern v. New Haven Community Sch[s]*, 529 F. Supp. 31 (E.D. Mich. 1981).
62. Ivan B. Gluckman and Thomas J. Koerner, Jr., *Recording Conversations in Schools*, 45 Educ. L. Rep. 19 (1988).
63. 407 Mass. 528, 531, 554 N.E.2d 1199, 1202 (1990), citing 4 W.R. LaFave, *Search and Seizure* § 10.11(b) at 177 (2d ed. 1987).
64. *In re Isiah B.*, 176 Wis. 2d at 649, 500 N.W.2d at 641.
65. 639 F.2d 662 (10th Cir. 1981).

or without the presence of students. This policy was contained in the student handbook entitled "Rights, Responsibilities and Limitations of Students" which was sent to each student. The court concluded that the search of Zamora's locker was reasonable partly because the school had a clear policy, Zamora was given a handbook containing the regulations bearing on lockers, and he was aware of the rules. He knew that it was a violation of school policy to have drugs on the premises.

In *Bilbrey v. Brown*,[66] a class action seeking declaratory and injunctive relief was brought on behalf of elementary students. Plaintiffs challenged the constitutionality of the school district's search and seizure policies set forth in the district's "Minimum Standards for Student Conduct and Discipline." They contended that the policies violated plaintiffs' right to privacy protected by the Warrant Clause of the Fourth Amendment. They also contended that the policies were so vague and overly broad as to constitute a denial of plaintiffs' right to due process of law. The United States District Court upheld the policy on the basis that it was specific and not vague if read in its entirety.[67] The court stated, "When viewed as a whole, the standards provide adequate notice of the type of conduct which may subject a student to a search."[68] The court concluded that the Constitution does not require that school rules include a specific catalog of prohibited items so long as their salient characteristics are readily determinable and easily understood.[69]

In re Dumas[70] was a Pennsylvania Superior Court case in which the evidence found in the search of a student's locker was suppressed because the search was not reasonable in inception. The instructive part of the case for our purposes is Judge Kelly's concurring opinion. Judge Kelly stressed that the record did not indicate that the school made any special restrictions with regard to the nature of the items that could be stored in the locker. The school did not notify students that the lockers would be subject to random or periodic inspection or search. The school did not follow a uniform policy or consistent practice regarding locker searches. Indeed, the record indicated that other students in similar circumstances

66. 481 F. Supp. 26 (D. Or. 1979), *rev'd in part, aff'd in part and rem.*, 738 F.2d 1462 (5th Cir. 1984) (the due process analysis of the district court was affirmed).
67. *Id.* at 28.
68. *Id.*
69. *Id.* at 29.
70. 357 Pa. Super. 294, 515 A.2d 984 (1986).

were not subjected to locker searches.[71] The following statement by Judge Kelly is helpful:

> I emphasize that although students may in fact store a variety of personal items in their lockers, they do so by license and not by right. If the student is notified that he or she is provided with a locker which is subject to inspection or search, there would be no reasonable expectation of privacy. A student would then have the choice of using the locker subject to its conditions, or not using it. I find no constitutional entitlement to a private school locker. Hence, I would find no prohibition to prevent the adoption of reasonable restrictions on the use of school lockers.[72]

Judge Kelly concludes by stating that in order for a school to make the transition from a practice of allowing students to maintain the privacy in their lockers to a practice of regular or periodic inspection or search, ample notice must be given of any such limitations. The importance of notice to the students of any change in the policy regarding the privacy of school lockers cannot be overstated.[73]

Searches of nonstudents, parents and visitors[74]

To date, no case law exists on the subject of searching nonstudents on campus. Caution should be shown before deciding to search a nonstudent, including parents and visitors, as this action will likely bring negative publicity to the school. Applicable state laws should be reviewed before developing a district policy regarding nonstudent searches.

Although the standard for conducting a search would most likely be reasonable suspicion, schools should consider several issues before searching nonstudents.

- Does the nonstudent have a right to be there?
- What conditions would warrant a search of a nonstudent?
- What is the state law regarding detention: If someone is trespassing, can school officials detain that person or must he or she be asked to leave? In the absence of a police officer, can a citizen's arrest be made if a person commits a felony on campus?
- If metal detectors are used on campus and adults refuse to pass

71. *Id.* at 298, 515 A.2d at 986.
72. *Id.* at 299, 515 A.2d at 987.
73. *Id.* at 302, 515 A.2d at 988.
74. *See* Beci, *supra,* at 834-6.

through them, is a search warranted?

When someone who is trespassing on campus has been asked to leave and complies, a search is not necessary. If he or she does not leave voluntarily, the appropriate step would be to call the police. If a search is required, then police can take charge and conduct the search according their standards.

Since adults are not required by state law to come to school, they can be asked to consent to a search before entering the building. A visitor's sign-in form could include a search consent. If a visitor refuses to sign the consent, unlike a student, that person can be denied entrance or can choose to turn around and leave. School officials can stop a student who wants to leave, but an adult wanting to leave is a different situation. Check with applicable state laws before detaining an adult.

Many districts are prohibiting the use of school facilities for community groups and activities that are unrelated to school services. This practice is based on the opinion that the more the school is open and available to the public, the more rights are given to the public to be there and remain free from a search.[75]

Many schools post a notice that vehicles driven onto the campus are subject to search. The legal theory behind student locker searches (where the district asserts that lockers will be searched in order to maintain control over school property) does not apply to vehicles driven onto the campus. The best approach is to limit parking on school property. If parking is permitted, however, the school should not rely solely upon a notice of consent before searching a car, but would be wise to have at least reasonable suspicion or probable cause before conducting a search.

Search and seizure checklist[76]

The following checklist, originally published in *Education Law*, outlines a series of questions for evaluating the reasonableness of a school search under the Fourth Amendment. The checklist has been constructed in

75. The basic concept behind this thinking is the open forum doctrine of First Amendment jurisprudence.
76. 2 Rapp, *supra,* at § 9.04[11]. Used by permission.

terms of a search that has already been conducted, but it can be adapted for use with a search that is still in the planning stage. The list is topical in nature and, as such, is appropriate for use by parties on either side of a search question. Since case decisions, as well as state constitutions and statutes, can vary from jurisdiction to jurisdiction, particular care should be taken to ascertain the governing precedents in the jurisdiction of concern.

Gathering the facts

- *Who conducted the search?* School principal or other school administrator; teacher; guidance counselor or school coordinator of discipline; law enforcement officer assigned as school security officer; outside police.
- *Personal background of student who was searched*: Age; sex; grade level; school record and history; prior experience of the person who conducted the search with that student.
- *Nature of the alleged infraction which caused the search*: Violation of criminal laws, such as laws against possession of narcotics; violation of school rules, or policies, such as regulations against smoking.
- *Time and location of the search*: During school hours; on school premises; principal's office or other part of school premises; was student found in area where infractions are known to occur?
- *What type of search was conducted?* Questioning leading to search of pockets and effects; locker search; strip search; drug-sniffing dog search; surveillance by school officials; metal detector; breathalyzer or other technological device.
- *Follow-up search*: Did initial search discover evidence which led to a further search?
- *What was being searched for/what was found?* Narcotics or other controlled substances; concealed weapons; stolen property.
- *What was the basis for conducting the search?* Observation of contraband by school officials; observation by school officials of conduct suggesting the presence of contraband; informant's tip; record of informant for reliability; anonymous telephone call; generally suspicious conduct; being in restricted area without a pass.
- *Purpose of the search*: Maintain educational atmosphere in general; search for contraband on individualized suspicion; what was the exigency requiring search without delay?
- *Extent of any police involvement in the search*: Did a school security officer or outside law enforcement officer conduct or participate in

the search; was the search instigated by law enforcement officers; did school officials act based on information received from law enforcement officers?

- *What, if any, are the district and school board search and seizure policies?* What are the school policies; how are they promulgated to students?
- *With respect to a locker search*: Does the school maintain control over the student's lockers; does the school maintain a master key; are students required to give the combinations of their locks to school officials; does the school conduct regular inspections of the lockers; what, if any, are the school regulations with respect to what may be kept in school lockers?
- *With respect to a pocket search*: Did the school official observe any suspicious bulges in the student's clothing prior to the search; did the student have a reputation, of which the school official was aware, for carrying contraband; was the student requested to surrender outer clothing, such as an overcoat, for search; was the student requested to reveal the contents of a purse or handbag; was the student requested to empty any or all pockets and surrender the contents; did the student comply with or resist such a search request?
- *With respect to a strip search*: Did any other form of search precede the strip search and yield contraband; did school officials request police aid in conducting the strip search; was the search conducted by personnel of the same sex as the student being searched; was the search conducted in privacy; were witnesses present?
- *With respect to searches utilizing drug-sniffing dogs*: Was search conducted on the basis of individualized suspicion or was it a general search of the entire school population; were police involved; were private dog handlers involved; did the dogs sniff the students' persons; did the dogs' noses physically touch the students' persons; did the dogs sniff-search the students' lockers or vehicles; what evidence is there establishing the dogs' record for reliability in detecting drugs; what kind of search was conducted at the school when a dog alerted to the presence of drugs?
- *With respect to confessions*: Under what circumstances was the student being questioned prior to the confession; what was the extent of any police involvement; if there was police involvement, was student read *Miranda*-type warnings prior to confessing?
- *With respect to any informant*: Was the informant known to the school official, or anonymous; if anonymous, did the informant claim

a relationship with the school, such as being the parent of a student; if the identity of the informant was known, did the informant have a record for reliability; had previous information supplied by the informant led to the seizure of contraband?

- *Was the search based on consent*: Did the student give consent prior to the search; was the setting in which the student gave consent coercive; was the student threatened in any way prior to giving consent; did the student at any time withdraw consent?

Analyzing the Fourth Amendment as applied to a school search

- *Applicability of the Fourth Amendment*: The Fourth Amendment applies to school searches.
- *In loco parentis doctrine*[77] *has no effect*: The *in loco parentis* doctrine does not apply to in-school searches; this doctrine does not moderate the applicability of the Fourth Amendment to student searches.
- *Did in fact a search take place?* What was the extent of the intrusion, if any, upon the student's reasonable expectation of privacy?
- *Did the search meet Fourth Amendment standards?* The Fourth Amendment requires that a warrantless search by school officials be reasonable under all the circumstances, although school officials need not show probable cause as a justification for the search.
- *What is the standard for testing the reasonableness of a search?* The standard of reasonableness is a two-prong test: first, was the search justified in its inception; second, was the search permissible in its scope.
- *What factors should be considered in analyzing whether a particular school search was reasonable?* The student's age, sex, history and school record should be considered along with the nature of the infraction, the school officials' reasons for conducting the search and other related factors.
- *Was consent given to the search?* Student consent can have a bearing upon the legality of a search.
- *Does this particular search meet the requirements of the "reasonable suspicion" or "reasonable cause" tests?* Each search must be

77. The doctrine states that the school administrator stands "in the place of a parent" and is charged with a parent's rights, duties and responsibilities toward the student. *See Black's Law Dictionary*. *T.L.O.* discredited this doctrine when applied to searches of students.

compared to prior holdings as to what is or is not reasonable under the Fourth Amendment in the context of a school search.

- *Effect of police involvement in the search*: Where outside police or school security officers either instigate or actively participate in the search, the criminal law standard of probable cause will generally apply.
- *What is the effect of district or school board search and seizure policies?* Such policies can serve to establish a community consensus as to what is a reasonable search and to lower the students' reasonable expectation of privacy.
- *Are there particular rules relating to particular types of searches?* Yes, court decisions have established legal principles concerning school locker searches, searches of pockets and effects, strip searches, searches utilizing drug-sniffing dogs, confessions by students and surveillance conducted by school officials.
- *Does it make any difference what kind of contraband is being searched for?* Yes, the courts have adopted slightly different approaches depending upon whether the contraband sought is narcotics, concealed weapons or stolen property.
- *What is the effect of this search on any subsequent criminal or juvenile proceedings?* If the school search did not meet Fourth Amendment standards of reasonableness, then any contraband confiscated was illegally seized and will not be admissible in criminal or juvenile proceedings, although it may be admissible in school disciplinary hearings.
- *Are school officials liable in civil lawsuits for unconstitutionally conducted school searches?* School officials possess a limited, good faith immunity to civil rights lawsuits but will be liable for damages where that immunity does not apply?

How to conduct a successful search[78]

Once reasonable grounds to conduct a search have been established, some general guidelines should be followed to protect the searcher and ensure that the search is not contested at a later date by either the school board or the courts.

78. Aldridge & Wooley, *supra,* at 53-6. Used by permission.

General

1. Always have an adult witness present from the inception of the search until the "evidence" is properly secured. This will strengthen any case brought against the student and protect the searcher from charges of improper conduct. (Imagine a counterclaim by the student that $50 is missing from a searched locker.)
2. Searches, especially student searches, should be conducted and witnessed by members of the same sex. This will help protect the rights of the student as well as those of the searcher from claims of impropriety.
3. Searches should be conducted in such a way as to cause the least amount of embarrassment to the student. Only the searcher, witness, and student should be present. Never search a student in front of another student.
4. Whenever a search is to take place, the student should be escorted from class to the search location. Stops along the way (restroom, locker) should be avoided. All personal property, including books, jackets, hats, tote bags, and purses, should be brought by the student from the classroom to where the search is to be conducted.

Search of a student

1. Student searches should be conducted in a private area where there will not be interruptions.
2. Have student remove all outer clothing such as a coat, sweater, hat and shoes. Have student remove all objects from pockets. Lay these aside until student is searched.
3. Conduct the search from the side of the student's body working from top to bottom on each side.
4. Check middle of back, inside forearms and thighs.
5. Instead of patting material, crush the cloth in articles of clothing. Flat objects may be easily overlooked by just a pat.
6. Don't stop if contraband is found. Continue until all objects have been investigated.
7. Turn attention to items that had been set aside. Items that could conceal contraband should be taken apart or, in the case of books, thumbed through.
8. Remember that the scope of the search must be reasonably related to the circumstances which justified the search.

Search of a locker

1. A written school policy which states that lockers belong to the school lowers expectations of privacy.
2. Lockers should not be shared by students, since this confuses ownership issues.
3. The student should be present when a locker is searched but not allowed near the locker.
4. Witnesses should arrange themselves so they can see both the locker search and the student's face. Human nature forces many students to stare at areas where contraband is located.
5. Start from the top of the locker, working down. Do not replace items in locker until it is empty.

Search of automobiles

1. School policy should be established that parking on campus is a privilege and not a right.
2. Student should be present at time of search.
3. Any illegal object in plain sight can justify the search.
4. The automobile should not be damaged by the search.

Chain of custody

1. An individual should be designated in each school to be in charge of possible contraband.
2. Contraband should be placed inside an envelope and sealed with information regarding the date, agent's name, and circumstances behind the seizure included.
3. Seized evidence should be secured in a locked desk, cabinet or vault.
4. Evidence should be turned over to hearing officer or police as soon as possible.

Schools without a search and seizure policy are well-advised to draft one in conjunction with a school attorney. Copies should be distributed to all students and parents or guardians. These policies should spell out exactly what kind of behavior is expected of students and what consequences they may expect to face if they violate school rules or the law by possessing drugs, weapons or other contraband.

Do not try to innovate new search practices. Become familiar with the cases explained in this booklet and the legal reasoning behind the court decisions. This will help you make intelligent, informed judgments about

searches at your school.

Relevant articles

John S. Aldridge and John A. Wooley. *Legal Guidelines for Permissible Student Searches in the Public Schools.* Schools Against Substance Abuse, Southwest Texas State University (1990).

Donald L. Beci. "School Violence: Protecting Our Children and the Fourth Amendment," *41 Cath. U. L. Rev. 817* (1992).

Stuart C. Berman. "Student Fourth Amendment Rights: Defining the Scope of the T.L.O. School-Search Exception," *66 N.Y.U. L. Rev. 1077* (1991).

Eugene C. Bjorklun. "School Locker Searches and the Fourth Amendment," *92 Educ. L Rep. 1065* (1994).

George Butterfield. "Landmark Decisions: A Balance of Rights," *School Safety*, Spring 1991, p. 16.

Floyd G. Delon and Greg L. Gettings. "The Post-*T.L.O.* Status of Search and Seizure Policies and Practices in Public Schools," *45 Educ. L. Rep. 461* (1988).

Bernard James. "Metal Detectors vs. Student Rights," *School Safety*, Spring 1993, p. 32.

Bernard James. "School Violence and the Law," *School Psychology Review,* 1994 23(2) p. 190.

Robert S. Johnson. "Metal Detectors in Public Schools: A Policy Perspective," *80 Educ. L. Rep. 1* (1993).

Joseph R. McKinney. "The Fourth Amendment and the Public Schools: Reasonable Suspicion in the 1990s," *91 Educ. L. Rep. 455* (1994).

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

Appendix

Leon County (Florida) School Board Revised Policy #41

7.11 Search and Seizure by School Personnel.

(1) **Search - General.** In all cases of search, including searches of lockers and persons, the responsible school official shall maintain an accurate written summary of the events surrounding the search incident.

(2) **Lockers.** Lockers remain the property of the school and are provided to students without charge. The rights of personal property, however, as well as the rights of the school, must be afforded consideration. The school principal or his designee is authorized to open lockers in the presence of another witness and to examine their contents, including personal belongings of students, when such person has reasonable-cause suspicion to believe that the contents threaten the safety, health, or welfare of any students or include property stolen from the school, school personnel, or other students. This policy does not preclude administrators from performing random locker searches.

(3) **Personal Search.** The right of students as citizens to be free from unreasonable search shall be preserved in the schools. As such, school officials shall proceed with extreme caution when engaging in the search of a student's person.

(a) **Secondary Students.**

1. Personal search may be conducted by school authorities when the health or safety of the student or other students is threatened. Reasonable grounds for this assumption must exist prior to the search.

2. When a search is to be conducted, and the student resists the search, he shall be immediately removed from the rest of the student body. Law enforcement officials will be requested to conduct the search.

3. In all other circumstances where the search of a student appears necessary (i.e., theft, extortion, burglary, etc.), school officials shall, after informing the student of the action to be taken and the reasons

thereto, contact the student's parents and/or law enforcement officials. The age, grade level of the student and seriousness of the offense should be considered when determining whom to contact.

(b) **Elementary Students.**

1. At the elementary level, personal search may be conducted by school officials when the health or safety of a student(s) is threatened or when there is a question of theft, extortion or burglary. Whenever possible, the search should be carried out by the principal or his designee.

2. If the student refuses to submit to a search, resort to the procedures specified in paragraph (a)3 above.

(4) **Use of Metal Detectors.** As part of an overall plan to protect the health, welfare, safety and lives of students, faculty, staff and visitors to the public schools, and to enforce provisions of the Code of Student Conduct, metal detectors may be used to scan and screen for firearms and other weapons in order to locate and deter their use. Firearms and other weapons have no place in public schools. They are life-threatening, cause bodily harm and have adverse and disruptive effects on the educational process.

(a) **Random Use of Detector.** Metal detectors may be used at random, without cause, at times to be determined by the site administrator or as otherwise prescribed by the district. Random searches shall be conducted with minimal disruption of the educational program. Care shall be exercised to ensure that the selection of students subjected to the detection process as part of a random sweep shall be demonstrably according to chance. It shall be the obligation of the person conducting the exercise to be able to explain to the satisfaction of the Superintendent, if called upon to do so, that no bias as to gender, religion or race entered the selection process. A report shall be submitted from each secondary school to the Superintendent following each semester regarding the frequency and manner of use of metal detectors.

(b) **Selective Use of Detector.** Surveillance solely with a metal detector shall not be considered a search governed by other policies of this Board relating to search of students and other persons on campus. The

use of a metal detector is not required where there is reasonable suspicion that a weapon will be found. Nevertheless, no person shall selectively use a metal detector on one student or a non-randomly selected group of students except:

1. On reasonable suspicion that a weapon will be found; or

2. Due to reasonable personal fear based on circumstances present or past that a weapon may be present.

3. In the event of such reasonable selective use of a detector, the employee may request school district law enforcement or local, county or state police to be present during the process and to conduct the detection on behalf of the school district. The employee shall, except when otherwise specifically ordered by an officer of competent jurisdiction, be in charge of the detection process and shall make such decisions and issue such orders to the officer as the employee shall deem appropriate for the circumstances. The employee may consult with the officer in making such decisions and/or issuing such orders and may follow, reject or modify the recommended action.

(5) **Individual Scanning of Persons.**

(a) The actual scanning shall not actually touch any part of the body.

(b) If the metal detector is not activated during the scanning, the person may be allowed to enter or remain in the school.

(c) If the metal detector is activated during the scanning, the person shall be requested to indicate what metal may be causing the alert and if there is no reason to believe the metal object is dangerous, to remove such object(s) for inspection by placing the object(s) in a container within sight of the person being scanned. A second scanning is then performed as described in subsection (a).

(d) If the second scanning fails to activate the metal detector, the person shall be allowed to enter or remain in the school.

(e) If the second scanning again activates the metal detector, a pat-

down search may be conducted for the purpose of locating the object which activated the metal detector. The pat-down search shall be limited to the area of the body where the metal detector was activated. Wherever possible, and except where school personnel are concerned for their safety or the safety of others, no school personnel may conduct a pat-down search of another person of a different sex, and all such searches shall be conducted only in the presence of another adult who is informed beforehand, and in the presence of the person to be searched, of the reason for such search.

(f) If school personnel detect an object other than a firearm or weapon during the pat-down search, that person should be asked to remove it. If the person does not remove it, then school personnel shall remove it. If such object, once removed, appears to be the object which activated the metal detector, the person will be allowed to enter the school. If the object feels like a firearm or weapon, the school personnel shall remove it.

Any of the above may be waived if the waiver is indicated by reason of a) emergency or b) adverse student behavior.

(6) **Scanning of Bags, Parcels, Briefcases, or Other Containers (referred to collectively as "parcels).**

(a) Parcels may be scanned by the metal detectors.

(b) If a parcel does not activate the metal detector, it shall be returned to its owner with no further search unless circumstances require other action.

(c) If the parcel activates the metal detector, the person conducting the search shall open the parcel in order to permit a visual search for firearms or weapons. Care should be taken not to physically handle objects within a parcel which cannot be seen. If further inspection is required, the contents shall be emptied into another container. If no firearms or weapons are seen, then the visual search ceases and the parcel is returned to the person.

(d) In the event that a visual search of a parcel indicates other containers which could conceal a firearm or weapon, those containers shall

be scanned. If the detector is activated, the parcel is subject to further visual search, as described in subsection (c).

(7) If firearms or weapons are found in any stage of the screening, those firearms or weapons and the involved student shall be handled under applicable provisions of the Code of Student Conduct and applicable state law. Any weapons confiscated shall immediately be given to a law enforcement officer. If a law enforcement officer is not available, the weapon shall immediately be given to the principal or his/her designee.

(8) Individual scanning and container scanning in all cases shall be minimally intrusive. In no way shall such scanning resort to a strip search of a person or a scavenger hunt of person's property.

(9) If a student refuses to cooperate with these procedures, he or she shall be reported to the principal and shall not be allowed to enter or remain in the school. The principal shall contact the student's parents or guardian and explain why the student will not be permitted to enter or remain in the school.

(10) If, as a result of the use of detectors, any controlled substances, tobacco products or other objects prohibited by Rule of the School Board or applicable state law are found, they shall be confiscated and immediately given to the appropriate school employee or a law enforcement officer, whichever the circumstances dictate, and the student's parents or guardian shall be promptly notified.

(11) **Calibration of Detectors.** Each detector shall be maintained and calibrated in accordance with the manufacturer's directions under the supervision of the principal at the campus to which the detector is assigned.

(12) **Search of Motor Vehicles.** All parking areas located upon school district property where students or visitors are permitted to park any motor vehicle or which are designated as student or visitors parking areas shall be posted with a sign not less than 18 inches by 24 inches which shall read as follows:

Search of Vehicles
By entering this area, the person in charge of any vehicle

consents to search of the vehicle, with or without cause, by school officials or law enforcement officers. Search may include passenger compartment, engine compartment, trunk and all containers, locked or unlocked, in or on the vehicle.

It is the policy of the Leon County School Board that any motor vehicle parked in the parking area on which students or visitors are permitted to park or which is designated as a student or visitor parking area may be searched by the site administrator or designee without a warrant under the following circumstances:

(a) Where weapons including but not limited to guns, knives, or clubs, are in plain view within the motor vehicle, or

(b) Where the student or other person has orally consented to the search of the motor vehicle, or

(c) Where there is reasonable suspicion to believe that the contents of a motor vehicle offend against the law or Rules of the School Board of Leon County, Florida, or where there is reasonable suspicion to believe that the motor vehicle contains articles which school personnel are authorized to seize, or

(d) Where there is reasonable suspicion to believe that the motor vehicle was used in the commission of a crime, or

(e) Where there is reasonable suspicion to believe that the motor vehicle is carrying a prohibited or stolen or illegally possessed substance or object.

The site administrator or designee may require the student to surrender possession of any key to a motor vehicle parked in a student parking area as described herein for the purpose of opening the motor vehicle. Forced entry into a motor vehicle which is locked shall not be permitted.

The site administrator shall permit the student to be present during the search of the motor vehicle. Any item found in or on the motor vehicle which is prohibited by law or Rules of the School Board may be impounded. The student shall be given a written list of any such items which are impounded. Where appropriate, such items may be released to

a law enforcement officer who shall be required to sign a receipt.

In the event that any provision of this policy, if strictly construed, would result in danger to any person by reason of: a) apparent emergency, or b) by adverse conduct of a student or other person, any person acting under the authority of the Leon County School Board pursuant to this policy is authorized to take any reasonable action.

Statutory authority:	230.22(2) F.S.
Law implemented:	230.33(6)(d) F.S.
Policy adopted/amended:	February 9, 1993 (emergency order); April 13, 1993.

Leon County School Board Policy
Tallahassee, Florida
Contact Donna M. Uzzell, Leon County School Board Member
904/487-7110

Lafayette Parish School Board
Use of Electronic Scanners/Metal Detectors

The following guidelines concerning the use of metal detectors will be followed at all schools where this use has been authorized.

1. Each principal will prepare plans for both general and random scanning in his/her buildings. This plan shall be kept on file at the offices of the Assistant Superintendent of Schools, Personnel and Facilities Services and the Director of Middle and Secondary Schools. Said plan shall include details related to:
   - The number of teachers to be used in the scanning process
   - Staff assignments
   - Procedures for search of the grounds and buses
   - Procedures for securing the building so that when general student population scanning takes place, students may not enter or leave except through designated exits/entrances
   - Procedures for locker searches
   - Procedures for the assignment of the appropriate law enforcement agency.

2. Discovery of Contraband: Should a subject be found to be in possession of contraband (such as weapons, illegal drugs, unauthorized telecommunication devices, or other prohibited objects), the person conducting the search shall notify the school principal/designee, who shall immediately involve the law enforcement agency on site in the removal of subject. The law enforcement agent shall take custody of all weapons and illegal drugs.

   All property removed from a student that is not prohibited by board policy, local, state and federal law, or school rules, shall be returned to said student upon completion of the search.

3. Within 12 hours of either a random or a general scan, a written report using the format attached shall be submitted to the Assistant Superintendent of Schools, Personnel, and Facilities Services with a copy to the Director of Middle and Secondary Schools.

4. General scans shall be defined as the use of metal detectors to search

all students who are present at school on the day of the search. Random or partial scans shall involve a search done with an identifiable group of students. For example:

- A bus load of students
- Every fifth student arriving at school who is not transported by bus
- An entire class of students
- All students who eat lunch during a given lunch period

5. The conduct of scan searches shall follow these listed procedures:
   - The metal detector shall be passed over the student on each side, front and back and over his/her purse/book bag.
   - If any metal is registered, the student may be instructed to:
     - Empty his/her pockets
     - Pull up his/her pant leg so that socks and shoes may be checked
     - Asked to take off jackets to be hand searched
     - Asked to submit purses/book bags for a look-in search
     - Asked to turn a belt buckle over to expose the backside in order to insure that no weapon is concealed
   - Once the object is located that caused the alarm and the alarm does not sound when passed over the student, the search shall stop at that point

6. The media shall not be present during scanning activities nor shall pictures be taken of students who are being scanned.

7. Each year, the building principal shall notify patrons and students of his/her school in writing of the provision for scanning of students, as well as other possible searches, i.e. lockers, book bags, etc.

8. Patrons and students will be subject to scanning when entering gymnasiums, buildings, or stadiums to attend athletic events or other activities scheduled outside of the school day.

If, after completing these processes, there is still a reasonable belief that the student is concealing a weapon on his/her person based on the sounds produced by the metal detector, the student may be asked to accompany an administrator of the same gender to the office. In the privacy of an office and with a same gender administrator/teacher present as a witness, the student will be asked to produce any weapon or metal

items on his/her person. At no time will a strip search be effected nor will any district employee touch or search the student.

If the above measures do not yield the object that is causing the detector to indicate the presence of any object, then the principal/designee will contact the parent of the child and detain the child until the parent comes to school. If the parent will not/or cannot aid you in locating the object that is present, inform the parent that the police will be contacted for assistance.

Application for School Parking Lot Access
(On School District Letterhead)

I, (child's parent's name), hereby agree to the below stated terms and responsibilities in connection with obtaining authorization to use the school parking facilities.

I understand that the parking lot is public property which is under the control of the school. I will prominently display the parking permit on the vehicle designated for access below. I agree that the authorized vehicle will not be used to transport or store contraband of any kind or use the lot in any way that will violate the school district code of conduct or criminal law.

I hereby understand and give (school name), my consent to search the authorized vehicle when it is parked on school property.

_____
School Year of Authorization

_____
Student Name

_____
Parent/Guardian Signature

_____
Vehicle Description

_____
Vehicle License

_____
School Representative

METAL DETECTION SCREENING REPORT

Type of Screening: _____Random _____Group

Date_____ Time_____

Confiscated Materials _____

_____

_____

Persons Conducting Screening

_____ _____

_____ _____

_____ _____

Evaluation Process _____Satisfactory _____Unsatisfactory

FLORIDA STATUTES 1933
TITLE XVI EDUCATION
CHAPTER 232. COMPULSORY SCHOOL ATTENDANCE; CHILD WELFARE

232.256. Search of student locker or storage area; authority

(1) The Legislature finds that the case law of this state provides that relaxed standards of search and seizure apply under the State Constitution to searches of students' effects by school officials, owing to the special relationship between students and school officials and, to a limited degree, the school officials' standing *in loco parentis* to students. Accordingly, it is the purpose of this section to provide procedures by which school officials may search students' effects within the bounds of the case law established by the courts of this state.

(2) A principal of a public school or a school employee designated by the principal, if he has reasonable suspicion that a prohibited or illegally possessed substance or object is contained within a student's locker or other storage area, may search the locker or storage area.

(3) The school board shall cause to be posted in each public school, in a place readily seen by students, a notice stating that a student's locker or other storage area is subject to search, upon reasonable suspicion, for prohibited or illegally possessed substances or objects.

(4) This section shall not be construed to prohibit the use of metal detectors or specially trained animals in the course of a search authorized by subsection (2) or subsection (3).

TENNESSEE

Tenn. Code Ann. 49-6-4204 (1955-1994).
Grants authority to school principals to search lockers or other enclosures used for storage by students "[w]hen individual circumstances in a school dictate it..." Those circumstances include, in part, incidents on school property involving drugs or drug paraphernalia by students. The statute further states that "[a] notice shall be posted in the school that lockers and other storage areas are school property and are subject to search for drugs, drug paraphernalia, dangerous weapons or any property which is not properly in the possession of the student."

Tenn. Code Ann. 49-6-4205 (1955-1994).
Makes students subject to a physical search because of the results of a locker search or information received. Sets forth the standards of reasonableness to be met before the principal conducts the search, including, in part, that "[t]he search will yield evidence of the violation of school policy or will lead to disclosure of a dangerous weapon, drug paraphernalia or drug..."

Tenn. Code Ann. 49-6-4206 (1955-1994).
States that "[a] principal or his designee, or both such persons, may search any vehicle parked or otherwise located on school property if there is probable cause to believe that the vehicle contains a dangerous weapon, drug paraphernalia or drug or contains evidence of a violation of school rules or regulations which endangers or has endangered the health or safety of any member of the student body."

Tenn. Code Ann. 49-6-4207 (1955-1994).
States that "[t]o facilitate a search ... metal detectors and other devices designed to indicate the presence of dangerous weapons, drug paraphernalia or drugs may be used in searches, including hand-held models which are passed over or around a student's body, and students may be required to pass through a stationary detector."

Tenn. Code Ann. 49-6-4208 (1955-1994).
States that "[t]o facilitate a search ... dogs or other animals trained to detect drugs by odor or otherwise may be used in conducting searches, but such animals shall be used only to pinpoint areas needed to be

searched."

Tenn. Code Ann. 49-6-4210 (1955-1994).
States that "[a]ny dangerous weapon or drug located by the principal or other staff member in the course of a search shall be turned over to the appropriate law enforcement officer for proper disposal."

Tenn. Code Ann. 49-6-4213 (1955-1994).
"(a) A student may be subject to testing for the presence of drugs in his or her body in accordance with this section and the policy of the local education agency if there are reasonable indications to the principal that such student may have used or be under the influence of drugs. The need for such testing may be brought to the attention of the principal through a search authorized by § 49-6-4204 or § 49-6-4205, observed or reported use of drugs by the student on school property, or other reasonable information received from a teacher, staff member or other student. All of the following standards of reasonableness shall be met:

(1) A particular student has violated school policy;
(2) The test will yield evidence of the violation of school policy or will establish that a student either was impaired due to drug use or did not use drugs;
(3) The test is in pursuit of legitimate interests of the school in maintaining order, discipline, safety, supervision and education of students;
(4) The test is not conducted for the sole purpose of discovering evidence to be used in a criminal prosecution; and
(5) Tests shall be conducted in the presence of a witness. Persons who shall act as witnesses shall be designated in the policy of the local board of education.

(b) For the purposes of this section and § 49-6-4203, 'drugs' means:

(1) Any scheduled drug as specified in §§ 39-17-405 through 39-17-416; and
(2) Alcohol.

(c) Before a drug testing program is implemented in any local education agency, the local board of education in that local education agency shall establish policies, procedures and guidelines to implement the provisions of this section within that local education agency. The state board of education shall prepare a model policy, procedure and guidelines which may be adopted by local boards of education.

(d) Tests shall be conducted by properly trained persons in circumstances that ensure the integrity, validity, and accuracy of the test results but are minimally intrusive and provide maximum privacy to the tested student. All tests shall be performed by an accredited laboratory. Specimens confirmed as positive shall be retained for possible retesting or reanalysis for at least ten (10) days.

(e) Students shall be advised in writing at the time of their enrollment that they are subject to testing. Notice to each student shall include grounds for testing, the procedures that will be followed, and possible penalties. Students shall be advised of their right to refuse to undergo drug testing and the consequences of such refusal.

(f) A parent of the student or a person legally responsible for him or her shall be notified before any drug test is administered to the student.

(g) The local education agency shall pay the cost of any testing required under the provisions of this section.

(h) In any school where local education agency or school policy allows tests provided for by this section, in-service training of principals and teachers will be conducted in signs and symptoms of student drug use and abuse and in the school policy for handling of these students. The department of mental health and mental retardation shall cause qualified trainers to be available to such schools to conduct this training.

(i) Test reports from laboratories shall include the specimen number assigned by the submitting local education agency, the drug testing laboratory accession number and results of the drug tests. Certified copies of all analytical results shall be available from the laboratory when requested by the local education agency or the parents of the student. The laboratory shall not be permitted to provide testing results verbally by telephone.

(j)(1) All specimens testing negative on the initial screening test or negative on the confirmatory test shall be reported as negative. When a student is tested and the results of the test are negative, all records of the test, the request for the test, and indications that a student was identified for testing and was tested, shall be expunged from all records in the school system.

(2) If a student is tested and the results of the test are negative, all records of the test, request for a test, or indication a student has been tested, shall be expunged from all records.

(k) The principal or guidance counselor of the school in which a student who tests positive in a drug testing program is enrolled shall

provide referral information to such student and to such student's parents or guardian. Such information shall include information on inpatient, outpatient and community-based drug and alcohol treatment programs.

(1) The department shall cause a student assistance program to be provided in schools authorizing drug testing of students under subsection (a). At a minimum, this student assistance program shall consist of a qualified student assistance program coordinator who may serve one (1) or more schools where drug testing is allowed. This coordinator shall conduct assessment counseling with any student who tests positive for the presence of drugs or alcohol. Such counseling shall include a determination of the severity of the student's alcohol and drug problem and recommendation for referral to intervention or treatment resources as appropriate. The expansion of these services by the department into additional schools after the initial year shall be subject to availability of funds.

(m) Malicious use of authority granted by the provisions of this section may be grounds for dismissal of the person so acting."

SCHOOL VIOLENCE AND THE LAW: THE SEARCH FOR SUITABLE TOOLS

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Abstract: This article examines some of the key school law cases pertinent to developing policies and procedures to address campus situations that may be associated with school crime/violence. The legal concept of a reasonableness and its use on forming reactive and proactive school discipline procedures is discussed. Used with permission, © *School Psychology Review*, 1994

The path to solutions about school violence runs through legal waters that run swiftly and that often are of uncertain depth. So perilous are the hazards that school officials often choose to change course on policies that have merit and are otherwise deserving of more courageous navigation. Schools are stuck in the middle of the failure of the juvenile justice system to adequately address juvenile delinquency. This systemic failure unfairly isolates schools from other agencies that provide services to children, not the least of which includes the law enforcement community. Routinely, the most disruptive youths in communities across the nation are purposefully placed into school classrooms instead of facilities designed for serious habitual offenders with problems far beyond the expertise found in the traditional curriculum. This is usually justified as a condition of probation and reform without any realistic hope of proper supervision because school officials are not informed of their presence. School officials, to be successful, must be able to see in the dark and hear without sound.

A general framework for dealing with campus violence is sorely needed. There are at most two ways to respond to the growing concerns about crime on the campuses of our schools today. The first is reactive, the second is proactive. In the former, school officials wait until incidents of criminal activity occur on campus, identify the violators, and mete out appropriate discipline. In the latter, officials scan the horizon for the warning signs of trouble and devise plans to respond to any symptoms that arise on their campuses, hopefully prior to any outbreak of the undesired behavior. Aside from these initial distinctions, both approaches require the same procedure and resources: dedicated school safety personnel, training for teachers and support personnel, and administrators who have established at least a cursory rapport with local law enforcement. For the educator, either approach brings a cost — some level of distraction from core educational objectives.

Given this common setting, there is a growing preference for the proactive response to criminal activity on campus. Good reason exists for this; the campus setting attracts the worst of today's antisocial behaviorists, many of whom are not part of the student body, but who savor the opportunity to play the role of the wolf among the campus flock. Assaults, batteries, weapons confiscations, drug possession, sale, and abuse, as well as the proliferation of gang activity represent the school administrator's worst nightmare. The campus has always been the center of neighborhood life

in America. Its evolution into a marketplace for criminal enterprises is a reality for many schools and a promise close to delivery for others.

Most school administrators assume from the outset that the law will be more of an impediment than an aid in devising plans to deal with campus crime. Nothing could be further from the truth. Much of what is known today as education law is actually only 3 decades old and evolving rapidly on a case-by-case basis. In this fresh, quickly changing environment, some fundamentals have remained constant. The notion of *in loco parentis*, protecting impressionable youth in a captive environment and preserving the educational environment from disruptions, still influences modern case decisions in a manner that currently makes available to the school official a body of law that is readily available to aid development of proactive school safety programs.

The amicability of school safety law is readily apparent when placed in contrast to the world of noncampus law enforcement. While it is true that the rubric of rules that dominate criminal procedure are designed to protect citizens from arbitrary enforcement — even in schools — modern off-campus criminal procedure is reactive in its essence. Judges issue warrants to authorize enforcement activity, but only "upon probable cause." Exceptions to the warrant requirements are activated by exigent circumstances that require an immediate response. The balance, in policy terms, tilts in favor of individual freedom and imposes the now well-known restraints on professional law enforcement officials.

But school professionals are charged with preserving an environment into which the families of a community send their children to receive training designed to prepare them to participate in and contribute to society. The educational process, multifaceted in modern society, is the object of preservation for the school official. When the educational process is threatened in a scenario that includes criminal activity, the courts respond differently. School officials are permitted to base their campus safety plans not on "cause," but "suspicion." Moreover, the actions of school officials are validated as long as they are "reasonable."

Reasonable actions, based upon the suspicion that the educational environment is threatened, dominates the legal response to on-campus crime problems. Two critical corollaries spring from this rule. First, it is ordinarily irrelevant, as far as the school official is concerned, that the on-campus antisocial behavior also would provide cause for a criminal charge if it occurred in another setting. School officials may take appropriate action to preserve the campus, leaving the larger more general questions about juvenile law to the whims of the local prosecutor. The two systems of discipline are mutually exclusive.

The rules of procedure permit a greater freedom of action for the school official precisely because the objectives are different. Preservation of the school environment is seen as requiring a more immediate response because the risk of delay is readily calculable in a hermetic environment. "School discipline" is thus unique; it can adapt to implement campus-based policies independent of the more generic concerns of local

law enforcement activities. This is not to suggest that partnerships with law enforcement are undesirable as a matter of policy; it is merely to observe that they are not required as a matter of law.

The second observation springs from the first. It is, in fact, this freedom to act on suspicion that is most threatened when school officials act proactively in concert with law enforcement in campus safety plans. Absent exigent circumstances, courts are less likely to view the activity as a school safety plan than to characterize it as campus-based law enforcement, triggering constitutional norms and individual protections. Thus, carefully planning school safety programs is critical as a means of responding effectively to local campus problems as well as to maintain favorable treatment by the courts, which eventually will review and resolve conflicts that arise out of school safety policies.

This article summarizes a legal framework for addressing campus violence. First, the doctrine of reasonableness as the basis for education law will be introduced. Second, the approaches approved by the courts for fashioning reactive and later proactive tools will be discussed. Third, the expansion of the doctrine of reasonableness is presented in some of the more difficult student misconduct cases. The objective is to provide school professionals with a foundation for making decisions in a changing campus climate with some assurance that the legal ground rules encourage and support effective school planning.

The doctrine of reasonableness

It is hard to overstate the importance of understanding the parameters of the reasonable suspicion doctrine of the U.S. Supreme Court. The doctrine represents the benchmark below which school officials may not go in planning responses to on-campus crime. It provides a range of enforcement alternatives for education policy makers who wish not to give control of campus problems to local law enforcement. It also provides a basis of comparison for state government policies that may offer greater protection for students and impose additional requirements on school authorities.

The reasonable suspicion doctrine is of more recent vintage than other components of what is known as education law. Its articulation by the U.S. Supreme Court in the case of *New Jersey v. T.L.O.* (1984) came as a welcome confirmation of notions that had guided the actions of school officials for much of the previous century.

The wide acceptance of *T.L.O.* is in part due to the nature of its holding. *T.L.O.*, among other things, acknowledged the special authority of school officials to keep campuses safe from disruptions and antisocial student behavior that often compromised educational objectives and gave meaning to the term "Reasonable Suspicion" to connote the somewhat lower level of Fourth Amendment protection for students in search situations. But, the balance of power struck in *T.L.O.* clearly favored school officials, authorizing acts in response to student violations of conduct without putting on the gear of traditional law enforcement, particularly the search warrant. School of-

ficials were told simply to do what was reasonable under the circumstances. Surprisingly, despite concerns that the fluid nature of campus life would provide school officials with a variety of ways to overwhelm the limitations created by the rules of reasonable suspicion, *T.L.O.* (1984) was generally well-received as a common sense approach to the isolated phenomenon of campus crime.

The decision grew out of a rather ordinary fact pattern. A 14-year-old high school freshman was discovered by a teacher in a bathroom violating the prohibition against smoking in designated nonsmoking areas. The disciplinary procedure on campus required that the student be taken to the school administrator, who questioned the student and searched her purse. The questioning was futile, but the search revealed a pack of cigarettes, cigarette rolling papers, marijuana, a pipe, plastic bags, money, and a list of students to whom the student was selling cigarettes. The school officials suspended the student for 3 days for smoking cigarettes in a nonsmoking area and 7 days for possession of marijuana. This school-initiated discipline was relegated to a footnote in the *T.L.O.* case. The issue of importance in the case was whether the search of the school officials could provide a basis for delinquency charges, which were brought by the State against the student in the Juvenile Court.

Should the incriminating evidence be suppressed? Should the school officials have waited to obtain a search warrant? If so, the student would almost certainly escape prosecution. In fact, had the search occurred off-campus by police officials, the protections of the Fourth Amendment would apply without question. Moreover, if the normal limitations of the Fourth Amendment were applied to investigations of disciplinary code violations by school officials, the suspension of the student would have to be reversed.

The Supreme Court ruled that the Fourth Amendment's prohibition on unreasonable searches and seizures was applicable in the school setting. The Justices were unwilling to give educators a total exemption from the search and seizure requirements as did previous rulings in some of the state courts. These state courts had reasoned that school officials conducting in-school searches of students were private parties acting *in loco parentis* and were therefore not subject to the constraints of the Fourth Amendment. The Supreme Court disagreed and in *T.L.O.* (1984) announced that school officials acted as representatives of the State, not as representatives for the parents of students, when carrying out searches and other functions pursuant to campus disciplinary policies.

But the Supreme Court gave educators a partial exemption from the need to obtain a warrant based upon probable cause. It acknowledged that preserving an appropriate educational climate was an important, delicate, and highly discretionary function. The interests of teachers and administrators in maintaining discipline in the classroom and on campus wrote Justice White, would be furthered by a less restrictive rule of law that would encourage school officials to maintain a balance between school children's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning could take place.

This part of the *T.L.O.* rule has two new components. The warrant requirement of the Fourth Amendment is replaced with the requirement that the youths subject to school discipline be under the authority of school officials. Its purpose is to limit the power of school officials to the acts of student violence. This change also emphasizes the limited nature of new rules; school officials cannot assume authority over persons and things not part of the campus environment.

The court then held that in-school searches need only be supported by reasonable suspicion not by probable cause. The legality of a search of a student, opined the Court, should depend simply on the reasonableness, under all the circumstances, of the search.

> Determining the reasonableness of any search involves a determination of whether the search was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. Under ordinary circumstances the search of a student by a school official will be justified at its inception where 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. (*NJV T.L.O.,* 1984)

The *T.L.O.* decision confirms many of the notions that school administrators had always held: that the law permits educators to respond to campus safety problems as the need dictates, provided the actions are reasonable. In addition, the decision acknowledged the need for school officials to react in a timely fashion to misconduct and authorized a shorter response time than would be applicable to ordinary law enforcement.

Therefore, the *T.L.O.* decision is only a blueprint for *reactive* school safety policies. School officials are permitted to bring to bear their experience in characterizing campus safety problems that violate disciplinary rules as well as assessing the proper course of conduct to preserve the campus. It is precisely this point — that school disciplinary rules need to be flexible to respond to a wide range of unanticipated conduct disruptive of the educational process — that justifies the departure from Fourth Amendment norms.

Reasonable suspicion and reactive campus enforcement programs

Of the total data base of case decisions after *T.L.O.* (1984), almost all of the cases where the courts have validated the conduct of school officials involve reactive actions on their part. The first group of cases decided after *T.L.O.* were actually clarification cases as federal and state courts developed some comfort with applying its parameters to similar disputes about school authority involving search and seizure. More recently, case decisions by the courts are starting to discuss the limitations of the reasonable suspicion doctrine, including — as has happened in some state court decisions — departing from it entirely and requiring probable cause for some specific campus enforcement activities.

The reactive decisions by definition refer to official responses to established viola-

tions of campus rules. Often the violation is immediate; occasionally it is a part of common knowledge that school officials have about a particular student who becomes the object of an on-campus search. Legally the only matter that is left to examine is whether the search is reasonably related in scope to the circumstances that justified the interference in the first place.

Consider the Texas case of *Coffman v. State* (1989). There the assistant principal of a public high school observed a student in the hallway of the school between classes. The student did not appear to have a permit and should have been in class. The administrator recognized the student as one he had previously disciplined on three or four other violations of school rules. After the student refused to stop and produce a hall pass, the principal stopped him to investigate further. Questioning revealed that the student had just entered the school from the parking lot, which the principal knew was the site of recent unsolved thefts. The principal checked the contents of the bag that the student was carrying and discovered a concealed weapon.

The state court applied the *T.L.O.* factors to determine whether the seizure and search of the student's bag was valid to support both school-imposed discipline as well as the state misdemeanor of carrying a weapon on school premises. The court approved of the search noting:

> Based on appellant's prior propensity to get into trouble, coupled with the fact that he was in the hall without a pass and returning from an area where thefts had previously occurred, [the principal] formed the very reasonable suspicion that appellant was involved in something illegal, or had violated school rules, and was trying to hide it. ... the legality of a search should depend simply on the reasonableness under all the circumstances of the search. ... We find [the principal] acted properly by stopping appellant and asking him for a hall permit. We also find the events that followed [the principal's] routine questions justified appellant's prompt detention and subsequent search of the bag. As Justice Blackmun stated in his concurring opinion in *New Jersey v. T.L.O.*, "The special need for an immediate response to behavior that threatens either the safety of school children and teachers or the educational process itself justifies the Court in excepting school searches from the warrant and probable-cause requirement." (*Coffman v. State,* 1989)

Thus, since the violation justifies the inception of student search, reactive cases should raise only one issue: Was the search reasonable in scope? This issue is sufficiently influenced by the nature of the violation that triggers the initial investigation such that often the two will be treated as part of one analysis as the quote above in the *Coffman* case illustrates. As a result, the reasonable scope issue is really just another way of categorizing the level of seriousness of the initial conduct violation. The more serious the violation, the wider the scope of the resulting investigation and search. An incident involving students and guns on campus should create an environment of exigency sufficient to justify warrantless actions by even law enforcement officers, as an exception to the much stricter probable cause standard. Therefore, as the seriousness of the lawlessness increases, so too increases the flexibility of the school administrator in bringing to bear various enforcement solutions.

Reasonable suspicion and proactive campus enforcement programs

T.L.O. (1984) is an indirect aid, at best, when school officials adapt its rules to support proactive campus safety policies. Its major premise — that school officials balance the student's reasonable expectations of privacy against the need for order — does not readily convert into a useful tool when the disruption or the violation has not yet occurred. It is on this point that discussions concerning school safety usually run aground.

What does the law require of student conduct codes that regulate student behavior? How will courts balance the competing interest when the disruption to the educational process is probable but remote? Does the reasonableness test for on-campus authority include actions based upon hunches and data (often from other jurisdictions) regarding trends in student behavior? How imminent is the undesirable conduct?

Complicating matters further is the duty of school officials to respect the privacy rights of students on campus. This interest is largely absent in the reactive case, particularly for serious campus conduct violations like weapons, drugs and the like. But in a proactive setting generic suspicions that some students are engaging in undesirable behavior is not only difficult to quantify, it is difficult to balance against student expectations of privacy. The Supreme Court in *T.L.O.* (1984) observed that:

> Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, and the necessaries of personal hygiene and grooming. In addition, students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items as photographs, letters, and diaries. Finally, students may have perfectly legitimate reasons to carry with them articles of property needed in connection with extracurricular or recreational activities. In short, school children may find it necessary to carry with them a variety of legitimate, non-contraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds.

If *T.L.O.* is useful in this regard at all, it is in its suggestion that courts balance the competing interests — the need for a safe educational environment and the right of student privacy — to permit school officials to act when reasonable expectations of privacy are outweighed by institutional factors. This discussion is not as straightforward as the reactive analysis above, but in many ways is more important to hammer out. It is only when school administrators know a little about how the courts balance competing interests that they can fully appreciate the parameters of *T.L.O.* and get past the law into specific policy discussions about solutions to local problems.

What kinds of institutional interests compare favorably to the right of privacy? In the search and seizure setting the law of privacy is context-oriented. Assertions of a right to privacy are empty unless first placed in a context that permits the law to balance the interest of the person claiming the right and the interests of the government in implementing its policies. Where is the search taking place? What is being seized?

Private property, homes, vehicles, books, bags, purses, lockers, clothing, and other

sites where items are placed for safekeeping by their owners make up the field where Fourth Amendment games are played. The arguments by now are commonplace, even to the layman. The government argues that the item seized is valid evidence to support a prosecution. The defendant argues that the itme seized must be returned and its value as evidence suppressed.

When the right to privacy is the basis for the request to exclude, the defendant usually argues that the government acted in a place and in a manner that violated his or her legitimate expectations of privacy. Generally the less public the location of the search and more personal the item seized, the less likely the government is to win the Fourth Amendment game. Certain exceptions exist that may alter this result. For example, items which are observable in "plain view" by government officials provide a valid basis for government action despite the fact that the items may have been on private property at the time of the observation. Permission to search, searches incident to a valid arrest, or searches prompted by exigent conditions that threaten the safety of other augment the list of exceptions. The less private the place, the greater the custodial interest of the government and the less reasonable the expectation of privacy of the individual.

When a student's right to privacy conflicts with the proactive suspicion of the school administrator to keep the educational environment free from disruption, two types of cases emerge. In the first category of decisions, school officials are permitted to act in response to corroborated facts that support their suspicions that a student is or may soon be breaking campus rules even prior to an actual disruption taking place. The educator is not required to wait until illegal behavior affects the learning environment before responding. As outlined in the *Coffman* (1989) case above, searches and seizures are sustained despite the valid expectations of privacy of the student because actual disruptions or corroborated suspicions satisfy the reasonableness test.

The second category of cases involve school assertions of its "custodial" interest in preserving public property for its intended use. The analysis in this line of cases is more subtle; properly established it diminishes the student's expectation of privacy enough to act as an effective deterrent against some forms of student criminal activity.

Proactive campus enforcement and corroborated suspicion

Consider the 1990 analysis of the Massachusetts Supreme Court in *Commonwealth v. Carey* that upheld the search of a student's locker and the confiscation of the gun found therein. The suspicion began when two students reported to a teacher that Carey, also a student, had shown them a gun that he had brought to school. The principal decided that the tip about the gun was reliable because of knowledge of a previous incident involving a fight that occurred between Carey and another student the previous school day. He confronted and searched Carey and after finding nothing on or around his person, searched the locker where the gun was discovered.

The Court validated the search. In its rationale, it noted:

> Reasonable suspicion of wrongdoing is a "common-sense [conclusion] about human behavior" upon which "practical people" — including government officials — are entitled to rely. ... A student's direct statement to a person in authority, indicating personal knowledge of facts which establish that another student is engaging in illegal conduct, may provide school authorities reasonable grounds to search the second student's locker. On the basis of school administrators' preexisting knowledge of the defendant's Friday afternoon brawl and the two students' eyewitness report of a gun in the defendant's hands said to be linked to the Friday altercation, together with the failure to find the gun on the person of the defendant or at his most recent whereabouts, [the administrator's] search of Carey's locker was clearly based on common sense, and was reasonable both at its inception and in its scope. (*Commonwealth v. Carey*, 1990)

In the California case of *In re William G.* (1985), a high school principal observed two students walking through the center of campus. While walking toward the students, he noticed that one of them was carrying a calculator case with an odd-looking bulge. The questioning revealed that the students did not have a class at the time. The principal noticed that during the discussion the student with the case placed it behind his back to conceal it. The principal decided to take the student to his office and search the bag. Inside were four baggies of marijuana, a metal gram weight scale, and cigarette papers.

In contrast to the *Carey* case, the court in *William G.* disallowed the search. Note in the excerpt below the characteristics of reasonableness that the court sought but did not find:

> [The principal] articulated no facts to support a reasonable suspicion that William was engaged in a proscribed activity justifying a search. The record reflects a complete lack of any *prior knowledge* or *information* on the part of [the principal] relating William to the possession, use, or sale of illegal drugs or other contraband. The record is also devoid of evidence of *exigent circumstances* requiring an immediate nonconsensual search. (*William G.*, 1985)

The principal in *Carey* had an information base from which to test his judgment and experience; the court supported this exercise of professional discretion. The administrator in *William G.* had only furtive gestures by the student and a hunch that something was going on. Was *William G.* correctly decided? Examine the rationale of the California court on its treatment of "hunches:"

> [The student's] "furtive gestures" in attempting to hide his calculator case from [the principal's] view cannot, standing alone, furnish sufficient cause to search. ... If a student's limited right of privacy is to have any meaning, his attempt to exercise that right — by shielding a private possession from a school official's view — cannot in itself trigger a "reasonable suspicion." A contrary conclusion would lead to the anomalous result that a student would retain a right of privacy only in those matters that he willingly reveals to school officials (*William G.*, 1985)

Earlier in the *William G.* opinion the court observed:

> [The reasonable suspicion] standard requires articulable facts, together with rational inferences from those facts, warranting an objectively reasonable suspicion that the student or students to be searched are violating or have violated a rule. ... The corollary to this rule is that a search of a student by a public school official is unlawful if predicated on mere curiosity, rumor, or hunch. (*William G.*, 1985)

Thus, proactive reasonable suspicion cases differ from the reactive cases in a major way. Rather than relying on an established violation to provide a predicate for a search or seizure without a warrant, the proactive case is "investigatory." School officials have to ferret out the violation; in effect, satisfy through some means of corroboration the suspicion that a violation has or is about to occur. Otherwise, the privacy interests of students — the right to be left alone — outweighs official action whether based on a hunch as to a single student or a dragnet patterned, generic search for all students. *T.L.O.* simply does not address this type of situation. The uncertainty of the exact parameters of *T.L.O.* on proactive suspicion has given rise to the controversial "custodial interests" cases discussed below.

Proactive campus enforcement and the custodial interest pretext

Very few custodial interests cases are available for analysis and yet assessments of their virtues and vices represent the cutting edge of school safety law. With the focus on preserving school property for its intended use in the educational process, school officials search lockers, desks, rooms, and parking lots as a deterrent against campus crime. Often the searches are conducted after some initial facts indicate a subject for further investigation, but increasingly, custodial interests cases are moving in the direction of the generic search of school property as a deterrent device.

The attraction of basing campus crime prevention activities in this fashion is easily understood; properly employed, custodial interests policies avoid the uncertainties which accompany the *T.L.O.* analysis in proactive settings. At least in theory it is easier to balance competing interests in favor of the owner on whose property the dispute takes place. The serious question involves whether the students affected have legitimate expectation of privacy on the property and if so, how much.

The nongeneric search — or particularized suspicion — cases that are based on the custodial interests notion are very straightforward. Its parameters mirror the concerns of corroboration and scope of search that are present in the proactive cases discussed above. School officials have some basis on which to suspect that a particular student is concealing contraband on school property. The resulting search of the property is a matter of the *T.L.O.* "scope analysis." Once reasonable suspicion is established, the right to ensure that school property is not used as a impediment to campus enforcement becomes a matter of degree.

A good example of the consistency between these cases and the *T.L.O.* reactive case appears in the New Mexico case of *State v. Michael* (1988). In *Michael*, the court upheld a principal's warrantless search of a student's locker after receiving a call from

a teacher that the student had tried to sell another child marijuana in swimming class. The principal had the student get out of the swimming pool and accompany him to the locker where a search revealed cigarettes mixed with marijuana and tetrahydrocannabinols. The court analyzed the events in this manner:

> In the instant case, the student, who was an eyewitness to the crime, approached one of his teachers and told that teacher what had happened. This was not a statement of suspicion or rumor, but an account of what the student had witnessed. Under those circumstances, the student's statement, relayed to the assistant principals, provided reasonable grounds for a search of respondent's locker. The fact that the principal did not know the identity of the complaining student, while relevant in a probable cause case, does not affect the finding that this search was based upon reasonable grounds. (*State v. Michael*, 1988)

The same pattern is evident in a car search in the Colorado case of *People in the Interest of P.E.A.* (1988). There a car search was upheld after the principal was informed that two minors had brought marijuana to school for the purposes of selling it. When a search of the students' person, bags, and lockers turned up nothing, the school officials decided to search the car of yet another student with whom the two accused had come to school. On the way to the car, the security officer asked *P.E.A.* if the vehicle contained anything illegal. He answered affirmatively but stated that the contraband belonged to the other two students. A search revealed a duffel bag filled with marijuana. The Colorado court first noted that it was the policy of the school to search the person and property of students suspected of dealing in drugs. Then the court concluded:

> Since the search was incidental to the maintenance of order by school officials and the protection of other students and was not performed by individuals acting as agents of the police, the ... acts of the principal and security officer are to be governed by the standards set forth in *New Jersey v. T.L.O.* ...
>
> ... Considering the limited ways the students could have transported the marijuana to school and concealed it on school grounds and the magnitude of the threat of having the marijuana sold and distributed at the school ... the connection between [the students] establishes the articulable facts and concomitant rational inferences necessary to create a reasonable suspicion that [the driver/owner of the car] possessed the drugs or other contraband. [Reasonable] suspicion is not a requirement of absolute certainty but is the sort of "common-sense" conclusion about human behavior upon which "practical people" — including government officials — are entitled to rely. ... [Quoting from *T.L.O.*]
>
> ... With respect to the second prong of *T.L.O.*, the record establishes that the scope of the searches conducted by the principal and security officer was not unreasonable. In view of the substantial state interests triggered by the contemplated sale of marijuana to other students, the measures taken by school officials in searching [the student who drove the car] his locker, and his car, which provided the means for transporting the marijuana to the school and for concealing the contraband, were reasonably related to the objectives of the search and not excessively intrusive. (*State v. Michael*, 1988)

Custodial interests searches that proceed from the reasonable suspicion that a particular student is using school property to conceal contraband are similar in analysis to corroborated suspicion cases like *Commonwealth v. Carey* (1990) noted above. Issues of scope should dominate a discussion. How plausible is the pretext? How far can school officials diminish student rights of privacy to implement a general deterrent to crime? Is there a limit on the means that school officials can utilize when they seek to investigate a particular incident further?

The following case is instructive in this regard, despite the fact that it reaches an incorrect result. In the Pennsylvania case of *In re Dumas v. Commonwealth* (1986), the court disapproved of a locker search because preceding violations of code of conduct regulations gave school officials an interest that outweighed the student's expectation of privacy in his locker. The school administrator in *Dumas* was told by a teacher that he had observed the student getting cigarettes from his locker and giving them to another student. The cigarettes were confiscated from the students and the locker was searched. Both tobacco and marijuana cigarettes were discovered. The court characterized the actions of the school officials in this manner:

> [The school administrator] did have reasonable grounds for believing that the initial search of [the student] would provide evidence that [he] had violated school rules by possessing cigarettes. However, once [the administrator] had seized the pack of cigarettes from [the student's] hands, the court found that it was not reasonable to suspect that there would be more cigarettes in his locker. We agree. Further, although [the administrator] suspected [the student] of being involved with marijuana he was unable to articulate any reasons for this suspicion. The mere fact that [the student] possessed cigarettes does not lead to the conclusion that he would also possess marijuana. ... [otherwise] it seems that catching the juvenile with cigarettes formed a pretext for a search for drugs. We therefore affirm the order suppressing the marijuana. (*In re Dumas v. Commonwealth*, 1986).

The *Dumas* decision is disturbing because it would seem more consistent with *T.L.O.* principles to permit a search in the area where illegalities have been observed by a teacher/eyewitness. Since the initial violation occurred at the locker, a search of the locker does not unnecessarily expand the scope of a search that was justified at its inception when the two students were confronted and searched. Moreover, the better way to characterize the activities in *Dumas* is to observe that two separate violations occurred that activated the interests and justified the actions of school officials. The first involved distribution of contraband from a locker, and the second involved personal possession and use of banned substances.

However, the result in *Dumas* may have turned on concerns of notice and due process. Thus, the case is still helpful on the larger matter. The opinion of a judge who wrote separately to explain why he agreed with the outcome suggests the real error of school officials:

> In the instant case, the school provided the student with a locker in which the student was permitted to store personal property. The record does not indicate

> that the school made any special restrictions with regard to the nature of the items which could be stored in the locker. The school did not notify the students that use of the lockers would be subject to random or periodic inspection or search. The school did not follow a uniform policy or consistent practice regarding locker searches. Indeed, the record indicated that other students in similar circumstances were not subjected to locker searches. Consequently, I agree that the student in the instant case had a reasonable expectation of privacy with regard to the contents of his locker ...
>
> I emphasize that although students may in fact store a variety of personal items in their lockers, they do so by license and not by right. If the student is notified that he or she is provided with a locker which is subject to inspection or search, there would be no reasonable expectation of privacy. A student would then have the choice of using the locker subject to its conditions, or not using it. I find no constitutional entitlement to a private school locker. Hence, I would find no prohibition to prevent the adoption of reasonable restrictions on the use of school lockers. ...
>
> [I]n view of the state's compelling interest in educating its youth in an environment conducive to learning, schools may be expected to take reasonable measures to eliminate the disruptive influence of drugs and violence. We have not held and do not suggest that the school may not restrict the school locker privilege in such a way as to eliminate a student's reasonable expectation of privacy. (*In re Dumas v. Commonwealth*, 1986)

As a result, the *Dumas* (1986) case is a reminder of the importance of school officials announcing their intentions to make the custodial interests a part of its campus crime strategy as a predicate for diminishing the expectation of privacy sufficiently to permit warrantless searches. In other words, the scope of a search is not justified merely with reference to the ownership of the property that is being searched. Assertions of the custodial interests must be a part of a proactive campus safety plan that is communicated to students and consistently enforced. When this happens, the expectations of privacy by students will always be outweighed when corroborated suspicions focus upon school property.

It may appear odd at first to mention automobiles in the custodial interest context. Automobiles are more properly included in cases of this type than they are in cases of searches involving personal effects (e.g., bags, coats and the like) because not all students rely on them to get to school and their very presence on campus is as a matter of grace and parking space rather than an ordinary part of student life. School administrators might well exclude all student vehicles from campus, but they could not enforce such a requirement regarding books and bags and coats without running into the difficulties of the generic search cases explored below. Nevertheless, whatever the rea- sonable expectation of privacy means, it does not include the notion that school officials cannot take steps to discourage use of school property in illegal student activity.

Proactive campus enforcement and generic suspicion: sweep searches
Generic suspicion cases involve the sweep searches: Locker, desks, closets, or rooms — any place where students are known to put personal items. Generic searches less frequently involve the student's person, books, bag, coats, and the like. This later form of search, in effect "gatekeeping," where access to the campus or the school building itself is conditioned upon passing a drug-sniffing dog or through a metal detector, is being considered by many school officials.

Generic-search cases are not really "*T.L.O.*-like" at all. The critical missing element is reasonable suspicion that a student has violated or is about to violate the law. Substituted in its place is the collective suspicion that a violation is occurring somewhere on campus. Since no link can be made to *New Jersey v. T.L.O.* (1984) in such cases, the custodial interest is often the starting place when discussing plausible points of authority.

T.L.O. does supply some of the fundamentals for the analysis. The Court stressed that students do not leave their constitutional rights at the edge of campus when attending public schools and, as a result, cannot be made to waive their constitutional rights as a condition for attending school or for using school facilities. Rights of free speech, privacy and equal protection of the laws are too fundamental to become a part of the bargain between school and pupil for access to lockers, parking lots, and desks. *T.L.O.* takes away an alternative basis for justifying the practice because its outcome was based upon the notion that when enforcing the law on campus, school officials act as agents of the State rather than acting in the shoes of the parents. It is the larger body of law relating to the Fourth Amendment warrantless searches that provides the rules for the analysis of generic suspicion policies. The cases below will illustrate the main points.

Most sweep search cases involve school safety policies that often reflect a "siege mentality" that seeks to send a message of deterrence and to ferret out violators at all costs. Consider *Burnham v. West* (1987), a federal court decision out of Virginia that invalidated a campus safety program based on the generic search. On one occasion, the principal, after noticing graffiti on school property, ordered teachers to search students' book bags, pockets, and pocketbooks for magic markers. Soon after it was reported that students were seen on buses carrying "walkmen" radios, the principal ordered a search of all students' book bags and pocketbooks for "walkmen" or similar devices. On yet a third occasion, a generic search was ordered after a report that a hallway smelled of marijuana. All students' pocketbooks and book bags and trouser pockets of male students were searched.

The Court offered the following analysis of the generic search policy:

> The Walkman search was unjustified at its inception because there were no reasonable grounds to suspect that the search of any given student would turn up evidence of that student's violation of any law or school rule. At best, it would have been reasonable to suspect that some unknown members of the student body had Walkmen or radios in their possession. The marijuana search illustrates even more clearly the unjustifiable nature of the sweep searches in this case, because

> suspicion in this instance could not reasonably be narrowed even to the entire student body. ... The places where the scent was detected were open hallways rather than confined areas to which only certain individuals had access, and the fact that these hallways led to the cafeteria indicates that [of the school personnel] would reasonably be expected to use them during the time in question.
>
> While the Court readily accepts the proposition that drug abuse is a serious problem, defendants have offered no evidence concerning its prevalence at [the school]. Smuggling Walkmen or radios into school is obviously a less serious problem than drug abuse, and there is likewise not evidence of its prevalence at [the school]. Defendants have made no sufficient showing of exigency requiring an immediate search without particularized suspicion, while plaintiffs, on the other hand, have shown a striking paucity of investigatory measures reasonably calculated to narrow the field of suspects. ... 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. (*Burnham v. West*, 1987).

Compare *West* to the dog sniffing case of *Horton v. Goose Creek Independent School District* (1982). This case, which arose out of the state of Texas, examined whether a campus substance abuse enforcement program that includes routine use of dogs was constitutional. On a random and unannounced basis, the dogs sniffed students' lockers and automobiles. Dogs also went into classrooms, on leashes, to sniff the students themselves. The Court held that dogs' sniffing of cars and lockers did not constitute a search under Fourth Amendment standards, but that dogs' sniffing of the students' persons did constitute a search within the purview of the Fourth Amendment, and that in a school setting, individualized reasonable suspicion was required in order for the sniffing to be constitutional.

The Court reasoned that, regarding sniffs of the lockers and cars, students had no expectation of privacy as to the air by applying to school searches the traditional Fourth Amendment exception that permits searches of items in public view and that can be detected through the other human senses:

> The Courts have in effect adopted a doctrine of "public smell" analogous to the exclusion from fourth amendment coverage of things exposed to the public view. ...
>
> [If] a police officer positioned in a place where he has a right to be, is conscious of an odor, say, of marijuana, no search has occurred; the aroma emanating from the property or person is considered exposed to the public "view" and, therefore, unprotected. From this proposition the courts have concluded that the sniffing of a dog is "no different," or that the dog's olfactory sense merely "enhances" that of the police officer in the same way that a flashlight enhances the officer's sight.
>
> We find [these cases] to be controlling on the question of whether the dogs' sniffing of student lockers in public hallways and automobiles parked on public

> parking lots was a search. The sniffs occurred while the objects were unattended and positioned in public view. Had the principal of the school wandered past the lockers and smelled the pungent aroma of marijuana wafting through the corridors, it would be difficult to contend that a search had occurred. Goldstein stands for the proposition that the use of the dogs' nose to ferret out the scent from inanimate objects in public places is not [a search]. (*Horton v. Goose Creek*, 1982)

But, the court was clearly unwilling to extend the "plain view/plain senses" doctrine to sniffs of the students' person based upon generic suspicion. As to this analysis, the court found the expectation of privacy stronger than the interest of school officials to create an effective deterrent to substance abuse through random dog sniffs:

> The students' persons certainly are not the subject of lowered expectations of privacy. On the contrary, society recognizes the interest in the integrity of one's person, and the fourth amendment applies with its fullest vigor against any intrusion on the human body. Most persons in our society deliberately attempt not to expose the odors emanating from their bodies to public smell. In contrast, where the Supreme Court has upheld limited investigations of body characteristics not justified by individualized suspicion, it has done so on the grounds that the particular characteristic was routinely exhibited to the public. [For example, voice recordings, handwriting samples and fingerprints]. Intentional close proximity sniffing of the person is offensive whether the sniffer be canine or human ...
>
> On the basis of our examinations of the record which indicates the degree of personal intrusiveness involved in this type of activity, we hold that sniffing by dogs of the students' persons in the manner involved in this case is a search within the purview of the fourth amendment ... The intrusion on dignity and personal security that goes with the type of canine inspection of the student's person involved in this case cannot be justified by the need to prevent abuse of drugs and alcohol when there is no individualized suspicion, and we hold it unconstitutional. (*Horton v. Goose Creek*, 1982)

These cases are representative of the psychology of sweep searches. The sweep searches that involve campus property [plain view/plain sense cases] are easy; they build upon the notion that custodial interests are a valid pretext for proactive campus enforcement activities. Body searches trigger additional concerns and produce a different set of requirements. Because such searches reflect a sense of desperation about campus crime and security, school officials must either establish the exigent circumstances as a matter of record or reduce their suspicions to an individual.

Conclusion

Any school safety issues, real or hypothetical, will track closely with the model of reasonableness. Its clarity yields a formula that acknowledges what many educators have known: when the actions of educators are designed to promote a safe learning environment, and are based on what the educator knows or objectively suspects about a student, assertions of authority will be sustained. The response of the courts to cam-

pus safety matters across a broad spectrum of incidents is surprisingly supportive, even when the actions of school officials are challenged on grounds other than the Fourth Amendment.

Courts appear to have made the adjustment to using the reasonableness model to balance competing interests of privacy, custodial interest, due process, free speech, religion, and, of course, the educational mission. Whether the matter involves the fear of disruptions caused by students wearing black arm bands (see *Tinker v. De Moines Independent School District*, 1969) gang apparel (see *Olesen v. Board of Education*, 1987), a student giving a lewd speech (see *Bethel School District v. Fraser*, 1986), wearing a lewd shirt (see *Hinze v. Superior Court*, 1981), on-campus sexual assault (see *Brandis v. Sheldon Community Schools*, 1987), or drug testing in extracurricular activities (see *Schaill v. Tippecanoe County School*, 1988) very little in the way of student misconduct escapes the reach of a well-executed school safety plan.

The law thus complements the good-faith efforts of school officials to provide a safe and effective learning environment. This is good news in an era when so much in the way of campus administration is purposely fragmented in order to respond to uniquely local needs. The reasonableness paradigm is dynamic in relation to the severity of student misconduct. It adapts easily to support a range of proactivity within a school safety plan. By definition, of course, the range of reactive action is almost limitless. Further details of the case law in this regard are beyond the treatment of this introductory article. Any educator wishing to get on the learning curve of school safety must understand that the reasonableness framework provides an incentive rather than a deterrent to implementing a plan to preserve a campus.

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