SEARCH IN A SCHOOL ENVIRONMENT

NOTE: The Legal Training Section of the Department of Criminal Justice Training has prepared this memorandum for informational purposes only. It is not intended for the purpose of providing legal advice in specific situations. Readers are encouraged to contact their local county attorney to obtain advice with respect to any particular issue or problem in their jurisdiction."

Any discussion of searching juveniles in a school environment must start with the seminal case of New Jersey v. T.L.O., 469 U.S. 325 (1985). T.L.O. was a 14 year old student who was believed to have been smoking in the lavatory. She was brought to a school administrator's office and questioned, and she denied having committed the infraction. The administrator demanded to see inside her purse, and spotted a pack of cigarettes. As he did so, he also noticed rolling papers. Knowing what that suggested, he proceeded to search the purse more thoroughly, finding marijuana, a pipe, a substantial amount of cash and an index card that indicated students owed money. Two letters in the purse corroborated his belief that she was dealing in marijuana. The school notified the police. T.L.O. was taken to the police station by her mother, and there, she admitted that she had been selling marijuana. Charges were brought against her.

T.L.O. argued that the search was a violation of the Fourth Amendment. The trial court concluded that although the Fourth Amendment did apply, a school official may search a student's person (or belongings) if the official has reasonable suspicion that a search is necessary due to the commission of a crime, to maintain school discipline or to enforce school policies. The New Jersey appellate court, however, noted that the contents of her purse "had no bearing" on the accusation, which was that she was smoking, as simple possession of cigarettes at that time was not an infraction. The court also ruled that even though the school official saw rolling papers in plain view when the purse was opened, that did not justify the "extensive 'rummaging' through" her belongings by the school administrator. New Jersey requested U.S. Supreme Court review. The Supreme Court considered only the question as to whether the exclusionary rule applied in such cases, when evidence was "unlawfully seized by a school official without the involvement of law enforcement officers." (Although the administrator was not, of course, a law enforcement officer, he was a "state actor.") The Court looked to earlier cases involved school officials, and how the Fourth Amendment should be applied to their actions, and agreed that school officials have some leeway "by virtue of the special nature of their authority over schoolchildren." The court noted that school officials "act *in loco parentis* in their dealings with students," and as such, their authority equates to that of a parent, rather than the State. However, the Court noted that concept was "in tension with contemporary reality." The Court had earlier accepted that school officials are subject to the dictates of the First Amendment[1] and the Fourteenth Amendment Due Process Clause.[2] Because school officials are also

[1] Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).
[2] Goss v. Lopez, 419 U.S. 565 (1975).

responsible for carrying out school discipline, they are not immune from the mandates set forth by the Fourth Amendment. The Court agreed that what is reasonable depends upon "the context within which a search takes place."

On one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of public order.
The T.L.O. Court ruled that even children have some expectation of privacy in their belongings and may carry "such nondisruptive yet highly personal items as photographs, letters and diaries," as well as personal hygiene items. In other words, "schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bring them onto school grounds." However, the Court agreed, school disorder in recent years has "often taken particularly ugly forms; drug use and violent crime in the schools have become major social problems." The court looked for a way to balance the child's right to privacy with the needs of a school to be able to carry out "swift and informal disciplinary procedures needed in the schools."

The Court noted that although probable cause is usually the standard, it had, in the past, agreed to a lesser standard. The Court ruled that the "legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search." A search must be limited and reasonable in scope, related to the objective of the search and "not necessarily intrusive in light of the age and sex of the student and the nature of the infraction." In T.L.O, it was reasonable for the school administrator to believe that she might have cigarettes with her, and her purse was a logical place for her to keep them. The Court held that the search was reasonable.

In a more recent case, Safford United School District v. Redding, 557 U.S. 364 (2009), the student was suspected of having ibuprofen and naproxen in her possession. [3] Both were prohibited under school rules that prohibited the possession of any medication whatsoever. The student allegedly gave at least one of the pills to another student. The student was told to strip down to her underwear (in the presence of a same gender school official) and to move her underclothing in such a way that any pills would fall out. However, no pills were found. Ultimately, the student's mother sued the school and its officials, arguing that the student was strip searched in a way that violated the Fourth Amendment. The Court emphasized that although law enforcement officers require probable cause, school officials require only reasonable suspicion. However, in this case, the Court agreed that the school officials lacked even reasonable suspicion that pills would be found in her underwear. But, the Court continued, because school search cases that were precedent were not specific enough to alert school officials that their actions would so violate the Fourth Amendment, they were entitled to qualified immunity in the lawsuit.

[3] The ibuprofen was of prescription-strength; the naproxen was over-the-counter.

Related Sixth Circuit case law, both before and after Redding was decided, followed this same reasoning. In Reynolds v. City of Anchorage, 379 F.3d 358 (2004), officers were called to a juvenile facility that housed both boys and girls placed there by the Juvenile Justice System. Staff members observed behavior by two girls that suggested they were under the influence of drugs. Officers joined staff in searching the girls' rooms. They found no actual drugs, but did locate items that suggested drug use. A female officer from another agency was requested to perform the actual searches. (She indicated she could not do a cavity search but was willing to do a "visual strip search" to look for possible drugs.) Both girls were required to strip in the presence of the officer and a female staff member; neither was physically touched. The female officer was sued under 42 U.S.C. §1983, but ultimately the Court agreed that the right to be free of such an invasive search was not clearly established at the time. The Court noted that the facility fell somewhere on the spectrum between a school and a prison, as the girls were classified as juvenile offenders. It was reasonable for the officer to believe such a search was reasonable, as the officers who responded would understand the nature of that facility, and these particular juveniles, and as such, the officer was entitled to qualified immunity.[4]

In Richardson v. Board of Education of Jefferson County, Kentucky, 2006 WL 2726777 (W.D.KY. 2006), three young men (including Richardson) were spotted by an instructor entering a stairwell in their high school during a time they should have been in class. A few seconds later, a loud boom was heard and the school fire alarms activated. The instructor looked into the stairwell and saw "paper debris" and smoke, along with black marks on the wall. He informed the assistant principal and all three young men were rounded up. Richardson was 16 and had "significant disciplinary problems" on his record. The school policy on searches at the time indicated that searches could be done under reasonable suspicion, to "protect the property and safety of others and/or to maintain the on-going educational process of the school." Complete disrobing was not permitted by the school officials but school officials were expected to contact law enforcement if "the search may require disrobing to the skin, or the student refuses to be searched." Officer Cox, Louisville Metro PD, was already at the school, providing security, and was summoned to the office to assist. The officer was told that he was suspected of having set off the "cherry bomb" and that Richardson might have matches and/or a lighter. Cox patted down Richardson, checked his pockets and had him remove his socks and shoes – nothing was found. The Assistant Principal suggested Richardson might have something hidden in his underwear. Cox instructed Richardson to pull down his pants, but Richardson refused. At some point, Richardson was handcuffed and at that point, he agreed to cooperate with Cox's demand. Richardson pulled down his pants, and Cox grabbed his "boxers from the top, pulled them out, and shook them." As such, he could see Richardson's groin area. During that time, his two fellow male students, who had also been questioned, walked by the open door and could see him being searched. Nothing was found. Ultimately he was allowed to call his father, and was suspended. Richardson filed a civil lawsuit challenging the search.

[4] All juveniles housed at this facility, Bellewood Home for Children, are in state custody, although not all, or even most, are juvenile offenders.

The Court agreed that the search was "justified at its inception" because there was adequate reasonable suspicion that Richardson was involved in the incident. The first search, the patdown, was also justified and was not contested. The Court agreed that the second search, for an item "that posed a threat to health or safety, namely an explosive device" was reasonable because it was "conducted by someone of the same sex and was only visible to members of the same sex." The Court upheld the search as reasonable under the facts known to the officer at the time.

The most recent case that is precedent in Kentucky is G.C. v. Owensboro Public Schools, 711 F.3d 623 (2013). In the fall of 2009, G.C. was suspected to have been texting during class, which was a violation of the school rules. His teacher seized the phone. G.C. had prior disciplinary issues, and in the late winter of 2008, he expressed a plan to take his life. His parents were made aware of the threat and sought treatment for him. Throughout the next school year, 2008-09, he had several disciplinary issues and again said he was suicidal. When the phone was confiscated in September, 2009, G.C. was brought to the school administrator, who "then read four text messages on the phone. The school administrator later indicated that she was worried and looking for other indications of suicidal thoughts. The Court addressed G.C.'s argument that his cell phone was searched improperly. The phone had been seized in March, 2009, and searched for possible evidence of his suicidal intentions, and G.C. did not contest that. However, he argued that the September, 2009 search "was not supported by a reasonable suspicion that would justify school officials reading his text messages." The school officials contended that the search was proper under the concerns that he was suicidal or might be involved in illegal activity. The Court agreed that "not all infractions involving cell phones will present" indications of "further wrongdoings." The Court ruled that "using a cell phone on school grounds does not automatically trigger an essentially unlimited right enabling a school official to search any content stored on the phone that is not related either substantively or temporally to the infraction." The Sixth Circuit reversed the District Court's grant of summary judgment and remanded the case for further proceedings.

Although not, specifically, a case involving search and seizure, N.C. v. Com., 396 S.W.3d 852 (Ky. 2013) may, in the future, be applied to Fourth Amendment cases. Although initially, the law enforcement officer in the N.C. case merely stood by as the student was questioned concerning a possible crime, once the boy confessed to the school official, criminal charges were placed against him by the law enforcement officer. The Court ultimately held that even though the officer did not do the initial questioning, that the failure to provide Miranda warnings to the student (which may have served to alert him that he was confessing to a crime, rather than simply a breach of school policy) prevented his confession from being admitted against him. (Although considered final in the Kentucky courts, this case is currently under a request for review by the U.S. Supreme Court.)

To summarize, when law enforcement officers are involved in particularized searches in a school environment, they are expected to adhere to the standard for law enforcement searches – probable cause. (Certainly, of course, if facts support it, an officer would be

permitted to do a Terry frisk, as well.) School officials doing searches are subject to a lesser standard but that lesser standard does not extend to law enforcement officers, even when they are employed by the school. Currently nothing specifically prohibits an officer from simply standing by and observing during a search, but active involvement (including verbal direction) brings the search under the law enforcement standard. (For example, coaching a school official to do a search may make that school official an "agent" of the officer, and bring the official under the law enforcement standard.)

POINTS TO REMEMBER:

1) Juveniles do have some expectation of privacy in their belongings in a school environment. That expectation may be addressed by rules and expectations set forth in a school handbook, for example, a rule that indicates that lockers are subject to search.
2) Just like law enforcement officers, school officials (who are "government actors") are subject to the mandates of the Fourth Amendment.
3) A school official may search a student's belongings if they have reasonable suspicion to suspect a student is violating a school rule, but a law enforcement officer remains subject to the probable cause standard.
4) School officials working in concert with a law enforcement officer may be held to the probable cause standard, when the evidence found is to be used in a criminal prosecution.
5) Even school officials in loco parentis have limitations regarding searches of students' belongings and persons.

NOTE: *This Memo does not address the issue of suspicionless drug testing done by schools to allow participation in sports or other extracurricular activities. It also does not address areas where students specifically have no expectation of privacy, such as lockers, whether the search of a locker is done randomly, or due to particularized suspicion.*