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### **School-Conducted Student Searches: A Review of Federal and State Court Decisions**

Recent news accounts alleging that a Pennsylvania School District accessed webcams on District-issued student laptops while the students were using the computers in their homes have rekindled conversation regarding student rights against illegal search and seizure and violations of privacy. Although the discussion has primarily been focused on searches that have taken place outside of the school environment, it may be helpful to take a renewed look at what exactly school administrators can do when students are physically present on District property. When considering the legality of conducting any search on school grounds, it is important to remember that there are both federal and state guarantees of individual rights that need to be considered. As such, we will begin by taking a look at both federal and Pennsylvania cases that have addressed this issue.

#### **Federal Law**

At the federal level, the law that most directly comes into play is the Fourth Amendment to the United States Constitution's guarantee against unreasonable search and seizure. The Supreme Court of the United States has considered the application of the Fourth Amendment to a school-conducted student search on several occasions.

#### *New Jersey v. T.L.O. (1985)*

In 1985, the Supreme Court issued its opinion in the case of *New Jersey v. T.L.O.* The case involved a search of a female student's purse by an assistant vice principal after he had found the student and another student smoking in the lavatory. When the student denied that she had been smoking, the school administrator searched her purse, locating cigarettes as well as drug paraphernalia. Although ultimately finding that the search of the student's purse was legal, the Court took the opportunity to discuss the application of the Fourth Amendment to student searches by school officials.

The Court held that the Fourth Amendment's "prohibition on unreasonable searches and seizures applies to searches conducted by public school officials." 469 U.S. 325, 333 (1985). The Court further explained that "a search of a child's person or of a closed purse or other bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy." *Id.* at 337. In setting forth the

standard to be applied to student searches, the Court held that “the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search.” *Id.* at 341. The Court then explained that “the reasonableness of any search involves a two-fold inquiry: first, one must consider whether the action was justified at its inception” and “second, one must determine whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place.” *Id.*

Significantly, the Court stated that it “need not consider the circumstances that might justify school authorities in conducting searches unsupported by individualized suspicion” (i.e. general or random searches). *Id.* at 342.

*Vernonia School Dist. v. Acton (1995)*

In 1995, the issue of student search came before the Supreme Court again, this time in the context of random drug testing of student athletes. The case was *Vernonia School Dist. v. Acton* and the Court upheld a School District’s policy of allowing random urinalysis drug testing of students who participate in its athletics programs. 515 U.S. 646 (1995). In supporting its decision, the Court emphasized that student-athletes had a reduced expectation of privacy as compared to other students. Interestingly, the Court noted in Footnote 2 that although the search is a “blanket search,” it is undertaken for “prophylactic and distinctly nonpunitive purposes.” *Id.* at 658. The Court also explained that evidence had been presented at the trial court to demonstrate that student athletes were the leaders of a drug culture at the school. *Id.* at 649. Although the Court mentioned that the School District had previously brought in a specially trained dog to detect drugs, it did not address the legality of that action. *Id.* Furthermore, the court did not answer the question of whether the school could randomly test all of its students for drugs and not just the student athletes.

*Board of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls (2002)*

The Supreme Court of the United States again visited the issue of student search with regard to drug testing in the 2002 case of *Board of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls*. 536 U.S. 822 (2002). This case explored the legality of suspicionless urinalysis drug testing of all students participating in competitive extracurricular activities. As in the *Vernonia* case, the test results obtained by the School District “are not turned over to any law enforcement authority” nor do they “lead to the imposition of discipline or have any academic consequences.” *Id.* at 833. In upholding the School District’s policy, the Court declined to impose a requirement of individualized suspicion on schools attempting to prevent and detect drug use by students. *Id.* at 837. Although there clearly was no level of individualized suspicion in this case, the Court did find that the School District had presented specific evidence of drug use at its schools. *Id.* at 835.

*Safford Unified Sch. Dist. v. Redding (2009)*

Although of limited assistance to most situations, the Supreme Court of the United States in 2009 issued its opinion in the case of *Safford Unified Sch. Dist. v. Redding*. 129 S.Ct. 2633 (2009). This case involved the strip search of a student who was suspected of distributing

pain-relief pills to other students. The Court, applying *T.L.O.*, found that the school administrators possessed reasonable suspicion to search the student's backpack but that, with regard to the strip search, "the content of the suspicion failed to match the degree of intrusion." *Id.* at 2642.

### **Pennsylvania Law**

An important concept to understand is that the Federal Constitution sets the minimum level of protection from unreasonable searches and seizures (as well as any other right provided by the Constitution) below which the states may not fall. What this means is that any individual State may go beyond the protections offered by the U.S. Constitution and offer additional guarantees.

#### *Commonwealth v. Cass (1998)*

In 1998, the Supreme Court of Pennsylvania issued its holding in the case of *Commonwealth v. Cass*. 551 Pa. 25 (1998). The *Cass* case involved a search of all student lockers at Harborcreek High School with the use of drug sniffing dogs. If a dog "alerted" to a particular locker as it was searching, that locker and those adjacent thereto would be opened and inspected.

At the trial court level the principal of the high school presented reasons for his heightened concern as to drug activity within the school which included, among other things: information received from unnamed students; observations from teachers of suspicious activity by the students, such as passing small packages between themselves in the hallways; increased use of the student assistance program for counseling students with drug problems; calls from concerned parents; and students exhibiting physical signs of drug use while in the school nurse's office. *Id.* at 30-31.

In its analysis, the Court reviewed the Supreme Court of the United States' ("SCOTUS") holding in *T.L.O.* and concluded that it stood for the position that "students do possess a legitimate, yet limited, expectation of privacy within the school environment." *Id.* at 35. The Court also reviewed SCOTUS' decision in *Vernonia School Dist. v. Acton* where the search was general in nature and not based on individualized suspicion. The Court found that factors used in *Acton* to determine if the search was legal were: 1) the nature of the privacy interest upon which the search at issue intrudes; 2) the character of the intrusion; and 3) the nature and immediacy of the government concern and the efficacy of the means utilized to address that concern. *Id.* at 37. The Court then stated that it would use the framework set forth in *Acton* to assess the legality of the search in question because *Acton*, unlike *T.L.O.*, dealt with a general search as opposed to a search based upon individualized reasonable suspicion. *Id.* at 38.

In terms of the nature of the privacy interest, the Court held that the students' do possess a legitimate expectation of privacy in their assigned lockers but that the privacy expectation is minimal. *Id.* at 39. Because of the students' limited expectation of privacy with regard to lockers, the Court found that the character of the intrusion was minimally invasive. *Id.* at 40. With regard to the nature and immediacy of the government concern, the Court found that the

evidence showing a heightened awareness of drug activity permeating throughout the entire school population, which appeared to be escalating as the school year continued, was sufficient to justify the means utilized to meet those concerns. Id. at 40.

After analyzing the case based upon federal case law, the Court then examined the case through the lens of the Pennsylvania Constitution. The Court found that, under Pennsylvania law, “it is reasonable to conclude that the student possesses some expectation of privacy regarding his or her personal property, and in containers used to carry his or her personal items, e.g. bookbag, gym bag, purse.” Id. at 44. The Court defined the level of privacy that students possess with regard to their lockers as “a limited one.” Id. at 45. Also, the Court found that although “case law makes clear that a canine sniff is not a search under the Fourth Amendment,” a dog sniff *is* a search under Pennsylvania law. Id. at 39 and 49. Although Pennsylvania law interprets a dog sniff as a search, a warrant is not required “when the canine is legitimately in the place where the sniff is conducted and articulable reasonable grounds exist for believing that drugs may be present in the place subjected to the sniff search.” Id. at 49. The Court found that in this case, the District had articulated reasonable grounds for believing that drugs would likely be found on school property.” Id.

In discussing the concept of general searches in Pennsylvania, the Court explained for a general search to be reasonable, and thus, constitutional, the objective of the search must outweigh the intrusion occasioned by the search. Id. at 46. Based on this standard, the Court stated: “protecting students from the dangers of drugs is certainly a compelling and important interest of the school district” and “given the fact that the students possessed only a limited right of privacy within their lockers; that they were forewarned of the possibility of their lockers being searched; and that the search as conducted followed stringent guidelines, we conclude that that the general search of the lockers in this instance represents only a minimal intrusion of the privacy rights at stake.” Id. at 48-49.

In summarizing its decision, the Court held that “general searches by school officials are compatible with the limited protection provided to school students under Article I, Section 8 of the Pennsylvania Constitution, so long as they are carried out based upon neutral, clearly articulated guidelines.” Id. at 54. Significantly, the Court in *Cass* also concluded that “the privacy interest of students within the school environment is a limited one entitled to no greater protection under Article I, Section 8 of the Pennsylvania Constitution than afforded students under the Fourth Amendment to the United States Constitution.” Id. at 55.

#### *In Re F.B. (1999)*

A little over one year after deciding *Cass*, the Supreme Court of Pennsylvania issued its opinion in the case *In Re F.B.* 555 Pa. 661 (1999). This case involved a Philadelphia high school that conducted a “point of entry” search during which students were required to stand in line before a table and empty their pockets while their backpacks, coats, etc. were searched. Id. at 664-665. In beginning its analysis of the case, the Court stated: “as this court recognized in *Cass*, general searches within the school environment do not offend the Fourth Amendment where the search meets the reasonableness test as set forth in *Vernonia School District v. Acton*.” Id. at 666.

Interestingly, the Court explained that a major point of contention among the members of the Court in the *Cass* decision was “the concept of general searches.” Id. at 667. The Court then went on to review the points upon which the opinion announcing the judgment of the court and the concurring opinion in *Cass* agreed. Id. Those factors were then identified as: “1) a consideration of the students’ privacy interest, 2) the nature of the intrusion created by the search, 3) notice, and 4) the overall purpose to be achieved by the search and the immediate reasons prompting the decision to conduct the actual search.” Id.

The Court found that the distinguishing factor in comparing this case with the *Cass* case “is the extension of the search beyond things in the student’s possession to the students themselves.” Id. at 668. Furthermore, the Court stated: “however, looking to the *Cass* decision for guidance, we recognize that the search of school lockers obviously extends to an inspection of personal items within the locker, including, but not limited to, book bags, purses and coats. Given that the same personal items were subject to search if found in a locker, it would be illogical to find a greater privacy interest at stake in searching those personal items outside a locker.” Id.

In finding a showing of the “immediate reasons prompting the decision to conduct the actual search,” the Court pointed to the fact that the trial court had taken judicial notice of the increased rate of violence within the Philadelphia schools. Id. at 673.

Although the facts of the case demonstrated that random students were subjected to the search when the lines entering the school became too long, the Court stated that random selection was not an issue because the appellant did not assert that he was randomly selected for search. Id. at 665. Therefore, the Court found that “because the search herein was conducted as a search of all students, no individual finding of reasonable suspicion directed at appellant is necessary to a determination of the constitutionality of the search.” Id. at 674.

*Theodore v. Delaware Valley School Dist. (2003)*

The most recent Pennsylvania Supreme Court decision regarding student search came in the 2003 case of *Theodore v. Delaware Valley School District*. 575 Pa. 321 (2003). This case involved the legality of a school district policy which “authorizes random, suspicionless drug and alcohol testing of students who hold school parking permits or participate in voluntary extracurricular activities.” Id. at 324.

Although the challenge to this policy was based on the Pennsylvania Constitution (Article I, Section 8), the Court noted that were the challenge based solely upon the Fourth Amendment to the U.S. Constitution, the Supreme Court of the United States’ decision in *Earls* would require the Court to uphold the policy. Id. at 341. The Court went on to point out that “the cases decided under Article I, Section 8 have recognized a strong notion of privacy, which is greater than that of the Fourth Amendment.” Id. Accordingly, the Court flatly rejected the “hands-off approach” articulated in the *Earls* case. Id. at 343.

The Court found that the District offered “no reason to believe that a drug problem actually exists in its schools, much less that the means chosen to address any latent drug problem would actually tend to address that problem.” *Id.* at 347. Contrasting the facts of the case with the facts of the *Vernonia* case, the Court found that the policy in question “was not adopted by a school district at its ‘wit’s end’ as a last-ditch effort to address a pervasive and disruptive ‘drug culture’ which other, lesser measures had failed to eradicate.” *Id.*

Referring to its decision in *In re F.B.*, the Court stated that “alcohol and drug use by some students does not present the same sort of immediate and serious danger that is presented when students introduce weapons into schools.” *Id.* at 348.

Lastly, the Court stated that “in light of the nature of the intrusion..., we hold that such a search policy will pass constitutional scrutiny only if the District makes some actual showing of the specific need for the policy and an explanation of its basis for believing that the policy would address that need.” *Id.* The Court concluded that the school district had not demonstrated an actual drug problem within the school that such a policy would help alleviate.

### **Analysis: What Actions Can A District Take?**

After a thorough review of *T.L.O.*, *Acton*, *Earls*, *Reading*, *Cass*, *F.B.* and *Theodore*, it is perfectly reasonable to question how these decisions will impact the policies that your School District has in effect or that it hopes to enact. One important lesson to be learned from reading the court decisions concerning student search and seizure is that facts matter. Particularly in the Pennsylvania cases, the court relied heavily upon facts that either strongly demonstrated or failed to present evidence of a drug or weapon problem within the school. The reason this is important is because it is wise for Districts to have their particular policies reviewed by their District Solicitor in the context of what is actually taking place within the District’s schools. Policies that are enacted in response to very specific and clearly-identified problems will almost always receive greater deference than situations where that is not the case.

Even where a school can demonstrate a serious problem with drugs, alcohol, weapons or other contraband, the students within that school still possess rights and an expectation of privacy (albeit of a limited nature). What *T.L.O.* and *Redding* teach us is that when a search is conducted of a particular student, that search must be based upon reasonable suspicion and must be conducted in such a manner so as the degree of the intrusion matches the content of the suspicion (i.e. the search can only go so far as is supported by reasonable suspicion).

In contrast to *T.L.O.* and *Redding*, the *Acton*, *Earls*, *Cass*, *F.B.* and *Theodore* cases all involved searches of a general nature that were not focused on one particular individual, but instead looked toward a large group of students, and in some instances, at the entire student population. The best way to analyze an existing or proposed general search policy is through the test that the Pennsylvania courts seem to have adopted, which is to ask (1) what are the students’ privacy interests that are at stake, (2) what is the nature of the intrusion that will be created by conducting the search in question, (3) what notice have the students received that

such a search may be conducted, and (4) what is the overall purpose to be achieved by the search and what are the immediate reasons prompting the decision to conduct the actual search?

In the end, the determination of whether or not a search is legal really comes down to one question: is the search reasonable? In order to demonstrate that they are acting in a reasonable fashion, School Districts should execute searches of a particular student only when individualized reasonable suspicion exists and of groups of students, or entire student populations, only when there is information demonstrating an existing problem that conducting such a search will help to alleviate without imposing too high a burden on the privacy interests of students. Sound like a daunting challenge? Your School District Solicitors can help you navigate through the law, but remember, their assistance and advice will be far more beneficial if it is rendered prior to a potentially illegal search being carried out, rather than after the fact.

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