

Good searches of
students, their lockers
or their property
research paper
example...

[Law](#), [Criminal Justice](#)



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Background

The U. S. Constitution, Fourth Amendment provides that people have the right to be secure in their houses, persons, effects and papers, against unwarranted searches and seizures. Searches and seizures need to be backed with a warrant and should be based on probable cause. The provision applies to the states via the Fourth Amendment due process clause (Burnham, 2002).

The United States has seen tragedies of attacks in schools raising the need to conduct searches of students to ensure the safety of school children and students. The tragedies in communities such as Jonesboro, Littleton, Pearl, West Paducah and Springfield as noted by (Ehlenberger, 2002) have brought school threat to safety into the conscience of the public, thus stirring school safety into the public agenda of the United States. Safety threats, which have long been considered applying to the urban areas only, have now become a concern for suburban and rural areas. Education policy makers

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and administrators continue to consider the ways to protect staff and students even though schools have been among the safest places for children. Student searches can be a significant tool to use in ensuring that schools continue being among the safest places for children.

In the public schools of the United States, students have the Fourth Amendment right, which protects them from unreasonable searches (Ehlenberger, 2002). However, the right is diminished in the school vicinity because of the distinct need to ensure a safe teaching and learning atmosphere. Schools should, therefore, strike a balance the need to provide safety and the right to privacy.

The courts have worked in the recent times to enable school officials conduct student searches. According to Yearout (2001), the move occurred because of escalated violence in schools and heightened public scrutiny in the recent past. A search that was considered illegal in the last two decades can now be considered legal. Furthermore, because of variation of laws from one state to another, laws on searches of students may differ.

Major cases/laws

According to the Supreme Court, the first ten amendments to the Constitution, which constitute the Bill of Rights is applicable to children in a school setting. According to the Court in Tinker (Beger, 2002), the rights of students do not diminish at the schoolhouse gates. It, therefore, means that the Tinker ruling of the Fourth Amendment applies to public schools. Crucial questions that arose from the ruling were varied. They were; should school principals obtain warrants to facilitate searching of students? Does “

probable cause” as cited by the Fourth Amendment apply to the principals? The questions are crucial because the evidence of wrongdoing provided in the event of an illegal search is inadmissible; which means it should be excluded from trial. The admissibility issue is critical especially when school officials are carrying out student searches for alcohol, drugs or weapons. The Supreme Court considered these crucial questions in the year 1985. The case was *New Jersey v. T. L. O.*, 469 U. S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (Beger, 2002). A fourteen-year-old girl, T. L. O., and a female companion whom a teacher found smoking in the girls’ restroom were involved in the case. Smoking was against school rules. T. L. O. denied having been observed smoking and that she never smoked. The assistant principal took a step to open the purse of T. L. O. and discovered a pack of cigarettes. The assistant principal, while searching the purse, further found evidence of marijuana possession, sale, and use. After the assistant principal had called the police, T. L. O. admitted involvement in selling marijuana to other students (Beger, 2003). However, she sought to influence the court to exclude the evidence arguing that the search had violated the rights provided for by the Fourth Amendment to the U. S. Constitution and the New Jersey Constitution.

The issue underwent three levels of litigation in the New Jersey courts before the U. S. Supreme Court made a final decision. The court held that there was no need for a warrant to enable the search by the assistant principal.

Furthermore, the “reasonable suspicion” reduced standard was applicable to searches. The court thus established a two-pronged reasonableness test: (1) the search should have a justification at its beginning; and (2) the search

should be conducted reasonably in relation to the scope of the conditions or circumstances as noted by Beger (2002). The Supreme Court weighed the interest in the privacy of T. L. O. against the need to obtain evidence of school violations by the school administration. The result of the case favored the school's discretion in searching for illegal items or goods in students' purses, pockets, and lockers.

The U. S. Supreme Court continued to erode the students' right as per the Fourth Amendment through a ruling in 1995. The case was *Vernonia School District 471 v. Acton*, 515 U. S. 646, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (Yearout, 2001). The case involved a challenge to a random urinalysis testing of students in a public school districts for students who participated in interscholastic athletics. Arguing against the privacy interest of the complainant, the court explained that there is a generally diminished privacy for children in public schools because the students or children need constant control and supervision. In addition, athletes have diminished privacy interests as there is a regular need for them to undergo routinely experience conditions of "communal undress" and physical exams in locker rooms (Yearout, 2001). The random testing by the school district was considered as minimally intrusive since it demanded collection of urine under similar conditions to those faced by students in public school restrooms. The Court finally cited several reasons that were sufficient to compel justified random testing by the school district. The reasons included drug use deterrence in school children, protecting athletes from drug-related injury and maintaining the functioning of the schools.

There are other cases touching on this hot topic such as *Jenkins v. Talladega*

City Board of Education, 115 F. 3d 821 (11th Cir. 1997), which involved two second-grade girls suspected to have stolen money (Beger, 2002). Strip searches were subjected to the girls by a teacher alongside a guidance counselor. Although the searches were fruitless, the court held that the defendants were immune from the suit.

The School District of Philadelphia

The school district of Philadelphia gives various policies and procedures regarding student searches. First the policies concern individual searches. The section is divided into two; Reasonable Suspicion and Scope of Search (The School District of Philadelphia, 2008). In terms of reasonable suspicion the policy states that searches of individual students can be conducted when there is reasonable suspicions that there has been a criminal infraction, school policy or rule violation and infraction or violation evidence. Searches can also be conducted where there is reasonable suspicion that the student to subject to search has been involved in violation or infraction (The School District of Philadelphia, 2008).

In regard to the scope of search, the policy stipulates that the scope of search must be limited to the minimal intrusive means that are present apart from situations where there is an immediate threat posed to the health and welfare of learners or others. The scope of search further details searches such as strip search, group or general searches and school lockers and desks searches. Strip searches are forbidden by the School District of Philadelphia. In case, the school officials have conducted a search on a student without finding anything, and still believe that the student might have contraband

items in his body, they are not permitted to strip search the student. They can conduct the police for further action. Group searches are also not permitted for school officials. In such cases, school officials should consult the School District Law Department or the City of Philadelphia Police Department. The policy states that the desks belong to the Philadelphia School District, and the School District reserves the right to make searches at any time without obtaining permission of the student using the desk. Secondly, the policy addresses administrative entry searches. The aim of this is to avoid illegal contraband and weapons from entering schools (The School District of Philadelphia, 2008). The searches help in deterring violence and serious physical injury in schools through inhibition of access into school facilities by persons possessing weapons or other contraband. Any person entering a School District of Philadelphia program or facility must undergo administrative entry search.

The Situation at Present

It is not an easy task to determine beforehand if a particular search is reasonable or not. The issue of “probable cause” (Mawdsley, 2004) is still a debatable issue in the United States and future case involving Supreme Court rulings can help iron out the issues surrounding the issue of searching students and their properties in public schools. The courts consider cases individually because most search cases are complicated, having factors that nullify and justify the search. As with the Philadelphian case, students can easily put contrabands under their private body parts. For instance, they can

insert drugs under their pants. Therefore, the policy needs to be reviewed to allow such searches as stripping.

Ramifications for School Administrators

As noted in this research, it is evident that school administrators face tough times as far as school searches are concerned. Most of the cases concerning searches have seen school administrators on the defensive sides in courts (Mawdsley, 2004). Some jurisdictions do not permit searches by school administrators. Any attempt to search students may lead to a tough case in court. Searches by school administrators also subject them to risks. Suppose the subject being searched is a criminal carrying explosive; the administrator faces danger of harm.

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