

Case and law review – search and seizure

Business



Abstract The Fourth Amendment is concerned with privacy along with search and seizure restrictions that apply in public schools, but, the Courts give school officials and police more flexibility to conduct searches in school. In this case and law review you will learn about two different cases where Courts balance a student's privacy rights against the school's interest in safety and student discipline. This means that students often have less protection against what they might perceive as unreasonable searches and seizures at school, than in other places.

The Fifth Amendment is concerned with fundamental fairness. This means that school officials cannot hold or punish a student without stating the reason and providing an opportunity to contest the charges.

In the case of *New Jersey v. T. L. O.*, a New Jersey high school student was accused of violating school rules by smoking in the bathroom, leading an assistant principal to search her purse for cigarettes.

The vice principal found marijuana and other items that made it look like the student was dealing the drug. The student tried to have the evidence from her purse covered up.

Her argument was that mere possession of cigarettes was not a violation of school rules; therefore, a desire for evidence of smoking in the restroom did not justify the search. Although the court concluded that the Fourth Amendment did apply to searches carried out by school officials, it held that “ a school official may properly conduct a search of a student's person if the official has a reasonable suspicion that a crime has been or is in the process of being committed, or reasonable cause to believe that the search is

necessary to maintain school discipline or enforce school policies (“ New jersey v. ” 1985).

” Here the Court recognized two things. First, it reaffirmed the role of the school in loco parentis, but it also recognized that school officials are representatives of the State. The Supreme Court decided that the search did not violate the constitution in which learning can take place. The U.

S. Supreme Court held that a school principal could search a student’s purse without probable cause or a warrant and established more lenient standards for reasonableness in school searches.

Under a State of Ohio education statute, a public school principal may suspend a student for misconduct for up to ten days without a hearing if he notifies the student’s parents within twenty-four hours and gives reasons for his action. In the Goss v. Lopez case, nine students at two high schools and one junior high school in Columbus, Ohio, were given 10-day suspensions from school. The school principals did not hold hearings for the affected students before ordering the suspensions.

The principals’ actions were challenged, and a federal court found that the students’ rights had been violated.

The case was then appealed to the Supreme Court. One question that comes to my mind is did the imposition of the suspensions without preliminary hearings violate the students’ Due Process rights guaranteed by the Fourteenth Amendment? The answer would be yes. The Court held that because Ohio had chosen to extend the right to an education to its citizens, it could not withdraw that right “ on grounds of misconduct absent <https://assignbuster.com/case-and-law-review-search-and-seizure/>

fundamentally fair procedures to determine whether the misconduct had occurred ("Goss v. Lopez," 1975).

"The Court held that Ohio was constrained to recognize students' entitlements to education as property interests protected by the Due Process Clause that could not be taken away without minimum procedures required by the Clause. The Court found that students facing suspension should at a minimum be given notice and given the right to some kind of hearing.

Within the American criminal justice system, an individual's freedoms are protected by the exact same government which, sometimes, looks to deprive that individual of those freedoms. This is part of the long battle in our nation's history to balance the federal and state governments' disciplinary powers and protective responsibilities over the public. These powers and responsibilities are expressed in the United States Constitution. Perhaps of most interest to us all are the protections provided by search-and-seizure laws.

The Fourth Amendment to the US Constitution holds that the people are to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizure;" and further that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized ("Fourth amendment -," 2013)." However, the language in the amendment was broad and didn't address issues such as how to define "unreasonable" and "probable cause. It was left up to the courts to interpret the constitutional protection against unreasonable search and seizure. The few sentences of this amendment are the source of one of the most <https://assignbuster.com/case-and-law-review-search-and-seizure/>

extensive bodies of case law, interpretation, and legal theory in the United States. The protections they extend to the people have been expanded, contracted, and redefined by the US Supreme Court for over two hundred years and is still a process which continues today.

These sentences serve to protect one of the rights United States citizens hold most treasured: the right to be left alone.

Probable Cause is a standard that means ' more likely than not. ' It is the logical belief, supported by facts and circumstances, that a particular person has committed a crime. Reasonable Suspicion is a much lower standard that means ' it's not unreasonable to suspect. ' It is known as a reasonable presumption that a crime has or will occur.

It is reached through rational conclusions based on facts or circumstances. This is also referred to as more than a guess but less than probable cause. Courts have said that school officials can search students in public schools if there is a reasonable suspicion to search.

They do not need probable cause. Under PA Code 12.

14 it states " Illegal or prohibited materials seized during a student search may be used as evidence against the student in a school disciplinary proceeding (" Chapter 12. students," 2005). " For example, if a school administrator has a reasonable belief that a student might be doing something illegal they can perform a search. Another example would be when school administrators are concerned that there might be illegal activity somewhere in the school they can also perform a search in this situation.

This means that student drug tests or metal detectors are allowed when there is a general concern about students using drugs or carrying weapons.

Schools are primarily responsible for keeping you safe, and providing you with the best possible education, free from unnecessary disruption. This allows school administrators some flexibility to conduct searches of the school and school grounds to ensure their students' safety. These searches can be based on information supplied by students, school employees, and the police.

Our district has control and access to all lockers on school premises, so school administrators can inspect student lockers. Under PA Code 12. 14 it states that " The governing board of every school entity shall adopt reasonable policies and procedures regarding student searches.

The local education agency shall notify students and their parents or guardians of the policies and procedures regarding student searches (" Chapter 12. students," 2005). " Our school board created a policy and it is actually stated in the student handbook as well as in the school board policies.

At my school, we have created a written policy that permits principals to search any locker and the contents inside it when they have a general concern that they might find evidence of a crime or a violation of a school rule. The U. S.

Supreme Court ruled that the use of drug-sniffing dogs for inspecting personal belongings is not a " search" under the Fourth Amendment. The

Court said that being sniffed by a dog is not an intrusive way to find illegal items, such as drugs, so it should not be in the same category as a search.

Drug-sniffing dogs are legal inside a school, and school officials do not need individualized suspicion to allow the police to search you with a dog. Last Tuesday our school did a random canine search at the high school and we all were made aware of this search after it happened. I am happy to say that nothing was found but I agree that random canine searches will keep our school safer.

It is also stated in our handbook that school administrators can search anyone's backpack or purse if they have a reasonable suspicion that he or she is breaking the law or violating a school rule.

At our middle school a girl had a pocket knife in her purse and another student found it. She reported this to our principal and he searched her purse without violating of her rights as a student. As an educator, I do not feel that the legal rights of students should surpass our rights to run a school smoothly. It is clear to me that power exists on school grounds; since the power exists to provide a safe environment for learning.

My hope is that it may be a short leap for schools to insist that they also have the power to prevent drugs or weapons from even entering school grounds.

Although I have not found myself personally in any situations regarding search and seizure, I do know that it is important to know my rights as an educator and also the rights of the student. I know I will continue to educate myself on this because if something were to happen in my class, I want be <https://assignbuster.com/case-and-law-review-search-and-seizure/>

confident in how to handle the situation at hand. Thanks to this class, I am now even more familiar with our school board policies. I reviewed the binder and it states the right to search a student or their personal belongings and seize anything they feel is necessary.

This is also stated in our code of conduct and handbook in which I carry around with me daily.

My thoughts on the practical realities when legal doctrine is applied in a school is that sometimes it's about weighing the ramifications of a strict application of the rules and policies versus taking a practical approach that negates the problem or the dangers posed by the violation without a legal consequence to the student. The difficulty is that you are establishing precedence that may affect your ability to enforce the rules when you need it. References (2005). Chapter 12. Students and student services (No.

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