Discipline 4

Student Due Process and Search and Seizure

BACKGROUND ON THE ISSUE

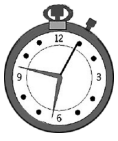
When most people think of due process, they think of courtroom trials portrayed on television—of lawyers, judges, juries, witnesses, and dramatic cross-examinations. When people think of search and seizure, they may think of the Fourth Amendment—of warrants, probable cause, and motions to suppress evidence that was seized illegally. The key question addressed in this lesson is: Do these constitutional protections apply to students in the public schools? Specifically,

- Are students entitled to due process? If so, what process is due?
- Does the Fourth Amendment protect students against unreasonable search and seizure?

Before the Supreme Court ruled on these questions, many educators feared that if the Bill of Rights applied to students, schools would become courtrooms and education would become an adversarial process. These fears, however, have proved to be greatly exaggerated. This is because the Court has applied the Constitution very differently to students in the public schools than to adults in their homes. This chapter explains and clarifies these differences.

Activator

Motivator



7 min

The principal should read each of the scenarios below one at a time. Ask teachers to respond to the set of questions after each scenario.

Scenario 1: Due Process

Al Anger walked into Principal Pal's office with a note from his teacher stating that Al started a fight in her classroom for the second time this month. Mr. Pal told Al that because of his fighting, he might be suspended. But before he suspended Al, Pal asked if Al had anything to say for himself. Al spent 10 minutes explaining that he didn't start the fight and that he was entitled to a due-process hearing that included an opportunity for his parents to question his teacher, to have some of his classmates testify on his behalf, and to have his family lawyer advise him. The principal told Al that he believed the teacher, that Al just had his hearing, and that he was being suspended for three days.

Ask teachers, by a show of hands, what they think about each of the statements in Table 4.1. You may want to tally the responses for the group. Ask teachers to hang on to the handout, as they will be returning to it later.

Table 4.1 Due Process Scenarios

paper copies

WWW

HTTP://WWW.CORWIN.COM/TEACHINGLAW

Al's Issue			
1. Al has a right to some type of due-process hearing before being suspended for one to three days.	True	False	Unsure
2. Al has a right to bring a parent to a meeting with the principal before being suspended for more that three days.	True	False	Unsure
3. Before being suspended for five days, Al has a constitutional right to bring a lawyer to a hearing to advise him.	True	False	Unsure

Al's Issue			
4. Before suspending Al for 5 days, the principal must investigate Al's claim by talking with the teacher and/or some of the students.	True	False	Unsure
5. Before being expelled, Al has a right to a formal hearing that includes a written statement of the evidence against him, the right to bring witnesses on his behalf, to question witnesses against him, plus the right to appeal.	True	False	Unsure
6. If Al were a student in special education, he would have additional due-process rights.	True	False	Unsure

Scenario 2: Search and Seizure

Read each of the cases in Table 4.2, and ask teachers to indicate, by a show of hands, whether they agree, disagree, or are unsure about the claims of Bully's lawyer in Cases 1 and 2 and the claims of the parents in Case 3 and 4. Tally the responses in the right-hand column. Ask teachers to hang on to the handout, as they will be returning to it later.

Alternative

As an alternative activity, principals can discuss the contents of a YouTube clip about the car and locker searches in a school district. This clip discusses how school officials permitted suspicionless searches of students' cars and lockers. Show the clip at http://www.youtube.com/watch?v=gQbwyr6FGOg to the participants.

After showing the clip, the principal should lead the teachers through a three-to-five-minute discussion about whether it was okay to allow these suspicionless searches.

Table 4.2 Search and Seizure Scenarios

Case			
Case 1. A student at Yourtown High told Mr. Kalm, the eighth-grade teacher, that she saw Bully Barnes put a long knife in his backpack. Kalm asks Bully if he can look in his backpack for a knife. Bully says, "Sure, 'cause I don't have a knife." Kalm looks through the backpack and can't find a knife. But Kalm opens Bully's wallet and finds an envelope with a substance that he gives to the principal that turns out to be marijuana. The principal then turns the marijuana over to the police. At Bully's trial, his lawyer claims that the search of his backpack was illegal, and therefore, the marijuana can't be used as evidence against him.	Agree	Disagree	Unsure
Case 2. Suppose Mr. Kalm had been told that Bully had marijuana in an envelope in his backpack, and when Kalm searched Bully's backpack for the marijuana, he couldn't find any, but he did find a long knife. When a prosecutor introduces the knife as evidence in court, Bully's lawyer claims that the knife was seized illegally since there was no reason to believe Bully had a knife in his backpack.	Agree	Disagree	Unsure
Case 3. When a student tells principal Kal Koncern that Sharon Shy gave her a pain pill in violation of school rules, Kal tells the nurse to search Sharon. Finding no pills in Sharon's backpack or outer clothing, the nurse continues the search by telling Sharon to take off her clothes and pull out her bra and underwear. After no pills are found, Sharon's mother claims that the search violated Sharon's Fourth Amendment rights.	Agree	Disagree	Unsure
Case 4. The Yourtown school board is concerned about drug use. Therefore, the Board wants to require all students who want to participate in any extracurricular activity to sign a waiver agreeing to submit to random, suspicionless drug testing. Some parents claim that forcing their children to submit to drug testing when there is no reasonable suspicion that they have used drugs is a violation of their Fourth Amendment privacy rights.	Agree	Disagree	Unsure

Rationale

Objectives

Rationale

3 min

Teachers often worry about what the legal limits are regarding school disciplinary issues within their classrooms. It is important that teachers understand this area of law in order to respond effectively and legally when such issues arise.

Objectives

Post and/or state the following objectives for the lesson plan:

1. Teachers will understand why and how the U.S. Supreme Court and other courts have applied the Due Process Clause to students in public schools in cases of suspension and expulsion.

2. Teachers will understand why and how the courts have applied the Fourth Amendment to students in public schools.

The Law

20 min

Two big ideas—*due process* and *search and seizure*—are the focus of the content below. In this activity, you will ask groups of teachers to conduct a vocabulary activity called a Frayer Diagram. Begin by explaining that a Frayer Diagram is a method employed to understand difficult terms. The process begins by providing an example of a Frayer Diagram structure. In Table 4.3, a term is placed in the center and each quadrant answers a specific question.

Divide teachers into eight groups, and assign each group one term and one Frayer Diagram from Tables 4.3 and 4.4. Also provide teachers with the notes on pages 74–76. After five to seven minutes, ask a representative from each group to report out on their diagrams. (You may want to collect the diagram cards, make copies for teachers, and distribute them.)

Table 4.3 Due Process Key Terms

The Law	Examples
Due Process	
Definition (your own words)	Implications for Teachers

The Law	Examples
Informal Notice and Hearing	
Definition (your own words)	Implications for Teachers

The Law	Examples
Formal Notice and Hearing	
Definition (your own words)	Implications for Teachers

The Law	Examples
Manifestation Determination	
Definition (your own words)	Implications for Teachers

Table 4.4 Search and Seizure Key Terms and Cases

The Law	Examples
Reasonable Suspicion	
Definition (your own words)	Implications for Teachers

The Law	Examples
BOE v. Earls (2002)	
Definition (your own words)	Implications for Teachers

The Law	Examples
New Jersey v. T.L.O. (1985)	
Definition (your own words)	Implications for Teachers

The Law	Examples
Safford Unified School District No. 1 v. Redding (2009)	
Definition (your own words)	Implications for Teachers

NOTES FOR DISTRIBUTION

Due Process

In *Goss v. Lopez* (1975), the U.S. Supreme Court ruled that students do not "shed their constitutional rights at the schoolhouse gate." Therefore, they are entitled to some form of due process if they are faced with a possible suspension for 1 to 10 days. This is because a suspension of up to 10 days is not so minor a punishment that it may be imposed "in complete disregard of the Due Process Clause."

Due process is a flexible concept. It varies according to the possible seriousness of the penalty: The more serious the possible penalty, the more formal the process that is due.

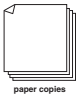
In cases of a short 1-to-10-day suspension, the process required is an informal notice and hearing. The *informal notice* may be oral or in writing and consists of telling students what they are accused of doing and what school rule they are charged with breaking. According to the Supreme Court, if they deny the charge, students are entitled to an *informal hearing* that consists of (1) "an explanation of the evidence the authorities have" and (2) "an opportunity to tell his side of the story" before the disciplinarian decides on what, if any, punishment to impose (*Goss v. Lopez,* 1975). The concern of the Court is that there be at least "rudimentary precautions against unfair or mistaken findings of misconduct" and arbitrary suspensions from school. Thus, the Court does not turn schools into courtrooms or require formal due process in cases of short-term suspensions. In fact, the informal process required in these cases is the minimum that most good disciplinarians would follow even if there were no court rulings about student suspensions.

In cases of long-term suspension or expulsion, a *formal notice* and *formal hearing* is required. Because such serious penalties can have serious consequences on a student's education and employment opportunities, meticulous procedures must be followed. These consist of a written notice that informs students and their parents of the charges, witnesses, and evidence against them and of their procedural protections at the hearing, including the right to question their accusers, to bring witnesses and evidence on their behalf, to have someone represent them, and to record the hearing and appeal the decision.

Additional procedures are required for students with special needs. Before they can be suspended for more than a total of 10 days during the school year, there must be a *manifestation determination.* This means that an individual educational program (IEP) team meeting must be called to determine whether the misbehavior is a manifestation of the student's disability. If not, the student can be disciplined like any other student. If the team concludes that the misbehavior is a manifestation of the disability, then standard discipline cannot take place, and the team must conduct a functional-behavioral assessment and develop a behavior intervention plan to address the behavior and/or modify the existing plan. (For more on disciplining students with special needs, see Chapter 3).

In sum, due process is not a fixed or inflexible concept that requires the same procedures in all discipline cases. Instead, it is a concept based on fairness that requires more formal procedures before more serious penalties are imposed. That is the reason judges require a formal notice and hearing before expelling a student, an informal process before a 1-to-10-day suspension, and no due process before minor punishments, such as detention or probation.

NOTES FOR DISTRIBUTION



Search and Seizure

In *New Jersey v. T.L.O.* (1985), the Supreme Court ruled that the Fourth Amendment's protection against unreasonable *search and seizure* applies to students in the public schools. However, the Court explained that educators are not required to comply with the requirements that apply to police who must obtain a warrant from a judge based on probable cause before searching citizens in their homes. Educators do not need a warrant. Instead of *probable cause* (a relatively high standard of evidence required of police before a judge will issue a warrant), the lower standard required of teachers or administrators is *reasonable suspicion.* Specifically, to justify a search by educators, the search must be reasonable in its *inception* and in its *scope.* To be reasonable in inception, a school official must be able to articulate some objective reason for the search. Furthermore, the scope of the search must be related to its reason and not be excessively intrusive in light of the age and sex of the student and the nature of the infraction. For example, if one student reported that he saw another student put a pistol in his backpack, it would be reasonable in inception to search the backpack. But, it would not be reasonable in scope for the educator to open and search the wallet in the backpack because it could not contain a pistol.

In *Board of Education v. Earls* (2002), the Supreme Court held that schools could require students to sign waivers permitting random, suspicionless drug testing as a condition for participating in *any* extracurricular activity. In a five-to-four decision, the majority reasoned that participation in extracurricular activities is a privilege and not a right. The Court further justified its decision based on the school's responsibility to protect the health and safety of students and on its belief that the goal of a drug-free school outweighed the limited invasion of privacy involved in random urine testing.

In *Safford Unified School District No. 1 v. Redding* (2009), the Supreme Court ruled that information from one student that a classmate gave her a pain pill in violation of school rules constituted reasonable suspicion to justify a search of the student's

backpack and outer clothing. But, the Court also ruled that proceeding to a strip search was not reasonable in scope because the search was for a common pain reliever that posed no danger to the students (based on the power of the drug or its quantity) and there was no reason to think the student was carrying pills in her underwear. Thus, a search, even if justified at its inception, crosses the constitutional boundary when it becomes excessively intrusive in light of the age and sex of the student—especially when the object of the search poses no danger to students.

Application

Content to Practice

15 min

Ask teachers to revisit the hypothetical cases from the start of this lesson. Individually or in small groups, ask teachers to answer the questions regarding due process in Table 4.5 and search and seizure in Table 4.6. The answers to each of the scenarios are provided below for the principal to share.

Table 4.5 Due Process Scenarios Revisited

Due Process		
Issue	**True/False**	**Why?**
1. Al is entitled to some type of due-process hearing before being suspended for one to three days.		
2. Al is entitled to bring a parent to a meeting with the principal before being suspended for more that three days?		
3. Before being suspended for more than five days, Al would be entitled to bring a lawyer to a hearing to advise him.		

Due Process		
Issue	**True/False**	**Why?**
4. Before suspending Al for more than five days, the principal must investigate Al's claim by talking with the teacher and/or some of the students.		
5. Before being expelled, Al would be entitled to a formal hearing that included a written statement of the evidence against him, the right to have someone represent him, to bring witnesses on his behalf, to question witnesses against him, plus the right to record the hearing and appeal the decision.		
6. If Al were a student in special education, he would have additional due-process rights.		

Table 4.6 Search and Seizure Scenarios Revisited

Search and Seizure		
Case	**Agree/ Disagree**	**Why?**
1. A student at Yourtown High told Mr. Kalm, the eighth-grade teacher, that she saw Bully Barnes put a long knife in his backpack. Kalm asks Bully if he can look in his backpack for a knife. Bully says, "Sure, 'cause I don't have a knife." Kalm looks through the backpack and can't		

(Continued)

(Continued)

Search and Seizure		
Case	**Agree/ Disagree**	**Why?**
find a knife. But Kalm opens Bully's wallet and finds an envelope with a substance that he gives to the principal and that turns out to be marijuana. The principal then turns the marijuana over to the police. At Bully's trial, his lawyer claims that the search of his backpack was illegal, and therefore the marijuana can't be used as evidence against him.		
2. Suppose Mr. Kalm had been told that Bully had marijuana in an envelope in his backpack; when Kalm searched Bully's backpack for the marijuana, he couldn't find any, but he did find a long knife. When a prosecutor introduces the knife as evidence in court, Bully's lawyer claims that the knife was seized illegally as there was no reason to believe Bully had a knife in his backpack.		
3. When a student tells principal Kal Koncern that Sharon Shy gave her a pain pill in violation of school rules, Kal tells the nurse to search Sharon. Finding no pills in Sharon's backpack or outer clothing, the nurse continues the search by telling Sharon to take off her		

Search and Seizure		
Case	**Agree/ Disagree**	**Why?**
clothes and pull out her bra and panties. After no pills are found, Sharon's mother claims that the search violated Sharon's Fourth Amendment rights.		
4. The Yourtown school board is concerned about drug use. Therefore, the board wants to require all students who want to participate in any extracurricular activity to sign a waiver agreeing to submit to random, suspicionless drug testing. Some parents claim that forcing their children to submit to drug testing when there is no reasonable suspicion that they have used drugs is a violation of their Fourth Amendment privacy rights.		

Due Process Answers

1. True

According to the Supreme Court decision in *Goss v. Lopez* (1975), Al Anger is entitled to an informal hearing before being suspended for 1 to 10 days. This consists of telling Al what rule he is accused of breaking. If he denies the accusation, he is entitled to know the evidence against him and to be given an opportunity to tell his side of the story before the principal decides on what, if any, punishment to impose.

2. False

Although some schools allow a student to bring a parent to a conference before imposing a suspension if the student is not a danger to himself or others, this is a matter of discretion and is not required by the courts.

3. False

Al does not have a constitutional right to bring a lawyer to advise him in the informal hearing that is required before a short-term suspension. According to the Supreme Court opinion in *Goss v. Lopez* (1975), "further formalizing the suspension process . . . may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process." However, some courts have held that in an expulsion case, Al would have a right to bring a lawyer to attend the hearing and advise him because of the seriousness of the possible penalty.

4. False

The *Goss v. Lopez* (1975) decision does not always require the principal to investigate Al's story, but under some circumstances, that would be the appropriate thing to do.

5. True

Before an expulsion, Al would be entitled to a written notice that advised him of the charges and evidence against him and of his right to bring someone to represent him, witnesses and evidence on his behalf, as well as his right to question witnesses and his right to record the hearing and appeal the decision.

6. True

If Al were a student in special education, he could not be suspended for more than 10 days during a school year unless his IEP team held a manifestation determination that concluded that his misbehavior was not caused by his disability.

Search and Seizure Answers

1. Bully's lawyer is *right.*

   The search of Bully's wallet and the seizure of his marijuana were illegal. According to the *New Jersey v. T.L.O.* (1985) decision, the Fourth Amendment requires that a search by educators must be reasonable in inception and scope. Based on what the student informant told Kalm, it was reasonable in inception for him to search

the backpack for the long knife. But it was not reasonable in scope to search the wallet, as a long knife could not be in the wallet. Therefore, if a prosecutor wanted to introduce the drugs as evidence in a criminal trial, Bully's lawyer would probably be successful in having the evidence ruled inadmissible.

2. The *seizure* of the knife was *legal.*

   Based on the student informant's information, Kalm's search of the backpack to look for the drugs was reasonable in inception and scope. Because Kalm found the knife in plain view incidental to a search for drugs, the search was not excessive in scope. Therefore, the judge would allow the knife to be entered in evidence against Bully.

3. The strip search was *not legal.*

   Applying the principles of *Safford v. Redding* (2009) to the facts of this case, the search violated Sharon's Fourth Amendment rights. Although the initial search of Sharon's backpack and outer clothing was reasonable in inception, the search was not reasonable in scope because the pills posed no danger to students, and because there was no reason to believe Sharon was hiding them in her underwear.

4. The drug testing would be *legal.*

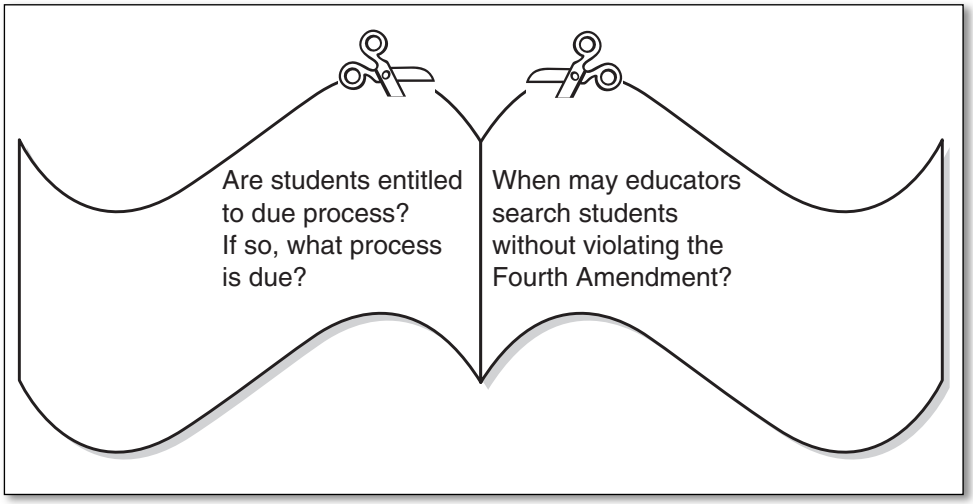
   According to the *Board of Education v. Earls* (2002) decision, public schools have discretion to require students who want to participate in extracurricular activities to sign waivers allowing school officials to engage in random, suspicionless drug testing. There is much debate about whether such a requirement is wise and cost-effective. But, it is now clear that such a policy does not violate the Fourth Amendment.

Assessment

5 min

At the beginning of the lesson, two questions were highlighted as the primary function of this lesson. Now, in the assessment, return to these two questions. Provide teachers with a ticket (see Figure 4.1) to leave the meeting. On one side, ask the teachers to answer the question: Are students entitled to due process? If so, what process is due? On the other, ask them to respond to the other question: When may educators search students without violating the Fourth Amendment?

Figure 4.1 Assessment Tickets



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Alternative

Use the following true-false assessment:

1. Students are entitled to an informal notice and hearing before short suspensions of 1 to 10 days.
2. Before being expelled, students must be provided with a lawyer by the school if they can't afford one.
3. Administrators can strip search students if they have reasonable suspicion that the student stole large sums of money.
4. Before being expelled, students are entitled to a formal notice and hearing. The written notice must inform students and their parents of the evidence against them and of their rights at the hearing, including the opportunity to have someone represent them, to bring witnesses and evidence on their behalf, to question their accusers, to record the hearing, and to appeal.
5. Students have a right to remain silent when questioned by teachers about violations of school rules.
6. To justify a search of students' clothing, backpacks, or cars, teachers or administrators need "reasonable suspicion." To meet this standard, the search must be reasonable in its inception and reasonable in scope.
7. Schools may require students to sign waivers to permit random, suspicionless drug testing in order to participate in extracurricular activities.

1. **True**
2. **False** *(In many states, students may bring a lawyer to an expulsion hearing to advise them, but the school is not required to furnish a lawyer for the student.)*
3. **False** *(Strip searches are only permitted in situations that pose a serious danger to the student or others.)*
4. **True**
5. **False** *(This right only applies to criminal law.)*
6. **True**
7. **True**

FAQ

10 min

As time permits, you may add some of these additional questions to the follow-up discussion.

1. Do *Miranda* warnings apply to students?

No. In *Miranda v. Arizona,* 377 U.S. 201 (1966), the Supreme Court ruled that the Fifth Amendment privilege against self-incrimination applies in a criminal investigation and requires that suspects be informed of their right to remain silent, that what they say may be used against them, and that they have a right to have a lawyer represent them.

These rules do not apply to educators or to school-resource officers employed by the school who question students in public schools, as school discipline is not a criminal proceeding. However, *Miranda* (1966) would apply to police who question students in school as part of a criminal investigation.

2. Is due process required before in-school suspension?

Not usually. In a 2007 decision (*Laney v. Farley,* 2007), a federal appeals court ruled that a student was not entitled to notice and an opportunity to be heard before an in-school suspension. The court reasoned that an in-school suspension does not deprive a student of educational opportunities the way an out-of-school suspension does. However, the court recognized that under certain circumstances, in-school isolation might constitute as much deprivation of education as at-home suspension.

3. Must due process be used before corporal punishment?

Not in those states or school districts that permit corporal punishment. The Supreme Court has ruled that corporal punishment is not unconstitutional and that it is a matter for state legislatures and local school districts to decide whether to permit such punishment and, if so, what procedures to require (*Ingraham v. Wright,* 1977). However, courts have ruled that grossly excessive corporal punishment may be unconstitutional, and such punishment probably also violates state law.

4. Are strip searches unconstitutional?

Often, but not always. Strip-searching two second-grade students for a missing $7 dollars was ruled clearly unconstitutional (*Jenkins by Hall v. Talladega,* 1996). In that case, the court suggested a continuum: At one extreme are dangerous weapons and drugs that might justify a strip search. At the other extreme are small amounts of money, personal items, and "nondangerous" contraband that would never justify strip searches. Similarly, it is likely that a strip search for $50 missing from a teacher's purse would be considered unreasonable because the theft would involve little danger to others and thus could not justify a highly invasive search. In cases where school officials feel that students should be strip searched because of substantial evidence of criminal behavior, such as possession of dangerous weapons or distribution of illegal drugs, it might be wise to have police—rather than educators—conduct such searches.

5. What about searches of student lockers or cars?

Lawyers differ about whether the Fourth Amendment even applies to lockers. Most lawyers believe that students have no reasonable expectation of privacy in their lockers. This is because the lockers are owned by the school, and school rules usually make it clear that the lockers are subject to search by school officials—especially when they have the combination of the locks. Other lawyers believe that educators should have some individual suspicion before they search a student's locker—especially if they search jackets or other items owned by the student in the locker. This is based on the theory that students do not lose their reasonable expectation of privacy in their clothing when they put it in their locker.

Courts consider the search of a car on school property more like the search of a backpack than a locker, and the principles of *New Jersey v. T.L.O.* (1985) should apply. Thus, to comply with the

Fourth Amendment, educators' searches of students' cars should be based on individual suspicion and reasonable in inception and reasonable in scope.

6. **Is it constitutional for administrators to use video cameras for surveillance?**

   Usually it is. Video cameras may be used in school hallways, cafeterias, libraries, parking lots, and other "common areas" without violating constitutional principles. However, the Fourth Amendment might be violated if video cameras were placed in school bathrooms, locker rooms, or private offices where people have a "reasonable expectation of privacy."

7. **If students consent to a search, do they lose their Fourth Amendment protections?**

   Yes, if they consent *voluntarily.* In a school setting, however, a student's lawyer might raise two questions: Is it reasonable to hold that students waived their rights if they didn't know them? Second, was the student's acquiescence to an administrator's request to search really voluntary? The answers may depend on the age and maturity of the student and whether the situation in which the consent was given seemed voluntary or coercive.

8. **Can educators ask the school-resource officer to search a student's backpack?**

   Yes, if the educator has reasonable suspicion that the student has committed a crime or violated a school rule (e.g., a teacher smells marijuana or sees a knife in a student's backpack).

Resource Material

Relevant Quotes

The authority possessed by the State to prescribe and enforce standards of conduct in its schools although concededly very broad must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a

public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause. . . .

The concern would be mostly academic if the disciplinary process were a totally accurate, unerring process, never mistaken and never unfair. Unfortunately, that is not the case, and no one suggests that it is. . . .

Requiring effective notice and informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may then determine himself to summon the accuser, permit cross-examination, and allow the student to present his own witnesses. . . . In any event his discretion will be more informed and we think the risk of error substantially reduced. . . .

We have imposed requirements which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions.

—Goss v. Lopez (1975)

How should we strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place? It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools. . . .

The school setting also requires some modification of the level of suspicion of illicit activity needed to justify a search. Ordinarily, a search . . . must be based on "probable cause" to believe that a violation of the law has occurred . . . [However,] the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. . . . 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 either the law or the rules of the school. Such

a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

—New Jersey v. T.L.O. (1985)

Given the nationwide epidemic of drug use, and the evidence of increased drug use in Tecumseh schools, it was entirely reasonable for the School District to enact this particular drug testing policy. . . . The test results are not turned over to any law enforcement authority. . . . The only consequence of a failed drug test is to limit the student's privilege of participating in extracurricular activities. . . . Given the minimally intrusive nature of the sample collection and the limited uses to which the test results are put, we conclude that the invasion of students' privacy is not significant. . . .

Within the limits of the Fourth Amendment, local school boards must assess the desirability of drug testing schoolchildren. In upholding the constitutionality of the policy, we express no opinion as to its wisdom. Rather, we hold only that Tecumseh's Policy is a reasonable means of furthering the School District's important interest in preventing and deterring drug use among schoolchildren.

—Board of Education v. Earls (2002)

The T.L.O. concern to limit a school search to reasonable scope requires the support of reasonable suspicion of danger . . . before a search can reasonably make the quantum leap from outer clothes and backpacks to exposure of intimate parts. The meaning of such a search, and the degradation its subject may reasonably feel, place a search that intrusive in a category of its own.

—Safford Unified School District No. 1 v. Redding (2009)

References

Board of Education v. Earls, 536 U.S. 822 (2002).
Goss v. Lopez, 419 U.S. 565 (1975).
Ingraham v. Wright, 430 U.S. 651 (1977).
Jenkins by Hall v. Talladega City Board of Education, 95 F.3d 1036 11th Cir. (1996).
Laney v. Farley, 501 F.3d 577 6th Cir. (2007).
Miranda v. Arizona, 377 U.S. 201 (1966).
New Jersey v. T.L.O., 469 U.S. 325 (1985).
Safford Unified School District No. 1 v. Redding, 129 S.Ct. 2633 (2009).

Additional Resources

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