



Student Search and Seizure

Janine Murphy
Assistant Legal Counsel
North Carolina School Boards Association

The information in this presentation is for educational purposes only and does not constitute legal advice. No attorney-client relationship is created or intended through this presentation or through receipt or review of these materials. For advice on specific matters, please consult with your board attorney or other legal counsel.

© This presentation is copyrighted by the North Carolina School Boards Association. Unauthorized copying or distribution is prohibited.



Part I: The U.S. Constitution and the Fourth Amendment

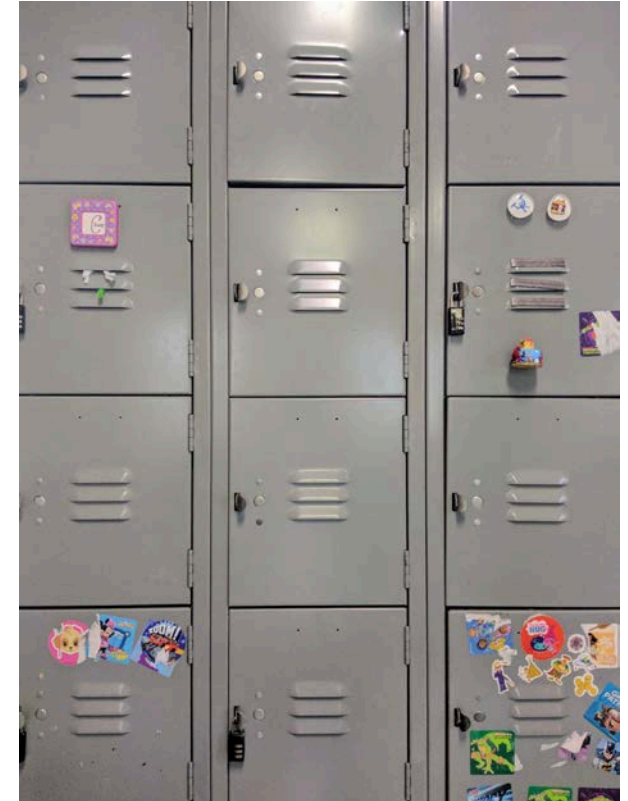
The U.S. Constitution

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”

U.S. Const. amend. IV

What is a search?

A “search” under the Fourth Amendment occurs when a government official examines a person's body or possessions in circumstances in which the person would have a legitimate expectation of privacy.



What is a legitimate expectation of privacy?

- Generally, a **legitimate expectation of privacy** exists when
 - an individual has exhibited an actual expectation of privacy, and
 - the expectation is one that is recognized as reasonable in our society.
- A student has a legitimate expectation of privacy in his/her body and the his/her personal possessions.

Part II: U.S. Supreme Court Cases

Cases Involving Individualized Suspicion

New Jersey v. T.L.O.

The U.S. Supreme Court held that the Fourth Amendment protection against unreasonable searches and seizures applies to searches and investigations conducted by public school officials.

- *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

Facts of T.L.O.

- Based on a report by a teacher, a vice principal searched T.L.O.'s handbag for cigarettes and in the process, also found marijuana.
- Juvenile delinquency charges were brought against T.L.O. in state court. She was convicted and appealed to the N.J. Supreme Court.
- The N.J. Supreme Court ruled that the search of her handbag violated the Fourth Amendment. New Jersey appealed to the U.S. Supreme Court.



T.L.O.: Balancing of Interests



Students

The Supreme Court recognized students' "legitimate expectations of privacy and personal security."



Schools

The Supreme Court recognized the school's substantial interest in

- maintaining order and discipline, and
- creating a safe environment that is conducive to learning.

T.L.O.: Easing of Restrictions in the School Setting

“The school setting requires some easing of the restrictions to which searches by authorities [i.e., law enforcement] are ordinarily subject.”

- School officials are not required to obtain a search warrant before searching a student or the student’s belongings.
- School officials are not required to have “probable cause” before searching a student or the student’s belongings.
 - Probable cause means a “fair probability” or a “substantial chance” of discovering evidence of criminal activity. *Safford v. Redding*, 577 U.S. 364 (2009).

T.L.O.: The Standard for Searching Students

The legality of student searches “should depend simply on the *reasonableness*, under all the circumstances of the search.”

“Reasonable Suspicion” has come to be defined as a “*moderate chance of finding evidence of wrongdoing.*”

T.L.O.: Reasonableness

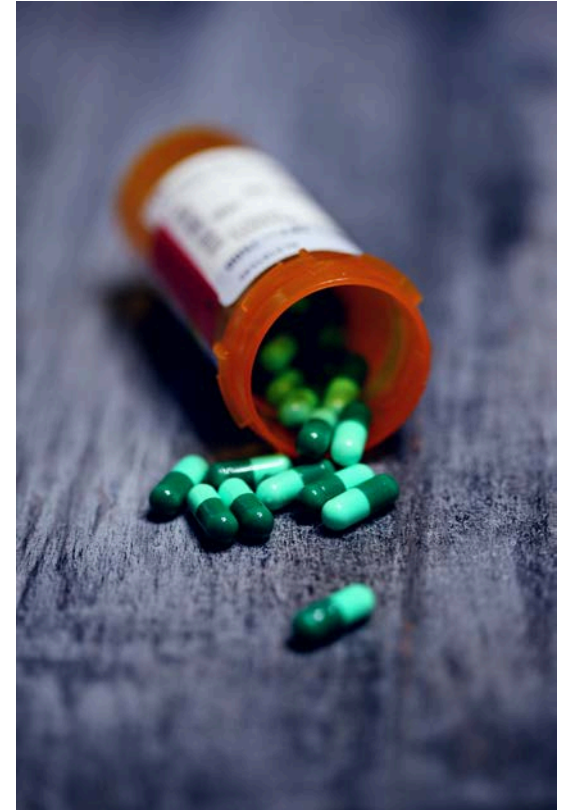
Determining
“reasonableness”
is a two-fold
inquiry.

1. Was the search
“justified at its
inception?”

2. Was the search
“permissible in
scope?”

“Justified at Its Inception”

- There must be a reasonable grounds to believe the search will turn up evidence of a violation of a school rule or a law.
 - Reasonable grounds is less than probable cause but must be “more than a hunch.”
 - Evidence of a violation could be drugs, alcohol, weapons, a stolen cell phone, stolen cash, etc.



“Permissible in Scope”

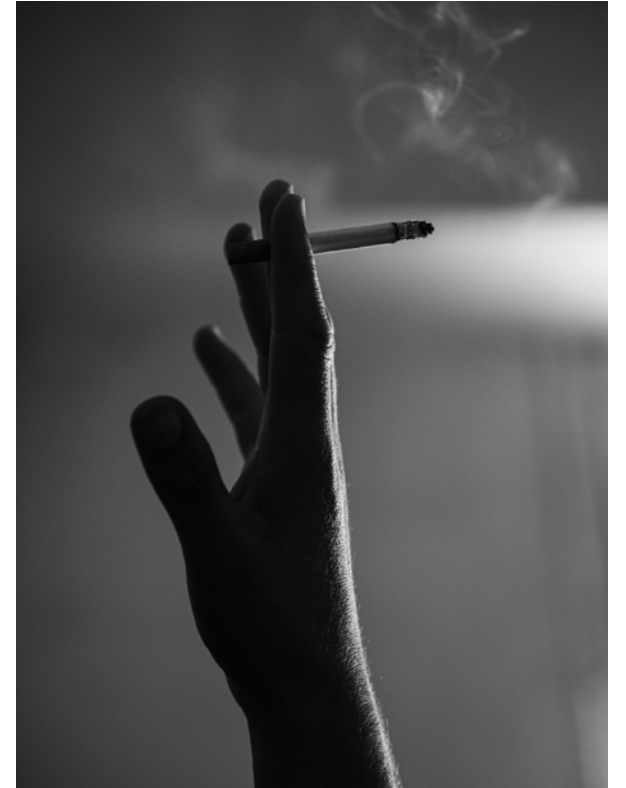
- The type of search conducted must be
 - reasonably related to the objectives of the search, and
 - not excessively intrusive in light of the age and sex of the student and the nature of the infraction.
 - Example: a strip search of a 13-year-old girl for a few Advils is excessively intrusive. *Safford v. Redding*, 577 U.S. 364 (2009).

T.L.O. Holding

- Using the reasonableness test the Supreme Court reasoned that T.L.O was subjected to two searches and held that both searches were legal.
- The initial search of the handbag was justified because the school official had a reliable report that T.L.O. had been smoking in the restroom. Her handbag was the logical place to look for evidence that she had been smoking at school.

T.L.O. Holding

- The search for cigarettes led to the discovery of rolling papers.
- The discovery of rolling papers, an indicator of drug use, provided reasonable suspicion for the second, more extensive search of the handbag that produced marijuana and evidence of drug dealing.



Individualized Suspicion

- “Individualized suspicion” exists when school officials have reason to suspect a *specific* student is, or a *specific, identifiable* group of students are, violating the law or school rules.
- Individualized suspicion is not necessarily required for all types of searches at school.
 - For example, individualized suspicion is not present when school officials conduct school-wide locker searches, use metal detectors at the school door, or mandate random drug testing of student athletes and/or participants in other extracurricular activities.

What if a student “consents” to a search?

- A student may consent to a search, but the consent must be valid, meaning that the student must agree to the search freely and voluntarily, without duress or coercion.
- Because a school official is in a position of authority over a student, the official may not be able to convince a court that a student gave valid consent for a search--especially if the student is young and/or is a student with disability.

Student Searches ~ The Sequel: Safford v. Redding

- In 2009 the Supreme Court provided further guidance on the *T.L.O.* reasonableness standard while reviewing a case involving an invasive strip-search conducted in a “non-dangerous” situation.
 - *Safford Unified School District No. 1 v. Redding*, 577 U.S. 364 (2009).

Safford v. Redding: Facts

- An assistant principal received a report from a student that Savannah Redding, a 13-year-old female student, had given prescription-strength pain pills (equivalent to two Advil) to fellow students, in violation of school rules banning and sharing such medication.
- School officials searched her backpack and outer clothing. No pills were found.
- The student was sent to the nurse's office where she was told to remove her outer clothing (pants and T-shirt) and to pull her bra and underwear away from her body, somewhat exposing her chest and pelvis. No pills were found.

Safford v. Redding

Search #1

Backpack and Outer Clothing

- The Supreme Court offered a more concise definition of reasonable suspicion than in *TLO*: “*a moderate chance of finding evidence of wrongdoing.*”
- The Court held that school officials had **reasonable suspicion** to search Redding’s backpack and outer clothing, including her jacket, socks and shoes, based on information received from two other students. The search was also **permissible in scope**.

Safford v. Redding

Search #2

Strip Search

- Redding was required to remove her outer clothing (pants and T-shirt) and pull out her bra strap and underwear band. The Court held that **the object of the search** (possible possession of common painkillers) **failed to match “the degree of intrusion”** (exposing intimate areas of the body).
- Applying the *T.L.O.* test, the court held that the strip search was **excessively intrusive** and was unlawful under the circumstances.

Safford v. Redding

Search #2

Removing Outer Clothing

According to the Court, “what was missing from the suspected facts that pointed to Savana was any indication of danger to students from the power of the drugs or their quantity, and any reason to suppose that Savana was carrying pills in her underwear.” This combination of facts led the court to hold that the search was unreasonable.

Safford v. Redding

Search #2

Removing Outer Clothing

“We ... mean... to make it clear that the *T.L.O.* concern to limit a school search to reasonable scope requires the support of reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing 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 demanding its own specific suspicions.

Reasonable Suspicion

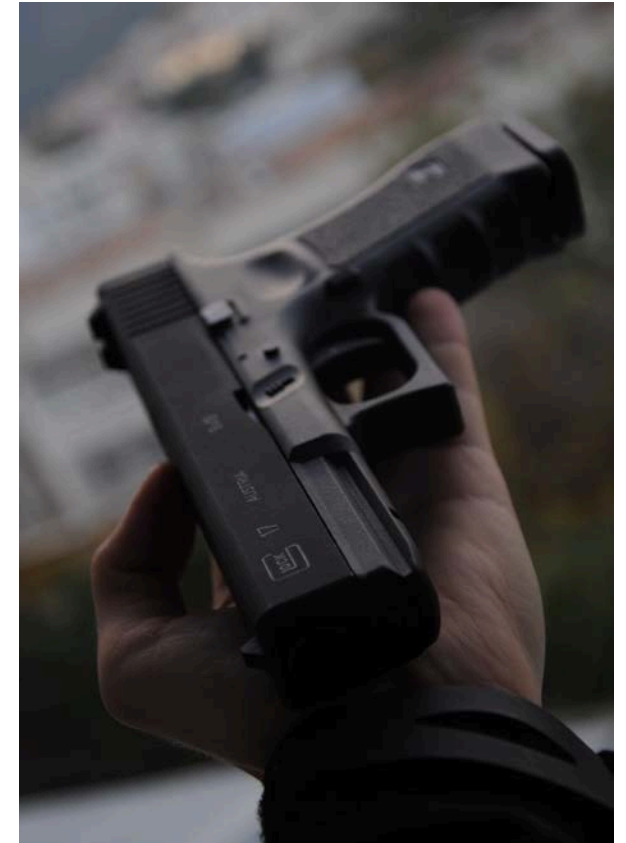
- The reasonableness test outlined in *T.L.O.* and affirmed in *Safford* is a **fact-specific, contextual test**.
- Reasonable suspicion, a moderate chance of finding evidence of wrongdoing, is usually based on multiple factors.

Factors that May Provide Reasonable Suspicion

- School official's personal observations and prior experience
- Reliable information from teachers and/or students or anonymous tips.
 - Reliability is determined using common-sense knowledge of human behavior. *In re Murray*, 525 S.E.2d 496 (N.C. App. 2000).
 - Independent corroboration of a tip is not absolutely required. *In re Murray*.
 - However, anonymous tips, without corroborating evidence, might not be sufficient to provide reasonable suspicion.

Factors that May Provide Reasonable Suspicion

- Alerts from metal detectors or drug dogs
- Student's age, history, and school record
- A compelling need to search without delay, particularly, in situations involving weapons, bomb threats, or drugs
- The prevalence and seriousness of a problem at the school



Part III: U.S. Supreme Court Cases

Cases Involving Searches Without
Individualized Suspicion

Drug Testing

Collecting and testing of urine constitutes a “search” under the Fourth Amendment.

Skinner v. Railway Labor Executives’ Association, 489 U.S. 602 (1989).



Drug Testing: Student Athletes



- In *Vernonia School District 47J v. Acton*, the Supreme Court upheld a school district's policy of random urinalysis drug testing for students who participated in athletics at high schools. *Vernonia v. Acton*, 515 U.S. 646 (1995).
- Facts – Drugs were a major problem at the school and athletes were “leaders of the drug culture.” The district tried other programs and alternatives before resorting to drug testing.

Drug Testing: Students in Extracurricular Activities

- In *Board of Education v. Earls*, the Supreme Court upheld a drug-testing policy for all students who participated in extracurricular activities. *Board of Educ. v. Earls*, 536 U.S. 822 (2002)
- Facts – The drug testing policy in *Earls* was broader than in *Vernonia* because there was no evidence of a pervasive drug problem at the school or among students who participated in extracurricular activities and the policy applied to all students involved in extracurricular activities, not just athletes.

Vernonia and Earls: Balancing Test

- The Court weighed three factors to determine the reasonableness of each school's drug testing program:
 - The nature of the privacy interest intruded upon;
 - The character of the intrusion; and
 - The nature and immediacy of the governmental concern, and the efficacy of the means for meeting it.

Vernonia and Earls: Analysis

- Students' privacy interest is low where the State is responsible for supervising, maintaining discipline, health and safety. Students voluntarily submit to the rules required for athletes.
- The character of the intrusion is insignificant—comparable to use of the restroom. Also, the results are disclosed to only a limited number of school employees and test results are not used disciplinary purposes or reported to law enforcement.
- The governmental interest in deterring drug use is high.

Vernonia and Earls: Holding

- In both cases the Supreme Court upheld the school's random drug testing program.
 - Individualized suspicion is not required with respect to random drug testing for extracurricular activities.
 - “Suspicionless” testing of students who participate in extracurricular activities is a reasonably effective means of addressing a school district's legitimate concern to prevent, deter, and detect drug use.

Does Your School System Have a Random Drug Testing Program?

- The majority of NC school systems do NOT have random drug testing programs.
- Considerations for those that do:
 - What are the specific goals to be achieved by the program?
 - How will students be selected for testing? How often? What substances?
 - How will student confidentiality be maintained?
 - What are the consequences for a student who tests positive?
- Review the program and policies with your board attorney.



Part IV: Applying the Supreme Court Standards

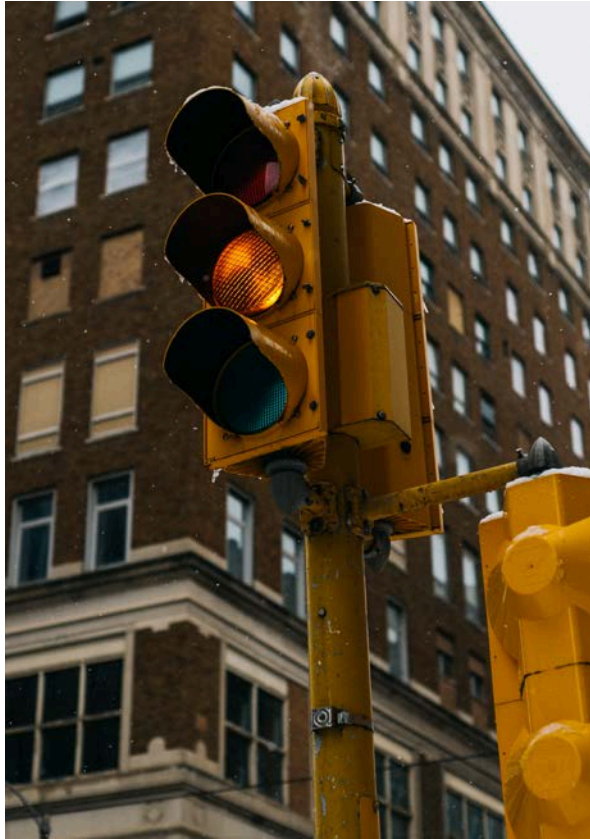
A. Pockets and Personal Possessions

- The standard for searching a student's pockets and personal possessions is reasonable suspicion.
- Reasonable suspicion is not required when contraband items are in "plain view."
- Unattended bags may be searched to determine ownership and for safety reasons.

B. Strip Searches

- Based on *Safford v. Redding*, in order to strip search a student, school officials must
 - Have reasonable suspicion that the search will lead to the discovery of dangerous items, such as weapons or illegal drugs; and
 - Have reason to believe (i.e., specific evidence) that the student is hiding the contraband in his or her underwear.

Strip Searches Lead to Lawsuits ~ and Schools Lose!



- Strip searches for stolen money or personal property do not qualify as searches for highly dangerous items.
- General knowledge that “students hide contraband in their underwear” is not specific enough to be a basis for conducting a strip search.
- When in doubt, secure the scene and consult a senior administrator.

Recommendations

- Schools should establish clear protocols governing student searches, particularly strip searches.
 - When are searches permitted? Who is authorized to conduct such searches?
 - Searches should always be conducted by a person of the same gender with another witness present.
 - Searches should be conducted in private: never in the presence of other students.
 - Some schools choose to ban strip searches.
- School employees should be trained on the protocols.

C. Pat-Downs or Frisks

- The *T.L.O.* reasonable suspicion standard applies.
 - Generally, if reasonable suspicion exists, a frisk or pat-down search is not considered excessively intrusive.
 - Pat-downs should be conducted in private, by school official of the same sex and gender, and with another adult witness present.
 - Consult with legal counsel regarding pat-down searches without individualized suspicion.

D. School Owned Computers and Online Accounts

- School officials generally have the right to examine school owned computer devices and school-based accounts.
- It's best if board policy explicitly states that students have no expectation of privacy in the contents of the school owned devices and school-based accounts.

PLS Policy 3225/4312/7320: Technology Responsible Use

Section E. Privacy

“Students ... have *no expectation of privacy* in anything they create, store, send, delete, receive, or display when using the school system’s network, devices, Internet access, email system, or other technological resources owned or issued by the school system, whether the resources are used at school or elsewhere, and even if the use is for personal purposes...”

“By using the school system’s network, Internet access, email ... individuals consent to have the use monitored by authorized school personnel as described in this policy.”

E. Personal Phones, Devices, and Accounts

- Reasonable suspicion is required to search a student's personal phone, computer, and other devices.
- Students have a reasonable expectation of privacy in personal, password-protected online accounts.



Personal Phones, Devices, and Accounts

- The scope of a search of a phone or an electronic device must be reasonably related to the objective of the search and not excessively intrusive in light of the nature of the infraction.
 - For example, reasonable suspicion that a student sent a threatening text to another student would not provide reasonable suspicion to search all the student's phone contacts, photographs, or Instagram account, etc.

Personal Phones, Devices, and Accounts

- Explicit or provocative images found during a search may constitute child pornography. School officials should not share or distribute any such images.
- School officials should consult with legal counsel, law enforcement, and/or DSS, as appropriate, if materials found indicate criminal activity and/or child abuse.

Policy 4318: Use of Wireless Communication Devices

Section C. Search of Wireless Communication Devices

“.... a student’s wireless communication device and its contents, including, but not limited to, text messages and digital photos, may be searched whenever a school official has reason to believe the search will provide evidence that the student has violated or is violating a law, board policy, the Code of Student Conduct or a school rule. The scope of such searches must be reasonably related to the objectives of the search and not excessively intrusive in light of nature of the suspected infraction.”

F. Search of Motor Vehicles



- School officials may search the interior of vehicles with reasonable suspicion.
- Examples of reasonable suspicion to search the interior of a vehicle:
 - 1) “Plain view” – contraband can be seen through the window
 - 2) Reliable information or a tip
 - 3) Drug dog alert during a parking lot sweep

G. Desk and Locker Searches

- There are two different types of desk and locker searches:
 - Searches where reasonable (individualized) suspicion exists to search a student's desk or locker. The scope of the search is defined by the nature of the suspected infraction.
 - School-wide suspicionless searches conducted for health/safety reasons, during emergencies (bomb threats), etc. Reasonable suspicion is required to search specific items found in the locker that are unrelated to the school-wide search.

Desk and Locker Searches

- PLS Policy 4342, Student Searches Section B.1

“School officials may conduct routine searches of student desks and lockers. Student desks and lockers are school property and remain at all times under the control of the school. However, students are expected to assume full responsibility for the security of their desks and lockers. Student desks and lockers may not be used to store illegal, unauthorized, or contraband materials.”

H. Use of Metal Detectors

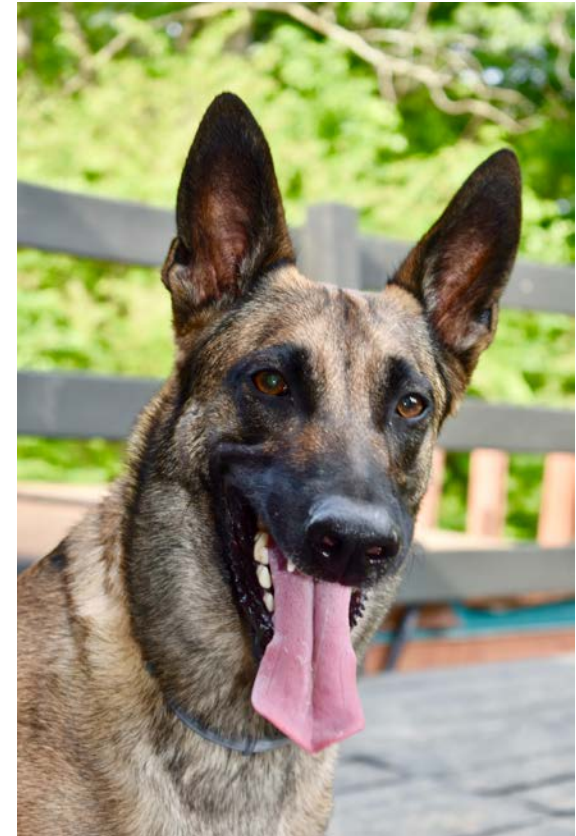
- There are two different types of metal detector searches.
 - Searches of individual students with reasonable suspicion
 - “Point-of-entry” searches by school officials
 - Consult with board attorney to set up standard protocols for conducting point of entry searches.

I. Testing for Alcohol: Breathalyzers

- A breathalyzer test is a search but is less intrusive than a urine test.
 - Individual breathalyzer tests may be used based on reasonable suspicion.
 - “Suspicionless” breathalyzer tests for all students attending an extracurricular activity have been upheld by several courts.
 - Consult with your board attorney to establish before implementing a suspicionless breathalyzer testing program.

J. Searches by Drug Dogs

- Use of trained dogs to sniff lockers, automobiles, and/or personal belongings as part of a random drug deterrent procedure is legally acceptable.
- A dog alert to an item provides reasonable suspicion to search the item.
- Dog should not be used to sniff students directly.
- Consult with your board attorney regarding legally acceptable protocols for dog searches.





Part V: School Policies

Policy 4342: Student Searches

- Section A. Searches Based on Individualized Suspicion
 - The Legal Standard
 - Personal Effects
 - Searches of Motor Vehicle
 - “Pat Down” Searches
 - Intrusive Personal Searches
 - Metal Detector Searches



Policy 4342: Student Searches

- Section B. Suspicionless General Searches
 - Searches of Desks and Lockers
 - Point of Entry Metal Detector Searches
 - Use of Trained Dogs
- Section C. Seized Items
- Section D. Failure to Cooperate
- Section E. Notice

Part VI: Conclusion

- Student Search and Seizure is a complicated area of the law!
- Determining the legal basis for a search of a student is always based on the specific facts of the situation.
- School administrators often have to make “on-the spot” decisions as a situation unfolds.
- Training for school employees on student search law is critical to help them balance school safety concerns, while at the same time respecting students’ Fourth Amendment rights.

Questions?

Contact

Janine Murphy:

jmurphy@ncsba.org

These slides are a visual aid for a webinar on Student Search and Seizure. They should not be relied upon for independent legal advice on specific issues. Please discuss specific legal concerns with your local school board attorney.

