



THE COMMONWEALTH EDUCATIONAL POLICY INSTITUTE

CENTER FOR PUBLIC POLICY - L. DOUGLAS WILDER SCHOOL OF GOVERNMENT AND PUBLIC AFFAIRS

CEPI Education Law Newsletter

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NOVEMBER 2012 : Vol. 11-3

SEARCH AND SEIZURE 2012: INVOLVEMENT OF SCHOOL RESOURCE OFFICERS**Overview**

The Fourth Amendment to the United States Constitution states in part: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause....” While in New Jersey v. T.L.O. (1985) the United States Supreme Court made it clear that public school students fall within the purview of the Fourth Amendment’s unreasonable searches and seizure prohibition, and that public school officials are acting as governmental officials when conducting student searches, it made a distinction between student searches by school officials and student searches conducted by the police. More specifically, said the Court, the foundation for a police search rests on *probable cause* and a search conducted by public school officials rests on *reasonable suspicion*—a more flexible standard.

In essence the Supreme Court in T.L.O. (1985) struck a balance between the Fourth Amendment protections of students and the legal authority and prerogatives of public school officials to maintain a safe, secure, and disruption free learning environment. As Justice White opined, “Against the child’s interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds.” In doing so the Court created the following two-pronged test to apply when judging the constitutionality of a student search conducted by public school officials: (1) To launch the search did the school official have *reasonable suspicion* to believe that present was a violation of law and/or school policy? (2) Did the search as conducted remain *reasonable in scope* (i.e., reasonably related in scope to the circumstances and purpose of the search)? Lower courts have consistently applied the T.L.O. (1985) two-pronged standard.

The Supreme Court Broadens School Authority. A decade after T.L.O. (1985) the Supreme Court broadened and extended the discretionary prerogatives of school authorities when, in a student drug testing case, it crafted a *special needs* analysis. Because school searches are different from police searches, said Justice Scalia, the warrant requirement present in police searches does not apply. Such a requirement would “unduly interfere with the maintenance of the swift and informal disciplinary procedures needed to maintain order in

schools.” However, he cautioned that *intrusiveness* is an important factor in determining whether “suspicionless” drug testing will readily pass constitutional muster in other contexts. Vernonia v. Acton (1995)

In a subsequent student drug testing case, the Court extended the *special needs* analysis and, by a 5-to-4 vote, held that “individualized suspicion” of students is not required in situations where school officials exercise their “legitimate prerogatives.” In the words of Justice Thomas, the privacy interests of students are “limited in a public school environment where the state is responsible for maintaining discipline, health, and safety....” Board of Education v. Earls (2002)

School Resource Officers and Student Searches. While public school administrators are not in the business of searching students to successfully gather evidence to prosecute students, the increased daily presence and active involvement of uniformed local police officers (often called *School Resource Officers* [SRO]) in public school buildings (elementary, middle, and secondary) inserts a confounding variable into student search situations often spawning the following questions: (1) When is the search of a student on school property, during the school day, a school search or a police search? (2) Does the mere presence of a school resource officer during a student search by a school official (usually a school administrator) automatically change a school search into a police search and require a warrant prior to the search? See, e.g., Patman v. Sate (Ga. App. 2000), M.W. v. Madison County (E.D. Ky. 2003), and Ortiz v. State (Ga. App. 2010) As stressed in an earlier commentary, the answers to such questions cannot be generalized and depend on the specific facts (*i.e.*, totality of the circumstances) present in each situation. (Vacca, 2012)

Recently I came across a Washington State case in which a law enforcement officer serving as a school resource officer conducted a warrantless search of a student on school grounds during the school day. The decision from the Supreme Court of Washington is both interesting and instructive.

State v. Meneese ((Wash. 2012)

Facts: In this case, a public school system and a local police department had entered a formal agreement in which the school system agreed to pay \$90,000 per year to the police department for the assignment of police officers to the schools. The assignments were made for purposes of creating and maintaining safe, secure, and orderly learning environments for students, teachers and staff through the use of “prevention and intervention techniques.” SROs had no authority to administer school discipline, suspensions, or expulsions.

In February 2009, an experienced, uniformed, full-time local police officer was serving as a school resource officer (SRO) at a public high school. In conducting a routine check of the boy’s restroom the SRO came across a male student standing at a sink holding a bag of marijuana in one hand and a medicine vial in the other hand. The SRO detained the student and confiscated the marijuana. He took the student and his backpack to the office of the school’s dean of students. In the dean’s office the dean took a “passive role” as the SRO informed her about the situation.

Subsequently, the SRO requested a patrol unit to pick up the student for booking at the police station. While waiting the SRO became suspicious that the student’s backpack might contain additional contraband. The backpack had a lock on the handles. When the SRO asked the student for the key the student told him that he left it at home. The SRO became more suspicious. He arrested and handcuffed the student and searched him for the key—which he found. The SRO searched the student’s backpack and found an air pistol. At that point the SRO read the student his Miranda (1966) rights. The backup officer arrived and transported the student for booking.

Court Action. The student was prosecuted for carrying a dangerous weapon at school and for possessing less than 40 grams of marijuana. His case was heard in County Superior Court. During the trial the student filed a motion to suppress the air pistol—claiming the search was unlawful. A court commissioner denied the motion. The Superior Court denied the student’s motion to revise the commissioner’s ruling and he was found guilty—a decision affirmed by the Washington Court of Appeals. The appellate court held that the school search exception to the constitutional requirement of a warrant applied to the search conducted by the police officer while he was working as a School Resource Officer. State v. J.M (Wash. 2012) The student next took his case to the Supreme Court of Washington.

Supreme Court of Washington Opinion. On appeal the student did not challenge the factual findings but rather he challenged the Superior Court’s conclusions of law and its application of law to the facts. On appeal the Supreme Court of Washington reviewed the Superior Court’s decision on these issues and not the commissioner’s ruling.

More specifically, the student claimed that the air pistol found should be suppressed because the SRO lacked the necessary warrant to search his locked backpack. Absent an exception to the warrant requirement the search was indisputably unlawful. Thus, the question before Supreme Court of Washington was whether, at the time of the search, the school search exception applied to the SRO’s search.

First, the Court emphasized that both the Washington State and federal constitutions protect persons from unreasonable searches and, quoting directly from the United States Supreme Court, exceptions to the probable cause/warrant requirement are “jealously and carefully drawn.”

Coolidge v. New Hampshire (1971) However, said the Court, while the school search exception is well established and “allows a school official to search a student’s person if, under the circumstances, the official has reasonable suspicion. . . , [i]n contrast with teachers and administrators, it is well settled that law enforcement officers acting on their own are not entitled to this exception.” State v. McKinnon (Wash. 1977) Thus, the Court agreed with the student appellant that in this case the SRO “was a law enforcement officer” when he searched the student’s backpack.

In its rationale the Washington Supreme Court relied on New Jersey v. T.L.O (1985) and Washington State case law to clearly emphasize the need for public school teachers and administrators to act swiftly in carrying out their substantial interest in maintaining discipline in classrooms and on school grounds, and how the warrant requirement is unsuited (*i.e.*, represents an extra burden) in the school environment. The Court also recognized that the SRO shares the same interest in maintaining discipline including the same concern for acting swiftly. However, the key difference, in this case, is that the SRO is a law enforcement officer employed by the police department and not the school system. He wore a standard issue police uniform that bore the Police Department insignia and he drove a marked police vehicle to and from school. In the Court’s view the SRO in this case was “a uniformed police officer and his role at the school does not exempt him from other police duties. . . .” His job concerns the discovery and prevention of crime and he has no authority to discipline students. Further evidence of his role as a law enforcement officer is evident in the search of the student where he had arrested and handcuffed the student prior to the search of the backpack.

Referencing several court decisions in other state specific jurisdictions the Washington Supreme Court recognized that without the application of the school search exception the SRO in State v. Meneese (2012) needed a warrant supported by probable cause to search the locked backpack. The search as conducted by the SRO was not a school search—therefore the school search exception did not apply. The search primarily promoted criminal prosecution and not education. It was conducted seeking evidence for criminal prosecution

not evidence for informal school discipline. As such, the Court held that the search was unlawful and the weapon should have been suppressed.

Decision. The Washington Court of Appeals was reversed and the case was remanded for further proceedings consistent with this opinion.

Dissenting Opinion. The dissenter's rationale rests on a very detailed and comprehensive analysis of the facts. Citing Tinker v. Des Moines (1969), Goss v. Lopez (1975), New Jersey v. T.L.O. (1985), Vernonia v. Acton (1995) and several other leading decisions, the dissenting Justice emphasized, among other things, that: (1) students do not "shed their constitutional rights at the schoolhouse door," (2) students "have legitimate expectations of privacy," (3) schools are "special environments," (4) school officials must be accorded flexibility to swiftly address problems, (5) the "reasonable suspicion" standard applies to school searches, (6) a determination of the term "unreasonable searches and seizures" depends on the context in which the search takes place, (7) the status of "police officer" does not automatically disqualify an SRO from working in a school and carrying out school policies as a school official, and (8) the Supreme Court in T.L.O. (1985) explicitly left unanswered the question of whether the *reasonable suspicion* standard also applied to searches "conducted by school officials with or at the behest of law enforcement agencies."

In the dissenter's view, "[w]hen SROs are invited by school administration to help maintain an environment in which learning can take place, they are considered 'school officials' for purposes of applying the *T.L.O.* standard." In such situations, "schools have simply delegated their recognized authority to resource officers who, by virtue of their training, are adept at detecting misbehavior and maintaining order."

In summary, the dissenting opinion stressed that both the Washington State and federal constitutions, buttressed by several court decisions, allow student searches in schools to be conducted based on individualized suspicion, "without the necessity of a warrant supported by probable cause." And, because schools are special environments where there are serious challenges to order and discipline, the *school search exception* applies whether the search of a student on school grounds "is carried out by a school resource officer (SRO) or other school official, so long as it is related to school policy and not merely a subterfuge for unrelated law enforcement activities." In the dissenter's view the majority "missed the mark" and in its decision "departs from persuasive precedent, the record on review, and common sense."

Policy Implications.

At the core of State v. Meneese (2012) is the following question: At the time of the search of the student in the office of the high school's dean was the SRO acting as a public school official or a law enforcement officer? The answer to this question determined whether or not the *school search exception* applied to the SRO and, if it did, the need to obtain a warrant based upon probable cause as a precondition of the search was negated. Obviously, the Supreme Court of Washington was convinced by the facts present in this case that the SRO was acting as an officer of the law and not a school official. Because the *school search exception* did not apply the search of the student's backpack was unlawful.

While State v. Meneese (2012) is but one case from one jurisdiction, it illustrates the predominant judicial analysis applied in situations where a student search involving an SRO is conducted on school grounds, during the school day, and application of the *school search exemption* crafted by the United States Supreme Court in T.L.O. (1985). Listed below are recommendations for policy gleaned from the Supreme Court of Washington opinion.

Local school boards must make it clear that:

- A primary goal and compelling interest of the Board is to provide safe, secure, non-disrupted, and crime-free learning environments in every school where teachers can teach and students can learn.
- While the Board respects the Fourth Amendment rights of all students, no student is immune from school disciplinary action.
- School administrators are empowered to act quickly and decisively (including the prerogative to initiate and conduct student searches) where *reasonable suspicion* of imminent harm to persons or property, or violations of school policy, or criminal activity exist on school grounds and/or at school sponsored activities.
- The sole intent of student searches is to enforce school system disciplinary policies and not to gather evidence for purposes of criminal prosecution.
- The Board welcomes and values the active cooperation of local law enforcement agencies and the assignment of law enforcement officers (*School Resource Officers*) to school buildings for the purpose of assisting building level administrators in maintaining safe, secure, non-disrupted, and orderly learning environments.
- Where local law enforcement officers, serving as school resource officers (SRO), are present on school property, they remain employees of their respective law enforcement agencies and are not employees of the school system.

Final Comment. In my view the mere presence of an SRO to provide security and order in a school disciplinary situation initiated and conducted by a school administrator does not automatically change the situation from a school matter into a police matter. However, while prevention and intervention may be needed, if tested through court action the facts will determine the outcome in each case.

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Note: The views expressed in this commentary are those of the author.