As of the date on its cover, this draft had not been considered by the membership of The American Law Institute and therefore may not represent the position of the Institute on any of the issues with which it deals. Any action taken by the membership with respect to this draft may be ascertained by consulting the ALI website or the Proceedings of the Annual Meeting.
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KATHLEEN M. O’SULLIVAN, Perkins Coie, Seattle, WA

*Director Emeritus

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DOUGLAS LAYCOCK, University of Virginia School of Law, Charlottesville, VA
PIERRE N. LEVAL, U.S. Court of Appeals, Second Circuit, New York, NY
BETSY LEVIN, Washington, DC
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ROBERTA COOPER RAMO*, Modrall Sperling, Albuquerque, NM
MARY M. SCHROEDER, U.S. Court of Appeals, Ninth Circuit, Phoenix, AZ
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HERBERT P. WILKINS, Concord, MA

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Restatement of the Law
Children and the Law

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Reporter
Professor Elizabeth S. Scott
Columbia Law School
435 West 116th Street
Jerome Greene Hall, Room 715
New York, NY 10027-7297
Email: es2054@columbia.edu

Professor Solangel Maldonado
Seton Hall University School of Law
One Newark Center
Newark, NJ 07102-5235
Email: solangel.maldonado@shu.edu

Director
Professor Richard L. Revesz
The Executive Office
THE AMERICAN LAW INSTITUTE
4025 Chestnut Street
Philadelphia, PA 19104-3099
Email: director@ALI.org

Associate Reporters
Professor Richard J. Bonnie
University of Virginia School of Law
580 Massie Road, Room WB179D
Charlottesville, VA 22903-1738
Email: rbonnie@virginia.edu

Deputy Director
Ms. Stephanie A. Middleton
The Executive Office
THE AMERICAN LAW INSTITUTE
4025 Chestnut Street
Philadelphia, PA 19104-3099
Email: smiddleton@ali.org

Professor Emily Buss
The University of Chicago Law School
1111 East 60th Street, Ste. 1
Chicago, IL 60637-3281
Email: ebussdos@uchicago.edu

Professor Clare Huntington
Fordham University School of Law
150 West 62nd Street, Room 7-104
New York, NY 10023-7407
Email: chuntington@law.fordham.edu

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The project’s Reporters may have been involved in other engagements on issues within the scope of the project; all Reporters are asked to disclose any conflicts of interest, or their appearance, in accord with the Policy Statement and Procedures on Conflicts of Interest with Respect to Institute Projects.
The bylaws of The American Law Institute provide that “Publication of any work as representing the Institute’s position requires approval by both the membership and the Council.”

Each portion of an Institute project is submitted initially for review to the project’s Advisers and Members Consultative Group as a Preliminary Draft. As revised, it is then submitted to the Council as a Council Draft. After review by the Council, it is submitted as a Tentative Draft or Discussion Draft for consideration by the membership at an Annual Meeting.

Once it is approved by both the Council and membership, a Tentative Draft represents the most current statement of the Institute’s position on the subject and may be cited in opinions or briefs in accordance with Bluebook rule 12.9.4, e.g., Restatement (Second) of Torts § 847A (AM. L. INST., Tentative Draft No. 17, 1974), until the official text is published. The vote of approval allows for possible further revision of the drafts to reflect the discussion at the Annual Meeting and to make editorial improvements.

The drafting cycle continues in this manner until each segment of the project has been approved by both the Council and the membership. When extensive changes are required, the Reporter may be asked to prepare a Proposed Final Draft of the entire work, or appropriate portions thereof, for review by the Council and membership. Review of this draft is not de novo, and ordinarily is limited to consideration of whether changes previously decided upon have been accurately and adequately carried out.

The typical ALI Section is divided into three parts: black letter, Comment, and Reporter’s Notes. In some instances there may also be a separate Statutory Note. Although each of these components is subject to review by the project’s Advisers and Members Consultative Group and by the Council and the membership, only the black letter and Comment are regarded as the work of the Institute. The Reporter’s and Statutory Notes remain the work of the Reporter.
Restatements (excerpt of the Revised Style Manual approved by the ALI Council in January 2015)

Restatements are primarily addressed to courts. They aim at clear formulations of common law and its statutory elements or variations and reflect the law as it presently stands or might appropriately be stated by a court.

a. Nature of a Restatement. Webster’s Third New International Dictionary defines the verb “restate” as “to state again or in a new form” [emphasis added]. This definition neatly captures the central tension between the two impulses at the heart of the Restatement process from the beginning, the impulse to recapitulate the law as it presently exists and the impulse to reformulate it, thereby rendering it clearer and more coherent while subtly transforming it in the process.

The law of the Restatements is generally common law, the law developed and articulated by judges in the course of deciding specific cases. For the most part Restatements thus assume a body of shared doctrine enabling courts to render their judgments in a consistent and reasonably predictable manner. In the view of the Institute’s founders, however, the underlying principles of the common law had become obscured by the ever-growing mass of decisions in the many different jurisdictions, state and federal, within the United States. The 1923 report suggested that, in contrast, the Restatements were to be at once “analytical, critical and constructive.” In seeing each subject clearly and as a whole, they would discern the underlying principles that gave it coherence and thus restore the unity of the common law as properly apprehended.

Unlike the episodic occasions for judicial formulations presented by particular cases, however, Restatements scan an entire legal field and render it intelligible by a precise use of legal terms to which a body reasonably representative of the legal profession, The American Law Institute, has ultimately agreed. Restatements—“analytical, critical and constructive”—accordingly resemble codifications more than mere compilations of the pronouncements of judges. The Institute’s founders envisioned a Restatement’s black-letter statement of legal rules as being “made with the care and precision of a well-drawn statute.” They cautioned, however, that “a statutory form might be understood to imply a lack of flexibility in the application of the principle, a result which is not intended.” Although Restatements are expected to aspire toward the precision of statutory language, they are also intended to reflect the flexibility and capacity for development and growth of the common law. They are therefore phrased not in the mandatory terms of a statute but in the descriptive terms of a judge announcing the law to be applied in a given case.

A Restatement thus assumes the perspective of a common-law court, attentive to and respectful of precedent, but not bound by precedent that is inappropriate or inconsistent with the law as a whole. Faced with such precedent, an Institute Reporter is not compelled to adhere to what Herbert Wechsler called “a preponderating balance of authority” but is instead expected to propose the better rule and provide the rationale for choosing it. A significant contribution of the Restatements has also been anticipation of the direction in which the law is tending and expression of that development in a manner consistent with previously established principles.

The Restatement process contains four principal elements. The first is to ascertain the nature of the majority rule. If most courts faced with an issue have resolved it in a particular way, that is obviously important to the inquiry. The second step is to ascertain trends in the law. If 30 jurisdictions have gone one way, but the 20 jurisdictions to look at the issue most recently went
the other way, or refined their prior adherence to the majority rule, that is obviously important as well. Perhaps the majority rule is now widely regarded as outmoded or undesirable. If Restatements were not to pay attention to trends, the ALI would be a roadblock to change, rather than a “law reform” organization. A third step is to determine what specific rule fits best with the broader body of law and therefore leads to more coherence in the law. And the fourth step is to ascertain the relative desirability of competing rules. Here social-science evidence and empirical analysis can be helpful.

A Restatement consists of an appropriate mix of these four elements, with the relative weighing of these considerations being art and not science. The Institute, however, needs to be clear about what it is doing. For example, if a Restatement declines to follow the majority rule, it should say so explicitly and explain why.

An excellent common-law judge is engaged in exactly the same sort of inquiry. In the words of Professor Wechsler, which are quoted on the wall of the conference room in the ALI headquarters in Philadelphia:

We should feel obliged in our deliberations to give weight to all of the considerations that the courts, under a proper view of the judicial function, deem it right to weigh in theirs.

But in the quest to determine the best rule, what a Restatement can do that a busy common-law judge, however distinguished, cannot is engage the best minds in the profession over an extended period of time, with access to extensive research, testing rules against disparate fact patterns in many jurisdictions.

Like a Restatement, the common law is not static. But for both a Restatement and the common law the change is accretional. Wild swings are inconsistent with the work of both a common-law judge and a Restatement. And while views of which competing rules lead to more desirable outcomes should play a role in both inquiries, the choices generally are constrained by the need to find support in sources of law.

An unelected body like The American Law Institute has limited competence and no special authority to make major innovations in matters of public policy. Its authority derives rather from its competence in drafting precise and internally consistent articulations of law. The goals envisioned for the Restatement process by the Institute’s founders remain pertinent today:

It will operate to produce agreement on the fundamental principles of the common law, give precision to use of legal terms, and make the law more uniform throughout the country. Such a restatement will also effect changes in the law, which it is proper for an organization of lawyers to promote and which make the law better adapted to the needs of life. [emphasis added]
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Chapter 1. Parental Authority and Responsibilities

§§ 1.10, 1.30 (T.D. No 1) – approved at 2018 Annual Meeting (previously §§ 2.10, 2.30)
§§ 1.70-1.72 (T.D. No. 2) – approved at 2019 Annual Meeting (previously §§ 1.80-1.82)

Chapter 2. State Intervention for Abuse and Neglect

Introductory Note (T.D. No. 1) – approved at 2018 Annual Meeting (previously Introductory Note to Chapter 3)

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Chapter 7. Discipline and Order Maintenance

Introductory Note, §§ 7.10, 7.20 (T.D. No. 2) – approved at 2019 Annual Meeting (previously Introductory Note, §§ 8.10, 8.20)

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§§ 16.01, 16.02 (T.D. No. 2) – approved at 2019 Annual Meeting (previously §§ 19.01, 19.02)

History of Material in This Draft

The Council approved the initiation of this project in October 2015.

Foreword

In 2002, The American Law Institute published Principles of the Law, Family Dissolution: Analysis and Recommendations, the first ALI project dealing with family law. The Principles, as the title suggested, dealt primarily with property, support, and child custody issues surrounding divorce, as well as the dissolution of other family relationships. Other legal issues relating to children and families were not covered. In part to address this void, in 2015 The American Law Institute launched the Restatement of the Law, Children and the Law. The project has ambitious goals. As its proposal notes: “[S]everal themes have emerged in legal doctrine in recent years that can contribute to a regime that is both relatively coherent and compatible with contemporary values. These core themes include a contemporary articulation of the basis of parental authority, a modern definition of child welfare as a core goal of legal regulation, and a developmentally informed conception of children as legal persons.” The Restatement will articulate and clarify these themes and thereby provide important and needed guidance to the courts.

I was delighted when we were able to recruit Professor Elizabeth S. Scott of Columbia Law School to be the Reporter. Buffie is working with a great team of Associate Reporters: Professors Richard J. Bonnie of the University of Virginia School of Law, Emily Buss of the University of Chicago Law School, Clare Huntington of Fordham University School of Law, and Solangel Maldonado of Seton Hall University School of Law.

The Restatement has four Parts: Children in Families, Children in Schools, Children in the Justice System, and Children in Society. Portions of each of the Parts were approved at the Annual Meetings in 2018 and 2019. At this year’s Annual Meetings, the membership will consider several important Sections, including on psychological abuse of children in families, constitutional rights of children in public schools, and searches outside of the school setting.

This Restatement is grappling with enormously complex issues in a balanced and sophisticated manner, weaving together a deep understanding not only of legal doctrine but also of a variety of other disciplines, including cognitive psychology and public policy. I am confident that it will be an influential resource. For that, I am enormously grateful to the Reporters as well as to their dedicated Advisers and Members Consultative Group.

RICHARD L. REVESZ
Director
The American Law Institute

April 15, 2021
## PART I

### CHILDREN IN FAMILIES

**Introductory Note**

**Note on definition of a parent**

[This will note that the Restatement is adopting the definition of a “parent” as drafted in the 2017 Uniform Parentage Act (UPA); the Reporters’ Note will cross-reference the ALI Principles of the Law of Family Dissolution: Analysis and Recommendations § 2.03 and Commentary, defining parent and parenting and caretaking functions, but the note will be clear that we are following the UPA, which is starting to be adopted by the states.]

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CHAPTER 11. REGULATION OF PRIVATE SCHOOLS
[Very short, mostly cross-referencing related Sections and explaining that no state action and thus no constitutional rights]

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PART IV
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CHAPTER 10
SCHOOL SEARCHES

TOPIC 1
SEARCH BASED ON INDIVIDUALIZED SUSPICION

§ 10.10. Student Search by School Officials Based on Individualized Suspicion

(a) A school official or authorized agent can lawfully search a student’s person, belongings, locker, or vehicle on school grounds without a warrant and without the consent of the student based on a reasonable suspicion that the search will reveal evidence that the student has violated the criminal law or a school regulation, if the search is otherwise lawful.

(b) A search is lawful under this Section if:

(1) it is justified at its inception; and

(2) its scope is reasonably related to the circumstances justifying the search, a condition that is satisfied if the search does not intrude excessively on the student’s legitimate expectation of privacy when balanced against the state interest that justified the search at its inception.

(c) Evidence from an unlawful search will be inadmissible in a subsequent delinquency or criminal proceeding against the student.

(d) A seizure of a student’s personal property is lawful if the property is:

(1) obtained in a lawful search; or

(2) found in plain view or was abandoned by the student.

(e) For purposes of this Section, a school resource officer employed by the school district or assigned to a school exclusive of other assignment is a school official. Other law-enforcement agents are not school officials and must comply with probable cause and other requirements that generally apply to searches by law-enforcement agents.

Cross-References:

§ 10.20. Search without Reasonable Suspicion; § 12.10. Minor’s Consent to Search;

§ 12.11. Parental Consent to Search of a Minor’s Possessions and Person
Comment:

a. The reasonable-suspicion standard: background and rationale. The Fourth Amendment of the U.S. Constitution protects citizens against unreasonable searches and seizures by government agents. The purpose of the Fourth Amendment is to restrict the government from intruding unduly into the private lives of citizens when it pursues its law-enforcement function. The protection of the Fourth Amendment is triggered only if the search intrudes into an individual’s legitimate expectation of privacy. A search or seizure is unreasonable if, under the circumstances, it intrudes excessively upon the citizen’s legitimate privacy interest in relation to the citizen’s person, belongings, home, or vehicle, when weighed against the government’s interest in conducting the search.

Ordinarily, a law-enforcement officer must obtain a warrant to conduct a lawful search. But under exigent circumstances, a search can be conducted without a warrant if the officer has probable cause to believe that a crime has been or is being committed. The probable cause standard is met if it is more probable than not that the search will produce evidence of the person’s suspected criminal activity.

The U.S. Supreme Court has clarified that a legal search can be conducted in some contexts even if probable cause is not satisfied. A “special needs” search can be conducted legally on the basis of “reasonable suspicion” because of unique characteristics of the setting.

Until the Supreme Court decided New Jersey v. T.L.O. in 1985, it was not clear that the Fourth Amendment applied to searches of students by public school officials. 469 U.S. 325 (1985). Some earlier courts had held that the relationship of school officials to students was in loco parentis, and that therefore the protections of the Fourth Amendment did not apply in that setting. T.L.O. clarified that a public school student has a protectable expectation of privacy, and, therefore, the search of a student by a school official is subject to Fourth Amendment protections and is illegal if it is unreasonable. However, a student’s legitimate expectation of privacy is less substantial than that of an adult or of a minor outside of the school setting. A search by a school official constitutes a “special needs” search which need not meet the standard of probable cause. In the public school setting, the relaxed “reasonable suspicion” standard is justified on the ground that school officials have a compelling interest in maintaining discipline and order so that the school can fulfill its educational function. School attendance is mandatory for students, and school officials have a responsibility to provide a safe and secure learning environment. Moreover, unlike
law-enforcement agents, school officials are not trained to evaluate probable cause; thus the official’s decision to search is afforded greater latitude than is the decision of a law-enforcement officer. The court assumes that requiring probable cause would unduly burden school officials in performing their educational mission.

Under the standard announced in *T.L.O.* and generally adopted by state and federal courts, an individualized search of a student is justified if the school official, in conducting the search, has a reasonable suspicion that the student has violated the criminal law or a school regulation, and that the search will provide evidence of the violation. The Court announced a two-prong test: First, the search must be justified in its inception, and second, the scope of the search must be reasonably related to the circumstances that justified it in the first place. See Comment c. To evaluate whether the scope of the search is reasonable, the court will determine whether measures used were reasonably related to the purposes of the search when initiated and not “excessively intrusive in light of the age and sex of the student and the nature of the infraction.” *T.L.O.*, 469 U.S. at 342. See Comment b. The assumption is that the reasonable-suspicion standard provides a balance that recognizes the student’s justified expectations of privacy without unduly burdening the school official’s effort to maintain order and protect student safety.

In evaluating the lawfulness of the search, the court weighs the extent to which the search intrudes on the student’s privacy interest against the importance of the government’s interest in conducting the search. The student’s legitimate expectation of privacy varies depending on the location of the search; the search of a student’s person intrudes on a substantial privacy interest, while his or her privacy interest in items in a locker or vehicle carries less weight. See Comment d. The government’s interest in conducting the search also varies; a search for weapons, for example, represents a compelling interest that can justify a more intrusive search than a search for stolen property. See Comment c.

Under this Section, school officials whose searches are subject to the reasonable-suspicion standard include administrators, teachers, or other adults employed by the school to perform an educational function. A school resource officer employed full-time by the school district to provide security in the school is a school official. Other law-enforcement officers in the school are not school officials and must satisfy probable cause to legally search a student. This issue is discussed in Comment i.
b. Reasonable suspicion: search justified at inception. A school official is authorized to undertake a search of a particular student only if the official has a reasonable suspicion that the student has violated the criminal law or a school rule and reasonably suspects that the search will reveal evidence of the violation. The state must be able to point to specific and articulable facts from which it could reasonably be inferred that the search would likely reveal evidence of the suspected violation by the student. A decision to search will not be based solely on a rumor, without more evidence. Nor is reasonable suspicion based solely on a hunch, intuition, or speculation. The reputation of the student, without other evidence of misconduct, also does not constitute reasonable suspicion.

Illustrations:

1. Jonah leaves his backpack on the school bus and the driver takes the bag to the principal’s office. Principal Roin has heard that Jonah has a bad reputation and belongs to a gang, and decides to search Jonah’s backpack. The search uncovers a knife. The search is illegal, as it is based solely on Jonah’s reputation, which does not constitute reasonable suspicion.

2. Greene County School District adopts a policy authorizing a nonconsensual urinalysis drug test of an individual student on the basis of rumors that the student uses drugs. The search is illegal unless corroborated by other evidence such as a tip from a reliable informant or behavioral evidence that the student is using drugs. Rumors alone do not constitute reasonable suspicion.

3. Same facts as Illustration 1, except that two students who Principal Roin reasonably believes are reliable sources independently tell her that Jonah has brought a knife to school and has shown it to other students on the bus. The search is lawful. Tips from a reliable source are a sufficient basis for reasonable suspicion.

A search is lawful only if certain predicate conditions are met. First, based on facts and inferences from facts, the school official must have reason to suspect that the particular student has engaged in a specific illegal or prohibited activity and that the search will produce a specific item that will be evidence of that activity. Thus, if a school official reasonably suspects that the student has committed a violation, but a search is unlikely to produce evidence related to that specific infraction, the search is not justified at its inception: The specific item sought must have
Pt. II, Ch. 10. School Searches, § 10.10

a logical relationship to the student’s suspected violation. For example, a policy of routinely searching any student apprehended for any violation of a school rule is illegal. Further, the school official ordinarily must have reason to suspect that the item will be found in the location of the search. These conditions are part of the reasonable-suspicion standard and aim to deter school officials from conducting searches of disfavored students, and from conducting exploratory searches not based on a specific suspected violation. A search that meets the conditions is justified at its inception so long as the suspicion is supported by sufficient evidence.

Illustrations:

4. Joachim has missed school several times and Assistant Principal Speidel, suspects him of truancy. When Joachim arrives at school at 11 a.m., Ms. Speidel takes him into her office and searches his backpack. Because Joachim’s suspected violation is truancy, the search is not based on reasonable suspicion that it will produce evidence of that violation, therefore it is not a lawful search.

5. Same facts as Illustration 4, except that Assistant Principal Speidel receives a reliable tip that Joachim is skipping school to smoke pot, and he seems to be impaired when he arrives at school. The search of Joachim’s backpack is legal, as Ms. Speidel reasonably suspects that it will yield drugs.

6. A student reports to her teacher that she saw Alva with a rifle earlier that day and thinks it is in Alva’s car. Principal Snow searches the car, including the trunk and glove compartment, and does not find the rifle, but finds marijuana in the glove compartment. The search of the trunk is lawful, but the search of the glove compartment is not, because the rifle could not have been found in that location.

7. Same facts as Illustration 6, except that the student reports that Alva has drugs in her car. The search of the glove compartment is legal because it is reasonable to suspect that drugs might be hidden there.

8. Elmo was in a group of boys observing a fist fight between rival gangs. The next day, he is called into the principal’s office and his backpack is searched for weapons. The search is not based on reasonable suspicion and is not lawful. No weapons were deployed in the fight, and the official has no information indicating that Elmo brought a weapon to school.
Many types of information can support reasonable suspicion that a student has engaged in, or plans to engage in, a prohibited activity. Reasonable suspicion can be based on the student’s suspicious behavior, statements, or demeanor. A student who is in a prohibited location, who seeks to avoid interaction with a school official, or who attempts to conceal an item may be suspicious; this, combined with other information, can constitute reasonable suspicion. The observation that the student appears to be under the influence of alcohol or drugs supports reasonable suspicion. Observations by other students, teachers, or outsiders can constitute reasonable suspicion, as can physical evidence of the violation that links it to the student.

Reasonable suspicion usually is not based on a single, isolated factor, but on more than one kind of evidence. Thus, the fact that the school official thinks the student had a sneaky expression acted furtively, or was in a prohibited location, without other evidence, does not constitute reasonable suspicion that he or she has engaged in a violation, and does not justify a search. Nor does the fact that a student has engaged in violations in the past, without other evidence, constitute reasonable suspicion.

Illustration:

9. Pedro has frequently been in trouble for violating school rules. In the past, he was sanctioned for smoking, leaving the classroom without permission, and truancy. Principal Sanchez returns to his office one afternoon to discover that graffiti has been spray-painted on his door. He immediately suspects that Pedro is the culprit because he is a troublemaker whom Mr. Sanchez has punished in the past. In the absence of other information, Principal Sanchez’s search of Pedro’s backpack for the can of paint is not based on reasonable suspicion and is illegal.

Reasonable suspicion can be based on tips from reliable informants, either teachers, other students, or outsiders. The school official’s judgment about the reliability of the informant will usually receive deference, in the absence of evidence that the school official had reason to know that the informant was not reliable. But an informant’s tip will support reasonable suspicion only if it is sufficiently detailed to provide a nexus between an alleged prohibited activity and the student to be searched, as well as reason to suspect that the item that is the object of the search will provide evidence of that activity and will be found in the location to be searched.
Illustration:

10. Principal White receives a tip from two students that Max has marijuana in his backpack. Based on this evidence, Principal White searches Max’s backpack, although the students providing the tip have a history of harassing Max and telling false stories about him. Because Principal White knows that the student informants have reason to falsely accuse Max, the search is not based on reasonable suspicion and is invalid.

Ordinarily, an anonymous tip receives little weight in determining whether the search was based on reasonable suspicion, because it is usually difficult, if not impossible, to evaluate the reliability of the source. An anonymous tip alone can justify a search only if the informant credibly indicates that a student presents a substantial and potentially immediate threat to school safety. If the anonymous tip describes conduct that does not present a serious threat to school safety, the tip will not justify a search unless it is substantially corroborated by other credible information.

Illustrations:

11. The principal of Barnstable High School receives an anonymous phone call in which the caller reports that two students, Bobby and Olaf, purchased assault rifles the previous day at a local gun store, and that Olaf was seen putting a large object that looked as if it could be an assault rifle in his car that morning. Because of the serious threat posed by the conduct described in the tip, a search of Olaf’s car and both students’ lockers is justified.

12. An anonymous caller tells the principal of Barnstable High School that Josie brought marijuana to school. Without other corroborating information, the tip does not support reasonable suspicion justifying a search. A student’s possession of marijuana does not pose a substantial threat to school safety.

c. Reasonable suspicion: the scope of the search. A search that is justified at its inception based on reasonable suspicion is lawful only if the scope of the search is reasonably related to the circumstances that justified it at its inception. In determining whether the search was reasonable in its scope, the court determines whether the state’s interest in conducting the search outweighed the student’s legitimate expectation of privacy under the circumstances, and whether the scope of the search was reasonably related to its initial justification. Comment d deals more specifically
with the student’s expectation of privacy. A search may be deemed too intrusive if the item sought could not plausibly be located in the area searched. Moreover, if the state’s interest is minimal, an intrusive search will not be deemed reasonable in scope.

A school official has a legitimate and important interest in maintaining order and discipline in the school; this interest justifies the more relaxed reasonable-suspicion standard applied in that setting. A student’s suspected illegal or prohibited activity can threaten that interest, but the extent of the threat varies depending on the nature of the suspected activity, and the weight accorded the state’s interest varies accordingly. The school official’s suspicion that the student has violated a minor school rule (smoking or being in a prohibited place) is a less serious threat to the state’s interest than a suspicion that the student has a weapon in school. Similarly, a suspicion that a student is selling cocaine is a more serious threat than a suspicion that the student possesses a small amount of marijuana. The extent to which a search that substantially intrudes on the student’s privacy interest is justified by the state’s interest in conducting the search will be determined both by the extent of the intrusiveness and the weight accorded the state’s interest; the two are balanced against one another. The state’s interest could be important enough to justify a nonintrusive search but not one that is intrusive in scope.

**Illustrations:**

13. Assistant Principal Miller receives a reliable tip from a student that the student was given two prescription-strength ibuprofen pills by Savannah; possession of prescription drugs violates school rules. Ms. Miller calls Savannah into her office, and when she finds no pills in Savannah’s backpack, tells her to remove her shirt and unzip her pants. Ms. Miller then searches inside Savannah’s bra and pulls out her underpants to look for the pills. The search is unlawful. Although the search of Savannah’s backpack is justified by reasonable suspicion, the strip search represents an excessive intrusion on Savannah’s privacy interest, given the modest threat to the state’s educational interest of the suspected infraction, as well as Savannah’s age and gender. The search was therefore justified at its inception but excessive in scope.

14. School officials reasonably suspect Vanessa, age 13, of possessing a small amount of marijuana. The principal searches her locker, desk, and backpack, and then undertakes a strip search. When no drugs or other evidence are found, Vanessa is taken to the school office, where she is detained for two hours. Vanessa’s searches and seizure are
illegal; the searches and seizure were excessively intrusive in scope, given the nature of the suspected infraction.

15. Same facts as Illustration 14, except that no strip search is conducted and Vanessa is allowed to return to her classroom when no drugs are found. The search is likely reasonable in scope in light of the suspected violation that justified it initially.

A search that is justified at its inception will be conducted as unintrusively as is consistent with the objective of the search.

Illustrations:

16. Principal Jones searches Raymond based on reasonable suspicion that he has a gun on his person. He demands that Raymond remove his shirt and empty all his pants pockets before Mr. Jones undertakes the search. No gun is located, but a small packet of marijuana falls out of Raymond’s pocket. The search is illegal because it is excessively intrusive. Mr. Jones could have detected whether Raymond was carrying a gun through a pat-down, which should have been a predicate to any more intrusive search. As such, the scope of the search was not reasonably related to the circumstances that justified it at its inception.

17. Same facts as Illustration 16, except that Principal Jones pats Raymond down and feels a lumpy, hard object in his pants pocket. Mr. Jones then asks Raymond to empty his pocket, which contains a knife. The scope of the search is justified. Mr. Jones reasonably extended the scope of the search to Raymond’s pants pocket when the pat-down revealed a hard object. The scope of the search was not beyond the circumstances that justified it at its inception.

18. Principal Washington receives tips from several teachers and students that Max is dealing drugs in school, an infraction he has engaged in before. According to the informants, Max keeps his drugs in his car, but sometimes keeps them in his backpack or locker. When Mr. Washington finds no drugs in searching Max’s car, searches of his locker and backpack are justified: The scope of the search is not beyond the circumstances that justified it at its inception.
The fact that a school official is justified in undertaking a search of a student for an item that the official suspects could provide evidence of a violation does not create a license to search beyond the area that was the location (or locations) of reasonable suspicion. Further, even when the search is reasonably directed at a location such as a vehicle or a backpack, the search exceeds its scope if it extends beyond areas where the item might reasonably be found. A legal search can become illegal if its scope extends into areas in which it is not plausible that the item that justified the search could be found. Illustration 6 provides a good example. The search at its inception was justified because Mr. Snow had a reasonable suspicion that Alva might have a rifle in her car. The search of the trunk and other areas in the car where the rifle might have been hidden were reasonably related to the circumstances that justified the search, but the search of the glove compartment was beyond the scope that justified the search in the first place, because the rifle could not have been located in the glove compartment.

A search that reveals an item that is evidence of illegal or prohibited activity is not excessively intrusive or illegal solely because that item was not the target of the search at its inception. The search is legal if the item is discovered in plain view in a location that is within the scope of the search at its inception. See Comment k and the Reporters’ Note thereto.

Illustration:

19. Principal Choplick reasonably suspects a student of smoking cigarettes in the girls’ restroom, a violation of school rules. He searches her bag and finds marijuana and evidence that she might be selling the drug. The search is a lawful search and is not beyond the circumstances that justified it in the first place.

d. The student’s legitimate expectations of privacy. The Fourth Amendment prohibition of unreasonable searches applies only if the search intrudes upon an individual’s legitimate expectation of privacy. T.L.O. held that students in school have privacy interests, thus triggering the protection of the Fourth Amendment. New Jersey v. T.L.O., 469 U.S. 325 (1985). No search occurs for purposes of the Fourth Amendment if the individual has no legitimate expectation of privacy. For example, courts have held that a canine sniff of luggage or of school backpacks separated from their owners is not a search for Fourth Amendment purposes.

A public school student has a privacy interest in his or her person, clothing, and belongings, and the contents of his or her locker, desk, and vehicle located on school property. The student’s
legitimate expectation of privacy is less substantial than that of an adult or of a minor who is not in school. See Comment a; the privacy interest will vary depending on the student’s age and on the location of the search.

A search without consent represents an intrusion into the student’s legitimate privacy interest that will vary depending on the location and intrusiveness of the search and (sometimes) on the age of the student. The student’s expectation of privacy is greatest in his or her person (the student’s own body and clothing), but a student also has a privacy interest in items in his or her backpack or purse and, to a lesser extent, in his or her locker or car on school premises. It is assumed that a younger child has a reduced expectation of privacy in his or her person and belongings as compared to an adolescent. The student’s expectation of privacy and the extent to which this interest is burdened by the search will be balanced against, and can be outweighed by, the state’s interest in conducting the search. The more intrusive the search is, the greater the required justification based on the seriousness of the threat posed by the suspected infraction. In evaluating whether the search intruded excessively on the student’s privacy interest, an important consideration is whether the scope of the search extended beyond the state’s interest justifying the search at its inception. See Comment c.

A school official searching a student will perform the search in the least intrusive way that is compatible with achieving the objective of the search. A student’s privacy interest in his or her person is subject to the greatest protection. A search of a student’s clothing and body will be conducted in the least intrusive manner possible consistent with its purpose. A search of the student’s body implicates core Fourth Amendment values and is inherently highly intrusive. If reasonable suspicion supports that the item sought is on the person of the student, a search of the student’s clothing and body will be undertaken initially through a pat-down, unless, due to the nature of the item sought, a more intrusive search is necessary. See Illustration 17.

Illustration:

20. Assistant Principal Ayala reasonably suspects that Kris stole 100 dollars from Ms. Ponsa, his English teacher. When Kris declines to show Mr. Ayala the contents of his pockets, Mr. Ayala instructs him to empty his pockets. The search is a valid search, which does not intrude excessively on Kris’s reasonable expectation of privacy. A pat-down would not have been an effective means of discovering the money.
A strip search of a student by a school official represents by far the greatest intrusion into the student’s privacy interest and is justified only if the student’s suspected activity threatens serious harm to the student or to others. In Stafford United School District No. 1 v. Redding, 557 U.S. 364 (2009), the U.S. Supreme Court concluded that a strip search of a 13-year-old girl based on reasonable suspicion that she had brought prescription ibuprofen to school was unreasonable and illegal under the Fourth Amendment. The Court, in an eight-to-one decision, described strip searches in school as involving “categorically extreme intrusiveness,” Id. at 376, and as “so degrading that a number of communities have decided that strip searches in schools are never reasonable and have banned them no matter what the facts may be,” Id. at 375. Although the Court in Redding did not ban strip searches in school, it made clear that such searches represent a humiliating and frightening intrusion and require special justification. Most courts after Redding have found strip searches to be unlawful unless the school official reasonably suspects that the student is engaging in a prohibited activity that seriously threatens the safety of the student or others, and that the search is the least intrusive means to produce evidence of the activity.

The reasonable use of force is permitted only if the student resists a lawful search, and only if it is justified by the importance of the state’s interest in undertaking a search, due to the severity of the threat of the suspected infraction.

e. Legitimate expectations of privacy: exclusions. A student’s legitimate expectation of privacy does not extend to all items brought into the school by the student. No reasonable expectation of privacy exists in relation to the object of a search if the item is displayed publicly, left in plain view, or abandoned by the student. If the student throws an item away or disclaims ownership of the item, it is deemed abandoned property in which the student has no protectable privacy interest. The student also relinquishes the expectation of privacy if the student consents voluntarily to the search. See Comment j.

Illustration:

21. Principal Hobson discovers one afternoon that the wall of the gymnasium has been spray-painted with black paint. Later that day, he walks around the student parking lot and sees three cans of spray paint on the back seat of Katha’s car. Because the cans are in plain view, Katha has no expectation of privacy in them, and Mr. Hobson can lawfully seize them.
f. Location of the search: lockers, desks, and student vehicles. A student has a privacy interest in the contents of the student’s desk and locker, and in a vehicle driven onto school property by the student. A school official is authorized to search the contents of those locations if he or she has a reasonable suspicion that the student has engaged in a prohibited activity and that the search will produce evidence of the violation. A search of a locker, desk, or vehicle is less intrusive than a search of the student’s person or belongings in his or her possession, and therefore the student’s legitimate expectation of privacy is somewhat less substantial.

Students keep personal possessions in their lockers and desks, creating a basis for a protectable privacy interest in the contents of the locker or desk. The fact that the locker or desk itself is school property does not negate the privacy interest. But because school lockers and desks are the property of the school, courts have found that a school official has authority to access those locations. Further, in some school districts, a school official is given the authority to open student lockers or search desks by statute or school-district policy without reasonable suspicion. But that authority does not give the school official authority to search the personal belongings inside a student’s locker or desk without the student’s voluntary consent or the official’s reasonable suspicion of an infraction. A student does not voluntarily consent to a search (negating the need for reasonable suspicion) by signing a blanket consent form as a condition of locker or desk use.

See Comment j and the Reporters’ Note thereto.

Illustration:

22. Principal Brown suspects that some students are bringing drugs to school and keeping them in their lockers. Based on a consent form signed by each student at the beginning of the school year, Principal Brown opens every student’s locker and searches backpacks and the pockets of jackets in the lockers. Principal Brown has authority to open the lockers but does not have authority to search students’ belongings therein without individualized reasonable suspicion.

A student has an expectation of privacy in a vehicle that he or she owns or is authorized to use and has driven onto school property, and in items in the vehicle that are not in plain view. Outside the school context, courts have authorized warrantless searches of vehicles because of their mobility. This rationale does not generally apply in the school context, but courts view
students’ expectation of privacy in their vehicles to be less substantial than in their personal belongings.

g. Location of the search: cell phones, social-media sites, email. The regulation of searches of cell phones, email, or social-media sites has posed new challenges for Fourth Amendment law. These locations often contain a great deal of private personal information; thus, the student who is subject to the search has a substantial and legitimate interest in privacy, such that a search potentially can be very intrusive.

Because a cell phone typically contains a large amount of private information, a search of its contents often is substantially more intrusive than is a search of other tangible objects. A school policy prohibiting possession of cell phones and authorizing their confiscation does not in itself authorize a search of the phone, absent reasonable suspicion by the school official that the phone will provide evidence of a specific violation by the student other than possession of a prohibited item.

Illustration:

23. A school-district policy prohibits students from bringing cell phones to school. Mr. Folger, a ninth-grade teacher, confiscates Henry’s cell phone when it falls out of Henry’s pocket, and turns it over to Principal Grayson. Ms. Grayson accesses Henry’s voicemail, calls phone numbers of other students, and examines Henry’s text messages, which include a text with an obscene photo. All aspects of the search of Henry’s cell phone are unlawful. Henry’s violation is bringing the cell phone to school. The search is not undertaken for the purpose of finding evidence of that violation, and Ms. Grayson has no basis for reasonably suspecting that the phone will produce evidence of other specific prohibited activity.

Even if a cell phone is used in violation of a school policy, a search of its contents is not authorized unless there is reasonable suspicion that the search will produce evidence of that violation.

Illustrations:

24. Associate Principal Bligh seizes Maria’s cell phone after seeing a group of students looking at what appear to be text messages on the phone. Use of a cell phone to
text or for other purposes in school is a violation of school policy. Ms. Bligh looks at the

times on Maria’s text messages to determine whether any messages were in fact sent while
Maria was at school. She finds such evidence on the phone and stops searching. Ms. Bligh’s
search is lawful because it is limited to finding evidence of Maria’s infraction of texting in
school.

25. Same facts as Illustration 24, except that Associate Principal Bligh continues
searching and opening text messages, discovering a nude photo of Maria. Maria admits to
sending the photo to a male friend after he sent a similar photo to her. She is charged with
a delinquency offense. The search that produces the photo is unlawful. The search was
justified at its inception based on the reasonable suspicion that Maria was violating school
policy by texting. But evidence that Maria used the phone during school hours could have
been obtained without opening and reading individual messages; thus, the continued search
of the text messages is outside the scope of reasonableness.

A student has a legitimate expectation of privacy in the postings on a private social-media
account accessible by a password, but not in postings on a public social-media account. A school
official is authorized to demand access to a private social-media account only if the official
reasonably suspects that the search will provide evidence of a specific violation of law or school
rules. Notice to the student or parents that school officials may demand access does not obviate
the need for reasonable suspicion to undertake a legal search. Similarly, a student has an
expectation of privacy in a private email account, but not in an account on a school server.

h. Suspicion focused on multiple students or unidentified student. Under limited conditions,
the requirement that a search must be justified on the basis of individualized suspicion directed at
a specific student is suspended or relaxed. First, a suspicionless search of a group of students
(including, rarely, the whole student body) or of randomly selected students is permissible under
some conditions if the screening procedure intrudes minimally on students’ privacy interest and
the state has an important interest. Section 10.20 deals with the state’s limited authority to
undertake a suspicionless search.

Individualized suspicion may not be not required when a teacher or administrator has
reasonable suspicion that a student (or students) likely engaged in a specific violation, but does
not know which student. In New Jersey v. T.L.O., 469 U.S. 325 (1985), for example, the search
was initiated in response to the smell of cigarette smoke in the girls’ restroom, and two students in
the restroom were suspects. As in the case of an individualized search, the determination of whether a “generalized” search (a search of multiple students based on reasonable, but not individualized, suspicion) was lawful will be based on the intrusiveness of the search on the students’ privacy interests, weighed against the importance of the state’s interest in light of the nature of the suspected infraction. But as the number of students to be searched increases, the level of suspicion directed at any individual student decreases, requiring greater justification for the intrusion on multiple students’ privacy interests represented by the search. It follows that if the suspected illegal activity represents a serious threat to student safety, the state has an important interest in conducting a generalized search; under those circumstances, the official reasonably can undertake a search of a larger group of students than would be legal if the suspected violation were of less consequence. Moreover, if the suspected violation represents a serious threat to student safety, a more intrusive search of each student (in terms of each student’s privacy interest) may be justified than would be allowed if no serious threat exists.

Illustrations:

26. Principal Marcus receives several reliable tips that a student in Mr. Rodriguez’s 11th-grade history class had brought a gun to school, but the tips did not reveal the identity of the student suspect. Given the seriousness of the threat, Ms. Marcus is justified in conducting a search of all students in the class. The scope of the search can extend to the person of each student (through an initial pat-down), and the students’ desks, backpacks, purses, and lockers.

27. Ms. Armacost, a seventh-grade teacher, discovers that 50 dollars were taken from her wallet. Given the less serious nature of this infraction, a search of the clothing and backpack of every student in her class is not reasonable and is illegal. The state interest in recovering the lost cash is not substantial, and the intrusion into each student’s privacy interest is substantial. Ms. Armacost is authorized to search a student based only on reasonable suspicion that the particular student took the money.

i. Search by school resource officers and law-enforcement officers. In many school districts, school resource officers (SROs) are employed to provide security. The function of the SRO is to assist the school administration and faculty in maintaining order and discipline, and in ensuring a safe educational environment. An SRO who is regularly employed by the school district
to fulfill those functions or is assigned exclusively to a school is deemed a school official when
that SRO undertakes a search of a student. A search by an SRO who meets these qualifications is
lawful if it satisfies the reasonable-suspicion standard.

A law-enforcement officer who is not regularly located at the school and is not employed
full-time by the district or locality to work in the school is authorized to search a student in school
only if the search satisfies the probable cause standard. The relaxed reasonable-suspicion standard
does not apply if the law-enforcement officer is occasionally called to the school or even if the
officer is part of a group of officers who are assigned by a police department in rotation to assist
with security at the school on a part-time basis. Moreover, if the SRO is an off-duty police officer
working part-time as an SRO for the school district, the probable cause standard applies to
nonconsensual searches of students. Of course, if the officer searches a student in school as part of
a criminal investigation that is not related to the school but involves a student, the probable cause
standard applies.

Illustration:

28. Officer Morales is employed by the Yellow Springs Police Department. He is
assigned for three months to Yellow Springs High School as liaison officer. Officer
Morales searches Vito’s backpack for drugs. The search satisfies reasonable suspicion, but
not probable cause. The search is unlawful. Officer Morales is not a school official; as a
law-enforcement officer, he must have probable cause to search without a warrant.

The distinction between the professional role of SROs and that of regular law-enforcement
officers justifies the application of different standards to their searches. An SRO is a school official
if he or she operates exclusively in the school setting; the SRO’s job is an integral part of the
educational function of the school. When the SRO conducts a search of a student, the primary
purpose is to maintain order and discipline in the school and not to apprehend a criminal, although
the search may implicate criminal activity such as possession of a weapon or drugs. Moreover, the
duties of an SRO in the school typically are broader than those of a law-enforcement officer. The
role of a law-enforcement officer is quite different—to prevent and detect crime and to apprehend
criminals. In undertaking a search, the law-enforcement officer’s purpose is to apprehend a
criminal; thus, the individual suspect needs the full protection of the Fourth Amendment against
the intrusion of the state.
When a law-enforcement officer assists a school official in conducting a search of a student initiated by the school official, the relaxed reasonable-suspicion standard will apply to the search, so long as the school official independently requested the officer’s assistance and did not act as the agent of the law-enforcement officer. Courts often emphasize that for reasonable suspicion to apply, the law-enforcement officer’s involvement must be limited and at the behest of the school official. Probable cause is not required for the search under these conditions. Even if the search is actually conducted by the law-enforcement officer, reasonable suspicion applies so long as the decision to search was initiated by the school official. But when a law-enforcement officer initiates or directs the search, the probable cause standard applies, even if a school official also participates. The distinction is motivated, as explained above, by the different roles of school officials and law-enforcement officers. It is assumed that school officials are motivated by educational objectives and would conduct a search only in service of those interests.

**Illustrations:**

29. Principal Maloney receives reliable tips that George is selling drugs in school and suspects that the drugs are in George’s car. She calls the local police station and asks for assistance in searching George’s car. Two officers search the car and find a stash of drugs. The search is lawful so long as it is based on reasonable suspicion, because the decision to search is made by Ms. Maloney.

30. Two off-duty police officers serve part-time as security officers in Springfield High School. The officers stop a fight between two students and take one student into the school office. Based on reasonable suspicion, the officers search the student. The search is unlawful unless probable cause is satisfied. It is not initiated by, nor does it involve, a school official. The police officers, as off-duty law-enforcement agents, are not school officials. A search initiated by police officers in a school setting must satisfy probable cause.

**j. Consent to search.** If a student validly consents to the request to search by a school official, the search is authorized even if not based on reasonable suspicion, but the scope of the search is limited by the terms of the consent. Thus, a student’s consent to search her desk is not consent to search her backpack. A lawful search on the basis of consent is also limited in its scope and purpose by the terms of the school official’s request. Thus, the search can extend only to places...
in which the item that is the declared object of the search could plausibly be found. For a discussion of minors’ consent to search in non-school settings, see § 12.10.

Illustration:

31. Assistant Principal Patton asks Homer for permission to search Homer’s backpack for a gun. Homer says he does not have a gun and voluntarily consents to the search. Ms. Patton undertakes a thorough search of the backpack and finds drugs in a small, hidden pocket. The search is not lawful, because the small pocket cannot plausibly contain a gun. Thus, the search extends beyond the scope of Homer’s consent.

A student’s consent to a search is valid only if it is voluntary and not coerced. Because of their developmental immaturity, children and adolescents are particularly vulnerable to coercion by adult authority figures. See § 12.21, describing adolescents’ vulnerability to coercion in interrogation. Students are inherently subject to the authority of school officials; thus, a student may not understand that she need not consent to a search requested by the official, particularly if the official exerts pressure to consent. Moreover, like a law-enforcement officer, the school official need not inform the student of his or her right to refuse to consent to a search. Schneckloth v. Bustamonte, 412 U.S. 218 (1973). The search will not be deemed voluntary if the official urges the student to consent or indicates that refusal to consent will result in a sanction or that consent will result in a benefit.

Illustrations:

32. A student in Ms. Voltaire’s eighth-grade class tells her that 40 dollars is missing from his backpack. Ms. Voltaire announces to the class, “Albert has told me that he is missing 40 dollars. I’d like each of you to let me look in your backpack. You don’t have to let me look; it’s a free choice.” James allows Ms. Voltaire to look in his backpack. The search is lawful even though Ms. Voltaire lacks reasonable suspicion, because James’s consent is voluntary.

33. Same facts as Illustration 32, except that Ms. Voltaire says to the class, “I won’t make you let me look in your backpack, but if you refuse, that will be pretty suspicious.” Because the search of James’s backpack is conducted without voluntary consent and without reasonable suspicion, it is unlawful.
When a school official undertakes a search on the basis of reasonable suspicion, consent by the student is not necessary. Consent and reasonable suspicion are alternative grounds for a legal search. If reasonable suspicion exists, the fact that a student’s consent was not voluntary and was invalid will not render the search illegal. For example, if the student consents only because the official indicates that the search will proceed with or without consent, the search will not be voluntary, but it is a lawful search if it was based on reasonable suspicion.

Illustration:

34. Principal Thomas suspects that Amos is dealing drugs in school on the basis of reliable student tips and a report from the gym teacher that she saw Amos furtively exchanging something for money in the locker room. Mr. Thomas calls Amos into his office and says, “Amos, I think you might have drugs in that backpack.” When Amos denies this, Mr. Thomas says, “Can I take a look?” Amos hands over the bag, saying, “Do I have a choice?,” believing that Mr. Thomas will search his bag whether he consents or not. Because the search is based on reasonable suspicion, it is a legal search, whether or not Amos’s consent is voluntary.

k. Lawful seizure of items by school officials. A seizure of an item by a school official occurs when the official takes away a student’s personal property in a way that materially interferes with the student’s possessory interest. An official can lawfully seize an item that is the target of a lawful search, as well as an item that is found inadvertently in the course of a lawful search that clearly indicates a violation. Further, an item that clearly indicates a violation can be seized if it is found in plain view in a location that the school official is allowed to be, in a situation in which there was no prior search or intrusion into the student’s privacy. Finally, an item that was abandoned by the student can be seized.

Seizure by a school official of an item that is the object of a lawful search is lawful. In this situation, the lawfulness of the seizure depends on the lawfulness of the search, and the lawfulness of the seizure alone is seldom in dispute.

Illustration:

35. Principal Johnson stops Sam in the hall because he notices a red bandanna hanging from his pocket. Red bandannas are the insignia of a local gang and Principal
Johnson has received reliable information that two gangs are planning a confrontation. Principal Johnson pats Sam down; lifting Sam’s shirt, because he is wearing baggy clothing, the principal sees a knife in Sam’s waistband and seizes the knife. The search that involves lifting Sam’s shirt is lawful because it is necessary due to his baggy clothing. Therefore, the seizure of the knife is lawful.

A seizure of an item that is not the object of a lawful search is lawful if it is found inadvertently in plain view in a location that is within the scope of the lawful search at its initiation. The location of the item is within the scope of the lawful search if the official conducting the search could reasonably suspect the item that was the target of the original search could likely be found in that location. The finding must be inadvertent and the incriminating nature of the item found must be immediately apparent.

Illustrations:

36. Principal Roper searches Elmo’s car based on reasonable suspicion that Elmo has a rifle in his car. In the course of the search, he finds drugs and drug paraphernalia sitting in the trunk of the car. Seizure of the drugs and drug paraphernalia is lawful because a search of the trunk is within the scope of the search for the rifle.

37. Same facts as Illustration 36, except that Principal Roper finds drugs in the glove compartment of the car. The drugs cannot be seized lawfully because the search of the glove compartment is beyond the scope of the lawful search for the rifle, and Principal Roper lacks reasonable suspicion to search for drugs. A rifle cannot fit in a glove compartment.

38. Principal Brown searches Eric’s backpack after a drug-sniffing dog alerts to Eric, indicating that it smells drugs. In the backpack, Principal Brown finds a gun, which she seizes. The search of the backpack for drugs is lawful based on reasonable suspicion created by the dog’s alert. The interior of the backpack is within the scope of the search, and therefore the gun found in the backpack is lawfully seized.

A lawful, plain-view seizure need not be based on a prior search. If an item is in open, public view, the school official can lawfully seize the item without prior reasonable suspicion if
the item clearly provides evidence of a violation or crime. No invasion of the student’s expectation of privacy occurs in that situation.

Illustrations:

39. School Resource Officer Juarez is walking around the student parking lot when he sees a hammer on the ground next to a student’s car. The day before, a hammer was used to vandalize school lockers. Officer Juarez seizes the hammer. Henry walks up and asks for the hammer, which he identifies as his. Officer Juarez lawfully seizes the hammer, which is in public view.

40. Same facts as Illustration 39, except that the hammer is on the back seat of Henry’s car. Officer Juarez calls Henry from his classroom and asks him to open the car door. Officer Juarez then seizes the hammer. The hammer is in plain public view and is lawfully seized by Officer Juarez. Plain view of the hammer provides reasonable suspicion that justifies the search.

An item can be lawfully seized if possession of the item in school is prohibited by school policy. Thus, the cell phone of a student can be lawfully seized if school policy prohibits the use of cell phones in school and the student is seen using the phone in school. In that situation, the seized item ordinarily should be returned to the student at the end of the school day. A seized cell phone cannot be lawfully searched unless the school official reasonably suspects that the search will reveal evidence of a violation other than the initial violation of prohibited school use. See Comment g.

Courts have recognized that a lawful seizure can be based on “plain feel,” when a state official seizes an incriminating item inadvertently found through touch.

Illustration:

41. Following school policy, Perry leaves his backpack with School Resource Officer Taylor while he goes to get a new school identification card. When Perry tosses his bag onto the cabinet, Officer Taylor hears an odd metallic thump. He then rubs his hand along the bottom of the bag, and feels the clear contour of a gun. Based on this “plain feel,” Officer Taylor then searches the inside of the bag, seizing the gun. The metallic thud is insufficient to justify a reasonable suspicion that Perry’s bag contains a weapon, but the
sound justifies feeling the bottom of the bag, leading to reasonable suspicion justifying the
search and seizure of the gun. Both the search and seizure are lawful.

I. The application of the exclusionary rule. Evidence seized during an unlawful search of a
student is excluded from any later delinquency or criminal proceeding brought against that student.
This is obviously clear when a law-enforcement officer searches a student in school without
probable cause. See Comment i and the Reporters’ Note thereto. But courts have held that the
exclusionary rule applies with equal force when a school official conducts a search without
reasonable suspicion or valid consent. Fourth Amendment protection of a student’s legitimate
expectations of privacy is meaningless if the evidence of an illegal search conducted without
reasonable suspicion could be introduced against the student in a criminal or delinquency
proceeding.

Courts offer the same deterrence rationale for the application of the exclusionary rule to
student searches as is applied to searches by law-enforcement agents generally. Under New Jersey
v. T.L.O., 469 U.S. 325 (1985), a school official is a government agent for Fourth Amendment
purposes. The official conducts an illegal search if the search was not justified at its inception or
if it was excessive in scope. The reasonable-suspicion standard gives school officials some latitude
in conducting student searches, while the exclusionary rule encourages them to respect students’
legitimate interest in privacy protected under the Fourth Amendment.

The suppression of evidence of an illegal search by a school official under the exclusionary
rule in a criminal or a delinquency proceeding is essential because the evidence was obtained
through unconstitutional means. A delinquency adjudication or criminal conviction can result in a
deprivation of liberty. Given the importance of the stakes to the individual, protection of the
individual’s Fourth Amendment interest is necessary; the integrity of the judicial process would
be severely undermined if an individual could be convicted on the basis of evidence acquired in
an illegal search, whether by a law-enforcement officer or a school official. As one court observed,
the Fourth Amendment’s “twin goals of enabling the judiciary to avoid the taint of partnership in
official lawlessness and of assuring the people . . . that the government would not profit from its
lawless behavior” are important in both criminal and delinquency proceedings, because the

Courts do not apply the exclusionary rule to school disciplinary proceedings. A disciplinary
proceeding is a civil proceeding; it is not a criminal or quasi-criminal adjudication that carries the
possibility of loss of liberty. In general, courts do not apply the exclusionary rule’s protections to civil proceedings on that basis. Although the outcome of a disciplinary proceeding may have important consequences for the student’s life, those consequences are related to the student’s education and the school’s educational mission and do not usually involve the prospect of a deprivation of liberty. Courts offer that distinction to rationalize the withholding of the protection of the exclusionary rule from disciplinary proceedings. A student who is subject to an unlawful disciplinary sanction on the basis of an illegal search can bring a civil claim against the school under § 1983 of the Civil Rights Act of 1964. See Comment m.

m. Civil remedies: § 1983 of the Civil Rights Act of 1964 and other civil-rights actions. Courts often enforce the Fourth Amendment’s constitutional requirements applied to school searches through federal suits brought under 42 U.S.C. § 1983 or analogous state causes of action for civil-rights or constitutional violations. In determining whether the constitutional rights of a minor have been violated, the courts generally apply T.L.O.’s reasonable-suspicion standard. In Safford Unified School District No. 1 v. Redding, 557 U.S. 364 (2009), a § 1983 suit, the U.S. Supreme Court applied T.L.O. and its progeny holding that reasonable suspicion did not justify a strip search of the minor under the circumstances of that case.

In an action under 42 U.S.C. § 1983, a defendant can raise a qualified immunity defense. A school official will not be found liable under § 1983 unless found to violate a clearly established federal statutory or constitutional right of the petitioner of which a reasonable person would have been aware. If the court finds a violation, it will then determine whether the violated right was clearly established at the time of the alleged constitutional violation. On this ground, the school district in Redding was granted qualified immunity and not held liable for the Fourth Amendment violation.

Courts deciding 42 U.S.C. § 1983 suits against schools routinely make findings as to the constitutionality of the conduct of school officials. Section 1983 litigation is thus an important source of law in determining the general constitutionality of conduct constituting a Fourth Amendment search in schools. Civil § 1983 suits also allow consideration of issues arising in school disciplinary proceedings that are not subject to the exclusionary rule. See Comment l.

REPORTERS’ NOTE

Comment a. The reasonable-suspicion standard: background and rationale. Before the U.S. Supreme Court decided New Jersey v. T.L.O. in 1985, courts disagreed over whether the
Fourth Amendment protections against unreasonable searches and seizures applied to public school students. 469 U.S. 325 (1985). Compare R.C.M. v. State, 660 S.W.2d 552 (Tex. App. 1983) (concluding that school officials act in loco parentis over minor students and as such are not constrained by the Fourth Amendment in searching them) with Horton v. Goose Creek Sch. Dist., 690 F.2d 470 (5th Cir. 1982) ("[W]e think it beyond question that the school official, employed and paid by the state and supervising children who are, for the most part, compelled to attend, is an agent of the government and is constrained by the fourth amendment.").

*T.L.O.* clarified that students do enjoy the protections of the Fourth Amendment, but that school officials are held to a more relaxed standard than are law-enforcement officers. 469 U.S. 325 (1985). *T.L.O.* established the basic Fourth Amendment framework regulating searches of public school students by school officials, a framework that has been adopted by most federal and state courts. Id. at 326. First, the Court recognized that “[s]choolchildren have legitimate expectations of privacy” under the Fourth Amendment’s prohibition on unreasonable searches and seizures. Id. However, the Court reasoned that the “substantial interest” of teachers and administrators in maintaining “order and a proper educational environment” justified an “easing of the restrictions” and a granting of flexibility toward school officials when they subject schoolchildren to nonconsensual searches. Id. at 340. Thus, *T.L.O.* and courts thereafter have agreed that minors “are entitled to less privacy at school than adults would enjoy in comparable situations.” Linke v. Nw. Sch. Corp., 763 N.E.2d 972, 980 (Ind. 2002); see also People v. Pruitt, 662 N.E.2d 540, 543 (Ill. App. Ct. 1996) (“The State’s power over schoolchildren permits a degree of supervision and control that could not be exercised over free adults.”).

Two key differences exist between the regulation of school searches and of most other searches under the Fourth Amendment. First, school officials are not required to obtain a warrant to search a student. *T.L.O.* found the warrant requirement to be “unsuited to the school environment” and an undue interference with “the swift and informal disciplinary procedures needed in the schools.” *T.L.O.*, 469 U.S. at 340. Second, school officials are not subject to the probable cause standard that applies to law-enforcement searches generally. Id. at 341. See also Narotzky v. Natrona Cnty. Mem’l Hosp. Bd. of Trs., 610 F.3d 558, 567 (10th Cir. 2010) (the Fourth Amendment guarantees “[w]ith limited exceptions” that “a search . . . requires either a warrant or probable cause”). Instead, the Court announced in *T.L.O.*, a search of a student in public school is justified if the school official has reasonable suspicion to believe that the student had engaged or was engaging in a crime or a violation of a school regulation. See *T.L.O.*, 469 U.S. at 340. The Supreme Court stated that “what is reasonable depends on the context within which a search takes place.” Id. at 337.

This Section follows the standard announced in *T.L.O.* for determining whether a search is reasonable. The reasonableness of a search is determined by a twofold inquiry: (1) “whether the search was justified at its inception;” and (2) “whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place.” Id. at 341. To the first prong, a search will be justified at its inception if the school official possessed “reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating
either the law or the rules of the school.” Id. at 341-342. The school official “is required to elicit
specific and articulable facts which, when taken together with rational inferences from those facts,
A search satisfies the second prong “when the measures adopted are reasonably related to the
objectives of the search and not excessively intrusive in light of the student’s age and sex and the
nature of the infraction.” T.L.O., 469 U.S. at 342.

Courts have held that the reasonableness standard promulgated by T.L.O. applies not only
to searches, but to seizures within the school context. Shuman ex rel. Shertzer v. Penn Manor Sch.
Dist., 422 F.3d 141 (3d Cir. 2005); see also Wofford v. Evans, 390 F.3d 318, 327 (4th Cir.
2004) (holding that “a school official may detain a student if there is a reasonable basis for
believing that the pupil has violated the law or a school rule”).

Since T.L.O., the Supreme Court has issued only three opinions dealing with searches of
public school students. In Safford Unified Sch. Dist. v. Redding, 557 U.S. 364 (2009), the Court
found a strip search of a 13-year-old student suspected of having prescription-strength ibuprofen
to be unreasonable, casting doubt on the legality of strip searches in school. See Reporters’ Note
Supreme Court upheld as constitutional a secondary school’s policy that authorized random,
suspicionless drug tests of student athletes. See also Bd. of Educ. of Indep. Sch. Dist. No. 92 of
participate in extracurricular activities was a reasonable and effective means to address “the School
District’s legitimate concerns in preventing, deterring, and detecting drug use”). See § 10.20.

Many scholars have been critical of the Supreme Court’s constitutional framework for
regulating searches of students. Most prominently, Barry Feld concluded that T.L.O. and Redding
have produced “patently irrational results, and [have denied] students any expectation of privacy
in their desks, lockers, or cars,” and that “[m]inimal legal protection, increased surveillance,
heightened police presence, and school officials’ repudiation of common sense and judgment have
fostered a school-to-prison pipeline that adversely affects all youths, especially students of color.”
Barry C. Feld, T.L.O. and Redding’s Unanswered (Misanswered) Fourth Amendment Questions:
progeny have allowed schools to become the “enclaves of totalitarianism” that were warned of in
Pinard, From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in
Public School Searches Involving Law Enforcement Authorities, 45 ARIZ. L. REV. 1067, 1067-
1071 (2003) (arguing that the probable cause should be applied to searches by law enforcement).

Scholars have criticized the reasonable-suspicion standard as contributing to the school-to-
prison pipeline. See, e.g., Feld, T.L.O. and Redding, supra, pp. 884-895. Feld argues that the
confluence of T.L.O.’s lower search standard, the heightened presence of law enforcement in
schools, the more extensive use of surveillance technologies, and schools’ zero-tolerance policies
have fueled the school to prison pipeline that has a disparate impact on urban Black males. See
also BARRY FELD & PERRY MORIEARTY, CASES AND MATERIALS ON JUVENILE JUSTICE
ADMINISTRATION 250-253 (West, 5th ed. 2018). See other sources cited in the Reporters’ Note to Comment i.

Comment b. Reasonable suspicion: search justified at inception. Many courts require that reasonable suspicion must be founded on articulable, objective facts. For example, in Hedges v. Musco, 204 F.3d 109, 112 (3d Cir. 2000), the Third Circuit evaluated the search of student after a teacher found the following behavior suspicious: the student’s face was flushed, her eyes were glassy and red, her pupils were dilated, she was uncharacteristically talkative, and when she left the classroom to get a drink of water, she walked in the opposite direction of the fountain. The court, finding that these were articulable facts, stated, “[W]here a teacher’s suspicion is based on objective facts that suggest that a student may be under the influence of drugs or alcohol, an examination of the kind here performed by Nurse Kiely will be permissible.” Id. at 118. See also Bridgman v. New Trier High School Dist. No. 203, 128 F.3d 1146 (7th Cir. 1997) (similarly upholding search founded on objective, articulable facts, when the student was giggling, seemed distracted, exhibited messy handwriting, and had bloodshot eyes and dilated pupils); C.A. v. State, 977 So. 2d 684, 685 (Fla. Dist. Ct. App. 2008) (search unjustified as officials had no articulable bases, relying on hunch); In re William G., 709 P.2d 1287, 1296 (Cal. 1985) (“[A] search of a student . . . is unlawful if predicated on mere curiosity, rumor, or hunch.”).

Courts also emphasize that school officials must be able to describe the suspicious behavior with specificity. For example, in Phaneuf v. Fraikin, 448 F.3d 591, 600 (2d Cir. 2006), the Second Circuit noted that school officials described the student’s behavior as suspicious, but gave no detail as to why; this was not enough to justify the search.

Most courts require more than a rumor of misconduct or of a student’s reputation to satisfy the reasonable-suspicion standard. For example, in State v. Polk, 57 N.E.3d 318 (Ohio Ct. App. 2016), the court held that a search of a student’s backpack based solely on the student’s rumored gang affiliation was unconstitutional. Likewise, in Cummerlander v. Patriot Preparatory Academy, the court held that subjecting a student to a drug test based on rumors alone was not justified. 86 F. Supp. 3d 808 (S.D. Ohio 2015). See also G.M. v. State, 142 So. 3d 823, 829 (Ala. 2013) (search based on student’s affiliation with another wrongdoer and possible participation in gang activity not justified); R.J.M. v. State, 456 So. 2d 584, 585 (Fla. Dist. Ct. App. 1984) (search based only on a rumor that the student’s friend had fainted at school because of drugs did not constitute anything “remotely resembling the reasonable suspicion of R.J.M.’s wrongdoing which is required to justify a search of a student.”); C.A., 977 So. 2d 684; M.S. v. State, 808 So. 2d 1263, 1265 (Fla. Dist. Ct. App. 2002) (similar facts).

Illustration 1 is based on State v. Polk, 57 N.E.3d 318 (Ohio Ct. App. 2016).

Illustration 2 is based on Cummerlander v. Patriot Preparatory Academy, 86 F. Supp. 3d 808 (S.D. Ohio 2015).

Many courts state that the search must be one that might produce evidence related to a specific infraction plausibly committed by the student. For example, in State v. B.A.S., 13 P.3d 244, 246 (Wash. Ct. App. 2000), the court stated that school officials’ suspicion that a student had violated its policy prohibiting students from leaving campus during school hours did not justify a
search of his pockets, because such search was unlikely to produce evidence related to the school policy violation. Explaining this logic, the court observed, “There must be a nexus between the item sought and the infraction under investigation.” Id. In In re I.G., 2006 WL 1752103 (Cal. Ct. App. June 28, 2006), the court found that the search of a student’s backpack lacked reasonable suspicion because it was not justified on the basis of a school official observing a fight in which no weapons were used the day before. See also Phaneuf v. Fraikin, 448 F.3d 591, 600 (2d Cir. 2006) (rejecting search for marijuana on the basis of suspicion that student had cigarettes in violation of school policy; “The school acted unreasonably in treating all contraband alike: Surely, a discovery of cigarettes cannot alone support a suspicion that a student is carrying a firearm or is bootlegging gin.”).


Many types of information can constitute reasonable suspicion that a student has engaged in, or plans to engage in, prohibited activity, and courts usually point to several corroborating sources in support of suspicion. See, e.g., A.M. ex rel. F.M. v. Holmes, 830 F.3d 1123 (10th Cir. 2016) (a student report of drug transaction corroborated by video-camera footage enough to meet reasonable-suspicion standard); Boyd v. Jefferson Cnty. Pub. Sch., 2017 WL 4685737 (W.D. Ky. Oct. 18, 2017) (student report of being threatened and harassed by another student corroborated by other student interviews and written statements enough to meet reasonable-suspicion standard); Williams ex rel. Allen v. Cambridge Bd. of Educ., 370 F.3d 630 (6th Cir. 2004) (student reports of fellow student’s intention to bring weapons to school corroborated by written statements and an interview with the accused student was enough to meet reasonable-suspicion standard); Kissinger v. Fort Wayne Cnty. Schs., 293 F. Supp. 3d 796 (N.D. Ind. 2018) (student’s recent history of drug infractions, student’s dishonest answers when questioned, and the fact that the school was designed as an alternative school for students who faced expulsion for various infractions, most of which were drug violations, constituted reasonable suspicion); Lausin v. Bishko, 727 F. Supp. 2d 610 (N.D. Ohio 2010) (student’s history of racism, together with video-surveillance footage and handwriting enough to constitute reasonable suspicion that the student had written a racist and threatening message on the bathroom wall); Vassallo v. Lando, 591 F. Supp. 2d 172 (E.D.N.Y. 2008) (student’s proximity to fire, covering his face with his hood, and quickening his pace when approached by a teacher enough to constitute reasonable suspicion); Hedges v. Musco, 204 F.3d 109 (3d Cir. 2000) (student’s flushed face, glassy and red eyes, dilated pupils, and uncharacteristic talkativeness enough to constitute reasonable suspicion).

Most courts have held that an isolated fact is not alone sufficient to constitute reasonable suspicion. See In re William G., 709 P.2d 1287, 1297 (Cal. 1985) (“William’s ‘furtive gestures’ in attempting to hide his calculator case from Lorenz’ view cannot, standing alone, furnish sufficient cause to search.”); G.C. v. Owensboro Pub. Sch., 711 F.3d 623, 633-634 (6th Cir. 2013) (“We disagree, though, that general background knowledge of drug abuse or depressive tendencies, without more, enables a school official to search a student’s cell phone when a search would otherwise be unwarranted.”); State v. A.S., 430 P.3d 703, 706-707 (Wash. Ct. App. 2018) (finding
search was not reasonable when student was middle school aged, the vice principal knew nothing about the student’s history or school record, police were already on their way, and other than an odor of marijuana, the vice principal had no reason to believe the juvenile’s bag contained marijuana).

Reasonable suspicion can be based on tips from known informants, if the tip is sufficiently detailed. For example, the court in R.M. v. State, 129 So. 3d 1157, 1159 (Fla. Dist. Ct. App. 2014), held that a report from a student informant about a student holding a gun was enough to constitute reasonable suspicion, because the report was sufficiently detailed: the informant described the student’s height, weight, race, age, haircut, clothing, and book bag. The court noted that a search may be unreasonable if based only on a generalized description that could apply to a large number of presumably innocent people in the area. Id. at 1159. See also Ross v. State, 419 So. 2d 1170, 1170 (Fla. Dist. Ct. App. 1982) (report describing an assault suspect as a Black male with short cropped hair, wearing a white T-shirt and wearing blue jeans, deemed too general to justify search as it could apply to large number of innocent people). Courts have held that the specificity with which an informant can describe the observed events is a factor to be considered when evaluating the reliability of a tip and the reasonableness of a school search. See United States v. Chavez, 660 F.3d 1215, 1222 (10th Cir. 2011); United States v. Copening, 506 F.3d 1241, 1247 (10th Cir. 2007); United States v. Brown, 496 F.3d 1070, 1078-1079 (10th Cir. 2007); Matter of I.O., 612 S.W.3d 637, 644 (Tex. App. 2020) (finding that the in-person tip did not raise reliability concerns because the tip “contained precise information specifically identifying appellant, a particular exchange of a controlled substance on the school campus, on a particular day, and to which the female student was an actual party.”).

Tips from informants are not always sufficient to constitute reasonable suspicion. Courts usually require some corroboration of informant tips. For example, in Phaneuf v. Fraikin, 448 F.3d 591, 599 (2d Cir. 2006), the court found the search unjustified although the informant was a “trustworthy” student who claimed to have had a direct conversation with the suspected student, because the school did nothing to investigate or otherwise corroborate the informant’s claims. Also, a tip cannot provide reasonable suspicion if the school official has reason to know that it is likely to be false. In Fewless ex rel. Fewless v. Bd. of Educ., 208 F. Supp. 2d 806 (W.D. Mich. 2002), a federal court found that the search lacked reasonable suspicion because the official had reason to know the tips were unreliable; the informants had a history of harassing the student who was the subject of the tip.

Illustration 10 is based on Fewless v. Bd. of Educ., 208 F. Supp. 2d 806 (W.D. Mich. 2002). Anonymous tips usually receive far less weight than tips from known reliable informants and typically require corroboration or additional evidence of student misconduct in order to constitute reasonable suspicion. For example, in R.M. v. State, 129 So. 3d 1157, 1159 (Fla. Dist. Ct. App. 2014), the court observed that the tip constituted reasonable suspicion because it was not an anonymous tip. Similarly, in A.M. ex rel. F.M. v. Holmes, 830 F.3d 1123, 1159 (10th Cir. 2016), the court emphasized the fact that an anonymous tip accusing a student of drug activity was bolstered by camera footage of the student standing in a circle of students handing around what
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seemed to be money. See also In re B.R.P., 2007 WL 2403226, at *3 (Tex. App. Aug. 23, 2007) ("an anonymous tip, standing alone, will rarely provide the reasonable suspicion necessary to justify an investigative detention or search").

Courts have held that anonymous tips are sufficient to constitute reasonable suspicion when the threat is particularly great. See K.P. v. State, 129 So. 3d 1121, 1125 (Fla. Dist. Ct. App. 2013) ("[t]he level of reliability that an anonymous tip must demonstrate in order to satisfy the Fourth Amendment is lower when an extraordinary danger is threatened") and In re K.C.B., 141 S.W.3d 303, 308-309 (Tex. App. 2004) ("[t]he presence of drugs on a student, however, does not tip the balance far enough for the search in this case to be deemed justified at its inception. Immediacy of action is not as necessary as could be found with a tip regarding a weapon").


Comment c. Reasonable suspicion: the scope of the search. The second prong of the reasonable-suspicion standard, announced by the Supreme Court in New Jersey v. T.L.O., 469 U.S. 325 (1985), and generally adopted by state and federal courts, requires the court to evaluate whether the scope of the search is reasonably related to the circumstances justifying the search. Courts undertake this analysis by weighing the government’s interest in conducting the search against the level of intrusiveness of the search. Thus, applying an implicit sliding scale, courts tend to conclude that the government may intrude to a greater extent (and the scope may be broader) when its interest in undertaking the search is more compelling, based on the nature of the suspected infraction. In Doe ex rel. Doe v. Little Rock Sch. Dist., 380 F.3d 349 (8th Cir. 2004), the court explained that the government interest must be evaluated according to the level of intrusion involved in the search at hand.

When the government interest is not substantial, the scope of the search must also be narrow; if the scope of the search is excessive in relation to its initial purpose, the court often will find it to be unreasonable. In Pendleton v. Fassett, 2009 WL 2849542 (W.D. Ky. Sept. 1, 2009), for example, school officials conducted a search based on a report that some students were smoking marijuana in a school bathroom. The search of a female student, in which the school official touched the student underneath her bra, was held to be unreasonable due to its intrusive nature in light of the infraction. The court observed that the search was undertaken to find items violative of school rules but not otherwise dangerous. Given the minimal state interest in the search relative to its invasive nature, the court found the search unreasonable as excessive in scope. Id. See also Coronado v. State, 835 S.W.2d 636 (Tex. Crim. App. 1992) (search in which official made student remove his socks and shoes, pull down his pants, open his locker, and unlock his car was justified at its inception but excessive in scope for infraction that involved truancy from school).

Courts view a search for weapons or explosives as creating the highest level of government interest. See, e.g., Thompson v. Carthage Sch. Dist., 87 F.3d 979 (8th Cir. 1996) (finding that a single “generalized but minimally intrusive search” of all male students in the sixth through twelfth grades for knives and guns was “constitutionally reasonable” in scope because “fresh cuts” on the seats of a school bus and student reports of a gun provided particularized evidence that there were
dangerous weapons on school grounds); In re Rafael, 200 Cal. Rptr. 3d 305 (Cal. Ct. App. 2016) (finding that when a student is found with a loaded firearm on campus, search of his cell phone for evidence of communication with other students who may have firearms was justified; court described need for “an immediate response to behavior that threatens . . . the safety of schoolchildren and teachers”). Courts generally find that pat downs are automatically justified when there is an individualized suspicion of a dangerous weapon. See, e.g., Shade v. City of Farmington, Minn., 309 F.3d 1054 (8th Cir. 2002) (“officials may pat down and search a student’s pockets when looking for a dangerous weapon”).

Drug possession provides a less important government interest to justify a search than does the possible presence of weapons (and therefore in theory, justifies a search of more limited scope), but the type of drugs (and whether they are deemed “dangerous”) and suspicion of an intent to sell are often relevant to the weight given in the government’s interest. In Safford Unified Sch. Dist. v. Redding, 557 U.S. 364 (2009), the U.S. Supreme Court found a strip search of a 13-year-old girl for prescription-strength ibuprofen to be excessive in scope due to the minimal state interest and the extreme intrusiveness of the search. The student was suspected of violating a school rule against possession of pain relievers on school grounds. Id. The Supreme Court held the strip search to be illegal under the second T.L.O. prong. Id. The initial search of the student’s backpack and outer clothing prior to the strip search, on the other hand, was not excessively intrusive. Id. The Court emphasized that “the categorically extreme intrusiveness of a search down to the body of an adolescent requires some justification in suspected facts.” Id. at 376. The Court also observed, “What was missing from the suspected facts that pointed to Savana was any indication of danger to the students from the power of the drugs or their quantity.”


The state’s interest in excluding drugs from school is often given considerable weight, particularly if the drugs are dangerous or there is evidence of selling. In People in Interest of P.E.A., 754 P.2d 382 (Colo. 1988), the court found the search of a car for evidence of drugs to be reasonable when an informant led school officials to suspect two students of selling marijuana, and the subject of the search had reportedly driven one of the suspects to school. Although an initial search of all three students, their backpacks, and their lockers did not produce evidence of drugs or other contraband, the court held that a subsequent search of the driver’s car was reasonably related to the initial justification provided. Id. See also State v. Schloegel, 769 N.W.2d 130 (Wis. Ct. App. 2009) (holding that a search of a student’s car for drugs was reasonable after searches of his person, backpack, and locker did not produce evidence of contraband). Courts sometimes find reasonable an intrusive search for drugs when it is the least intrusive way of confirming or denying a particular, justified suspicion. In Cornfield v. Consolidated High School District No. 230, 991 F.2d 1316 (7th Cir. 1993), for example, a 16-year-old student was suspected of “crotchting” drugs because of an unusual bulge observed by his teacher. Two male school personnel took the student to the boys’ locker room where they conducted a strip search in which they observed the student change, from a distance, to ensure he did not conceal any drugs or contraband, but did not physically touch him. Id. The court determined that while children the age
of the student are often extremely self-conscious about their bodies, and therefore the potential impact of a strip search was likely substantial, it was not unreasonable for officials to conclude that a strip search was the least intrusive way to confirm or deny their suspicions. Id. In V.W. ex rel. Wybrow v. Da Vinci Acad. of Sci. & Arts, 2011 WL 4001150 (D. Utah Sept. 8, 2011), however, the court held it would be reasonable for a factfinder to conclude that seizure of a student suspected of selling drugs in pill form was unreasonable when a strip search of that student, a search of her locker, and a search of her backpack all revealed no evidence of drugs or drug paraphernalia.


The school’s interest in protecting its community from theft or in enforcing routine rules represents the lowest level of government interest, usually justifying a minimally intrusive search that is narrow in scope. See Beard v. Whitmore Sch. Dist., 402 F.3d 598 (6th Cir. 2005) (“a search undertaken to find money serves a less weighty governmental interest than a search undertaken for items that pose a threat to the health or safety of students, such as drugs or weapons”).

In evaluating the scope of the search, courts often find an intrusive search to be unreasonable if a less intrusive option is available. In Beard v. Whitmore Lake School District, 402 F.3d 598 (6th Cir. 2005), school officials strip searched all 25 students in a gym class after one student reported her money had been stolen during class. The court held that while “school administrators have a real interest in maintaining an atmosphere free of theft,” this interest did not outweigh the intrusion of searching all 25 students in a highly intrusive manner without their consent. Id. at 605. Therefore, the court held the search was unreasonable, but left open the possibility that a less intrusive search might have been reasonable. Id. In In re I.G., 2006 WL 1752103 (Cal. Ct. App. June 28, 2006), the court found that a search of a student’s pockets for weapons was excessive, because the school official was searching for weapons and the search was not preceded by a pat-down.


Comment d. The student’s legitimate expectations of privacy. The U.S. Supreme Court recognized that a public school student has “legitimate expectations of privacy,” a conclusion necessary to trigger the protections of the Fourth Amendment. New Jersey v. T.L.O., 469 U.S. 325, 326 (1985). However, because of the substantial governmental interest of teachers and administrators in maintaining “order and a proper educational environment,” these expectations are less substantial than the privacy interests of adults or of minors outside the school context. This diminished privacy interest supports applying the relaxed reasonable-suspicion standard to searches by school officials. Id. at 326.

A student’s privacy interest extends to his or her person, clothing and belongings, contents of a locker or desk, and vehicle located on school property. The interest will vary depending on the student’s age and, most importantly, on the location of the search. See, e.g., Cornfield by Lewis v. Consol. High Sch. Dist. No. 230, 991 F.2d 1316, 1321 (7th Cir. 1993) (“What may constitute
reasonable suspicion for a search of a locker or even a pocket or pocketbook may fall well short
of reasonableness for a nude search.”). A search that focuses on the clothing or person of the
student implicates significant privacy interests. Most intrusive is a strip search. See below. Students
often have private information in their purses, backpacks, cell phones, and private social-
media accounts. Thus courts recognize that these sites implicate substantial privacy interests. For
a discussion of privacy interests in cell phones and social media, see Comment g and the Reporters’
Note thereto. Courts have found that a student’s privacy interest is far less substantial when applied
to the search of a student’s locker, desk, or vehicle. In re Juvenile 2006-406, 931 A.2d 1229, 1232
(N.H. 2007) (concluding with “little difficulty . . . that the search of the juvenile’s locker did not
violate his rights”); Anders ex rel. Anders v. Fort Wayne Cmty. Sch., 124 F. Supp. 2d 618, 624
(N.D. Ind. 2000) (search of car was reasonable when officer observed student walking from known
smoking area toward vehicle without a pass). See Comment f and the Reporters’ Note thereto. Courts
have held that no legitimate interest in privacy is implicated (and no search occurs) when
a trained canine sniffs student property not near the student nor in his or her possession. See
§ 10.20, Comment g, and the Reporters’ Note thereto.

The intrusiveness of a search is gauged on the basis of the student’s privacy interest, which
depends on the location of the search; the student’s interest is weighed against the state’s interest
in undertaking the search. A less intrusive search will often be justified under circumstances in
(subjecting student to emptying of pockets was reasonable, but expansion to strip search without
discovery of additional evidence was not); H.Y. ex rel. K.Y. v. Russell Cnty. Bd. of Educ., 490 F.
Supp. 2d 1174 (M.D. Ala. 2007) (strip search was unreasonable but search of the students’ “book
bags, books, purses, pockets, socks, and shoes, and the contents of their pockets” would likely
have been reasonable); Coronado v. State, 835 S.W.2d 636, 637 (Tex. Crim. App. 1992) (searches
of student’s “clothing and person, locker, and vehicle” were reasonable, but strip search was
unreasonable). When an initial, less invasive search reveals evidence of wrongdoing, a more
intrusive search will sometimes be justified. In an older case, the court upheld escalation to a strip
search based on evidence found in a locker search. Williams v. Ellington, 936 F.2d 881, 883-886
(6th Cir. 1991) (finding escalation to a strip search justified based on evidence found in locker and
bag).

Courts have long viewed strip searches of students to be extraordinarily intrusive. Before
the Supreme Court decided Stafford United School District. No. 1 v. Redding, 557 U.S. 364
(2009), many courts found strip searches to be illegal. See cases cited above, upholding less
intrusive searches but finding strip searches illegal violations of students’ privacy interest.

Redding involved a strip search conducted by a school official because the student was
suspected of possessing prescription-strength ibuprofen. The Supreme Court held that the search
was illegal; thus, the state interest balanced against the intrusive search was insubstantial, and the
outcome may have seemed obvious. But the opinion has been viewed by courts and other observers
as a strong statement against strip searches. See discussion below.
Strip searches have been described variously as “demeaning, dehumanizing, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission.” Mary Beth G. v. City of Chicago, 723 F.2d 1263, 1272 (7th Cir. 1983) (quotations omitted). Moreover, at least one court has noted that “[a]lthough students may surrender some expectations of privacy . . . an expectation that they will be free from strip searches is not one of them . . . [S]tudents [have] an important privacy interest in not being unclothed involuntarily.” Thomas ex rel. Thomas v. Roberts, 261 F.3d 1160, 1168 (11th Cir. 2001). Strip searches can “result in serious emotional damage” to students. Safford Unified Sch. Dist. v. Redding, 557 U.S. 364, 375 (2009) (citing Irwin A. Hyman & Donna C. Perrone, The Other Side of School Violence: Educator Policies & Practices That May Contribute to Student Misbehavior, 36 J. SCH. PSYCHOL. 7, 13 (1998)). See also D.H. ex rel. Dawson v. Clayton Cnty. Sch. Dist., 52 F. Supp. 3d 1261, 1292 (N.D. Ga. 2014), aff’d in part, rev’d in part sub nom. D.H. by Dawson v. Clayton Cnty. Sch. Dist., 830 F.3d 1306 (11th Cir. 2016) (discussing the “profound psychological impact” strip searches have on students).

Courts agree that the invasion of privacy incident to a strip search is unmatched, and, as such, the use of such searches in school should be reserved for situations in which the suspected activity constitutes a grave threat to student safety. There is virtually universal agreement among courts that strip searches conducted without individualized suspicion are not constitutionally permissible unless a grave threat exists. See, e.g., Thompson v. Carthage Sch. Dist., 87 F.3d 979, 983 (8th Cir. 1996) (clothing (not strip) search of all male students in grades six through 12 after staff learned that a knife or a gun may have been brought to school was reasonable); In re T.A.S., 713 S.E.2d 211, 217 (N.C. Ct. App. 2011), writ allowed, 712 S.E.2d 884 (N.C. 2011), and vacated, 366 N.C. 269 (2012) (holding that a search of female student’s bra for pills based only on generalized suspicion was excessively intrusive and unreasonable “in light of T.L.O. and Redding”); Foster v. Raspberry, 652 F. Supp. 2d 1342 (M.D. Ga. 2009); K.Y. v. Russell Cnty. Bd. of Educ., 490 F. Supp. 2d 1174 (M.D. Ala. 2007); Kennedy v. Dexter Consol. Schs., 10 P.3d 115 (N.M. 2000). See Comment h.

Courts that upheld student strip searches before Redding agreed that both a high degree of individualized suspicion and a high degree of suspected danger are necessary to justify a strip search at school. See, e.g., Richardson v. Bd. of Educ. of Jefferson Cnty., Ky., 2006 WL 2726777 (W.D. Ky. Sept. 22, 2006) (holding strip search of one male student’s underwear for fireworks or other explosive devices was reasonable); Cornfield by Lewis v. Consol. High Sch. Dist. No. 230, 991 F.2d 1316 (7th Cir. 1993) (holding strip search of student based on individualized suspicion of “crotchting” drugs reasonable); Thompson, 87 F.3d 979. In general, a judicial consensus exists that (1) strip searching schoolchildren should be limited in practice to the most urgent circumstances, and (2) a group strip search—one conducted because of generalized, rather than individualized, suspicion—is virtually never permissible (having yet to be permitted by any court). See Comment h.

Few courts since Redding have upheld strip searches, suggesting that courts interpret the opinion as embodying a strong statement against strip searches generally, despite its narrow holding. This Section adopts this interpretation. The Fifth Circuit has interpreted Redding to have
articulated a heightened standard under which strip searches are improper unless school officials 1
reasonably suspect either that the object of the search is (1) dangerous, or (2) actually likely to be 2
hidden in the student’s underwear. See Littell v. Houston Indep. Sch. Dist., 2018 WL 3149148, at 3
*4 (5th Cir. June 27, 2018). See also Highhouse v. Wayne Highlands Sch. Dist., 205 F. Supp. 3d 4
639, 647 (M.D. Pa. 2016) (applying this same “new constitutional rule” from Redding to hold that 5
the plaintiff sufficiently alleged the strip search to locate 250 dollars was unreasonable); Doe v. 6
Champaign Cmty. Unit 4 Sch. Dist., 2015 WL 3464076, at *7 (C.D. Ill. May 29, 2015) (discussing 7
the “exacting standard” set by Redding for strip searches and remarking that an intrusive strip 8
search previously held constitutional would likely be reversed as unreasonable under Redding). 9
See also D.H. by Dawson v. Clayton Cnty. Sch. Dist., 830 F.3d 1306, 1317 (11th Cir. 2016) (court 10
“readily conclude[d] that forcing D.H. to strip fully naked in front of his peers” to locate marijuana 11
“was unconstitutionally excessive in scope”); Gray v. Great Valley Sch. Dist., 102 F. Supp. 3d 12
671, 685 (E.D. Pa. 2015) (16-year-old subjected to strip search to locate drugs plausibly alleged a 13
colorable violation of her Fourth Amendment rights).

In the handful of cases in which strip searches have been upheld as constitutional since 14
Redding, substantial particularized evidence justifying the search was required, although the 15
rulings are outliers, given the lack of a safety threat. See, e.g., S.S. ex rel. Sandidge v. Turner 16
specifically stated that plaintiff had placed drugs in bra); A.M. v. Holmes, 830 F.3d 1123, 1158 18
(10th Cir. 2016), cert. denied sub nom. A.M. ex rel. F.M. v. Acosta, 137 S. Ct. 2151 (2017) (tip 19
that student was dealing drugs, suspicious behavior on video surveillance, marijuana leaf insignia 20
on belt buckle, and discovery of 200 dollars when searching outer clothing was enough 21
particularized evidence to justify strip search).

Some scholars have been highly critical of Redding, arguing that it offers students little 22
protection. See Barry C. Feld, T.L.O and Redding’s Unanswered (Misanswered) Fourth 23

A number of school districts and legislatures have banned strip searches outright. See N.Y. 24
search of a student be conducted”). According to Brief for the Urban Justice Center as Amicus Curiae 27
(2009), “seven states have banned strip searches by public school officials explicitly. Cal. Educ. 29
§ 28A.600.230 (2009); Wis. Stat. § 118.32 (2004).”

The age of the student is sometimes relevant to the court’s evaluation of his or her privacy 32
interest. In D.H. by Dawson v. Clayton Cnty. Sch. Dist., 830 F.3d 1306, 1318 (11th Cir. 2016), 33
the Eleventh Circuit quoted Redding, stating that “adolescent vulnerability intensifies the patent 34
intrusiveness of the exposure” to hold unconstitutional a strip search of a 12-year-old. See also 35

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person searched” adds to the intrusiveness of a search); compare Gray ex rel. Alexander v. Bostic, 458 F.3d 1295, 1306 (11th Cir. 2006) (“... the handcuffing [of a nine-year-old] was excessively intrusive given Gray’s young age and the fact that it was not done to protect anyone’s safety.”); with V.W. ex rel. Wybrow v. DaVinci Acad. of Sci. & the Arts, 2011 WL 4001150, at *4 (D. Utah Sept. 8, 2011) (finding search of shoes and socks of high school freshman was not unreasonable after factoring in age of student).

Courts have also found that a search is more intrusive when it is conducted by a school official of a different sex than the student. Hotchkiss v. Garno, 883 F. Supp. 2d 719, 732-733 (E.D. Mich. 2012).

Comment e. Legitimate expectations of privacy: exclusions. A student’s legitimate expectation of privacy is limited by the same exclusions that apply to any search governed by the Fourth Amendment. A student has no legitimate expectation of privacy in an item displayed publicly, left in plain view, abandoned, or in which he or she has disclaimed ownership. See, e.g., State ex rel. K.M., 49 So. 3d 460 (La. Ct. App. 2010) (determining that a school security officer constitutionally seized a knife observed in a minor’s purse when she opened the bag to show that she did not have identification with her); California v. Hodari D., 499 U.S. 621 (1991) (determining that an item deliberately dropped by a minor suspect while running from a police officer was abandoned; as such, he no longer retained any legitimate expectation of privacy in the item); Miller v. State, 498 N.E.2d 53 (Ind. Ct. App. 1986) (ruling that by stating that his gym bag belonged to another student, defendant had disclaimed his legitimate expectation of privacy in the bag). Items that are thrown away are generally considered abandoned property and receive no Fourth Amendment protection. See, e.g., Smith v. State, 510 P.2d 793, 796 (Alaska 1973) (“We view the sequence of an individual’s placing an article in a receptacle, from which routine municipal collections are made, and then withdrawing from the area as activity clearly indicative of an intention to relinquish all title, possession, or claim to property.”). Observations of items displayed publicly are not considered searches, and as such are not governed by Fourth Amendment protections.

Students also have no expectation of privacy in items detectable by the unaided senses of smell or hearing. See U.S. v. Fisch, 474 F.2d 1071, 1076 (9th Cir. 1973) (plain hearing); Matter of Gregory M., 627 N.E.2d 500 (N.Y. 1993) (hearing unusual thud when book bag was tossed by student justified feeling outside of bag to search for gun); U.S. v. Johnston, 497 F.2d 397, 398 (9th Cir. 1974) (plain smell).

Validly given consent to search also extinguishes an expectation of privacy. See Comment j, and the Reporters’ Note thereto.

Comment f. Location of the search: lockers, desks, and student vehicles. Courts recognize that students have a legitimate privacy interest in lockers, desks, and vehicles located on school grounds, but generally deem that interest to be less substantial than the privacy interest in their persons, clothing, or personal belongings, such as backpacks or purses. The student’s privacy interest in lockers and desks is presumed to be diminished because those items are school property and also are less intimately associated with the individual than his or her body or personal
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belongings. Evidence that courts view students’ privacy interest in lockers and vehicles to be less substantial than their interest in their persons can be found in the judicial response to trained canine sniffs. Screening sniffs of lockers, vehicles, and unoccupied desks are not deemed searches at all for Fourth Amendment purposes, because no legitimate expectation of privacy is implicated; in contrast, a canine sniff of a student’s person is deemed a search that intrudes on privacy interests. See Comment h and § 10.20, Comment g, and the Reporters’ Note thereto.

A majority of state courts that have ruled on the issue indicate that students have a protectable privacy interest in the contents of their locker (even though lockers are school property and can be opened as such). In In Interest of Dumas, 515 A.2d 984, 986 (Pa. Super. Ct. 1986), the court held that students have a protectable privacy interest in their locker and its contents, and found a locker search to be without reasonable suspicion. A school official searched Dumas’s locker and found marijuana after seeing him take a pack of cigarettes from his locker. The only basis for searching the locker was that the school official “suspected [Dumas] of being involved with drugs,” with no specific evidence to support the suspicion. Id. Many other courts have recognized students’ privacy interest in their lockers while upholding searches based on reasonable suspicion. See Com. v. Cass, 709 A.2d 350, 359 (Pa. 1998) (“Common sense dictates that when a student is given permission to store his or her belongings in a locker designated for his or her personal and exclusive use, that student can reasonably expect a measure of privacy within that locker.”); State v. Jones, 666 N.W.2d 142, 148 (Iowa 2003) (“Accordingly, we conclude that a student such as Jones has a measure of privacy in the contents of his locker.”); In re Cody S., 16 Cal. Rptr. 3d 653, 657 (Cal. Ct. App. 2004) (“In California, a student has an expectation of privacy in his school locker.”); State v. Brooks, 718 P.2d 837, 841 (Wash. Ct. App. 1986) (holding that a school official needs “reasonable grounds” to search a locker); State v. Joseph T., 336 S.E.2d 728, 736 (W. Va. 1985) (similar statement); Com. v. Snyder, 597 N.E.2d 1363 (Mass. 1992) (similar statement); State v. Michael G., 748 P.2d 17 (N.M. Ct. App. 1987). The Supreme Court of New Jersey in T.L.O.: “For the four years of high school, the school locker is a home away from home. In it the student stores the kind of personal ‘effects’ protected by the Fourth Amendment.” State in Interest of T.L.O., 463 A.2d 934, 943 (N.J. 1983), rev’d on other grounds, 469 U.S. 325 (1985).

Students’ privacy interest in their lockers is based primarily in the Fourth Amendment, although some states derive it from their state constitutions. S.C. v. State, 583 So. 2d 188, 190-191 (Miss. 1991) (grounding a student’s privacy interest in his or her locker in § 23 of the Mississippi constitution); Com. v. Cass, 709 A.2d 350, 359-360 (Pa. 1998) (interpreting the Pennsylvania constitution to protect a “measure of privacy” within a student’s locker).

A minority of state courts have found that students have no privacy interest in their lockers because lockers are school property. See, e.g., Shoemaker v. State, 971 S.W.2d 178, 182 (Tex. App. 1998) (“Shoemaker did not have a legitimate expectation of privacy in her school locker. A student’s locker is school property which remains under the control of school authorities.”); In re Patrick Y., 746 A.2d 405, 413 (Md. 2000) (“School lockers are classified as school property and, . . . because of that, school officials are permitted to search the lockers as they could any other school property. No . . . reasonable suspicion [is] required.”); S.A. v. State, 654 N.E.2d 791, 795 © 2021 by The American Law Institute
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(Ind. Ct. App. 1995) (same). However, even these courts sometimes have looked for reasonable suspicion to justify the searches, rather than relying on the lack of privacy interests alone. See In re S.M.C., 338 S.W.3d 161, 167 (Tex. App. 2011).

Some courts conclude that students have no privacy interest in their lockers on the basis of an announced school policy authorizing searches. See, for example, In Interest of Isiah B., 500 N.W.2d 637, 641 (Wis. 1993) (“We agree with the state and hold that when the Milwaukee Public School System (M.P.S.), as here, has a written policy retaining ownership and possessory control of school lockers . . . and notice of the locker policy is given to students, then students have no reasonable expectation of privacy in those lockers.”).

In some districts, students are required to sign a consent to search as a condition of obtaining the use of a locker. This consent is not voluntary and, in itself, does not justify a search. See Comment j and the Reporters’ Note thereto.

In many states, statutes seek to regulate student privacy interests in lockers. Those statutes fall into three broad categories: statutes acknowledging the expectation by limiting the ability of school officials to search lockers, statutes denying that expectation, and statutes deferring to school board policy. Many states do not have statutes dealing with student privacy in lockers, and instead defer entirely to court interpretations of state and federal constitutions.

Several state statutes provide that a search of a student locker is subject to T.L.O.’s reasonable-suspicion standard, implicitly recognizing students’ privacy interest. The Connecticut statute provides:

All local and regional boards of education and all private elementary and secondary schools may authorize the search by school or law enforcement officials of lockers and other school property available for use by students for the presence of weapons, contraband or the fruits of a crime if (1) the search is justified at its inception and (2) the search as actually conducted is reasonably related in scope to the circumstances which justified the interference in the first place.

CONN. GEN. STAT. § 54-33n (2018). See also FLA. STAT. ANN. § 1006.09 (West 2016). At least one state, Arkansas, acknowledges a privacy right by only allowing school officials to search student lockers “upon receipt of information that guns, drugs, or other contraband are concealed in school-owned property.” ARK. CODE. ANN. § 6-21-608 (West 2018). Other states acknowledging a privacy right by limiting school officials’ right to search lockers include Ohio (OHIO REV. CODE ANN. § 3313.20 (West 2018)), South Carolina (S.C. CODE ANN. § 59-63-1120 (2018)), Tennessee (TENN. CODE ANN. § 49-6-4204 (West 2018)), and Virginia (VA. CODE ANN. § 22.1-279.7 (West 2018)).

By contrast, several state statutes deny any expectation of privacy in lockers. “As a matter of public policy, the General Assembly finds that students have no reasonable expectation of privacy in [lockers, desks, parking lots, and other school property] or in their personal effects left in these places and areas.” 105 ILL. COMP. STAT. 5/10-22.6 (2018). States with similarly explicit statutes include Indiana (IND. CODE § 20-33-8-32 (2018)), Iowa (IOWA CODE ANN. § 808A.2 (West
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Whether acknowledging or denying the right to privacy, many statutes include some sort of notice requirement. Fla. Stat. Ann. § 1006.09 (West 2016); Ind. Code Ann. § 20-33-8-32 (West 2018); Iowa Code Ann. § 808A.2 (West 2018); Md. Code Ann., Educ. § 7-308 (West 2018); Minn. Stat. Ann. § 121A.72 (West 2018); Okla. Stat. tit. 70 § 24-102 (2018); Tenn. Code Ann. § 49-6-4204 (West 2018). Some statutes imply that lack of notice negates the validity of the search. N.J. Stat. Ann. § 18A:36-19.2 (West 2018) (“The principal or other official designated by the local board of education may inspect lockers or other storage facilities provided for use by students so long as students are informed in writing at the beginning of each school year that inspections may occur.”). However, most states simply require notice without indicating what effect lack of notice would have on the validity of a search. E.g., Okla. Stat. tit. 70 § 24-102 (2018) (“Schools shall inform pupils in the student discipline code that they have no reasonable expectation of privacy rights towards school officials in school lockers, desks, or other school property.”).

At least one state court has struck down a statute that denies students any right to privacy in their lockers. See In re Adam, 697 N.E.2d 1100, 1108 (Ohio 1997) (“However, it appears that R.C. 3313.20(B)(1)(b), as it authorizes searches of students and their belongings on anything less than a reasonable basis, is contrary to the Ohio and United States Constitutions . . . Moreover, appellant was not stripped of his expectation of privacy in his book bag by any sign posted within the school’s premises.”)).

Courts sometimes allow a search of a student’s personal belongings only on the basis of reasonable suspicion even when school officials are authorized by state law or school policy to open lockers without reasonable suspicion. Those courts reject that a written locker agreement or other form of notice abrogates a student’s privacy interest in the contents of his or her locker. State v. Jones, 666 N.W.2d 142, 148 (Iowa 2003) (“In this case, both Muscatine school district policy and state law clearly contemplate and regulate searches of school lockers. Nevertheless, we believe Jones maintained a legitimate expectation of privacy in the contents of his locker.”). Compare Iowa Code Ann. § 808A.2 (West 2018) (“The furnishing of a school locker, desk, or other facility or space owned by the school and provided as a courtesy to a student shall not create a protected

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1 student area, and shall not give rise to an expectation of privacy on a student’s part with respect to
2 that locker, desk, facility, or space.

3 At least one statute captures this distinction, recognizing a legitimate privacy interest in the
4 contents within the locker, even if no privacy interest in the locker itself exists. Under the
5 Minnesota statute, student lockers can be searched at any time; however, “the personal possessions
6 of students within a school locker may be searched only when school authorities have a reasonable
7 suspicion that the search will uncover evidence of a violation of law or school rules.” MINN. STAT.
8 ANN. § 121A.72 (West 2018).

9 In general, students have the same privacy interest in their desks that they have in their
10 lockers, although the privacy interests in a desk in isolation is virtually never examined. Courts
11 sometimes mention desks in conjunction with lockers as examples of student spaces. Desks are
12 also sometimes mentioned along with lockers in state statutes regulating school searches, but the
13 privacy interest is not separately addressed. E.g., 105 ILL. COMP. STAT. 5/10-22.6 (2018) (No
14 expectation of privacy in student desks or lockers or in personal effects left in those places); S.C.
15 CODE ANN. § 59-63-1120 (2018) (administrators may conduct reasonable searches of lockers and
16 desks).

17 Cases involving searches of desks indicate that students have a limited privacy interest.
18 Desks can be searched when a teacher or administrator has reasonable suspicion that there is
20 (N.D. Ga. 1999), aff’d sub nom. Thomas v. Roberts, 261 F.3d 1160 (11th Cir. 2001) (noting that
21 a search of desks would have been reasonable pursuant to the T.L.O. standard.); see also In re
23 desk and locker was reasonable “as these were likely places to conceal goods.”).

24 Courts that have addressed students’ privacy interest in their vehicles located on school
25 property consistently acknowledge that some right to privacy in student vehicles exists. Vehicles,
26 unlike lockers and desks, are not the property of the school. The expectation of privacy is limited,
27 however, and courts usually find the state’s interest sufficiently substantial to overcome the
28 intrusion on privacy interests. In State v. Best, 987 A.2d 605, 607 (N.J. 2010), the principal
29 searched Best’s car and found drugs after another student reported that Best had given him drugs.
30 When evaluating this search, the Court relied on T.L.O. to conclude that “the reasonableness
31 standard applies to the school authorities’ search of a student’s automobile on school property.”
32 Id. at 613. Other courts generally have come to the same conclusion. E.g., People v. Williams, 791
34 vehicle search); Kissinger v. Fort Wayne Cmty. Sch., 293 F. Supp. 3d 796, 806 (N.D. Ind. 2018)
35 (same); State v. Schloegel, 769 N.W.2d 130, 136-137 (Wis. Ct. App. 2009) (same); State v.
37 (Idaho Ct. App. 2011) (using the T.L.O. standard to hold the search of a student vehicle was
38 reasonable); People in Interest of P.E.A., 754 P.2d 382, 388-389 (Colo. 1988) (same); Anders ex
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The reasonable-suspicion standard does not apply to a student vehicle not parked on school property. In that situation, a search by a school official must be based on probable cause to believe the search will yield evidence of a violation or crime related to school activity. J.P. v. Millard, 830 N.W.2d 453 (Neb. 2013).

Comment g. Location of the search: cell phones, social-media sites, email. Modern technology has presented new challenges for courts evaluating searches under Fourth Amendment doctrine. Case law dealing with searches of cell phones, social media, and email has developed in response to these challenges.

The search of a cell phone implicates students’ legitimate expectations of privacy because a cell phone typically carries a great deal of personal information. Outside the school context, cell phones sometimes have been analogized to purses and wallets. United States v. Finley, 477 F.3d 250, 260 (5th Cir. 2007); United States v. Cote, 2005 WL 1323343, at *6 (N.D. Ill. May 26, 2008); United States v. James, 2008 WL 1925032, at *4 (E.D. Mo. Apr. 29, 2008). But some courts have recognized that cell phones often contain a larger amount of personal information, which can make searching their contents more intrusive than searches even of purses or backpacks. United States v. Deans, 549 F. Supp. 2d 1085, 1094 (D. Minn. 2008); United States v. Fierros-Alvarez, 547 F. Supp. 2d 1206, 1214 (D. Kan. 2008); Connecticut v. Boyd, 992 A.2d 1071, 1088-1089 (Conn. 2010). The Supreme Court in Riley v. California, 573 U.S. 373 (2014), held that phones generally cannot be searched without a warrant, even when the search is conducted after an arrest.

Courts’ analyses of cell-phone searches in the school setting often focus on the second prong of the T.L.O. test—whether the scope of the search was excessive in light of its initial purpose. New Jersey v. T.L.O., 469 U.S. 325, 333 (1985).

As more students use technology and cell phones, schools have developed policies creating restrictions on student access to their phones in school. Those polices have been upheld, and a school official can confiscate (seize) a cell phone when possession violates a school policy. But a search of a confiscated student cell phone is often unlawful if the search is not justified on the basis that it will provide evidence of a specific infraction other than possession of the phone. In Klump v. Nazareth Sch. Dist., 425 F. Supp. 2d 622, 641 (E.D. Pa. 2006), a federal district court found a search to be illegal because it was not based on reasonable suspicion of a violation. School officials took a cell phone that accidentally fell out of a student’s pocket and used it to call several other students, access the student’s voicemail and text messages, and conduct an AOL Instant Message conversation. Id. at 627. The court found that search to be illegal for several reasons: Most importantly, the search was not directed at finding evidence of a violation about which the school officials had reasonable suspicion. The violation in question was having the phone in school; officials did not have reason to suspect that Klump’s phone had illicit text messages until after they searched the phone. Id. Further, in calling other students, the school officials were searching to find evidence of other students’ misconduct. Id. at 640.

See also Jackson v. McCurry, 762 F. App’x 919, 926-927 (11th Cir. 2019) (search of text messages based on an accusation and corroborated reports that the student was engaging in bullying via text to other students in violation of school policies was upheld); G.C. v. Owensboro Pub. Schs., 711 F.3d 623, 634 (6th Cir. 2013) (search of confiscated phone not based on reasonable suspicion of other infraction was illegal; “using a cell phone on school grounds does not automatically trigger an essentially unlimited right enabling a school official to search any content stored on the phone that is not related either substantively or temporally to the infraction.”); Simpson, Next Friend of J.S. v. Tri-Valley Cnty. Unit Sch. Dist. No. 3, 470 F. Supp. 3d 863, 870-871 (C.D. Ill. 2020) (search of student’s camera roll to find a “Gun Meme” was based on reasonable suspicion that it would turn up evidence of bullying or of a threat of gun violence in the school; it was reasonable for principal to believe that the picture from Snapchat would be found on the camera roll); Gallimore v. Henrico Cnty., 38 F. Supp. 3d 721, 725 (E.D. Va. 2014) (search of cell phone for marijuana based on a tip that student had drugs was beyond scope of reasonable suspicion because cell phone could not hold drugs); Mendoza v. Klein Indep. Sch. Dist., 2011 WL 13254310 (S.D. Tex. Mar. 16, 2011) (search upheld to search text messages to determine whether text messages were sent in school in violation of school policy; further search of content of text messages was illegal). The Mendoza court observed that determining whether the student had used the phone during school hours could have been accomplished without opening and reading individual messages. “[A] continued search must be reasonable and related to the initial reason to search or to any additional ground uncovered during the initial search.” Id., at *10.


Not all courts find searches of confiscated cell phones to be illegal. See, e.g., J.W. v. DeSoto Cnty. Sch. Dist., 2010 WL 4394059, at *4 (N.D. Miss. Nov. 1, 2010) (search of confiscated cell phone used in violation of school policy was reasonable to determine how student was improperly using the phone); In re Rafael C., 200 Cal. Rptr. 3d 305 (Cal. Ct. App. 2016) (search of phone for information about gun brought to school upheld; suspicious behavior justified the search and involvement of a gun made the risk of harm great enough that the scope of the search was reasonable).

Courts have held that students have a legitimate expectation of privacy in their private social-media accounts, but not in public postings on social media. Reported cases are not available, but accounts of school liability have been reported in the media. A student successfully sued her school for damages after her principal demanded that she log in to her Facebook account in the principal’s office. See S.S. v. Minnewaska Area School District, in which the school was required to pay damages and revise its social-media privacy policy, according to a news report. Curt Brown, *ACLU Wins Settlement for Sixth-Grader’s Facebook Posting*, STAR TRIBUNE (Mar. 25, 2014), http://www.startribune.com/minnewaska-student-wins-70k-from-school-over-facebook-post/252263751/.

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school officials could not demand disclosure of passwords for private social-media or email accounts. *Know Your Rights*, ACLU PENNSYLVANIA, 2017, https://www.aclupa.org/download_file/3095. School officials can require that students give passwords to school-owned email accounts. Id.

Although the student’s expectation of privacy is reduced in a school-issued device, students may have expectations of privacy even when the school provides the device. Following a case in which parents sued after a school used hidden spyware on school-issued MacBooks to take photos of students in their homes, concerns regarding the potential for abuse of technology to intrude into student privacy have increased. *Massachusetts Schools Should Safeguard Students’ Right to Privacy*, ACLU MASSACHUSETTS, https://aclum.org/uncategorized/massachusetts-schools-safeguard-students-right-privacy/. The ACLU of Massachusetts argued that schools must provide notice to students and their parents of any search by technological device, and must justify the search. The ACLU also argued that parents’ presence should be required. Id.


The extent of students’ privacy interest in email can depend on whether the email account is a school email account or a personal account. School districts reserve the right to review and retain email that is transmitted using their technology resources, including the internet, and many districts have adopted policies that specify that email shall not be considered private. *Using School District Email for Personal Communications*, TEX. CLASSROOM TEACHERS ASS’N, https://tcta.org/node/14148-using_school_district_email_for_personal_communications. A news account reported, “School districts are legally obligated to monitor to some extent how students use district-owned computers—and may even have the authority to investigate a student’s personal mobile device in districts that require students to BYOD—‘Bring Your Own Device,’” Lisa Black, *Student Computer Use Raises Privacy Questions*, CHICAGO TRIBUNE (Sept. 28, 2014, 5:37 AM), http://www.chicagotribune.com/news/ct-school-tablets-privacy-met-20140928-story.html. School districts are advised to “put in place strong parent notification policies to warn families they should not expect any privacy concerning the devices.” Id.

In California, students’ privacy rights depend on whether they use school computers or their own personal computers. *Your Rights: Student Social Media Rights*, ACLU NORTHERN CALIFORNIA, https://www.aclunc.org/our-work/know-your-rights/student-social-media-rights. According to an ACLU report, many schools have policies authorizing the installation of software on school-owned devices that monitor student activity, including browsing history. Id. Schools can also sometimes search for students’ social-media activity without informing students. Id. That said, according to the report, if a school undertakes a social-media-monitoring program, the school district must inform students and parents. Id. Further, a school must allow students to see the information it has collected about social-media activity and delete that information when a student leaves the district or turns 18. Id.

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For a scholarly analysis of these issues, see Mary Graw Leary, *Reasonable Expectations of Privacy for Youth in a Digital Age*, 80 Miss. L.J. 1035 (2011).

Comment h. Suspection focused on multiple students or unidentified student. In situations in which school officials suspect multiple students of a violation or have suspicion of a violation, but are uncertain about the identity of the likely violator(s), no individualized suspicion exists per se; this might be called a generalized-suspicion-based search. *T.L.O.* in a footnote made clear it was not dealing with cases that lack individualized suspicion. 469 U.S. 325 n.8 (1985). Cases include situations in which there is a reasonable suspicion that an unidentified student brought a weapon to school, or in which money disappears from a specific classroom at a specific time. A generalized search is different from a suspicionless search, because the school official suspects that a specific violation has occurred. See § 10.20. The Supreme Court has yet to address the Fourth Amendment implications of a search of a group of students initiated in response to generalized suspicion. A generalized search occupies a space between a search based on individualized suspicion, regulated under the standard announced in New Jersey v. T.L.O., 469 U.S. 325 (1985), and a blanket, suspicionless search dealt with by the Court in Vernonia School District, 47J v. Acton, 515 U.S. 646 (1995), and Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, 536 U.S. 822 (2002). Both *Acton* and *Earls* suggest that in the case of suspicionless searches, the intrusion on the students’ privacy interest should be minimal and the government interest an important one, because of the absence of reasonable suspicion that a violation has occurred. See *Acton*, 515 U.S. at 658 (“Under such conditions, the privacy interests compromised by the process of obtaining the urine sample are in our view negligible.”); *Earls*, 536 U.S. at 833 (“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.”).

Courts evaluating the reasonableness of generalized-suspicion searches focus on the extent to which the search affects students’ legitimate expectations of privacy, weighed against the importance of the government’s interest. These searches, by definition, lack individualized suspicion, and intrude into the privacy interests of multiple students; thus, many students will be searched with little reason to suspect that any specific individual was engaging in a prohibited activity. For this reason, courts evaluating such searches tend to shift the balance, to some extent, in the direction of protecting students’ privacy interests, increasing the burden on the state to demonstrate that the state interest justifying the generalized search was an important one. Courts usually reject generalized searches that are very intrusive, such as body searches. The importance of the government’s interest is also important; the threat of weapons or dangerous drugs and alcohol may support a generalized search, whereas a purpose to recover stolen property is likely to be deemed too insubstantial to justify any substantial intrusion on privacy interests.

If searches based on generalized suspicion do not intrude substantially on the privacy interests of students, they are usually upheld. Generalized searches of lockers and cars on the school’s property are usually found to be minimally intrusive; courts typically note that students have weak legitimate privacy interests against which to balance the government’s interest. In

On the other hand, generalized searches that are highly intrusive of students’ privacy interests are not justified in the absence of a compelling government interest. Thus, courts agree that the government’s interest in finding missing money or property does not justify a generalized strip search. See discussion below.

Courts also focus on the importance of the state’s interest in undertaking the search. When generalized searches are initiated in response to concerns over the presence of weapons or explosives, the state’s interest is usually viewed as exceeding students’ privacy expectations. Because such a search implicates the school’s core responsibility for students’ safety at school, courts are generally willing to permit the search. In Thompson v. Carthage School District, 87 F.3d 979 (8th Cir. 1996), a school principal received notice from a bus driver that there were fresh cuts in the seat of a school bus, indicating that a student might have a knife on campus. The principal also learned that students were discussing the possibility of a gun on campus. In response to these concerns, the principal instructed all students to remove their jackets, shoes, and socks, empty their pockets, and place those items on large tables in the science room. They were subsequently searched with a metal detector and patted down if the metal detector sounded. The Eighth Circuit concluded that this generalized search for a weapon did not violate the students’ Fourth Amendment rights. See also In re F.B., 726 A.2d 361 (Pa. 1999) (holding generalized searches in response to neighborhood strife and concerns over armed students did not violate Fourth Amendment); In re Patrick Y., 723 A.2d 523 (Md. Ct. Spec. App. 1999) (holding search of all middle school student and teacher lockers permissible when school security guard received information about drugs or weapons in middle school); Shade v. City of Farmington, Minn., 309 F.3d 1054 (8th Cir. 2002) (holding pat-down search of group of students on bus where knife was spotted did not violate Fourth Amendment); Brosseau v. Town of Westerly ex rel. Perri, 11 F.
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Supp. 2d 177 (D.R.I. 1998) (permitting pat-down searches of students in cafeteria when pizza-cutting knife was reported missing). In Koontz v. Dustin, 2010 WL 3788870 (M.D. Fla. Sept. 24, 2010), a district court ruled that a principal’s generalized search of students’ belongings on a school bus was permissible in light of a report of a possible explosive device after one student on the bus falsely claimed he had a bomb in his book bag. The principal subsequently boarded the bus and searched other students’ bags to ensure that no explosives had been placed in them. The court concluded “this was reasonable. Indeed, anything less under the circumstances might well have been regarded as irresponsible.” Id., at *5.

When the government’s interest is important but less compelling, courts are divided. Thus, although drugs in school may pose less acute dangers than weapons, some courts view the government interest in excluding drugs from campus as sufficiently important to justify generalized searches. For example, in Rhodes v. Guarricino, 54 F. Supp. 2d 186 (S.D.N.Y. 1999), the Southern District of New York considered a search of student hotel rooms on a field trip to Disney World after the principal detected the strong odor of marijuana and saw a large group of students congregating in the hallway. The principal subsequently searched the majority of the 20 rooms his students occupied, ultimately finding marijuana in one student’s room safe and a bottle of alcohol in a drawer in another student’s room. In upholding the search, the court took note of “the problems of drugs, crime, and violence, specifically cited by the Supreme Court as justifying the special Fourth Amendment rules for students . . . .” Id. at 191. See also Com. v. Cass, 709 A.2d 350 (Pa. 1998); State v. N.G.B., 806 So. 2d 567 (Fla. Dist. Ct. App. 2002) (holding escalating series of searches by school resource officer after discovery of baggie of marijuana permissible); Juran v. Independence Or. Cent. Sch. Dist. 13J, 898 F. Supp. 728 (D. Or. 1995) (holding breathalyzer search of 72 students on bus permissible in light of generalized suspicion of alcohol consumption); Ziegler v. Martin Cnty. Sch. Dist., 831 F.3d 1309 (11th Cir. 2016) (permissible to detain students for breathalyzer tests after finding empty party cup of alcohol); Oliver v. McClung, 919 F. Supp. 1206, 1218 (N.D. Ind. 1995).

Other courts have concluded that the possible presence of drugs or alcohol is insufficient to justify a generalized search. For example, in Dennis v. Board of Education of Talbot County, 21 F. Supp. 3d 497 (D. Md. 2014), a school official received word from a single parent that members of a high school lacrosse team concealed alcohol in water bottles and consumed it on the bus when traveling to and from competition. The principal, assistant principal, and security staff boarded the bus and searched students’ belongings. The district court concluded that this search violated the Fourth Amendment, noting that the students still had reasonable expectations of privacy in their bags (suggesting that search of the water bottles might have been permissible). Id. at 503-504. In Burnham v. West, 681 F. Supp. 1160 (E.D. Va. 1987), a school principal detected an odor of marijuana in the hallway and ordered a search of all students’ pocketbooks and book bags, and of male students’ pockets. The court held that the general search for marijuana ran afoul of the Fourth Amendment, observing that the principal made only cursory efforts to determine whether any student had left a classroom during the relevant time. Id. at 1166.
In contrast to the cases involving substantial safety concerns, courts often discount the government’s interest in retrieving missing money or movable property, finding this interest to be too insubstantial to justify intrusive searches of students on the basis of generalized suspicion. Courts concur that a search for money or property cannot justify a strip search of a class or group of students, given the highly intrusive nature of such a search. For example, in Knisley v. Pike Cnty. Joint Vocational Sch. Dist., 604 F.3d 977 (6th Cir. 2010), all students from a high school nursing class were strip searched after two students told the instructor that cash, a credit card, and two gift cards were missing from their purses. The Circuit Court observed that “the severity of the school system’s needs was slight,” id. at 980-981, and ultimately concluded that the scope of the searches was not reasonable in light of the students’ “legitimate expectation of privacy in their bodies,” id. at 981. Accord Thomas v. Roberts, 261 F.3d 1160 (11th Cir. 2001), vacated on other grounds, 550 U.S. 953 (2002) (holding strip search of entire elementary school class for 26 dollars unreasonable); Bell v. Marseilles Elementary Sch., 160 F. Supp. 2d 883 (N.D. Ill. 2001), denying reh’g of Bell v. Marseilles Elementary Sch. Dist. 150, 2001 WL 818897 (N.D. Ill. Mar. 7, 2001) (strip searching 30 elementary school students for missing money held unreasonable); Kennedy v. Dexter Consol. Schs., 10 P.3d 115 (N.M. 2000) (holding strip search of two students for missing ring unconstitutional); Konop v. N.W. Sch. Dist., 26 F. Supp. 2d 1189 (D.S.D. 1998) (concluding strip search of two eighth-grade female students for fundraiser money violated Fourth Amendment); Oliver, 919 F. Supp. 1206 (holding strip search of entire gym class for $4.50 unconstitutional).

Illustration 27 is based on Thomas v. Roberts, 261 F.3d 1160 (11th Cir. 2001).

Some courts uphold less invasive searches for money or property based on generalized suspicion. For example, in Des Roches v. Caprio, 156 F.3d 571 (4th Cir. 1998), the court upheld a principal’s search of a limited number of students’ backpacks after one student’s pair of shoes was taken from atop her desk. The school principal had been informed that a ring had gone missing from the class the day before. The principal conducted a search of the personal belongings of all 19 students in the class. The court upheld the search. See also In re A.D., 844 A.2d 20 (Pa. Super. Ct. 2004) (upholding constitutionality of search of a small group of students who had been seated next to bleachers beside purses from which money was reported stolen).

In addition to the substantive concerns of the search (i.e., the particular suspicion aroused, the nature of the intrusion on legitimate privacy interests, and the state’s interest), courts sometimes focus on the number of students who are searched: in general, the larger the number of students that are targeted by the search, the more likely it is that a court will deem it to be impermissible. For example, when suspicion about participants in a specific extracurricular activity has been used to justify a drug-testing regime, one court has concluded that drug-testing students from an unrelated extracurricular activity is impermissible. See Trinidad Sch. Dist. No. 1. v. Lopez, 963 P.2d 1095 (Colo. 1998). Similarly, whereas a search of the possessions of 19 students who were close to an area where an infraction occurred was permissible, see Des Roches, 156 F.3d 571, a schoolwide search in response to an odor of drugs is not, see Burnham v. West, 681 F. Supp. 1160 (E.D. Va. 1987).
Comment i. Search by school resource officers and law-enforcement officers. Before New Jersey v. T.L.O., 469 U.S. 325 (1985), was decided, some courts held that student searches by school teachers and administrators could be undertaken without probable cause only if the search was “free of involvement by law enforcement personnel.” State v. Young, 216 S.E.2d 586, 594 (Ga. 1975). See also M.J. v. State, 399 So. 2d 996, 998 (Fla. Dist. Ct. App. 1981) (“where a law enforcement officer directs, participates, or acquiesces in a search conducted by school officials, the officer must have probable cause for that search, even though the school officials acting alone are treated as state officials subject to a lesser constitutional standard for conducting searches”); Picha v. Wielgos, 410 F. Supp. 1214 (N.D. Ill. 1976) (police officers must have probable cause to search a student even when acting in conjunction with school officials). But see Tarter v. Raybuck, 742 F.2d 977 (6th Cir. 1984) (in action brought for damages, declining to require probable cause for school officials acting with marginal police involvement).

T.L.O. expressed no opinion on “the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies.” 469 U.S. at 342. Since T.L.O., lower courts have identified standards applied to three different variations of police involvement in searches of students in schools: (1) when the search is conducted by a school resource officer who is a full-time school employee, it is assumed to further educationally related goals, and the reasonableness standard is applied; (2) when school officials initiate the search and police involvement is minimal, the reasonableness standard is applied; and (3) when “outside” police officers (including part-time school employees) initiate the search of a student for investigative purposes, the probable cause and warrant requirements are applied. Myers v. State, 839 N.E.2d 1154, 1160 (Ind. 2005).

For courts finding law-enforcement officers employed by the school district (usually a “school resource officer”) to be a school official, see State v. D.S., 685 So. 2d 41, 43 (Fla. Dist. Ct. App. 1997) (“even if the school police officer had directed, participated, or acquiesced in the search” the reasonableness standard applies because the “school police officer is a school official who is employed by the district School Board.”); see also S.A. v. State, 654 N.E.2d 791, 795 (Ind. Ct. App. 1995) (“a trained police officer, [] acting in his capacity as security officer for the IPS schools . . . is governed by the test announced in [T.L.O.]”); T.S. v. State, 863 N.E.2d 362, 369 (Ind. Ct. App. 2007) (noting that the officer was employed by the Public School Police); Russell v. State, 74 S.W.3d 887, 891 (Tex. App. 2002) (reasonableness standard applied when officer is assigned to the school); In re S.F., 607 A.2d 793, 794 (Pa. Super. Ct. 1992) (reasonable-grounds standard applies to a search conducted by a plainclothes officer employed by the school district); T.L.B. v. State, 271 So. 3d 1038, 1040 (Fla. Dist. Ct. App. 2019) (clarifying that a gut feeling or hunch that something is wrong does not constitute reasonable suspicion to justify a search of a student by school resource officer).

Searches conducted by law-enforcement employees of the school district are deemed inherently in the furtherance of educational goals unless conducted for the purpose of aiding criminal prosecution. See In re J.F.M., 607 S.E.2d 304, 307-308 (N.C. Ct. App. 2005) (the school resource officer conducted the search out of concern for the student’s actions as violations “under
the rules and policies of the school, not as violations of the laws of North Carolina”); see also State v. Tywayne H., 933 P.2d 24, 255 (N.M. Ct. App. 1997) (the nature of a T.L.O. “search by a school authority is to maintain order and discipline in the school. The nature of a search by a police officer is to obtain evidence for criminal prosecutions”). Courts have emphasized the involvement of school administrators to illustrate that a search by an S.R.O. was conducted for the purposes of furthering educational goals. T.S. v. State, 863 N.E.2d 362 (Ind. Ct. App. 2007). See In re J.F.M., 607 S.E.2d 304, 307-308 (N.C. Ct. App. 2005) (a resource officer is subject to the T.L.O. standard because the officer “intended immediately to present [the student] to the administrator in order to discuss the ramifications of her actions under the rules and policies of the school, not as violations of the laws of North Carolina”); see also People v. Dilworth, 661 N.E.2d 310, 317 (Ill. 1996) (school police officer conducted a search in the furtherance of educational goals because the search was at the request and in the presence of school administrators); In re D.L.D., 694 S.E.2d 395, 400 (2010) (a resource officer works in the furtherance of educational goals when working with school administrators to investigate violations of school rules to maintain a safe educational environment); Wilson ex rel. Adams v. Cahokia School Dist. No. 187, 470 F. Supp. 2d 897 (S.D. Ill. 2007) (reasonable suspicion applies when a school resource officer interviews a student at the request of school officials).

Courts justify school resource officers performing searches based on reasonable suspicion because the relaxed standard is appropriate given that the purpose of assigning an officer to a school is to maintain a safe educational environment where students can learn without fear. Some courts have observed that holding school resource officers to the probable cause standard might not deter improper searches but could instead lead unqualified school administrators and teachers to perform more searches without assistance. In State v. Angelia D.B., 564 N.W.2d 682, 690 (Wis. 1997), the court stated that “it could be hazardous to discourage school officials from requesting the assistance of available trained police [school resource officers],” as the school officials are “generally . . . untrained in proper pat down procedures or in neutralizing dangerous weapons.” Courts do not want to discourage school officials seeking law-enforcement assistance in searching children, nor do they want to remove school officials’ ability to conduct a search based on reasonable suspicion. See J.A.R. v. State, 689 So. 2d 1242, 1243 (Fla. Dist. Ct. App. 1997) (“the fact that the school official prudently asked a law enforcement officer [school resource officer] to assist in this search does not increase the level of suspicion needed to perform a pat-down of a student to determine if he or she possesses a dangerous weapon”).

Objectives such as impeding the use of illegal drugs are considered to be in the furtherance of educational goal when conducted by school resource officers. “Courts have held that searches conducted by school police officers were governed by the reasonableness standard based on the rationale that by ferreting out drugs, the officers were working in the furtherance of educational goals.” T.S. v. State, 863 N.E.2d 362 (Ind. Ct. App. 2007). See In re S.W., 614 S.E.2d 424, 427 (N.C. Ct. App. 2005) (“In maintaining a proper educational environment, Deputy Carpenter’s employment as a resource officer mandates that he help maintain a drug free environment at the school”); see also Com. v. J.B., 719 A.2d 1058, 1066 (Pa. Super. Ct. 1998) (reasonableness
standard applies when a school resource officer searches a student who appears intoxicated because the student “under the influence of a controlled substance, could disrupt the learning environment”).

Some scholars have criticized the application of the reasonable-suspicion standard to searches by school resource officers (SROs). Michael Pinard, From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities, 45 ARIZ. L. REV. 1067, 1067-1071 (2003) (arguing that the probable cause standard should be applied to searches by law enforcement).

Searches initiated and conducted by “outside” law-enforcement officers or by school officials acting at the behest of the “outside” law-enforcement officers are held to the higher probable cause standard. See State v. Tywayne H., 933 P.2d 251, 254 (N.M. Ct. App. 1997) (probable cause standard applies when “outside” officers hired by a school-affiliated club conduct their own search at a school dance without the presence or involvement of school officials); see also In re Thomas B.D., 486 S.E.2d 498, 500 (S.C. Ct. App. 1997) (probable cause is required when “the search was conducted by police [on school grounds] in furtherance of a law enforcement objective—that is, the removal of Thomas D. from a surrounding detrimental to his welfare and his relocation to the parentally-approved and societally-mandated school environment”); F.P. v. State, 528 So. 2d 1253, 1255 (Fla. Dist. Ct. App. 1988) (probable cause required when school resource officer carries out search at the behest of the “outside” police).

Courts emphasize the difference in the objectives of school officials and “outside” police officers in searching students. As one court observed, “the purpose of the search conducted by so-called ‘outside’ police officers is not to maintain discipline, order, or student safety, but to obtain evidence of a crime.” In re Josue T., 989 P.2d 431, 436-437 (N.M. Ct. App. 1999).

In his concurrence in T.L.O., Justice Powell emphasized:

[I]nherent differences between the roles of police officers and school officials which make the reasonable grounds standard inapplicable to searches conducted by police officers acting independently of school officials. . . . Law enforcement officers function as adversaries of criminal suspects . . . Rarely does this type of adversarial relationship exist between school authorities and pupils. Instead there is a commonality of interests between teachers and their pupils. The attitude of the typical teacher is one of personal responsibility for the student’s welfare as well as for his education.

T.L.O., 469 U.S. at 349 (Powell, J., concurring).

If a police officer is off duty and working part-time at a school, the officer is not considered a school official and is held to the higher probable cause standard that applies generally to outside law-enforcement officers. See A.J.M. v. State, 617 So. 2d 1137, 1138 (Fla. Dist. Ct. App. 1993) (probable cause is required for searches conducted by a school resource officer employed by the sheriff’s office); see also Patman v. State, 537 S.E.2d 118, 120 (Ga. Ct. App. 2000) (probable cause is required for searches conducted by a police officer working special duty at a school). “Outside” police officers working part-time in a school do not receive the same educational
training as school resource officers, and so, courts have found it unreasonable to consider such an “outside” officer to be school official or to hold such an officer to the lower reasonableness standard applied to school officials. See Thomas v. Barze, 57 F. Supp. 3d 1040, 1068 (D. Minn. 2014) (“Barze, who was not part of the SRO program but was rather hired directly by the school as a part-time, off-duty law enforcement officer, is [] less reasonably considered to be a school official”).

Some courts have not followed this clear distinction between school resource officers and “outside” police, and instead determine the standard of review based on an inquiry regarding the amount of law-enforcement involvement. See Cason v. Cook, 810 F.2d 188, 191-192 (8th Cir. 1987) (the school resource officer was hired through an “established police liaison program between the Des Moines Police Department and the school district, . . . funded jointly by the police department and the school district,” which instructed officers “to cooperate with the school officials” and was treated as a law-enforcement officer working in conjunction with school officials); see also Thomas v. Barze, 57 F. Supp. 3d 1040, 1068 (D. Minn. 2014) (school resource officer and part-time off-duty law-enforcement officer are treated as law-enforcement officers working in conjunction with school officials).

Courts have based the examination of amount of law-enforcement involvement on more than police involvement during the actual search. One court observed:

In determining how much police involvement occurred and which standard applies, courts have considered various factors, including whether the officer was in uniform, whether the officer has an office on the school campus, how much time the officer is at the school each day, whether the officer is employed by the school system or an independent law enforcement agency, what the officer’s duties are at the school, who initiated the investigation, who conducted the search, whether other school officials were involved, and the officer’s purpose in conducting the search.

State v. Alaniz, 815 N.W.2d 234,238 (N.D. 2012).


Courts have held that searches conducted by school officials with minimal involvement of outside law enforcement should be held to the lower “reasonableness” standard. See In the Interest of A.D., 844 A.2d 20 (Pa. Super. Ct. 2004) (reasonable suspicion applies when an “outside” police officer did not witness or aid in the search or initiate or guide the investigation); see also A.M. ex rel. F.M. v. Holmes, 830 F.3d 1123 (10th Cir. 2016) (reasonableness standard applied when the search was officially conducted by the assistant principal in the presence of an “outside” police officer); Myers v. State, 839 N.E.2d 1154, 1160 (Ind. 2005) (reasonable suspicion applies when school officials conduct a search with the use of police resources like narcotics dogs); In re Murray, 525 S.E.2d 496 (N.C. Ct. App. 2000) (reasonable suspicion applies when a school official conducted a search assisted by a school resource officer who handcuffed a student).
Courts evaluate whether the reasonableness standard should be applied by assessing the level of police involvement. “The mere fact that school officials cooperate with police . . . does not establish that the police acquiesced in or ratified the search. The inquiry must focus on whether the police coerce, dominate or direct the action of school officials.” In re D.E.M., 727 A.2d 570, 573-574 (Pa. Super. Ct. 1999). In determining whether police involvement was minimal, courts have examined whether the search was initiated by law enforcement or by school officials. Courts have interpreted initiation of a search by school officials as a prominent indication that the police did not direct, dominate, or ratify a search; in this situation, the reasonable-suspicion standard is applied. See In re D.D., 554 S.E.2d 346, 353-354 (N.C. Ct. App. 2001) (“the officers’ involvement was minimal . . . None of the officers initiated any investigation, nor were the officers directing Principal Hicks in an investigation to collect evidence of a crime”).

Searches initiated by school officials are usually found to have had minimal police involvement and are held to the lower reasonable-suspicion standard. See State v. N.G.B., 806 So. 2d 567, 568-569 (Fla. Dist. Ct. App. 2002) (reasonableness standard applies when an investigation was initiated by the school’s vice principal who requested the school resource officer’s assistance); see also Milligan v. City of Slidell, 226 F.3d 652, 653 (5th Cir. 2000) (reasonableness standard applies when the principal removed students from class for questioning and allowed students to be questioned by “outside” police officers); F.S.E. v. State, 993 P.2d 771, 772-773 (Okla. Crim. App. 1999) (reasonable-suspicion standard applies when a school official incites an investigation and requests an “outside” police officer to search a student’s car); Coronado v. State, 806 S.W.2d 302 (Tex. App. 1991) (reasonable-suspicion standard applies when a school official initiates an investigation and requests a deputy sheriff permanently assigned to the school to search a student’s car); Martens v. Dist. No. 220, Bd. of Educ., 620 F. Supp. 29, 31 (N.D. Ill. 1985) (reasonable suspicion applies when an investigation was initiated by a school officer but “disorgagement was in the presence of and at the urging of a[n] [“outside”] police officer”); Cason v. Cook, 810 F.2d 188, 191-192 (8th Cir. 1987) (reasonableness standard applies when police involvement occurred only after physical evidence was found by a school administrator); In re D.D., 554 S.E.2d 346 (N.C. Ct. App. 2001) (reasonable suspicion applies when the principal asked a school resource officer to assist in an ongoing investigation); J.A.R. v. State, 689 So. 2d 1242, 1243 (Fla. Dist. Ct. App. 1997) (reasonable-suspicion standard applies when a school resource officer conducted a pat-down search for a firearm at the behest of school officials); In re Alexander B., 270 Cal. Rptr. 342 (Cal. Ct. App. 1990) (reasonable-grounds standard applies when a school official requests a school-district-employed police officer to search students).


Searches initiated by law-enforcement officers usually are subject to probable cause. One court observed, “When confronted with a search . . . initiated by law enforcement officers not under the supervisory control of school authorities, courts have uniformly held that probable cause is required.” Reynolds v. City of Anchorage, 379 F.3d 358, 372-373 (6th Cir. 2004). See also Thomas v. Barze, 57 F. Supp. 3d 1040, 1067 (D. Minn. 2014) (“T.L.O. would not apply when the search or seizure was initiated by the police or law enforcement, rather than a school official”);
see also State v. Tywayne H., 933 P.2d 251, 255 (N.M. Ct. App. 1997); F.P. v. State, 528 So. 2d 1253, 1255 (Fla. Dist. Ct. App. 1988). Justice Powell in *T.L.O.* pointed to the adverse purposes of law enforcement in searching a student. Such a search is less likely to be conducted with the “commonality of interests between teachers and their pupils.” *T.L.O.*, 469 U.S. at 349 (Powell, J., concurring). See also Angelia D.B., 564 N.W.2d at 688 (“when school officials, who are responsible for the welfare and education of all of the students within the campus, initiate an investigation and conduct it on school grounds in conjunction with police, the school has brought the police into the school-student relationship”).

Illustration 30 is based on Thomas v. Barze, 57 F. Supp. 3d 1040 (D. Minn. 2014). While searches initiated by “outside” law enforcement or conducted by school officials at the behest of “outside” law enforcement are held to the probable cause standard, some courts have held that searches conducted by school officials based on a tip provided by “outside” law enforcement constituted a search with minimal law-enforcement involvement subject to the lower reasonable-suspicion standard. See In re K.K., 950 N.E.2d 198, 201 (Ohio Ct. App. 2011) (reasonable suspicion applies when an “outside” police officer only gave a tip to the principal who independently decided to search students); see also In re P.E.A., 754 P.2d 382, 385 (Colo. 1988) (same); In re D.E.M., 727 A.2d 570 (Pa. Super. Ct. 1999) (similar facts; when the student admitted to possessing the gun, the student was arrested and charged for the offense). Those courts emphasize that by providing tips, the police officers did not actually initiate a search, nor did the police officers request the school officials to investigate.

Searches based on tips, like other searches deemed conducted with minimal police involvement, are often treated as searches independent of police involvement, but not without controversy. In his dissent in *K.K.*, Justice Hoffman stated that, “the majority concludes the school official’s decision to search was made independent from police . . . however, . . . it was the relaying of the tip by Officer Dreyer that prompted the school official to search,” and so Justice Hoffman found that “the school acted in conjunction with law enforcement in initiating the search” and would have required probable cause. 950 N.E.2d at 202.

The growing presence of school resource officers and other law-enforcement officers in schools has been justified on the basis of the increased need for protection in an age in which school shootings are not uncommon. But this trend has generated a great deal of criticism because it is thought that a consequence is that students who get in trouble in school are far more frequently referred to the justice system and charged with delinquency or criminal offenses than in the past. Youth of color particularly become part of a “school to prison pipeline” for infractions that in earlier times would have been dealt with as school discipline matters. Jason Nance has written extensively on this topic and provides important empirical evidence on the adverse impact of SROs in schools and their disparate impact on Black youths. See, e.g., Jason P. Nance, *Students, Police, and the School-to-Prison Pipeline*, 93 WASH. U. L. REV. 919 (2016); Jason P. Nance, *Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 EMORY L.J. 765 (2017). See also Judith A.M. Scully, *Examining and Dismantling the School-to-Prison Pipeline: Strategies for a Better Future*, 68 ARK. L. REV. 959, 959-960 (2016) (“The school-to-prison pipeline is a
devastating process through which many of our children—particularly males and students of color—receive an inadequate education and are then pushed out of public schools and into the criminal punishment system. Although this phenomenon harms children of all ages and races, it impacts children of color most heavily.”); Danielle Dankner, No Child Left Behind Bars: Suspending Willful Defiance to Disassemble the School-to-Prison Pipeline, 51 LOY. L.A. L. REV. 577, 577 (2018) (“With the criminalization of school discipline and the subsequent increased involvement between students and the juvenile justice system, a path from school to prison became entrenched. Public schools across the nation continued to increase their reliance on punitive disciplinary measures to punish a range of behaviors. . . . Due to school disciplinarians’ implicit bias when enforcing exclusionary policies, students of color and students with disabilities are most at risk.”).

Comment j. Consent to search. Doctrine regulating consent-based searches outside the school context is well developed. See §§ 12.10 and 12.11. Schneckloth v. Bustamonte, 412 U.S. 218 (1972). A search conducted with valid consent is constitutionally permissible without probable cause. The permissible scope of the search is limited by the scope of consent. Florida v. Jimeno, 500 U.S. 248, 251 (1991). A person can manifest consent through actions as well as words. United States v. Walls, 225 F.3d 858, 863 (7th Cir. 2000); however, consent must be unequivocal, and uncontaminated by duress and coercion. United States v. Williams, 754 F.2d 672, 674-675 (6th Cir. 1985). In the context of police searches, courts evaluate the validity of consent by examining the totality of the circumstances, taking into account the nature of the police activity toward the defendant as well as the possibly vulnerable subjective state of the person who consents. See Schneckloth, 412 U.S. at 229; United States v. Mendenhall, 446 U.S. 544, 558 (1980); United States v. Lloyd, 868 F.2d 447, 451-452 (D.C. Cir. 1989). The “totality of the circumstances” test also takes into account factors such as the individual’s age, education, and intelligence; lack of advice concerning constitutional rights; the length of any detention before consent was given; prolonged questioning; and the use of physical punishment. Id. at 451. But under Schneckloth, a search can be valid although the state did not inform the suspect of the right to withhold consent. Schneckloth, 412 U.S. at 229. This distinguishes the validity of consent to search from the validity of a Miranda waiver. See discussion in § 12.21. In the search context, the failure to provide this information and proof of the suspect’s ignorance of the right are factors to be considered, but are not necessary for a legal search.

A valid consent to search must be voluntary; consent cannot be coerced implicitly or explicitly. Schneckloth, 412 U.S. at 228. “[I]f under all the circumstances it has appeared that the consent was not given voluntarily that it was . . . granted only in submission to a claim of lawful authority then we have found the consent invalid and the search unreasonable.” Id. at 233. But a finding of voluntariness of consent to search sometimes is not precluded by evidence of defendant’s low intelligence, poor schooling, or history of psychological problems, or by absence of any warning of a right to withhold consent. United States v. Hall, 969 F.2d 1102 (D.C. Cir. 1992).
Courts have been inconsistent about whether the inquiry about voluntariness is based on subjective or objective considerations. The factors described above include subjective factors, but some cases suggest that individual characteristics affect the determination of voluntariness only when the official recognizes and exploits a unique vulnerability to obtain consent. United States v. Grap, 403 F.3d 439, 443-444 (7th Cir. 2005); Michael C. v. Gresbach, 479 F. Supp. 2d 914, 921 (E.D. Wis. 2007), aff’d, 526 F.3d 1008 (7th Cir. 2008). Some courts have held that the test for determining voluntariness focuses on whether a reasonable person in the consentor’s position would believe that he or she is free to refuse consent. United States v. Drayton, 536 U.S. 194, 206-207 (2002); United States v. Wade, 400 F.3d 1019, 1022 (7th Cir. 2005); see also Illinois v. Rodriguez, 497 U.S. 177, 188 (1990). Valid consent exists when the circumstances allow for an objectively reasonable belief that the scope of a person’s consent permitted the official to conduct the search. Florida v. Jimeno, 500 U.S. 248, 251 (1991); Illinois v. Rodriguez, 497 U.S. 177, 186 (1990). However, a determination of voluntariness can turn on whether the accused himself or herself felt compelled to consent (rather than what a reasonable person would feel). In Maimonis v. Urbanski, 143 F. App’x 699, 700 (7th Cir. 2005), the court emphasized that the student must understand that he or she is free to refuse to consent to the search.

A search conducted on the basis of consent is limited in scope to the terms of the consent. In United States v. Dyer, 784 F.2d 812, 816 (7th Cir. 1986), the Seventh Circuit found that a suspect can limit or withdraw consent to search, and police must honor such limitations if the search is based on consent. When determining the scope of consent, a court asks, “what would the typical reasonable person have understood the scope of consent to be by the exchange . . . ?” Florida v. Jimeno, 500 U.S. 248, 251 (1991); United States v. Breit, 429 F.3d 725, 729 (7th Cir. 2005). When the suspect expressly limits the scope of his or her consent, the official must limit his or her action accordingly. Breit, at 730.

A search of a student by a school official can be based on the student’s valid consent. A school official can request a student’s permission to search the student’s property without reasonable suspicion of a violation, so long as the student understands that consent must be voluntary. See, e.g., Maimonis v. Urbanski, 143 F. App’x 699, 700 (7th Cir. 2005) (no reasonable suspicion required if student understands that he or she is free to refuse to consent). But courts recognize that the consent of students in public school often is not voluntary. Students, in general, are subject to the authority of teachers and principals and likely do not feel free to refuse to allow a search when requested by those adults. See Greenleaf ex rel. Greenleaf v. Cote, 77 F. Supp. 2d 168, 171 (D. Me. 1999) (search upheld as voluntary based on evidence that student understood right to refuse consent and, if student had refused, school officials would have ceased).

Children and adolescents tend to be more submissive to the authority of adults in positions of authority and thus are likely to acquiesce to a search by a school official without voluntary consent. That tendency also makes children more susceptible to coercion than an adult would be. This response is supported by substantial research confirming the vulnerability to influence and coercion of children and adolescents. This research is described in § 12.10, Reporters’ Note to Comment b, and § 12.21, Reporters’ Note to Comment h.
In the absence of valid consent, a search is still legal if the official has reasonable suspicion of a violation. Consent is not required for a lawful search by a school official when the facts support reasonable suspicion. In People in Interest of T.S., 2015 WL 4505955, at *5 (V.I. Super. July 22, 2015), the court emphasized that a warrantless search of a student is justified by either consent or reasonable suspicion. Even if the official’s manner of seeking consent would make the consent invalid, a search can proceed if reasonable suspicion is established. In DesRoches by DesRoches v. Caprio, 156 F.3d 571, 577 (4th Cir. 1998), the court declined to find a Fourth Amendment violation when a school official demanded the search coupled with threats of punishment, when the threats were unsuccessful in eliciting the student’s consent. The court noted that because individualized reasonable suspicion was established in that case by the time the search actually commenced, the search was reasonable under the Fourth Amendment. Id. at 578. The court found the search valid under the reasonable-suspicion standard, although without reasonable suspicion it would have been illegal, as no voluntary consent was given. See also Gutin v. Wash. Twp. Bd. of Educ., 467 F. Supp. 2d 414, 424-425 (D.N.J. 2006), on reconsideration, 2007 WL 2139376 (D.N.J. July 23, 2007) (absence of voluntary consent does not render a search unreasonable if the search meets the reasonable-suspicion standard).


In an unusual case involving scope of consent (by the parent, not the student), the court in Madden v. Hamilton County Department of Education, 2015 WL 11004862, at *6 (E.D. Tenn. Aug. 5, 2015), held that it would not be reasonable for school officials to believe that an elementary school student’s mother consented to a full-body search of her child when authorizing a doctor to give instructions that the student should be sent home if a rash is seen on her lower extremities. In that case, the question focused on the reasonableness of the scope of consent. Id. The court found that the search was unreasonable as it extended beyond the scope of consent given by the parent.

In Beard v. Whitmore Lake School District, 402 F.3d 598, 605 (6th Cir. 2005), the court considered the lack of consent to be a persuasive factor when finding that searches of male and female students in locker rooms violated the Fourth Amendment. The court rejected the school’s argument that the students voluntarily consented to the intrusive searches, pointing out that the students were attending gym class as part of the school curriculum. Id. As such, the students did not voluntarily consent to be subject to search. Id. In that case, the court’s holding highlighted that the totality of the circumstances is key when considering the question of whether there was consent to search.

Several states have provided school officials with guidelines for searching students, and those guidelines include discussions of consent searches. In 1998, for example, the governor of New Jersey issued a manual explaining how and under what circumstances educators and law-enforcement officers could conduct lawful searches. See NEW JERSEY SCHOOL SEARCH POLICY MANUAL AND COMPANION REFERENCES GUIDE, https://www.state.nj.us/lps/dcj/school/. The manual notes that many courts are skeptical of consent searches and tacitly assume that police used coercive or overbearing tactics to induce a suspect to consent to search. Id. at 179. That assumption
has led courts to establish a strong presumption that consent was not freely and voluntarily given. Id. The manual recommends that school officials comply whenever possible with the same rules (such as consent-to-search standards) that govern police requests for permission to conduct a search. Id. at 180. Students should be informed that they have the right to limit the scope of the consent to search to particular places or things to be searched. Id. at 183. Finally, the manual notes that students giving consent may terminate that consent at any time, and the request to terminate the search must be scrupulously honored. Id. at 190. Other states have also published guidelines on consent searches. The Wisconsin Department of Justice guidelines on consent searches in schools note that a student can limit the scope of consent by consenting to search of a backpack, but withholding consent to a purse, for example. See WISCONSIN DEP’T OF JUST., SAFE SCHOOL MANUAL, https://www.doj.state.wi.us/sites/default/files/2013/safe-school-manual-2013.pdf. Those guidelines note that school officials and law-enforcement officers may not draw negative inferences from a limitation on the consent to search. Id. South Dakota’s Attorney General’s Office and Department of Education and Cultural Affairs also issued a manual that touches on consent to search, recommending that local school districts have a standard consent form in their code of conduct. S.D. ATT’Y GEN.’S OFF. & S.D. DEP’T OF EDUC. & CULTURAL AFFAIRS, SOUTH DAKOTA’S GUIDE TO STUDENT RIGHTS & RESPONSIBILITIES, DESIGNED FOR SCHOOL ATTORNEYS, at 17, https://atg.sd.gov/docs/Students%20Rights%20and%20Responsibilities.pdf.

Some courts have rejected the voluntariness of blanket “consent to search” agreements signed by students. The court in Doe ex rel. Doe v. Little Rock Sch. Dist., 380 F.3d 349, 354 (8th Cir. 2004), found that because students are required by state law to attend school, they neither entered into a contract that incorporates the handbook nor voluntarily assented to be bound by its terms (including a term authorizing search by school officials). The court elaborated that a lack of mutual voluntary consent to the conditions described in the student handbook makes it fundamentally different from an employee handbook, which may create an enforceable contract. Id. Finally, the court concluded that the school district may not deprive its students of privacy expectations protected by the Fourth Amendment simply by announcing that the expectations will no longer be honored. Id. See also Knisley v. Pike Cnty. Joint Vocational Sch. Dist., 2008 WL 9718792, at *3 (6th Cir. Dec. 8, 2008) (strip search for missing property was beyond consent based on the student handbook; moreover, handbook consent was problematic as students were not aware of the policy).

In the context of vehicle searches, some courts have recognized implied consent based on the terms of application forms to have a vehicle on school grounds. In Morgan v. Snider High Sch., 2007 WL 3124524, at *6 (N.D. Ind. Oct. 23, 2007), the court found that the terms of a school’s parking-permit application created implied consent for a vehicle search. See also Anita J. v. Northfield Twp.-Glenbrook N. High Sch. Dist. 225, 1994 WL 604100, at *1 n.2 (N.D. Ill. Nov. 4, 1994) (student gave prior consent to vehicle search through school’s parking-registration policy that required students to consent to searches of their vehicles when parked on school property).
Comment k. Lawful seizure of items by school officials. In U.S. v. Jacobsen, 466 U.S. 109 (1984), the U.S. Supreme Court described a seizure as a taking away of property in a way that meaningfully interferes with the owner’s possessory interests. Id. at 113. Courts have recognized seizures as including both a taking of tangible property, like a backpack, as well as taking of intangible property, such as text messages. See, e.g., G.C. v. Owensboro Pub. Schs., 711 F.3d 623 (6th Cir. 2013) (seizure of phone and search and seizure of text messages). In the school context, any confiscation of student property by a school official that interferes with the student’s possessory interest is a seizure.

Courts agree that a seizure is lawful when a school official takes an item found in a lawful search. When the seized item is the target of the search, disputes may arise about the legality of the search, but not of the seizure; in this situation, the seizure is lawful if the search is lawful. See, e.g., In re William V., 4 Cal. Rptr. 3d 695 (Cal. Ct. App. 2003). In that case, the court held that the search of high school student by the school resource officer was lawful, and therefore seizure of the knife found in the search was lawful. Id. The officer patted down the student for weapons after seeing a colored bandanna in the student’s pocket, violating school’s prohibition of bandannas due to gang associations. Id. The officer then lifted the student’s jacket to search his waistband and thereby obtained plain view of the knife. Id. The court found that further search beyond the pat down was justified by the student’s baggy clothing. See also In Interest of Dumas, 515 A.2d 984 (Pa. Super. Ct. 1986) (seizure of drugs from student’s locker was illegal; a teacher observing cigarettes in a student’s hand did not justify a search of the student’s locker for drugs).

Illustration 35 is based on In re William V., 4 Cal. Rptr. 3d 695, 697 (Cal. Ct. App. 2003).

A seizure of incriminating student property may be justified even if the item was not a particularized object of the initial search. Courts generally permit the seizure of an item found in plain view in the course of a lawful search, even though the item was not the object sought in the initial search, so long as the item is found inadvertently in a location within the scope of the initial search and its incriminating nature is obvious. A plain-view seizure is valid only if the item seized is found in a location where the item that was the target of the original search could likely be found. Otherwise the official has exceeded the lawful scope of the search, and the seizure of any item found is unlawful.

See, e.g., Bundick v. Bay City Indep. Sch. Dist., 140 F. Supp. 2d 735 (S.D. Tex. 2001) (holding a seizure of a machete was lawful after a police dog sniff alerted officers to the existence of drugs on the student). The court in Bundick stated:

[T]he fact that a machete was found and seized instead of any suspected substance, is of no consequence. The official was legally in a position to view the contents of the toolbox when he discovered the machete, and it was “immediately apparent” that the machete was an illegal knife under the school district rules; therefore, taking possession of the machete constituted a valid “plain view seizure.”
Id. at 738. See also State ex rel. K.M., 49 So. 3d 460 (La. Ct. App. 2010) (permitting the seizure of a knife by a school official when a nonstudent opened her purse to indicate that she lacked identification documents).


A plain-view seizure is also valid in the absence of a prior search when a school official inadvertently comes upon an item in plain view that is reasonably suspected of evidencing a specific infraction, when the school official or officer was lawfully in a place to view the seized property. Cases usually involve situations in which the school official was patrolling the school premises, conducting rounds, or observing student behavior. See, e.g., State v. D.T.W., 425 So. 2d 1383, 1384-1385 (Fla. Dist. Ct. App. 1983) (ruling lawful an open-view public seizure when a high school teacher’s aide looked into minor’s car and spied a partially covered object that he was able to identify as a bong, and holding that, “since the teacher’s aide had a right and a duty to be where he was, peering into the window and seeing the ‘bong’ in open view in appellee’s car was nothing more than a legally permissible pre-intrusive open view.”). See also T.J. v. State, 538 So. 2d 1320, 1320 (Fla. Dist. Ct. App. 1989); In Interest of Thomas B.D., 486 S.E.2d 498 (S.C. Ct. App. 1997) (permitting police on school campus to seize a pack of cigarettes visible from a minor student’s pocket, and to subsequently seize marijuana clearly visible inside the cigarette pack’s clear wrapper). Courts appear unfriendly to public-view seizures of student property by school officials that take place off of school grounds, as long as it was not a school-sponsored event or activity. See, e.g., J.P. v. Millard Pub. Sch., 830 N.W.2d 453, 466 (Neb. 2013) (ruling unlawful the public, plain-view seizure of minor’s sawed-off shotgun, visible in his car, which was parked off-campus, on the grounds that “driving to school and parking off school grounds was not a school-sponsored event, nor was it associated with a school-sponsored event.”).


Courts have also upheld “plain feel” seizures, in which an incriminating item is discerned though touch while in the course of a lawful search. The incriminating nature of the item must be immediately apparent. See, e.g., Com. v. Wilson, 805 N.E.2d 968, 976 (Mass. 2004) (when the contour of a prohibited object makes its identity immediately apparent during a lawful pat frisk, seizure of the object does not violate the Fourth Amendment). In Matter of Gregory M., 627 N.E.2d 500 (N.Y. 1993), a school security officer lawfully seized a gun when he touched the outer surface of a student’s backpack after hearing an unusual metallic thumping sound when the bag was placed on a shelf. The ensuing search of the bag was reasonable when he felt the outline of a gun. See also Matter of Marrhonda G., 575 N.Y.S.2d 425 (N.Y. Fam. Ct. 1991) (holding that plain-view doctrine includes seizure of evidence discovered by sense of touch as well as by sight, and finding lawful the search of student’s bag resulting in police seizure of prohibited weapons). But see State v. Kazmierczak, 771 S.E.2d 473 (Ga. Ct. App. 2015) (finding insufficient police officer’s statement that after patting down a student it “felt as though” the student had marijuana in his pocket; the marijuana did not meet the “immediately identifiable” requirement).

Illustration 41 is based on Matter of Gregory M., 627 N.E.2d 500 (N.Y. 1993).
In theory, items protected by the First Amendment (such as notebooks or other written material) warrant special protection against unlawful seizure. Roaden v. Kentucky, 413 U.S. 496, 502 (1973). However, likely in response to concerns over school shootings, courts have appeared increasingly willing to find seizures of student property ostensibly protected by the First Amendment to be lawful when officials have a reasonable suspicion justifying a limited search, particularly when violent activity is suspected. See, e.g., Cuesta v. Sch. Bd. of Miami-Dade Cnty., 285 F.3d 962 (11th Cir. 2002) (finding lawful the seizure of student’s violent drawings accompanied by threatening words aimed at the school, as the words were sufficient to create reasonable suspicion that the student may have intended to harm the school); Porter v. Ascension Parish Sch. Bd., 393 F.3d 608 (5th Cir. 2004) (granting summary judgment for school on student’s Fourth Amendment claim, because search was reasonably justified by student’s violent drawing even though student’s younger brother brought the two-year-old drawing to school); K.J. v. Greater Egg Harbor Reg’l High Sch. Dist. Bd. of Educ., 431 F. Supp. 3d 488, 505-506 (D.N.J. 2019) (granting summary judgment for school on student’s Fourth Amendment claim because search of the high school’s sketchbook, person, and belongings was justified when student was drawing “flame pooper” weapon, student had brought weapons to school in the past, and search was done in privacy of vice principal’s office); E.T. v. Bureau of Special Educ. Appeals of the Div. of Admin. Law Appeals, 169 F. Supp. 3d 221, 244, 246-247 (D. Mass. 2016) (granting summary judgment to school district on plaintiff’s First Amendment claim, and holding that the seizure of a student’s notebook was reasonable because the student, who had Asperger’s syndrome, was known to draw graphically violent cartoons often containing guns and bombs, and had made a comment about a “surprise type of action to alter the school.”). However, courts have been more protective of students’ First Amendment rights when investigating a school violation or crime deemed less serious. See, e.g., Commonwealth v. Buccella, 751 N.E.2d 373 (Mass. 2001) (finding unlawful the seizure of student’s papers to examine his handwriting during investigation of graffiti containing racial obscenities).


The Supreme Court has generally applied the Fourth Amendment exclusionary rule in the context of deterring “culpable” police conduct. Herring v. United States, 555 U.S. 135, 144 (2009); see also Calandra, 414 U.S. at 347-352.

The Supreme Court has also adopted non-deterrence rationales for the exclusionary rule, including preserving judicial integrity, censuring unlawful government conduct, and denying government agents the opportunity to profit from unlawful behavior. But it has largely favored the

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deterrence rationale in recent years. See 1 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE
ON THE FOURTH AMENDMENT § 1.1(f) (5th ed. 2017); Potter Stewart, The Road to Mapp v. Ohio
and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-

States are bound, under the Fourteenth Amendment, to apply the Fourth Amendment
exclusionary rule consistent with Supreme Court precedent. See Hudson v. Michigan, 547 U.S.
586, 590-591 (2006); see also Mapp, 367 U.S. 643. Forty-eight states also apply distinct
exclusionary rules “rooted” in state constitutional law (usually Fourth Amendment analogues) or
statute. Megan McGlynn, Note, Competing Exclusionary Rules in Multistate Investigations:
Resolving Conflicts of State Search-and-Seizure Law, 127 YALE L.J. 406, 410 n.15, 412 n.27
(2017); see also 1 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH
AMENDMENT § 1.5(b) (5th ed. 2017) (noting that state courts routinely apply the exclusionary rule
when they find state constitutional violations).

The Supreme Court has not yet “determine[d] [whether] the exclusionary rule applies to
the fruits of unlawful searches conducted by school authorities.” New Jersey v. T.L.O., 469 U.S.
325, 332 n.3 (1985). But see id. at 373-374 (Stevens, J., concurring in part and dissenting in part)
(determining that the exclusionary rule should apply when school officials conduct unlawful
searches).

Prior to the Supreme Court’s ruling in T.L.O., few courts addressed the question of whether
the federal exclusionary rule should apply to evidence collected during school searches. See T.L.O,
469 U.S. at 332 n.2. In determining whether and when to apply the rule, courts decided whether
teachers and school officials were state agents, and, if so, whether the reasons for the rule could
be applied in the school context. See generally State v. Young, 216 S.E.2d 586, 590-591 (Ga.
1975). Some courts held that school officials were not government actors, and that the exclusionary
rule therefore could not apply, on the theory that those officials acted in loco parentis in relation
to their students. See, e.g., In re Donaldson, 269 Cal. App. 2d 509 (Cal. Ct. App. 1969). In contrast,
courts that held that the exclusionary rule applied to teachers or school officials reasoned that those
individuals were government actors for the purposes of the Fourth Amendment. See, e.g., People
v. D., 315 N.E.2d 466 (N.Y. 1974) (“In exercising their authority and performing their duties,
public school teachers act not as private individuals but perforce as agents of the State.”); State v.
Walker, 528 P.2d 113 (Or. Ct. App. 1974). Some of those courts applied a probable cause standard,
see, e.g., In re Dominic W., 426 A.2d 432 (Md. Ct. Spec. App. 1981); State v. Mora, 307 So. 2d
317 (La. 1975), vacated sub nom. Louisiana v. Mora, 423 U.S. 809 (1975), aff’d on remand, State
v. Mora, 330 So. 2d 990 (La. 1976), while others held school officials to a lower standard, such as
reasonable suspicion, see, e.g., In re L.L., 280 N.W.2d 343 (Wis. Ct. App. 1979); D., 315 N.E.2d
466.

Although the Supreme Court granted certiorari in T.L.O. to resolve the split between state
courts on whether the exclusionary rule should apply in criminal or delinquency proceedings to
searches conducted by school officials, the Court declined to answer that question because it
concluded that the search at issue was reasonable. See T.L.O., 469 U.S. at 327, 332, 332-333 nn.2

In *T.L.O.*, Justice Stevens described the rationale for applying the exclusionary rule in criminal proceedings against juveniles:

Schools are places where we inculcate the values essential to the meaningful exercise of rights and responsibilities by a self-governing citizenry. If the Nation’s students can be convicted through the use of arbitrary methods destructive of personal liberty, they cannot help but feel that they have been dealt with unfairly. The application of the exclusionary rule in criminal proceedings arising from illegal school searches makes an important statement to young people that “our society attaches serious consequences to a violation of constitutional rights,” and that this is a principle of “liberty and justice for all.”

*T.L.O.*, 469 U.S. at 373-374 (Stevens, J., concurring in part and dissenting in part) (footnotes omitted) (quoting Stone v. Powell, 428 U.S. 465, 492 (1976) and 36 U.S.C. § 172 (Pledge of Allegiance)). Only one state, Georgia, does not apply the exclusionary rule to illegal searches conducted by teachers or school officials, even in adult criminal proceedings. See *Young*, 216 S.E.2d 586. The exclusionary rule applies only when an individual acting in a law-enforcement capacity is involved in the search. See State v. Trippe, 246 S.E.2d 122 (Ga. Ct. App. 1978) (holding trial court did not err in suppressing evidence illegally obtained by school chief of security who was also employed as a deputy).

Juvenile courts in delinquency proceedings, like adult criminal courts, regularly conduct suppression hearings in order to determine the admissibility of evidence under the federal and state
exclusionary rules. Courts have generally reasoned that “juvenile delinquency proceedings are quasi-criminal[,] and as such the exclusionary rule does apply.” In re Nicholas R., 885 A.2d 1059, 1061 n.3 (Conn. App. Ct. 2005) (citation omitted); see, e.g., In re Montrail M., 589 A.2d 1318, 1325 (Md. Ct. Spec. App. 1991) (finding exclusionary rule’s judicial integrity and nonprofit rationales “as pertinent to juvenile delinquency proceedings as they are to criminal proceedings”); Rogers, 836 P.2d at 131 (holding on state constitutional grounds that in a juvenile proceeding “petitioner’s liberty interest is sufficiently analogous to the liberty interest at stake in traditional criminal prosecutions that the reasons for the sanction of suppression of evidence are equally applicable”); L.L., 280 N.W.2d at 347 (“A juvenile delinquency proceeding is a court proceeding brought by the state which can result in the deprivation of the minor’s liberty.”). See generally WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 1.7(b) (5th ed. 2017). Some courts have reasoned explicitly that the deterrence rationale for the exclusionary rule applies in delinquency proceedings to searches by teachers and school officials, see, e.g., In re J.A., 406 N.E.2d 958, 962 (Ill. Ct. App. 1980) (“School officials . . . are clearly employees and agents of the State, and the deterrent purpose of the [exclusionary] rule could be served by its application to them.”), as well as to police officers conducting searches in schools, see, e.g., State ex rel. R.L., 95 So. 3d 1147, 1150 (La. Ct. App. 2012) (“In an effort to discourage police misconduct, evidence recovered as a result of an unconstitutional search or seizure is inadmissible.”). Other courts have also adopted alternative rationales for application of the exclusionary rule, such as the preservation of judicial integrity, see, e.g., In re William G., 709 P.2d 1287, 40 Cal. 3d 550, 567 n.17 (Cal. 1985), and the vindication of state constitutional rights, see, e.g., Rogers, 836 P.2d 127. Many courts have also applied the exclusionary rule in delinquency proceedings without comment. For discussion see, e.g., G.M. v. State, 142 So. 3d 823 (Ala. 2013); In re Appeal of Pima Cnty. Juv. Action No. 80484-1, 733 P.2d 316 (Ariz. Ct. App. 1987); In re K.H., 14 A.3d 1087 (D.C. 2011).

Some state juvenile codes also provide for pretrial suppression hearings, including on Fourth Amendment grounds. See, e.g., CAL. WELF. & INST. CODE § 700.1; N.Y. FAM. CT. ACT § 330.2.

Courts generally suppress evidence under the exclusionary rule when school officials, police officers, or school resource officers conduct unlawful searches, under both reasonable suspicion (school officials) and probable cause (law enforcement) standards. Compare State v. Heirtzler, 789 A.2d 634 (N.H. 2001) (holding school officials acting under supervision of school resource officer to probable cause standard, and suppressing evidence), with In re Josue T., 989 P.2d 431 (N.M. 1999) (holding school resource officer acting under supervision of school official to reasonableness standard, and not suppressing evidence). Georgia, which does not apply the exclusionary rule to teachers or school officials, see Young, 216 S.E.2d 586, applies the exclusionary rule when police officers or school resource officers conduct or direct searches of students on school grounds. See State v. K.L.M., 628 S.E.2d 651 (Ga. Ct. App. 2006) (holding police officer to probable cause standard, and applying exclusionary rule).
Few courts have addressed the question of whether the exclusionary rule should apply in school disciplinary proceedings. T.J. v. State, 538 So. 2d 1320, 1322 n.3 (Fla. Dist. Ct. App. 1989). Modern courts that have addressed the issue have generally held that the exclusionary rule does not apply in school disciplinary proceedings, offering several rationales:


Second, courts have applied the Supreme Court’s balancing test, and held that the social cost of application of the rule would outweigh the deterrence benefits. See Thompson, 87 F.3d at 981 (“To the extent that the exclusionary rule prevents the disciplining of students who disrupt education or endanger other students, it frustrates the critical government function of educating and protecting children.”); Mendoza, 2011 WL 13254310, at *22 (“Teachers and school administrators are not law enforcement officers. Rather, they have a duty to safeguard all children in their custody. There is no compelling interest to be served by applying the exclusionary rule to the present situation.”); Gordon J., 208 Cal. Rptr. at 666-667 (“[T]he duty of the school administration [is] to protect law abiding students from delinquents among them[,] . . . The social cost in terms of harm to other students, to say nothing of the damage to the morale of parents and teachers, is too dear.”); cf. T.M.M. ex rel. D.L.M. v. Lake Oswego Sch. Dist., 108 P.3d 1211 (Or. Ct. App. 2005) (holding that the “costs [of exclusion] outweigh the benefits of deterrence” of Fifth Amendment violations).

Finally, two state courts have declined to apply the rule to school disciplinary proceedings on the ground that their state constitutional exclusionary rules should only apply to proceedings in which “the liberty interest at stake . . . is the same as the liberty interest at stake in a criminal proceeding.” Scanlon v. Las Cruces Pub. Sch., 172 P.3d 185, 189 (N.M. Ct. App. 2007); cf. T.M.M., 108 P.3d at 1215 (finding “qualitative differences between the liberty interests at stake in criminal prosecutions and those implicated in school expulsion proceedings”). The California Court of Appeal has additionally suggested that the courts should address harsh disciplinary
sanctions “by dealing with the penalty imposed, rather than the procedure used to gather the
evidence.” *Gordon J.*, 208 Cal. Rptr. at 668.

For two older federal-district-court opinions applying the exclusionary rule to school
disciplinary proceedings, see Jones v. Latexo Indep. Sch. Dist., 499 F. Supp. 223, 238-239 (E.D.
Tex. 1980) (finding suspensions a deprivation of defendant’s liberty interest, and that application
of the exclusionary rule would deter the constitutional violation); Caldwell v. Cannady, 340 F.
Supp. 835, 839 (N.D. Tex. 1972) (school board prohibited from considering evidence obtained in
violation of Fourth Amendment rights).

The application of the exclusionary rule to school disciplinary proceedings has been of
interest to scholars. See Barry C. Feld, *T.L.O. and Redding’s Unanswered (Misanswered) Fourth
K. Bach, *Note, The Exclusionary Rule in the Public School Administrative Disciplinary

**Comment m. Civil remedies: § 1983 of the Civil Rights Act of 1964 and other civil-rights
actions.** 42 U.S.C. § 1983 is an important means of determining the scope of students’ civil rights
under federal constitutional law.

42 U.S.C. § 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or
> usage, of any State or Territory or the District of Columbia, subjects, or causes to
> be subjected, any citizen of the United States or other person within the jurisdiction
> thereof to the deprivation of any rights, privileges, or immunities secured by the
> Constitution and laws, shall be liable to the party injured in an action at law, suit in
> equity, or other proper proceeding for redress, except that in any action brought
> against a judicial officer for an act or omission taken in such officer’s judicial
> capacity, injunctive relief shall not be granted unless a declaratory decree was
> violated or declaratory relief was unavailable. For the purposes of this section, any
> Act of Congress applicable exclusively to the District of Columbia shall be
> considered to be a statute of the District of Columbia.

For a treatise on 42 U.S.C. § 1983, see generally SHELDON H. NAHMOD, CIVIL RIGHTS & CIVIL

To prove a violation of constitutional rights under 42 U.S.C. § 1983, a plaintiff must prove
that a person acted under color of law (generally, in violation of a statute, policy, or practice). For
the purposes of 42 U.S.C. § 1983, a person acts under color of law when that person abuses or
contravenes his or her official authority under law. See generally Monroe v. Pape, 365 U.S. 167
(1961). A person includes an official sued in his or her individual capacity as well as local
Dep’t of State Police, 491 U.S. 58 (1989).
A defendant—such as a school official, school resource officer, or school district—may raise a qualified immunity defense in a 42 U.S.C. § 1983 action. Under Pearson v. Callahan, 555 U.S. 223 (2009), a court may find that an officer is entitled to a qualified immunity defense when the alleged right that has been violated is not “clearly established.” Law—for the purposes of qualified immunity analysis—is clearly established when “a reasonable person would have known” of the constitutional or statutory rights at issue. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

In Safford Unified School District No. 1 v. Redding, 557 U.S. 364 (2009), the U.S. Supreme Court held that a school official’s reasonable suspicion did not justify a strip search of a minor in school, but held that that official was entitled to a qualified immunity defense in a 42 U.S.C. § 1983 action because such law was not clearly established at the time of the violation.


42 U.S.C. § 1983 cases also allow consideration of issues that would not likely arise in a criminal or delinquency proceeding, such as issues arising when evidence of a search results in a student’s suspension or expulsion. See, e.g., Webb v. McCullough, 828 F.2d 1151 (6th Cir. 1987) (declining to grant summary judgment on question of reasonableness of search on school field trip resulting in suspension of student). Under Pearson, however, some courts decline to address the constitutionality of particular actions. See, e.g., Herring v. Sliwowski, 712 F.3d 275 (6th Cir. 2013) (finding school nurse who visually examined student’s genital area without parental consent or emergency justification entitled to summary judgment on qualified immunity defense, but not deciding on issue of constitutional violation).