

Searches of Students' Cell Phones: Case Analysis and Best Practices

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Lower courts are beginning to grapple with challenges to students' Fourth Amendment right to be free from unreasonable search and seizure as it relates to the digital environment, cell phones in particular. Recently, lower courts in several states have applied standards set forth decades ago to decide cases involving searches of students' mobile devices.

Given the absence of guidance from the Supreme Court, this study aims to: (1) identify and analyze trends in the current application of legal standards related to search and seizure in the digital age; (2) synthesize these findings into a set of essential guidelines for school officials to use as they navigate a legal landscape that has yet to be well defined; and (3) make recommendations to further develop the body of law.

Findings indicate that students possess reasonable expectations of privacy in their personal mobile devices and password-protected private Web 2.0 communications. T.L.O governs searches of students' personal mobile devices, so the reasonableness of the search is the key consideration. Substantive suspicion at the outset, carefully tailored searches, and a clear governmental interest will keep school officials from violating students' Fourth Amendment protections.

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Lawsuits involving searches of students' cell phones by school officials are on the rise. These searches can place districts in danger of violating students' rights and being held liable for damages. For example, in September, 2010, the American Civil Liberties Union of Pennsylvania and the Tunkhannock Area School District settled a lawsuit that alleged that school officials had illegally searched a student's cell phone. The school district denied any wrongdoing but agreed to pay the student \$33,000 to resolve the suit. School officials had confiscated the student's cell phone, searched it, discovered semi-nude images of the student, and suspended her for three days ("ACLU Settles", 2010).

The above search illustrates the types of challenges presented by the rapid growth in ownership, use, and capabilities of mobile devices. Mobile devices are pervasive, powerful, and the primary means by which students interact with each other. According to a study by the Pew Internet & American Life Project, 78% of teens own mobile phones, with almost half (47%) owning smartphones; one in four teens (23%) have a tablet computer and 74% of teens are mobile internet users, meaning they access the internet via mobile devices at least occasionally (Madden, Lenhart, Duggan, Cortesi & Gasser, 2013). In addition, 77% of teens bring their mobile phones to school every day (Lenhart, Ling, Campbell & Purcell, 2010) and 80% of teens use social networking sites, with most logging on daily (Lenhart, Madden, Smith, Purcell, Zickuhr & Rainie, 2011).

School officials struggle to balance the educational benefits of mobile devices with the harm that the devices facilitate. Research shows advantages for teaching and learning when cell phones are used appropriately in schools and classrooms. Lu (2008) discovered that second language learners recognized more vocabulary words after reading regular, brief text messages than when they read more detailed paper materials. Similarly, Matthews, Doherty, Sharry, and Fitzpatrick (2008) found that completion of assigned tasks was significantly higher when students used cell phones. In a small pilot study, Engel and Green (2011) learned that students using cell phones in a mathematics classroom showed gains in participation, reflection and assessments throughout the school year. Katz (2005) found that cell phones helped students reference information on the move, connect with teachers, retrieve schedule and assignment information, coordinate with other students, discuss assignments and seek help with their academics. He also found that cell phones provided managerial benefits for both teachers and administrators.

Unfortunately, the power of these devices also brings risk of harm to the school community. School officials across the nation work to maintain order in the school environment by investigating disputes, accusations, and suspicions (often involving serious issues such as cyberbullying, sexting, and drugs). They increasingly feel compelled to search the content of students' mobile devices. Student and parent resistance to such searches has led to a limited but growing number of challenges to cell phone searches in the courts.

School officials must properly apply the legal standard to searches of these devices. Through an analysis of relevant case law and legal commentary, this article synthesizes the current body of such searches and seizures in the digital age and provides a set of guidelines for school officials. The following research questions guide the discussion, which is organized into three sections.

1. How are courts applying long standing legal standards to decide search and seizure cases involving students' mobile devices?
2. What are the essential legal guidelines for school officials regarding the search of students' mobile devices?

The first section includes an overview of the foundational Supreme Court cases that set the legal standards that govern search and seizure in the public school setting (*New Jersey v. T.L.O.*

(1985) (*T.L.O.*), (*Vernonia School District 47J v. Acton* (1995) (*Vernonia*), *Safford v. Redding* (2009) (*Safford*), and *Riley v. California*, (2014) (*Riley*)). The second section reviews how courts have applied these legal standards to more recent search and seizure cases involving mobile devices. The final section synthesizes the rulings to provide guidelines for school officials as they engage in these types of searches.

Supreme Court Precedent

The standards set forth by *T.L.O.*, *Vernonia*, and *Safford* guide any court that decides a case involving searches within the public school setting. Although these cases did not involve mobile devices or Web 2.0, courts have relied on the reasonableness standard and the tests they produced to decide all cases involving these technologies. The more recent case *Riley v. California*, provides insight into the sensitive issues related to cell phone searches, though *Riley* was decided in the context of a criminal case, not at a school.

T.L.O.

In *New Jersey v. T.L.O.*, a 14-year old student (*T.L.O.*) was caught smoking with a friend in a school restroom. When confronted by the school's Assistant Principal (AP), *T.L.O.* denied smoking in the bathroom and smoking in general. The AP searched *T.L.O.*'s purse and found a pack of cigarettes. Upon removing the cigarettes, the AP noticed a package of cigarette rolling papers, which he associated with marijuana. The AP then continued with a more thorough search of *T.L.O.*'s purse and discovered a small amount of marijuana, a pipe, empty plastic bags, a substantial amount of money, an index card with a list of students who owed *T.L.O.* money, and two letters implicating *T.L.O.* in dealing drugs. Subsequently, *T.L.O.* was suspended by the school and charged with delinquency by the state (*New Jersey v. T.L.O.*, 1985).

In court, *T.L.O.* moved to have the evidence from her purse suppressed claiming that the search violated her Fourth Amendment rights. The Juvenile and Domestic Relations court ruled that the search was reasonable, denied the motion to dismiss, and sentenced *T.L.O.* to a year of probation. On appeal, the appellate court affirmed the ruling of the Juvenile court. *T.L.O.* appealed to the New Jersey Supreme Court, which reversed the ruling of the appellate court and ruled that the search was not legal. The U.S. Supreme Court reversed the lower court's ruling (*New Jersey v. T.L.O.*, 1985).

The Court held that the "[Fourth] Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials" (*New Jersey v. T.L.O.*, 1985, p. 333), and that "in carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the parents" (*New Jersey v. T.L.O.*, 1985, p. 336). In addition, the Court held that students have legitimate expectations of privacy. However, balancing the privacy right with the school's need to maintain an environment that is conducive to learning "requires some easing of the restrictions to which searches by public authorities are ordinarily subject" (*New Jersey v. T.L.O.*, 1985, p. 340). Therefore, "school officials need not obtain a warrant before searching a student who is under their authority" (*New Jersey v. T.L.O.*, 1985, p. 340) and are not required to adhere strictly "to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law" (*New Jersey v. T.L.O.*, 1985, p. 341). Finally, the Court held that the legitimacy of a search by school officials is dependent on the "reasonableness, under all the circumstances, of the search" (*New Jersey v. T.L.O.*, 1985, p. 341).

The court used a two-part test to determine whether the search was legal. First, the search must be “justified at its inception” (*New Jersey v. T.L.O.*, 1985, p. 341, quoting *Terry v. Ohio*, 1968, p. 20). To satisfy this test, a search must be based on reasonable suspicion “that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school” (*New Jersey v. T.L.O.*, 1985, p. 342). Second, it must be determined that the search, as conducted, “was reasonably related in scope to the circumstances which justified the interference in the first place” (*New Jersey v. T.L.O.*, 1985, p. 341, quoting *Terry v. Ohio*, 1968, p. 20). To satisfy this part of the test, the method and extent of the search must be “reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction” (*New Jersey v. T.L.O.*, 1985, p. 342). Based upon these standards, the Court ruled that the search of T.L.O.’s purse was reasonable and did not violate the Fourth Amendment.

Vernonia

In *Vernonia School District 47J v. Acton*, (1995), the Supreme Court addressed a mandatory random drug testing program for student athletes. School officials established the drug testing program based on concerns that student athletes were heavily involved in the drug culture surrounding the school. The expressed purpose of the program was to “prevent student athletes from using drugs, to protect their health and safety, and to provide drug users with assistance programs” (*Vernonia School District 47J v. Acton*, 1995, p. 650). The program applied to all student athletes and required written consent from both the student and a parent/guardian. All athletes were tested at the beginning of their season and then once per week. Ten-percent of the athletes were selected randomly for testing. Procedures and safeguards, including monitors who stood at a respectful distance (for boys) or outside a closed bathroom stall (for girls), were used to avoid tampering. Access to test results was limited to the school administrators. In the fall of 1991, a student (Acton) was denied participation when he and his parents refused to provide the proper written consent. Acton filed suit claiming that the program violated his Fourth Amendment right to be free from unreasonable searches and seizures. The District Court dismissed the claims, but the Ninth Circuit reversed. The U.S. Supreme Court reversed the Ninth Circuit’s ruling.

Since the individual suspicion that justified the search in *T.L.O.* did not apply, the Court developed a new three-part reasonableness test that balanced the governmental interest with the level of intrusion. The factors in the new test included: (1) “the nature of the privacy interest upon which the search...intrudes” (*Vernonia School District 47J v. Acton*, 1995, p. 655), (2) “the character of the intrusion that is complained of” (*Vernonia School District 47J v. Acton*, 1995, p. 659), and (3) “the nature and immediacy of the governmental concern at issue” (*Vernonia School District 47J v. Acton*, 1995, p. 660).

Regarding the first factor, the Court recognized that “the ‘reasonableness’ inquiry cannot disregard the schools’ custodial and tutelary responsibility for children” (*Vernonia School District 47J v. Acton*, 1995, p. 656), and that “students within the school environment have a lesser expectation of privacy than members of the population generally” (*Vernonia School District 47J v. Acton*, 1995, p. 657, quoting *New Jersey v. T.L.O.*, 1969). In addition, the Court held that athletes possessed less privacy and were subject to more regulation than other students. (*Vernonia School District 47J v. Acton*, 1995).

In its analysis of the character of the intrusion, the Court stated that “the degree of intrusion depends upon the manner in which production of the urine sample is monitored” (*Vernonia School District 47J v. Acton*, 1995, p. 658). In *Vernonia*, the conditions students were subjected to as part

of the testing program were similar to those in any public restroom, so the invasion of privacy was slight (*Vernonia School District 47J v. Acton*, 1995). Moreover, “the results of the tests are disclosed only to a limited class of school personnel who have a need to know; and they are not turned over to law enforcement authorities or used for any internal disciplinary function” (*Vernonia School District 47J v. Acton*, 1995, p. 658).

Finally, the Court required that the nature and immediacy of the governmental concern be “an interest that appears *important enough* to justify the particular search at hand, in light of other factors that show the search to be relatively intrusive upon a genuine expectation of privacy” (*Vernonia School District 47J v. Acton*, 1995, p. 661). Citing a series of studies on the negative physiologic effects of drug use and the district court’s conclusions regarding the level of the drug crisis at the school, the Court held that a relatively high degree of governmental concern existed.

Safford

Safford involved a situation in which a student handed an AP a pill that a girl had given him. He told the AP that students were planning to take the pills at lunch. The school’s policies strictly prohibited the nonmedical use, possession, or sale of any drug on school grounds, unless permission had been granted (*Safford v. Redding*, 2009).

The AP called the girl out of class. A search of her belongings and clothes revealed that she had a number of prescription level ibuprofen pills in a day planner. The girl said she got the day planner and the pills from Redding. A search of her bra and underpants revealed no further drugs. The AP did not ask the girl when she got the pills or where Redding might be hiding them (*Safford v. Redding*, 2009).

The AP called Redding into his office and showed her the day planner. Redding admitted that the day planner was hers and that she had lent it to the girl. She said none of the items were hers. The AP showed Redding the pills, but Redding denied knowing anything about them. A female and the AP searched Redding’s backpack, finding nothing. The AP had the female take Redding to the school nurse’s office to search her clothes for pills. The two females asked Redding to remove her clothes and pull her bra out and to the side and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. No pills were found (*Safford v. Redding*, 2009). Redding sued.

The Supreme Court deemed the search justified at the outset because a number of pieces of evidence linked Redding to the pills, including student statements and pills being found in her day planner. A search of Redding’s backpack and pockets was reasonable in scope because students can be expected to carry drugs in such places (*Safford v. Redding*, 2009). The court held that the search of her undergarments, however, went beyond what was reasonable. Any search of a student’s undergarments is highly intrusive and involves a much greater invasion of privacy than a search of a backpack. In such circumstances, *T.L.O.* (1995) requires a court to weigh the invasiveness of the search, the age and gender of the student, and the nature of the harm in determining whether a search was reasonable. In *Safford*, the school lacked individual suspicion that Redding had drugs in her undergarments. Moreover, the risk of harm from prescription drugs is less than from illegal drugs, which also mitigated against the search being legal (*Safford v. Redding*, 2009).

Safford illustrated that the standards of reasonableness for a highly invasive search differs from the standards for a less invasive search. The level of suspicion and the threat of harm need to be higher to justify a highly invasive search. *Safford* should be an important precedent in cell phone cases due to the invasive nature of such searches, as discussed in *Riley*.

Riley

Riley v. California (2014) involved two separate cell phone search cases that occurred in the criminal context. In one case, Riley was stopped for a traffic violation, which eventually escalated into him being arrested on a weapons charge. An officer searched Riley's cell phone without a warrant and found evidence of gang affiliation.

In the other case, Wurie was arrested for a drug sale. The police searched his cell phone without a warrant and traced a phone number in the cell phone labeled "Home" to an address that was Wurie's residence. The police obtained a warrant, searched the residence, and found drugs and firearms (*Riley v. California, 2014*).

Both defendants moved to suppress the evidence from the cell phone searches, contending that the searches were illegal since they were conducted without a warrant. The court discussed how cell phones are different than other objects of searches because they contain a huge amount of information that can be regarded as a record of a person's entire life. The court ruled that cell phones generally cannot be searched without a warrant, even when the search is conducted incident to an arrest (*Riley v. California, 2014*).

Synthesis of Supreme Court Rulings

The direct holding of *Riley* should not apply to searches in public schools because such searches are considered an exception to the warrant requirement. *T.L.O.*, *Vernonia*, and *Safford* discussed the standards for determining the constitutionality of searches conducted by public school officials in terms of reasonableness. School officials can legally search individual students and their property when reasonable suspicion exists that the search will produce evidence of a violation and the search is conducted in a way that is reasonable in its extent and not excessively intrusive. School officials can conduct legal searches without individualized suspicion when the governmental interest outweighs the level of intrusion (Vorenberg, 2012), as the *Vernonia* court determined that such searches are reasonable.

However, the reasoning underlying *Riley* will be important to schools because the court determined that people have a higher than normal expectation of privacy with regard to the data on their cell phones. Cell phone searches uncover evidence of an enormous number of events about a person's entire life (*Riley v. California, 2014*), many of which are unrelated to the possible violation. The reasoning in *Riley* suggests that the standard that constitutes "reasonableness" would be higher than in most other school searches. In this respect, cell phone searches may be analogous to the search of Redding's underwear in *Safford*, which was deemed illegal because such a search requires a higher standard of reasonableness than a search of a student's pockets. Similarly, the courts should require a higher standard of what constitutes reasonable for a cell phone search than for the search of a backpack, for example.

Mobile Device Cases

This section discusses the application of the Supreme Court precedent described above to cases involving searches of students' mobile devices. Table 1 provides an overview of the cases discussed in the following sections and is organized by the categories described above.

Table 1

Recent Search and Seizure Cases Involving Cell Phones

Case	Date	Ruling	Rationale
<i>Klump v. Nazareth Area School District</i>	3/30/2006	Unconstitutional	Not justified at inception - no reason to suspect the search would turn up evidence of wrongdoing; used search to attempt to catch other students' violations
<i>J.W. v. Desoto County School District</i>	11/1/2010	Constitutional	Justified at inception - student was caught violating cell phone policy; reasonable in scope - search was limited to photos on phone
<i>Mendoza v. Klein Independent School District</i>	3/16/2011	Unconstitutional	Justified at inception – accessed outgoing texts to determine if phone was used in violation of cell phone policy; not reasonable in scope – no reason to search texts further
<i>G.C. Owensboro Public Schools</i>	3/28/2013	Unconstitutional	Not justified at inception – background knowledge of students' past tendencies or wrongdoing does not justify search
<i>Gallimore v. Henrico County</i>	2014	Unconstitutional	Search of cell phone not justified at inception; a cell phone could not possible hold drugs
<i>In re Rafael C.</i>	3/25/2016	Constitutional	Justified at inception - student acting suspiciously near site of questioning of other students; reasonable in scope – reasonable to search cell phone due to suspicious behavior regarding the phone and the involvement of firearms.

Searches of Students' Mobile Devices

In *Klump v. Nazareth Area School District*, (2006) a student (C.K.) had his cell phone confiscated by a teacher when it accidentally fell out of his pocket during class. The school's policy allowed students to carry cell phones but not use or display them during school hours. The teacher and an Assistant Principal called nine other students from the phone's address book, accessed C.K.'s text messages and voicemail, and used the cell phone to engage in an instant messaging conversation with C.K.'s younger brother without identifying themselves. The school officials claimed that their search of the cell phone was prompted by a message they received from C.K.'s girlfriend asking him to get her a "f***in' tampon," which referred to a large marijuana cigarette.

In denying the school system's motion to dismiss, the district court held that because C.K. was in violation of school policy, school officials were justified in initially seizing the cell phone. However, the subsequent search of the cell phone was not justified because it did not satisfy the first prong of T.L.O.'s two-part test – that a search must be justified at its inception. The court stated that "[school officials] had no reason to suspect at the outset that such a search would reveal

that [C.K.] himself was violating another school policy; rather, they hoped to utilize his phone as a tool to catch other students' violations" (*Klump v. Nazareth Area School District*, 2006, p. 640). In addition, the court also stated that "there must be some basis for initiating a search" (*Klump v. Nazareth Area School District*, 2006, p. 641), which it determined school officials did not have.

In *J.W. v. Desoto County School District*, (2010) a middle school student (R.W.) had his cell phone seized when he opened the phone during class to view a text message from his father. The school seized the phone pursuant to its policy prohibiting cell phone possession and use during school hours. Once in possession of the cell phone, school officials accessed and searched the photo library and discovered a photo of one of R.W.'s friends holding a BB gun and other photos that depicted gang-related symbols. R.W. was subsequently expelled from school for the remainder of the year. R.W. filed suit claiming, among other things, that the search of the cell phone violated his Fourth Amendment right to be free from unreasonable searches and seizures.

In dismissing the Fourth Amendment claims against the school officials, the district court relied on *T.L.O.*'s two-part test. The court held that the search was justified at its inception because R.W. was caught using the cell phone in knowing violation of school policy, which diminished his expectation of privacy, and that "upon witnessing a student improperly using a cell phone at school, it strikes this court as being reasonable for a school official to seek to determine to what end the student was improperly using that phone" (*J.W. v. Desoto County School District*, 2010, p. 12). The court also held that the search was "reasonably related in scope to the circumstances which justified the interference in the first place" (*New Jersey*, 1985, p. 341). The court distinguished the search of R.W.'s cell phone from that in *Klump*, stating that "the school officials in *Klump* appeared to use that accident as a pretext to conduct a wholesale fishing expedition into the student's personal life, in such a manner as to clearly raise valid Fourth Amendment concerns" (*J.W. v. Desoto County School District*, 2010, p. 15), whereas "the decision by the school officials in this case to merely look at the photos on R.W.'s cell phone was far more limited, and far more justified" (*J.W. v. Desoto County School District*, 2010, p. 16).

In *Mendoza v. Klein Independent School District*, a student (A.M.) had her cell phone seized and searched by an Associate Principal (AP) when she was observed huddled together with a group of friends in the hallway looking at what appeared to be her cell phone. The AP suspected that A.M. was using her cell phone in violation of school policy and therefore accessed the phone to determine if any text messages had been sent during school. Once the AP determined that messages had been sent during school, she continued her search of the text messages and discovered a nude photo of A.M. When confronted about the photo, A.M. admitted to sending the photo to a male friend in response to a similar photo he had sent to her. A.M. was suspended and ultimately transferred to an alternative school for 30 days for violating school policy prohibiting incorrigible behavior. A.M. filed suit claiming, among other things, that the AP's search of her phone violated her Fourth Amendment right to be free from unreasonable searches and seizures.

A federal magistrate judge denied the school districts motion for summary judgment as to the Fourth Amendment claim against the AP. The magistrate confirmed that A.M. had an expectation of privacy regarding the contents of her phone and analyzed the search within the framework of *T.L.O.*'s two-part reasonableness test. The magistrate found that based on the AP's observations of A.M., she had a reasonable suspicion that A.M. was in violation of school policy and, therefore, the search was justified at its inception. However, because "the only justification proffered by [the AP] for the search of A.M.'s phone was to determine whether A.M. had used the phone during school hours" (*Mendoza v. Klein Independent School District*, 2011, pp. 25-26), which could be accomplished without opening and reading any individual messages, the magistrate found that the continued search of the text messages went beyond the reasonable scope of the

search. The magistrate concluded that “a continued search must be reasonable and related to the initial reason to search or to any additional ground uncovered during the initial search” (*Mendoza v. Klein Independent School District*, 2011, p. 26).

The differing fact patterns of *Mendoza* and *T.L.O.* illustrates the key lesson from *Mendoza*. The lack of reasonable suspicion to continue past the initial search of A.M.’s phone distinguishes the case from *T.L.O.* Whereas the cigarette rolling papers provided the reasonable suspicion to continue with a more thorough search in *T.L.O.*, the school official in *Mendoza* lacked any compelling evidence to justify the continued search of specific text messages that led to the discovery of the nude photo.

G.C. v. Owensboro Public Schools involved the search and seizure of the phone of an out-of-district student (G.C.) with a history of drug use, anger, depression, and suicidal thoughts. In response to a history of disciplinary issues, the District Superintendent previously decided to give G.C. one last chance for the 2009-2010 school year. The Superintendent revoked G.C.’s out-of-district privilege when he violated his school’s cell phone policy by using his phone to text message during class. G.C.’s phone was seized as a result of the texting incident and searched by one of the school’s Assistant Principals (AP). The AP claimed that she was concerned about G.C.’s wellbeing, considering his history of depression and suicidal thoughts, and therefore read four of G.C.’s recent text messages. G.C. filed suit claiming, among other things, that the search of his cell phone violated his Fourth Amendment rights.

The panel declined to follow *J.W.*, reasoning that schools should not have an overly broad right to search cell phones just because the phone is used at school (*G.C. v. Owensboro Public Schools*, 2013). Instead, the panel held that the search of G.C.’s cell phone was not justified at its inception. In particular, “general background knowledge of drug abuse or depressive tendencies, without more, [does not enable] a school official to search a student’s cell phone when a search would otherwise be unwarranted” (*G.C. v. Owensboro Public Schools*, 2013, p. 25). The court stated that school officials “failed to demonstrate how anything in this sequence of events indicated to them that a search of the phone would reveal evidence of criminal activity, impending contravention of additional school rules, or potential harm to anyone in the school” (*G.C. v. Owensboro Public Schools*, 2013, p. 26).

Gallimore v. Henrico County (2014) was the first school related cell phone search case decided after *Riley*. In *Gallimore*, school officials received a report that a “long haired” student had smoked marijuana on a school bus. The officials conducted a search of several possessions of a long haired student, W.S.G., including his cell phone. No marijuana was found on W.S.G., who was then sent back to class. W.S.G. sued the school officials. The court determined that the search of W.S.G.’s possessions was reasonable, except with regard to the cell phone, which the court opined could not possibly hold drugs. The court notes in dicta that a search of the phone for names of drug dealers, etc. may have been legal.

The most recent cell phone search case was *In re Rafael C.* (2016) (*Rafael C.*). In *Rafael C.*, school officials suspected two boys of placing a gun in a school trash can. The boys were taken to the office for questioning, during which time the gun was found in the trash can. Rafael, with other students, were outside the office during the questioning. School officials asked the students to leave. All complied quickly, except Rafael, who moved away very slowly. A school official then asked Rafael to return, but he kept moving away. Finally, the school official chased down Rafael and escorted him to the office (*In re Rafael C.*, 2016).

When asked why he did not follow instructions, Rafael got fidgety and reached into his pants pocket. Fearing he had a firearm, school officials forcibly seized the cell phone in his pocket. School officials were concerned that Rafael was using the cell phone to communicate about the gun

or possibly other guns with other students. The cell phone was turned on, at which time school officials could access content on the phone, including photos of students holding the gun that had been confiscated (*In re Rafael C.*, 2016).

Rafael was charged in juvenile court with possessing a firearm on a high school campus. He sought to suppress evidence from the cell phone, arguing that the search was not legal. The court denied his motion because the search was justified at its inception and reasonable in its scope. The suspicious behavior of Rafael, coupled with him reaching into his pocket, made it reasonable for school officials to initiate the search. The court determined that the search was reasonable in its scope in large part due to the involvement of the gun making the risk of harm great (*In re Rafael C.*, 2016).

It is instructive to compare the searches in *Safford* and *Rafael* in order to understand the different results in cases that have some similarities. In each case, the student became involved in the investigation after school officials initially focused on other students. School officials had more justification to search Redding than Rafael, since another student indicated that Redding had given pills to her. Both searches were very invasive, though the search of undergarments would be considered the more invasive of the two. The biggest difference between the cases related to the risk of harm. The *Safford* court did not consider the legal drug Ibuprofen to be a significant threat, while the *Rafael* court, of course, considered guns on campus to be a major risk of harm. The different results between the cases illustrates the importance of the risk of harm related to the object of the search.

Synthesis of the Cell Phone Cases

In the limited but growing body of law in this area, courts have applied the standards set by *T.L.O.* to govern cases involving searches of students' mobile devices. School officials must have reasonable suspicion for a search to be justified at inception (*Klump v. Nazareth Area School District*, 2006; *In re Rafael C.*, 2016). Similarly, the court in *G.C.* refused to grant school officials a justification for searching a cell phone that had been used at school (*G.C. v. Owensboro Public Schools*, 2013), though the *J.W.* court granted school officials more leeway (*J.W. v. Desoto County School District*, 2010).

Courts do not look favorably on searches in which the only justification was the seizure of a mobile device in violation of school policy, which is correct in light of *T.L.O.* School officials have no justification to search a cell phone simply because it was brought to school in violation of a school rule barring cell phones on campus because the finding of the phone by itself shows that the student violated the rule. *J.W.* notwithstanding, the same should be true of searches conducted when the only basis for the search is the fact that a student used the phone on campus. Searches can be justified when school officials have reason to think that the use is leading to the violation of another school rule. For example, a search would be justifiable if a student was using the phone during an examination, because school officials could reasonably think that the student was cheating.

Assuming that reasonable suspicion exists to justify a search at its inception, school officials must carefully tailor the search in a way that limits the scope of the search to the circumstances that justified it in the first place (see *Klump v. Nazareth Area School District* and *Mendoza*). For example, school officials attempting to discipline students for using a cell phone in violation of school policy, should limit their searches to determining whether the policy was violated. Such a search should be limited to a log that shows when the phone was used, but does not require reading the content of messages. Only the *J.W.* court permitted a broader search of the

phone in such circumstances. However, school officials should be able to search the content of phones if they have a reasonable suspicion of a violation of policy, such as sexting, that necessitates them determining whether a certain substantive content exists on the phone. School officials will have more leeway to search if the object of the search poses a great risk of harm to the school community.

Guidelines for School Officials

The Supreme Court has yet to provide clear guidance on searches of students' mobile devices. However, the case law discussed above, although limited, does allow for some of the contours of the body of law to take shape. This section provides guidelines for school officials when engaging in searches of students' mobile devices.

Guidelines for Searching Mobile Devices

- Students have a reasonable expectation of privacy in regards to their personal mobile devices and, therefore, are protected by the Fourth Amendment from unreasonable searches and seizures.
- The probable cause standard and the warrant requirement do not apply to searches within the school setting. However, school officials must have reasonable suspicion to initiate a search of a student's personal mobile device. So long as reasonable suspicion of wrongdoing exists, school officials do not need student or parent consent to search a personal mobile device.
- The constitutionality of a search of a student's personal mobile device is based on the "reasonableness" of the search under all circumstances. Reasonableness is determined according to *T.L.O.*'s two-part test where (1) the search must be justified at its inception; and (2) the search must reasonably relate in its scope to the circumstances that initially prompted it. Failure to meet either of these tests would result in a search that violates the Fourth Amendment.
- Recent rulings indicate that school officials who seize a mobile device for a violation of school policy do not have the authority to conduct a search of a student's personal mobile device that goes beyond that violation. Suspicion of wrongdoing, such as cheating via images or text messages, would provide a much more solid basis for initiating a search.
- In *G.C.*, the court held that general background knowledge of a student's past behavior or tendencies was not enough to justify a search. School officials would be wise to base their searches on more substantial suspicion such as first-hand observations or reports of wrongdoing from credible sources.
- Assuming a search is justified, to avoid a constitutional violation, school officials must tailor the search to the specific circumstances that prompted the search. In other words, school officials cannot turn a justified search into a "fishing expedition" to discover evidence of wrongdoing. According to *Mendoza v. Klein Independent School District* (2011), "a continued search must be reasonable and related to the initial reason to search or to any additional ground uncovered during the initial search." (p. 26)
- *Rafael* (2016) shows us that courts will grant school officials more latitude in searches when the object of the search poses a great risk of harm. The courts clearly regard student and staff safety as the most important objective of school officials in such cases.

Summary

Students possess reasonable expectations of privacy and, therefore, Fourth Amendment protections in their personal mobile devices. *T.L.O* governs searches of students' personal mobile devices. Substantive suspicion at the outset and carefully tailored searches will keep school officials from violating students' Fourth Amendment protections. To avoid violating constitutional protections in these types of searches, school officials should carefully weigh the intrusiveness of the search with their interest in "maintaining discipline in the classroom and on school grounds" or "deal[ing] with breaches of public order" (*T.L.O.*, 1985, p.339).

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