

SCHOOL SEARCHES

This is a very short overview of the legality of school searches conducted by police officers: All searches entail an invasion of privacy. Whether a particular search is legally permissible involves a balancing of competing interests: the individual student's right to privacy and security against the school district's interests in maintaining order, discipline, and the security and safety of other students.

What is a Search?

A search is an examination of a person's property or self with a view to the discovery of contraband (whether illegal or in violation of school rules). "Contraband" means any property or material which is unlawful to produce or possess and whose possession may be contrary to school district policy.

Reasonable Suspicion: "Factors and circumstances that would lead a reasonable officer to SUSPECT that a crime is being committed, about to be committed or has been committed"

A search will be reasonable in its scope and intrusiveness where it is reasonably related to the objectives of the search and is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction.

Probable Cause: "Factors and circumstances that would lead a reasonable officer to BELIEVE that a crime is being committed, about to be committed or has been committed". Probable Cause is the standard in the following circumstances:

1. To make an Arrest
2. To obtain a Search Warrant
3. To make a Vehicle Stop
4. To hold a person for trial after a Preliminary Hearing

Categories of Searches – School searches can be categorized as follows:

1. Blanket and Administrative searches: neutrally administered to all students
2. Reasonable suspicion searches involving certain identified individual students.
3. Consent searches.
4. Law enforcement searches based on probable cause.

In conducting searches of students, school officials are generally not required to obtain a warrant or demonstrate probable cause for conducting the search. Instead, the California and United States Supreme Courts have adopted the lower "reasonable suspicion" standard under which warrantless searches are permissible so long as the school official has reasonable grounds for suspecting that the search will reveal evidence that the student has violated the law or school rules, and the scope of the search is reasonably related to the facts that gave rise to the suspicion.

Courts, however, have limited the application of the reasonable suspicion standard to searches initiated and conducted by school officials. Rather the Courts look at the District's interests supporting the

application of the reasonable suspicion standard and the purpose of the search at issue. The Courts note that the District has a compelling interest in ensuring student's safety at school by establishing discipline and maintaining order. The Courts acknowledge that this interest may become entangled when the student's conduct at issue violates both the student code of conduct and the law.

The Court's decision makes clear that limited participation by law enforcement officers in student searches is permissible and **does not** require the officers to obtain a search warrant. However, the Courts are very clear to limit its holdings to searches conducted in the furtherance of educational purposes. It should be noted that searches, like the on-campus interview conducted by the police officer and social worker at issue in *Greene v. Camreta*, are unlikely to fall into this category. Such interviews, such as the one in *Greene*, are conducted to protect the child's welfare in the environment where he or she is suspected of being abused, generally outside of school. As a result, a primary interest is not in maintaining discipline and ensuring the safety of the school environment.

PAT-DOWN SEARCHES:

What is a Pat-Down Search? A law enforcement officer has the right to perform a pat-down search of the outer garments of a suspect for weapons, when the officer has a reasonable fear for his own or another person's safety.

Procedures for Performing a Pat-Down Search

When reasonable suspicion exists to perform a pat-down search, it should be performed with due caution, restraint and sensitivity. These searches are only justifiable and may only be performed to protect the safety of officers and others and may never be used as a pretext for obtaining evidence. Under these circumstances, pat-down searches should be conducted in the following manner:

- Whenever possible, pat-down searches should be conducted with at least two officers present or a school administrator present
- Because pat-down searches are cursory in nature, they should be performed with the suspect in a standing position or with hands placed against a stationary object or behind the head, fingers interlocked and feet spread apart.
- In a pat-down search, officers are permitted only to externally feel the outer clothing of the suspect. An officer may not place his/her hands in pockets unless he/she feels an object that could reasonably be a weapon, such as a firearm, knife, or other item.
- If the suspect is carrying an object such as a backpack or other item that may conceal a weapon, the officer is permitted to search the backpack for a weapon.
- If the external feeling of the suspect's clothing fails to disclose evidence of a weapon, no further search may be made. If evidence of a weapon is present, an officer may retrieve that item only.