

MEMO

To: JPPSS Principals

From: Patricia Adams, Chief of Legal Services

Date: April 2, 2013

Re: Clarification of Policy on Searches of School Computers and Student Cell Phones and Other Electronic Devices

Some questions were raised during our discussion last week about searches of school computers and/or student-owned electronic devices, including cell phones. As school administrators, it is inevitable that you will be called upon to make decisions regarding these issues in future. Therefore, I wanted to clarify the District's position on these issues so that you will feel confident in your understanding of the law and District policy when that time comes. I have also attached a Cell Phone Search Checklist for School Administrators that, I hope, will assist you in the decisionmaking process regarding searches of student property. Although the checklist specifically references cell phone searches, the questions posed apply equally to searches of student-owned property, in general.

When is it permissible to search a school-owned computer for evidence of violations of law or school policy?

In short, a teacher or administrator may search school property, including school computers, when "articulable facts" lead to a reasonable belief that the search will produce evidence to establish a violation of Board policy or law. (See 2012-2013 Student Policy Manual at p. 21).

When is it permissible to search student cell phones or other student-owned electronic devices?

Not surprisingly, searches of student property, including cell phones, is rather more complicated. As noted during our discussion, the Board approved a new Telecommunication Device Policy (August 23, 2012) which provides, in pertinent part, that:

Students are allowed to possess electronic devices on campus. However, all electronic devices must be **COMPLETELY OFF** and must not be visible or audible while students are on the school grounds or on the school bus except as authorized by the principal for specified reasons or in the case of an emergency. "Emergency" shall mean an actual or imminent threat to public health or safety, which may result in the loss of life, injury, or property damage. A copy of the Telecommunication Device Policy is attached for ease of reference.

Summary:

In the school setting, if the initial encounter with the student is based upon reasonable suspicion that the student has violated the law or school policy, the subsequent search of the phone/electronic device will also be valid and requires no additional justification, so long as it is *reasonably related* to the need of the educator to discover evidence of a suspected violation of law or school policy.

Discussion:

Under the Fourth Amendment, searches and seizures must be "reasonable". However, there are different standards for determining when a search is reasonable depending on the context. For a search to be considered reasonable under the criminal law standard, there must be (1) a search warrant; (2) supported by reasonable cause to believe that a violation of law has occurred.

While the standard for an educator to search student property is less stringent, it is important to remember that students do not check all of their Fourth Amendment rights at the door when they enter school. Whether a student's cell phone may be searched without violating the student rights will depend on a consideration of the following factors.

U.S. Supreme Court has said that the reasonableness of a student search will depend on: (1) whether the search was justified from the start; and (2) whether the scope of the search was reasonably related to the initial reason for the search. In other words, was there a valid reason for the search in the first place and was the scope of the search appropriate?

Specifically as it regards the search of a cell phone or other electronic device, a seizure and search will generally be considered reasonable in the first place when the student's use or possession of the phone violates school rules. For example, if a Jefferson Parish teacher observes a student texting during class (without prior authorization), the teacher could confiscate the phone without fear violating the student's rights. (See Telecommunication Device Policy).

More difficult, however, is determining the appropriate scope of a cell phone search. How far can a teacher or administrator go in searching the contents of the phone before the search is no longer reasonably related to the initial justification for the search?

The case of Klump v. Nazareth Area School District provides some guidance regarding the proper scope of a student cell phone search. In Klump, a student's cell phone was confiscated after it accidentally fell out of the student's pocket during class. The teacher and assistant principal then searched through the cell phone's number directory and attempted to call nine other students to determine if they too were in violation of the policy. They also accessed text and voice mail messages and communicated with the student's brother -- posing as the student. The student's parents asserted that the search violated his Fourth Amendment rights.

The Court held that, insofar as possession of the phone violated school policy, the school was justified in seizing the phone. However, the court said that the scope of the search was too broad; that the school should not have used the phone to catch other students in violations. The Court concluded that, "Although the meaning of 'unreasonable searches and seizures' is different in the school context than elsewhere, it is nonetheless evident that there must be some basis for initiating a search. A reasonable person could not believe otherwise."

Please feel free to contact me if you have any questions about this material or if you need advice on this, or other legal issues, in future.

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