

Student Searches

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. One aspect of that prohibition is that a person operating under the authority of the government must have a reasonable, individualized suspicion to search persons. This prohibition applies to schools and their administrators and employees.

What is a reasonable search? This question has no hard and fast answer that applies to every situation. The answer necessarily depends on the specific facts of a situation. It requires schools and its administrators and employees to weigh the need for a search of a student with the invasiveness of the search to the student. A failure of a school's administrators or employees to articulate a legitimate reason for a search of a student could thwart the prosecution of the student for a crime and impose liability on the school, its administrator, and its employees for violating a student's Fourth Amendment rights.

A recent case in Missouri illustrates some constitutional limits on student searches. The court reversed a criminal conviction based on drugs found during a search of a student because the school employee who performed the search could not articulate a reasonable, individualized suspicion that the student was carrying drugs or other contraband before the search and the school's policy to hand-search all late students was unreasonable under the circumstances of the case.

The case arose from a school district's search of a student's pockets because he arrived 30-minutes late to school.



By: Brian Mayer

The student in the case, Charles Williams, arrived 30-minutes late to school with a group of other late students. The School's school safety employee, DeAndre Duncan, knew Williams from regular "routine, get to class" interactions, but no incidents that suggested he could possess drugs. Duncan had the late students remove their shoes and everything from their pockets and pass through a metal detector. Williams passed through undetected. Duncan then hand-searched the students. When Duncan attempted to pat down William's back pocket, Williams told him to stop. Duncan then brought Williams to the school's security office and demanded he empty his pockets. Williams removed a white rocky substance in plastic wrapping.

Duncan handcuffed Williams and contacted the school's SRO, Officer DeAndre Davis. Officer Davis then read Williams his Miranda rights, took him to his office in the school, and arrested him for possessing drugs.

At the student's trial for drug possession, the school safety officer testified that his search of Williams followed the school's policy to "hand check" all students who arrive 30 minutes late. The school started the policy in reaction to drug activities and violence in the neighborhood of the school, "to protect students, teachers, and staff." A "hand check" involves a student removing everything from their pockets, often removing their shoes, pulling their pockets out, and undergoing a pat-down, "all the way down to the ankles."

The trial court found the search reasonable because it was uniformly applied, done for safety reasons, and limited to a pat down and emptying pockets – not a strip search.

The student appealed the court's decision and the appellate court found that the search was unreasonable and the school violated the student's Fourth Amendment rights. The appellate court discussed two types of student searches: suspicion-based searches and general, suspicionless searches.

A suspicion-based search is a search based on facts and observations that suggest a moderate chance of finding evidence of wrongdoing: violations of the law or the school's policies. If that reasonable suspicion exists, then a search of a student is reasonable if it reasonably limited in scope given the facts and observations that indicated the need to search.

The search in this case was not suspicion-based. The appellate court found that being tardy, by itself, does not raise reasonable suspicion to justify a body search. The student also passed undetected through a metal detector before the search of his body. Therefore, a search of his body for guns, knives, or other metallic objects would not be within the scope of a reasonable search. Also, the school safety employee searched the student for general contraband – drugs or weapons – not for evidence of this truancy.

The search here was a suspicionless search the school safety employee performed under the school's policy to body search all students who were at least 30-minutes late. Whether a neutral policy that authorizes suspicionless searches for a group of students violates the Fourth Amendment depends on whether the school's interest in safety and order outweighs the students' privacy rights.

For example, random urinalysis of student athletes for drugs is generally reasonable. A known problem of students at a school using drugs is an important and immediate concern. Urinalysis is a negligible invasion of a student's privacy when it is performed under conditions that are negligibly more intrusive than using a public restroom. Student athletes have a lower expectation of privacy when they voluntarily subject themselves to regulations to participate in sports. The intrusion on the student's right to privacy is further reduced when the consequences of a failed drug test are limited to the student's exclusion from participation in a sport – not referral to law enforcement. These factors illustrate how a limited, effective, search can outweigh a student athlete's reduced expectation of privacy, satisfying the constitutional requirements for reasonable searches.

A policy allowing for random or general searches of any students is subject to more scrutiny on whether the invasiveness of the search justifies the reason for the search. Drug sniffing dogs and metal detectors are generally found to be reasonable when applied in a minimally invasive manner to students in general when used to address a known problem involving drugs or violence. Those tools may in-fact lead to reasonable cause for a suspicion-based search.

A general policy to randomly search student's bodies or possessions is more invasive and requires a correspondingly stronger justification to be deemed constitutionally reasonable.

In another case, for example, a school policy that allowed for random searches that required students in a classroom to empty their pockets, leave their bags in the classroom, and leave the classroom while school staff searched through their belongings was found to be unreasonable. Unlike student athletes, the students did not voluntarily subject themselves to enhanced regulations by going to class. Students often carry personal items in their pockets or bags that they would understandably not want school officials to rifle through. The school also turned drugs and other illegal contraband over to the police for criminal proceedings against the students, turning the school's role of promoting student welfare into a role of enforcing criminal violations. The school's heavy-handed searches were found to violate the general classroom students' rights against unreasonable searches.

The appellate court for Charles Williams's case found that the school's policy of searching the body of every student who arrived at least 30 minutes late was unreasonable. The searches were suspicionless because they were performed under a generally applicable policy. Therefore, the appellate court weighed the invasiveness to the student's privacy and the consequences to the student against the school's need for the policy and the likely effectiveness of the policy to address that need. Searching the student's pockets and touching his body invaded his expectation of privacy. The arrest of the student for a felony was a serious consequence resulting from the search. The school failed to offer a correspondingly serious justification for their search or their policy.

The intrusiveness of the search outweighed the school's generalized concern about keeping drugs out the school. The school argued that it needed the policy to keep drug activities and violence in the neighborhood from spilling into the school. However, the school did not identify that the school has a specific problem with drug activities and violence among its students at the school. The appellate court also found the effectiveness of the school's policy of hand searching tardy students questionable. While any searches are going to be more effective in deterring drug possession than no searches, the appellate court found the link between tardiness and school safety strained. Therefore, the school's general interest in safety did not, by itself, justify the school safety employee touching the student and searching his pockets.

Yet the school now has evidence of student drug possession in the school to justify future searches. Therefore it might seem that the school's search of Williams, though unconstitutional, is justified because it still furthered the goal of keeping drugs out of the school. So what is the harm?

While this case reversed a criminal verdict against a student because of violations of the Fourth Amendment of the United States Constitution, it did not directly involve liability of the student's school district or school district employees. However, constitutional violations can impose significant liability and possible defense costs on a school district and its employees. An employee can be liable to a student for an unreasonable search of the student. A school district can be liable to a student if the employee searched the student under a policy deemed to be unreasonable. (Poorly written zero-tolerance policies are often found to be unreasonable.) Cases in which school districts and its employees were found liable to students for unreasonable searches include a case involving a strip search of an elementary school student to find a missing \$3 and a search of a student's mobile phone with no reasonable basis to search the phone.

**For questions regarding
Student Searches:**



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The harm in conducting unconstitutional searches, therefore, is liability for damages, including attorney's fees, for violated a student's Fourth Amendment rights. The touchstone for avoiding liability is reasonableness, considered from the perspectives of both the school its students.

In Missouri, for information on student's searches, review MSBA Policy JFG and MCE Policies 2150 and 2160. Consider the following actions involving student searches:

- Notify students in handbooks and other materials that lockers, desks, and other school district property are subject to random searches.
- Be able to articulate and document facts and observations that form the basis of the reasonable suspicion that led to a search of a student or student property.
- Request the presence of more than one adult to witness the search of a student or their property.
- Contact law enforcement officials to conduct searches for reasonably suspected criminal evidence.
- Try to perform the search away from other students and take other measures to protect the student's privacy and prevent embarrassment to the extent possible.
- Limit the search to the property that formed the original justification for the search.
- Do not strip search a student except in extreme circumstances: a law enforcement officer is not available and strong facts indicate a student has a weapon, explosive, or other harmful substance and presents an imminent threat of physical harm to the student or others.
- Verify law enforcement officers' identity if they become involved.
- Attempt to notify the student's parents or guardian if law enforcement removes the student from school.

See EdCounsel's Legal Guide for Missouri School Leaders for more information and guidance on this topic and other legal issues affecting Missouri schools.

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