Student Search and Seizure

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Agenda
- Basic Constitutional Provisions
- Searches in School
  - Justifications
  - Procedures
  - Examples
- Seizures in school
  - School’s Role in Law Enforcements Interrogations
- Questions

U.S. Constitution:
4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated
§ 1, Art. 9 of the Oregon Constitution

No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure

Basic Take-Away:

- Searches are not per-se illegal
- They simply must be conducted in a reasonable fashion
- Which leads us to:
  - What is a search?
  - What is reasonable?

What is a Search?

- Generally defined as an invasion of an individual’s privacy interest
- This is a fancy way of saying that you are uncovering something somehow concealed
- If the student considers something hidden or private, and you take it out of hiding, it is a search
But what about...?

- Lockers?
- Things in plain view?
- Things not on an individual’s person?
- Drug sniffing dogs?

What is a Reasonable Search?

- In the school context, it must be based on reasonable suspicion
- This means that you have a moderate chance of finding a violation of law or policy when you search the student
- There are differences between Oregon Law and Federal Law – but they largely work together
- Oregon law only permits reasonable suspicion for issues that present a student safety or health risk

Reasonable Suspicion

- Generally a fluid concept
- Based on:
  - The specificity of information received
  - The reliability of the source
Conducting the Search

- To be reasonable as a whole, it must meet a two part test:
  - Reasonable at its inception
    - Meaning based on reasonable suspicion
  - Reasonably related in scope to the purpose of the search
    - You can’t search beyond what gave you suspicion
    - The potential indignity of the search bears on the reasonableness (general rule, no strip searches)

Special Considerations

- Consent by the student to be searched will make the search reasonable
  - This can come from the student or the parent, if you wish to contact them

Example 1:

- You receive reliable information that some female students smoking in the girl’s bathroom
- What can you search for?
- Where can you search?
Example 2:

- Your school has been combating a prescription drug problem, and you receive information that a female student has several prescription pills with her today, and she plans on distributing them at lunch.
- Do you have reasonable suspicion?
  - Who gave you the information, is it reliable?
- What locations can you search?

Example 3:

- You receive information that student A has been harassing student B via text message during the day.
- You call student A to the office, and confiscate his phone, what can you do with the phone?

Student Seizures

- Similar to searches, students have a right to be free from unreasonable seizures during the school day.
- Increasing litigation over law enforcement interrogations in the school environment
  - Many lawsuits against both law enforcement and the schools involved.
What is a Seizure?

- A seizure occurs “when there is a governmental termination of freedom of movement through means intentionally applied”
- In the school context, this is usually when a student is interrogated at school by law enforcement

Law Enforcement

- A seizure usually is only going to occur when law enforcement is questioning a student at school
- Not applicable to school personnel questioning
  - Students have to be at school anyways, therefore you cannot really ‘seize’ them in the constitutional sense

When is it Reasonable?

- Law enforcement must have:
  - Warrant,
  - Court order
  - Some kind of exigency
  - Consent from the parents
What to do as a school admin?

- When law enforcement wants to interview a student:
  - Should you contact parents? Default should be YES unless told otherwise by law enforcement.
  - Document why the police are interviewing the student, and their justification.
  - Put the burden on law enforcement to demonstrate why they need to interview the student.

Should you sit in on the interview?

- If the interrogation is unreasonable, and you participated and facilitated it, potential liability for the District.
- If you do not participate and law enforcement violates the student’s rights, potential liability for not intervening.

Questions?

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