

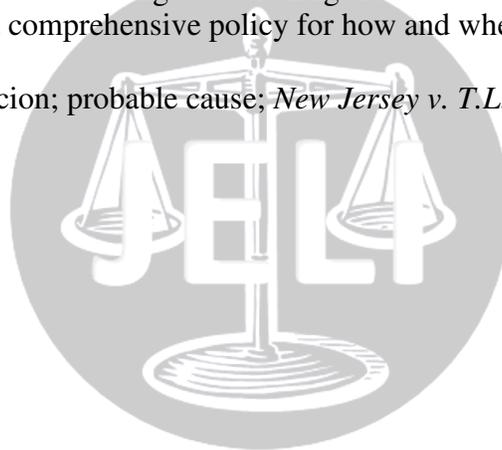
## The intricacies of reasonable suspicion

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### ABSTRACT

Although children are afforded many of the same 4<sup>th</sup> Amendment rights as adults, the school setting allows for a lesser expectation of privacy for students. The individual rights of students must be balanced against the overall health and safety of the school environment for all students. Based on this view of the courts, students do not need to meet probable cause status in order to be subjected to searches of their property and person at school. Their behaviors must only meet the standards of reasonable suspicion, a lesser measure of determining whether a search is necessary. Even though this lesser standard is allowed in the school setting, certain criteria must be met in order to claim reasonable suspicion. The U.S. Supreme Court rules in favor of schools only when those criteria are met. It is paramount that school administrators follow the letter of the law when determining the need to search a student's person or belongings. School administrators aiming to avoid litigation should write and provide constituents with a clear and comprehensive policy for how and when to conduct searches.

Keywords: reasonable suspicion; probable cause; *New Jersey v. T.L.O.*; strip search; student handbooks



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## The Intricacies of Reasonable Suspicion

Throughout history there have been cases involving the Fourth Amendment rights of individuals in our society. At first glance, the Fourth Amendment of the Constitution of the United States seems clear in its meaning. Citizens of the United States are protected from unreasonable searches and seizures. However, according to Staros and Williams (2007), the Fourth Amendment restricts police and government officials acting in their official capacities in different ways. Police are governed more strictly by the Fourth Amendment than school officials. This paper will examine the differences between probable cause and reasonable suspicion. It will also seek to determine which laws and policies, if any, were violated during a specific incident in Clovis, Montana (fictional).

### Probable Cause

Probable cause is defined as evidence that gives someone a reason to think that a crime has been or is being committed (Probable cause, n.d.). According to Merriam-Webster online dictionary, probable cause is an objective standard rather than a function of subjective opinion or suspicion not grounded in fact or circumstance. Police officers must prove probable cause in order to procure a warrant for arrest or conduct a search of a citizen. Probable cause, according to Essex, p. 69 (2016), involves a serious level of suspicion that a crime has been or is being committed. If thinking of a continuum ranging from suspicion to certainty, probable cause would fall closer to the certainty side of the continuum that a crime has been or is being committed. Probable cause is required in order for a police officer to search a student's belongings on or off campus.

### Criteria for Probable Cause

Moore (1983) stated that many states use the *Aguillar-Spinelli test* to determine if there is probable cause to issue an arrest or search warrant. This is a two-pronged test. The first prong of the test requires the police to inform a judge of the circumstances surrounding an informant's claim of illegal activity. The second prong of the test requires the police to prove that the informant is credible and reliable. *Illinois v. Gates* (1983) established the totality of the circumstances approach to determining probable cause. This new consideration held that the two prongs should be used to help determine the reliability of a claim of illegal activity, but should not be exclusive requirements used in every case. The totality of the circumstances involved in the case should be used to determine probable cause.

### Reasonable Suspicion

Reasonable suspicion is defined as an objectively justifiable suspicion that is based on specific facts or circumstances and that justifies stopping and sometimes searching a person thought to be involved in criminal activity at the time (reasonable suspicion, n.d.). School officials are not held to the high standards of determining probable cause before searching students. They are held to a less rigorous standard called reasonable suspicion. Thinking about a continuum ranging from suspicion to certainty, reasonable suspicion would fall farther away from the certainty side of the continuum that a crime has been or is being committed. Essex, p. 65-67 (2016) states that reasonable suspicion is based on information received from students or

teachers that is considered reliable by school officials. Courts will usually support schools that search student belongings if the informant is known and the information provided is credible. Although the courts state that school authorities can stand *in loco parentis* to students under their charge that status cannot stand alone without reasonable suspicion.

### **T.L.O.**

*New Jersey v. T.L.O.* (1985) established that requiring a warrant for searching students would interfere with disciplinary procedures necessary for schools to run smoothly. T.L.O. was a 14-year-old female student who was caught smoking cigarettes in the girls' restroom at school. She denied the allegation and the principal searched her purse. He found a pack of cigarettes and rolling papers. When he searched further, he found a small amount of marijuana, a pipe, money, and a list of student names indicating that they owed the girl money. The state brought delinquency charges against T.L.O. When T.L.O. moved to suppress the evidence against her, claiming an unlawful search, the court held that the Fourth Amendment does not require school officials to get a warrant when there is reasonable suspicion of a crime or a school rule being broken (*Ibid.*)

### **Criteria for Reasonable Suspicion**

Albeit that reasonable suspicion is a lesser form of probable cause, there are still certain requirements to be met if a school district hopes to be supported in court. First, a search at school should be justified at its inception. There should be reasonable grounds for suspecting that a search will uncover evidence of violation of school rules or of a law. This may not be based solely on a "hunch" or a feeling. The scope of the search should be limited to the one incident. Also, the scope of the search should be in relation to the age and sex of the student and the seriousness of the incident. For example, a strip search would not be advisable to find a missing or stolen one-dollar bill. *Essex*, p. 69-70 (2016) stated that there should be *individualized* suspicion, referring to both the individual student and the individual violation.

Even though the legal standard for reasonable suspicion is clear-cut, it must be applied in a case-by-case manner. That application proves that its interpretation depends on the case at hand. The court states that "articulating precisely what reasonable suspicion means...is not possible. Reasonable suspicion is a commonsense, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." (*Ornelas v. United States et.al.*, 1996).

### **Intricacies of Reasonable Suspicion**

Within the framework of reasonable suspicion as a guideline for school searches, there are several different levels as well. Thinking again of that continuum, reasonable suspicion would have its own section with different levels ranging from one end, closer to suspicion, towards the other, probable cause. The seriousness of the accusation and therefore the level of reasonable suspicion are different in regard to accusing a student of having drugs compared to accusing a student of having a weapon. There is also a distinct difference between searching a student's locker or desk and searching that student's purse, book bag, or car on school property. That distinction is that the former are school property and the latter are not. There is more latitude afforded to school officials when searching school property than in searching a student's

property or person. (Essex p. 68-69) 2016). Handbooks and district policy should state that the lockers and desks are property of the school district.

Student desks and lockers allow school officials the most latitude because they are considered school property. That does not mean, however, that they can be arbitrarily searched whenever and however school officials please. Desks and lockers should never be searched on a mere hunch. School officials must meet the standard for reasonableness, first. In both cases, it is advisable that a witness (school official) and the student in question be present during the search. Desks or lockers should not be indiscriminately searched unless there is the imminent threat of harm. (Ibid)

Book bags, purses, wallets, or other personal items require a higher level of reasonable suspicion, closer to probable cause, due to the intrusive nature of the search. Again, the suspicion should be justified at its inception, and the scope of the search matched to the incident at hand. There must be stronger evidence leading school officials to the conclusion that a school rule or law has been broken in order to perform this more intrusive search.

There are two different situations to consider when it comes to searching a student's car. If the automobile is parked on school property, it may be searched once the standard of reasonable suspicion is met. The student should be present and there should be another witness present during the search. If the car is parked off of school property, local law enforcement should be involved and probable cause must be established. Law enforcement should have a warrant for the search. In both cases, a clear district policy should be in place and should have been made available to parents and students, informing them of the fact that student automobiles may be searched with reasonable suspicion or probable cause. (Ibid)

The most intrusive form of school search is the strip search. Strip searches are strongly discouraged by school officials unless there is significant evidence to support the need for this type of intervention. Intrusive mass searches by school officials are also prohibited since it is highly improbable that reasonable suspicion can be established for an entire classroom of students. Strip searches should be implemented only when there is a high-risk situation in which the health and safety of students are in imminent danger. Strip searches require the highest level of suspicion, very close to, if not probable cause itself.

### **District Policy**

District policy can be a school's "saving grace" when it comes to litigation. Every district should have a clear and comprehensive policy in place when it comes to searches at school. Those policies should also be shared with parents and students when they are enrolled in school. Ehlenberger (2001) believes that "the best search policies are developed by school boards who work collaboratively with local law enforcement, local judges and attorneys, school staff, and community members."

### **Incident in Question**

The incident in question occurred on March 11, 2016. The Clovis Montana Baseball "C-Team" rode the bus to play a double-header in another community. During the trip, it was reported to the Coach that, "there were a group of boys on the bus huddled around each other, taking pills." The report was made by a member of the team thought to be a reliable witness. Before heading home, the coach, a contracted employee, searched the players' athletic bags and found nothing to corroborate the story. During practice the next day, the head coach of the

Varsity Team arrived and told the boys that they were “pill poppers.” He further informed them that they would be searched from now on every time they got on the bus to go out of town.

That day, several of the “C-Team” players were randomly drug tested, along with other students involved in athletics. Parents of High School Athletes are required to sign a document giving permission for their students to be drug tested. One player was found with marijuana in his system and was penalized. His parents removed him from the team.

On March 14, the team’s bags were searched before getting on the bus to go to another community. On March 21, the bags of the players were searched before getting on the bus. On April 4, the bags were searched once more before loaded onto the bus. Bags were searched again on April 11, 12, 18, and 28 before going to away games.

Once parents learned of the searches, there was at least one parent phone call to the Head Varsity Coach in which he explained that he had a right to search bags to “keep kids safe.” When asked when the searches would stop, he said, “after the last game of the season.” There was at least one parent email to the Head Varsity Coach about this invasion of privacy, to which the coach did not respond. There was also at least one parent phone call to the Clovis Athletic Director, stating concerns about the searches, Fourth Amendment Rights violations, and seeking clarification about the reasonable suspicion used to justify the searches. The Athletic Director stated that the head coach was acting within his rights to keep students safe. He asked, “Why does it matter so much to you that your kid’s bag is being searched?” He then said that he fully supported the decision of the Head Coach to search bags and that contact would need to be made by the parent with the head coach if there was still a problem.

On April 28, before the team left for their last out-of-town game, a parent went to the bus to observe the bag searches. The team was lined up next to the bus. The contract coach, without a certified school official as a witness, told the boys to put their bags on the ground. He then searched each bag individually by opening the zippers, putting his hands in the bag to feel around, removing some items, shaking the items out, putting the items back in the bag, zipping it back up, and handing it to each player. He also asked to sniff their drinks from Sonic, McDonald’s, etc. When the coach came to the bag of the student whose parent was in attendance, the parent stepped forward, took the bag of the player, said, “I will search your bag in front of him (coach),” and searched the bag in the same manner that the coach had. The coach said, “Okay,” and the parent handed the bag to the player so he could get on the bus. This was the last game of the season. The searches were over. A certified school employee showed up after the searches were over to ride the bus with the team.

## Conclusion

The first search of the teams’ bags was more than likely justified because a reliable source reported suspicious activity on the bus. The question would be, “Why was the whole team searched and not just the group of boys in question?” When nothing was found, however, the reasonable suspicion of the incident did not allow for further searches. The more intrusive nature of the searches (personal student bags) would require a high level of reasonable suspicion. There would need to be a new incident to preempt each and every search. The informant did not name specific students, so the searches were indiscriminant and sweeping. Legal experts state that there should be *individualized* suspicion, referring to both the individual student and the individual violation.

According to most school policies, district property assigned to a student and a student's person or property while under the authority of the public schools are subject to search, and

items found are subject to seizure. Notice of the school policy must be provided to students and parents. This was done through the Student Handbook provided at the beginning of the year. Certified school personnel, school security personnel, and school bus drivers may search student belongings when there is a reasonable suspicion that a crime or breach of school rules is occurring or has occurred. The policy does not define reasonable suspicion. It does say that there should be an authorized person to witness the searching of lockers and vehicles, but does not specifically mention bags. It also states that when it comes to school-owned property, “students have no reasonable expectancy of privacy, and lockers, desks, storage areas, etc., may be inspected at any time with or without reason, or with or without notice, by school personnel.”

Due to the fact that bags are not specifically mentioned in the policy, one can infer that they are subject to search when students are under school authority if there is a valid reason for the search. The only guiding principle that is directly listed in the policy in regard to bags is the term, “reasonable suspicion.” The term leaves much to interpretation. There is, however, more evidence that the students’ Fourth Amendment rights were infringed upon than not. The Clovis District may have dodged a very expensive bullet had a parent wished to have challenged the searches in court.



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