Maintain Order And Lose Your Shirt: Personal Liability Of Educators In The Classroom

Brian L. McGuire, (E-mail: bmcguire@usi.edu), University of Southern Indiana
Leslie E. Nunn, (E-mail: lnunn@usi.edu), University of Southern Indiana

ABSTRACT

Professors, teachers and school administrators are increasingly faced with concerns not even thought of in previous decades. For example, drugs, weapons, suicides, robberies, and assaults are now everyday occurrences in some educational facilities. Being able to cope with such situations requires care and some knowledge of the law. In addition, the danger to school employees can go even further, such as personal financial liability in the form of damage law suits by students against the school and its employees. Obviously, the thought of an educator losing personal assets and retirement pay because of only trying to protect other students or one's own self is daunting.

THE FOURTH AMENDMENT

The Fourth Amendment guarantees people the right "to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." However, many school and university administrators operate under the belief that students have few (if any) constitutional rights in the school setting. Unfortunately for these administrators, such feelings are no longer valid.

Without question, schools have both a right and a duty to provide a safe environment conducive to learning. Some years ago, courts looked at school officials as acting on behalf of the student's parent. Therefore, school officials were considered to be a private party not subject to the Fourth Amendment (Mercer v. State, 450 S.W.2d 715). However, times have changed in recent years, and now courts view the school officials as state governmental employees who are agents of the government and are therefore bound by the Fourth Amendment. Bellnier v. Lund , 438 F.Supp 47, are subject to the U.S. Civil Rights Act, as amended, and other laws, including exposure to personal financial liability for violating students' rights.

In fact, the U.S. Supreme Court has stated that students do not "shed their constitutional rights…at the schoolhouse gate" (Tinker v. Des Moines Indep. Cmty. Sch. Dist, 393 U.S. 503, 21 L.Ed.2d 731, 89 S. Ct. 733). Clearly, then, school officials are paid employees of the state and must comply with all provisions of the United States Constitution. The U.S. Supreme Court has further said that "it is indisputable" that the Fourth Amendment protects the rights of students against encroachment by public school officials (New Jersey v. TLO, 469 US 325, 83 L.Ed.2d 720, 105 S. Ct. 733). The reason for this dramatic change in the law is that courts have recognized that parents do not voluntarily yield their parental authority over to the schools because education is compulsory and parents have no choice in the matter (Ingraham v. Wright, 430 US 651, 97 S.CT. 1401, 51 L.Ed.2d 711). Furthermore, the US Supreme Court has gone so far as to state "that the schools are educating the young for citizenship is reason for scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes" (West Virginia State Board of Education v. Barnette, 319 US 624, 87 L. Ed. 1628, 63 S. Ct. 1178).

The Fourth Amendment provides protection to the owner of any container that conceals the contents from plain view (US v. Ross, 456 US 798, 72 L.Ed.2d 572, 102 S. Ct. 2157). In one ruling, the courts stated that "a search of a child's person or of a closed purse or other bag carried on her person, no less than a similar search carried out on

an adult, is undoubtedly a severe violation of subjective expectations of privacy (T.L.O. *supra*). In another case, the courts found that "students often carry items of a personal or private nature in their pockets and bags, and many students (whether or not they are carrying contraband) must surely feel uncomfortable or embarrassed when officials decide to rifle through their personal belongings" (Doe v. Little Rock School District, 380 F.3d 349, 8th Cir 2004).

REASONABLENESS OF THE SEARCH

The Fourth Amendment does not prohibit all searches, but rather proscribes unreasonable searches. (Footnote: The Fourth Amendment goes on further to specify requirements for search warrants, etc., but this study addresses only the validity of searches conducted without a court-issued search warrant.) "The legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search" (T.L.O., *supra*. at p. 341). As an additional reference, see Terry v. Ohio, 392 US 1, 20 L.Ed.2d 889, 88 S.CT. 1868, and also see Wood v. Strickland, 420 US at 326.

"A search of a student by a teacher or other school official will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction" (T.L.O., *supra* at p. 342). The reasonableness of the search of the student by school officials, however, involves a two part inquiry: (1) whether the search was justified in its inception; and (2) whether the search was reasonable in scope in light of the age and sex of the student and the intrusiveness of the search.

Part One: Justified in its Inception

The term "justified in its inception" has been interpreted to mean that "a search is warranted only if the student's conduct creates a reasonable suspicion that a particular regulation or law has been violated with the search serving to produce evidence of that violation" (Bridgman v. New Trier High School 128 F.3d 1146). Furthermore, what is reasonable suspicion has become the subject of numerous court opinions. It is well settled that "reasonable suspicion" requires more than a good faith effort or minimal restraint on the part of the school official. Simply stated, the Constitution does not permit good intentions to justify objectively improper intrusions on student privacy (Bellnier v. Lund, *supra*).

When a question as to reasonableness comes before the courts, it is the school administrator that has the burden to establish the student's conduct was such that it created a reasonable suspicion that a specific rule or law had been violated and that a search could reasonably be expected to produce evidence of that violation (Cales v. Howell Public Schools, 635 F.Supp 454). While the evidence required to support a search of students might be somewhat less than that probable cause required for a police officer to obtain a search warrant in a non-educational setting, there must still be some credible evidence to authorize a reasonable search.

The circumstances justifying a search must be recent in time to the search and of such a nature as to indicate a more or less "guilty conscience" on the part of the suspected student. "This aspect of the case evokes some concern because school teachers and administrators can marshal negative incidents and perceptions while discounting any contrary evidence that may accumulate over the course of a number of months or longer" (Cornfield v. Consolidated High School Dist 230, 991 F.2d 1316).

Examples of unconstitutional searches, where the courts struck down a search by school officials, include a situation where a teacher and police officer were investigating the theft of money. Although they had no reason to know which of some 30 students might have taken the money, all thirty students were searched. Ultimately, the money was not found (Bell v. Marseilles Elementary School Dist. 2001, U.S. Dist LEIS 2367, Illinois 2001). In another example, a student was seen in the school parking lot attempting to avoid detection by ducking behind a parked car when she was supposed to be in class. The school security guard confronted her and she gave a false name. At the school office, she was made to empty her pockets where "re-admittance slips" were improperly found in

her possession. Then she was taken to a bathroom where she had to remove her jeans and bend over so a teacher could visually inspect the contents of her brassiere (Cales v. Howell Public Schools, 635 F.Supp 454).

Examples of constitutional searches, where the courts upheld the search by school officials, include a situation where a student identified another student to a teacher as someone he had just seen possess cigarettes in violation of school rules (Rudolph v. Bd of Education, 242 F. Supp 2d 1107, Alabama 2003). As an additional reference, see Thomas v. Clayton, 94 F Supp 2d 1290.

Part Two: Reasonable in Scope in Light of the Student and Intrusiveness

A teacher had reason to believe someone in her classroom had stolen money ($3.00) from another student, but she had no evidence as to which student might have done it. This teacher caused all students to empty their purses and pockets and remove their shoes. When this failed to produce the stolen money, the teacher took each student into the restroom where the students were made to strip to their underclothes. The search was found to be unconstitutional (Bellnier, supra).

The Court of Appeals for the Seventh Circuit has stated that "as the intrusiveness of the search of a student intensifies, so too does the standard of Fourth Amendment reasonableness" (Cornfield v. Consolidated High School District No. 230, 991 F.2d 1316). Furthermore, any evidence that does justify the search of purses, pockets and lockers, will likely fall far short of justifying a "strip search."

REASONABLE CAUSE

Courts take the position that "we balance the Fourth Amendment rights of individual students with the interest of the state and the school officials in the maintenance of a proper educational environment to educate today's youth. A school official or teacher's reasonable search of student's person does not violate the student's Fourth Amendment rights, if the school official has reasonable cause to believe the search is necessary in the furtherance of maintaining school discipline and order, or his duty to maintain a safe environment conducive to education" (Tarter v. Raybuck 742 F.2d 977). In addition, it might be added that is "if" certain major precautions are taken.

In addition**,** the Supreme Court has gone farther when it said "that the schools are educating the young for citizenship is reason for scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes" (West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed 1637). The standards the Supreme Court applies to school searches are essentially the same as in criminal cases away from the school campus. Specifically, the standards are: (1) the nature of the privacy interest upon which the search intrudes; (2) the character of the intrusion; (3) the nature and immediacy of the governmental concern at issue; and (4) the efficacy of the means employed in meeting that concern (Terry v. Ohio, 392 U.S. 1, 20 L.Ed.2d 889, 88 S. Ct., 1868).

STRIP SEARCHES

Strip searches present serious problems for the courts. In Doe v. Renfrow, 631 F.2d 91, the court held "it does not require a constitutional scholar to conclude that a nude search…is an invasion of constitutional rights of some magnitude. It is a violation of any known principal of human decency." The court went on to call a strip search "outrageous under 'settled indisputable principles of law.'"

For the most part, courts have consistently required the following three rules in strip searches of all students. First, strip searches are not justified without individualized suspicion unless there is a legitimate safety concern (such as weapons). Secondly, school officials must be investigating allegations of violation of the law (or school rules) and only individual accusations justify a strip search. Finally, strip searches must be designed to be minimally intrusive, taking into account the item for which the search is conducted.

CIVIL RIGHTS ACT

The Civil Rights Act, as amended, provides that individuals acting under "color" of state law can be personally liable when their actions violate the civil rights of individuals. In this sense, "color" means that the individual was acting in some official governmental capacity in an area where he or she had legal right to act (42 U.S.C. Section 1983). If the student sues the school district and the individual teacher(s) or administrator(s) personally at the same time, the trend is to dismiss the lawsuit against the individuals as being redundant to the main suit against the school (Jungels v. Pierce, 825 F.2d 1127).

At the same time, if the individuals acted unlawfully, the governmental entity will not be held liable, unless the individuals were executing a governmental policy or custom when the wrong act was done (Monel v. Dept of Social Services, 436 U.S. 658, 98 S. Ct. 2018, 128 L.Ed.2d 470). Even then, the policy or custom being carried out must be shown to be the proximate cause of the supposed constitutional deprivation. Additionally, the U.S. Supreme Court has said that the single isolated incident of wrongdoing by a non-policymaker is generally insufficient to establish municipal acquiescence in unconstitutional conduct (Tuttle 471 U.S. 823, 105 S. Ct 2436). Courts generally look for a series or pattern of unconstitutional conduct in order to hold the governmental entity liable.

It is not necessary for a student to wait until an unconstitutional policy of a school district is wrongfully applied to a specific situation, as there can be standing to challenge a policy that is currently in effect and capable of being applied even though it has never been applied in the past (Babbitt v. United Farm Workers Nat. Union, 442 U.S. 289, 60 L.Ed.2d 895, 99 S. Ct. 2301). Furthermore, the fact that a teacher violated a constitutionally protected right of a student does not of itself automatically make the school board or even the school district liable for the teacher's misconduct. The legal doctrine of "respondeat superior" does not apply here. The liability of the school board (or the school district or municipality, or any other governmental agency for that matter) must rest entirely on the unlawful conduct of the governmental agency itself, not simply on the illegal conduct of one of its employees, such as the teacher (Pembaur v. Cincinnati, 475 U.S. 469, 89 L.Ed.2d 452, 106 S. Ct. 1292).

PERSONAL LIABILITY

Whether a strip search is involved or not, if a school official's conduct violated any known constitutional protection of the student, that official can be held personally liable for the breach of that particular constitutional protection. To win damages from a school official, the student must show that the official was personally responsible the deprivation of the constitutional right. Also, the student must show that the law was sufficiently clear that a reasonable official in his position would have known that what he was doing violated that constitutionally protected right (Anderson v. Creighton, 483 U.S. 635, 107 S. Ct 3034, 97 L.Ed.2d 523).

However, the student needs to show several things: (1) that the law was settled enough that the school official should have known that his conduct would violate the Constitution, and (2) that the official knew about, approved, condoned or turned a "blind eye" to the unconstitutional conduct (Gentry v. Duckworth, 65 F3d 1422).

SEARCHES CONDUCTED BY SCHOOL ADMINISTRATORS

A school administrator has management and monetary interest in what his/her employees are doing while on the job or on the school premises. Under general employment law, employees owe a duty of loyalty to the employer, as does the employer to the employee (Food Lion, Inc. v. Capital Cities/ABC, Inc., 194 F.3d 505, 515, 1999). This duty gives the employer a vital, as well as legal, interest in what is going on in and about his/her premises (Lochenmyer v. Didrickson, 636 N.E.2d 93, 98, Ill. App. Ct., 1994). Since the employer is not a criminal investigator, he/she is given wider latitude when it comes to conducting searches of his/her own business areas (Stoker v. State, 788 S.W.2d 1, 11, Tex. Crim. App., 1989). However, this right does not extend to searching an employee's home.

CONCLUSION

As was stated previously, professors, teachers and school administrators are increasingly faced with situations, such as drugs, weapons, robberies, and assaults, which were not common concerns in prior decades. However, being able to cope with such situations requires extreme care, and often knowledge of the law, as actions by school employees can often result in personal financial liability in the form of damage law suits by students against the school and its employees. This study examined some of the complexities involved and offered some possible alternatives in addressing those complexities.

SUPPLEMENTARY MATERIAL

For additional reading on this subject, please see the following cases: Anders v. Ft. Wayne Community Schools, 124 F.Supp 2d 618 (Indiana 2000); Bell v. Marseilles Elementary School Dist, 2001 U.S. Dist LEIS 2367 (Illinois 2001); Bundick v. Bay City School Dist,140 F.Supp 2d 735 (Texas 2001); Brousseau v. Town of Westerly, 11 F.Supp 2d 177 (Rhode Island 1998); Cornfield v. Consolidated High School Dist 230, 991 F.2d 1316 (7th Cir 1993); Doe v. Little Rock School District, 380 F.3d 349 (8th Cir 2004); Doe v. Renfrow, 631 F.2d 91 (7th Cir 1980); Earls v. Bd. of Education, 242 F.3d 1264, (10th Cir 2001); Horton v. Good Creek Independent School Dist, 677 F.2d 471 (5th Cir 1982); Levett v. Bd of Education, 2000 U.S. Dist LEXIS 9650 (Illinois 2000); O'Meara v. City of Chicago, 1999 U.S. Dist LEXIS 18063 (Illinois 1999); Phaneup v. Cipriano, 330 F.Supp 2d 74 (Connecticut 2004); Rudolph v. Bd of Education, 242 F. Supp 2d 1107 (Alabama 2003); Shade v. City of Farmington, 309 F.3d 1054 (8th 2002). Tarter v. Raybuck, 742 F.2d 977 (6th Cir 1984); Thomas v. Clayton, 94 F Supp 2d 1290 (Georgia 1999); Thomas v. Roberts, 323 F.3d 950 (11th 2003); and Reynolds v. City of Anchorage, 379 F.3d 358 (6th Cir 2004).

NOTES