

## DO STUDENTS LEAVE PRIVACY RIGHTS AT THE SCHOOLHOUSE DOOR?

You receive a call at your office from the parent of a student at a local school district. The call involves the search of the student's locker. The student is a bright kid. Actually, he's a very bright kid, especially when it comes to computers. He carries a laptop to school everyday, which he keeps zipped in his backpack and locked in his locker during class.

One day the high school where this student attends suffers a security breach of its computer server. The principal knows that the student is bright and a "computer junkie." Assuming that this student must be the culprit, the principal proceeds directly to the student's locker, opens it, opens his backpack, removes his computer and has it sent to an off-site facility. At the off-site facility, the student's computer is accessed and all files are reviewed. Nothing is found on the laptop, which is eventually returned to the student. The student and his parents are livid. They want to know from you if the search is lawful?

In a time when the National Security Agency listens in on phone calls of American citizens without warrants and the Patriot Act has just been renewed with limited civil liberties protections, do students have any legitimate expectation of privacy at school? Although many school administrators may feel differently, the short answer is yes. It is well settled that children do not "shed their constitutional rights...at the schoolhouse gate." *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969). In regard to the legality of school searches, the Supreme Court set out the applicable standard in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). Although *TLO* is now twenty years old, there has been relatively little litigation at the Circuit Court level regarding school searches and little to no litigation regarding computer searches.

In *TLO*, the Supreme Court held that the Fourth Amendment's prohibition against unreasonable searches and seizures applies to school officials and is not limited to searches carried out by law enforcement officers. School officials act as representatives of the State when they carry out their duties under New York State statutes, and not merely as surrogates for the parents of students. Accordingly, school officials are not immune from Fourth Amendment requirements.

The Court specifically held that students do have a legitimate expectation of privacy at school, however, that expectation of privacy must be balanced against the school's equally legitimate need to maintain an environment in which learning can take place. Thus, the Fourth Amendment's protections against unreasonable search and seizure must be eased somewhat in a school setting.

The Court then set out the standard for searches in a school setting. A school official does not need *probable cause* to believe that the student subject to a search has violated or is violating the law. Instead, the legality of a school search is simply based on reasonableness, under all the circumstances, of the search.

To determine whether a search is reasonable, one must determine whether 1) the search was justified as its inception, and 2) whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. A search is justified at its inception if there are reasonable grounds for suspecting that the search will produce evidence that the student has violated or is violating the law or school rules. If the measures adopted for the search are reasonably related to the objectives of the search and not excessively intrusive given the age and sex of the student and the nature of the infraction, then the search will be found to be reasonable.

Above is the legal context in which the search of the high school student must be analyzed. First, we must determine whether the search of the student was “justified at its inception.” School officials had no reasonable grounds to suspect that the search of this student would produce evidence that the school rules or the law had been violated. The district’s only basis for the search was that the student was perceived to be a computer geek. The district had no informant or any information linking the student to the server breach. A “hunch” without any corroborating information would not constitute reasonable grounds to justify such an invasive search.

Even if the search was justified at inception, it does not seem reasonable that a security breach of a computer server would justify searching a closed backpack, locked in a school locker. Furthermore, removing the computer to an off-site facility where the entire computer was analyzed is excessive. The violation that necessitated the search was a breach of the school computer server. There was no risk of harm to students, emergency circumstances or potential loss of order or control that would necessitate such an intrusive search. Although the server breach would necessitate an investigation, it would not necessitate an intrusion into a student’s personal belongings. In this scenario, the balancing test set out by the Supreme Court in *TLO* tips heavily in favor of the student’s privacy interest in his personal belongings.