



***To Search or Not Search – That is the Question!***  
**Student and Personnel Issues: Fourth Amendment**  
**Update**

Erica Graham  
Ashley Yi\*\*

Contact Information:

**ERICA M. GRAHAM**  
DEPUTY GENERAL COUNSEL  
HOUSTON ISD LEGAL SERVICES  
MAIN: (713) 556-7245  
DIRECT: (713) 556-7251  
FAX: (713) 556-7269  
[EGRAHAM1@HOUSTONISD.ORG](mailto:EGRAHAM1@HOUSTONISD.ORG) (EMAIL)

\*\* Erica Graham is grateful for the assistance of HISD Assistant General Counsel Ashley Yi on this paper as well as the slide presentation

## **Student Searches**

The authority of school administrators to search a student's person or property is a necessary part of facilitating a safe learning environment and maintaining school discipline. Student search and seizures involve constitutional issues that are governed largely by case law, rather than by statute, because of the highly fact-dependent nature of cases.<sup>1</sup> Thus, the ultimate issue in school searches involve the balancing of students' personal rights against the public interest in safe and effective schools.<sup>2</sup>

## **Constitutional Protections**

Students have a right to be free from unreasonable searches while on the school premises or attending school activities under the United States and Texas Constitution.<sup>3</sup> However, the Supreme Court has expressed that although students possess this constitutional right, they are limited.

### ***United States Constitution***

The Fourth Amendment to the U.S. Constitution states that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized."<sup>4</sup> The United States Supreme Court has held that "[a]lthough the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context in which the search takes place."<sup>5</sup>

### ***Texas Constitution***

The Texas Constitution guarantees rights independently of the protections to individuals afforded by the Federal Constitution. The Texas Constitution has a provision parallel to the Fourth Amendment. In Article I, Section IX of the Texas Constitution, it states "the people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and

---

<sup>1</sup> Benjamin Scungio and Stephanie Cote, *Four on Fourth: Four Case That Impact the Fourth Amendment (Search & Seizure) in Schools*, BRCSM (July 11, 2018), <https://www.brcsm.com/four-fourth-four-cases-impact-fourth-amendment-search-seizure-schools/> (last visited Nov. 11, 2023).

<sup>2</sup> See generally Alexander Black, Annotation, *Search conducted by school official or teacher as violation of Fourth Amendment or equivalent state constitutional provision*, 31 A.L.R. 5th 229 (1995).

<sup>3</sup> U.S. CONST. amend. IV; TEX. CONST. art. I, § 9.

<sup>4</sup> U.S. Const. amend. IV.

<sup>5</sup> *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985).

no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.”<sup>6</sup>

While the U.S. Supreme Court acknowledges that students have certain privacy interests in the school environment, it also recognizes the “substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds.”<sup>7</sup> Thus, the Court indicated this “require[s] some easing of the restrictions to which searches by public authorities are ordinarily subject.”<sup>8</sup> Therefore, the Fourth Amendment requires only that searches and seizures by school officials be reasonable.<sup>9</sup>

### **Standard for School Searches: Reasonable Suspicion**

In the landmark case of *New Jersey v. T.L.O.*, the U.S. Supreme Court addressed the application of the Fourth Amendment to school searches. The Court established that the legality of searches conducted by school employees is based upon a lower standard of reasonableness.<sup>10</sup> The Court indicated that determining reasonableness of any search involved a twofold inquiry: (1) whether the action was justified at its inception and (2) whether the search conducted was reasonably related in scope to circumstances which justified interference in the first place.<sup>11</sup> Thus, the Court held that school officials are not required to obtain a search warrant before conducting a search of a student, nor are they required to base the search on probable cause that a violation of the law or school rule has occurred.<sup>12</sup> Additionally, the Court provided no further guidance for lower courts or schools to define valid searches in other circumstances.

#### **New Jersey v. T.L.O., 469 U.S. 325 (1985).**

A teacher observed T.L.O. and her companion smoking cigarettes in a school restroom, in violation of the school’s no-smoking rule. T.L.O. was taken to the principal’s office where the assistant principal proceeded to search T.L.O.’s purse after she denied smoking. Upon the initial search, cigarettes and rolling papers were found. Because the administrator knew that rolling papers are linked to the use of marijuana, the purse was searched further; Marijuana, a pipe, plastic bags, and a list of student names were found.

The U.S. Supreme Court applied the twofold reasonableness test and upheld both the initial and subsequent searches of T.L.O.’s purse. First, the Court concluded that the search was justified at its inception based on the initial report from the teacher that T.L.O. had been smoking in violation of school rules.<sup>13</sup> This in turn, constituted reasonable suspicion that cigarettes were in T.L.O.’s

---

<sup>6</sup> TEX. CONST. art. I, §9.

<sup>7</sup> *T.L.O.*, 469 U.S. at 339.

<sup>8</sup> *Id.* at 340.

<sup>9</sup> *Id.* at 343.

<sup>10</sup> *Id.* at 341-42.

<sup>11</sup> *Id.* at 341-43.

<sup>12</sup> *Id.* at 341.

<sup>13</sup> *Id.* at 347.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: To Search or Not to Search, that is the question! Student and Personnel Issues: Fourth Amendment Update

First appeared as part of the conference materials for the  
39<sup>th</sup> Annual School Law Conference session

"To Search or Not to Search, that is the question! Student and Personnel Issues: Fourth Amendment Update"