

Students, Parents, Schools & the Constitution

The title is set against a dark green background. Below the title, there are several horizontal bars: a thick green bar, followed by a thin white bar, and then a series of thin, overlapping green and white bars that create a layered, modern look.

Introduction

- This presentation will explore the history of how the Courts have interpreted the Fourth Amendment rights of students in schools.
- This presentation will explain to school personnel how the interpretation of the Constitution affects students in the day to day school environment.
- It will also briefly discuss the rights of parents and teachers.

Key Constitutional Amendments

- First Amendment
- Fourth Amendment
- Fourteenth Amendment

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DUE PROCESS

Fourteenth Amendment – Rights of Citizenship

- No state shall...deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Goss v. Lopez (1975)

The US Supreme Court case held that a public school must conduct a hearing before subjecting a student to suspension. Also, a suspension without a hearing violates the Due Process Clause of the Fourteenth Amendment of the US Constitution. Except in an emergency a student may not be suspended until that student has been...

- Advised of the allegations against him
- Questioned about it
- Given an opportunity to give an explanation

Tenn. Code Ann. §49-6-3401(c)(1)



Students & the Fourth Amendment

Fourth Amendment

U. S. Constitution

“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 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Article I, Section 7

Tennessee Constitution

That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are **dangerous to liberty** and ought not be granted.

New Jersey v. T.L.O. 1985

Standard for School Searches

- School children do have expectations of privacy protected by 4th Amendment
- School officials not exempt because they are surrogates for parents
- Search must be reasonable under all circumstances
 - ✓ Justified at its inception
 - ✓ Reasonable in scope

School Security Act

TCA 49-6-4201 et seq.

- Requires individualized suspicion
- Search of lockers, containers, packages, vehicles
- Search of persons
- Use of metal detectors
- Use of dogs

Vehicle Searches

TCA 49-6-4204(d)

“Vehicles parked on school property by students or visitors are subject to search for drugs, drug paraphernalia, or dangerous weapons.”

Weapons TCA 39-17-1309 – Weapons Defined

It is an offense for any person to possess or carry, whether openly or concealed, with the intent to go armed, any...

- Firearm,
- Explosive,
- Explosive weapon,
- Bowie knife,
- Hawk bill knife,
- Ice pick,
- Dagger,
- Slingshot,
- Leaded cane,
- Switchblade knife,
- Blackjack,
- Knuckles or
- any other weapon of like kind...

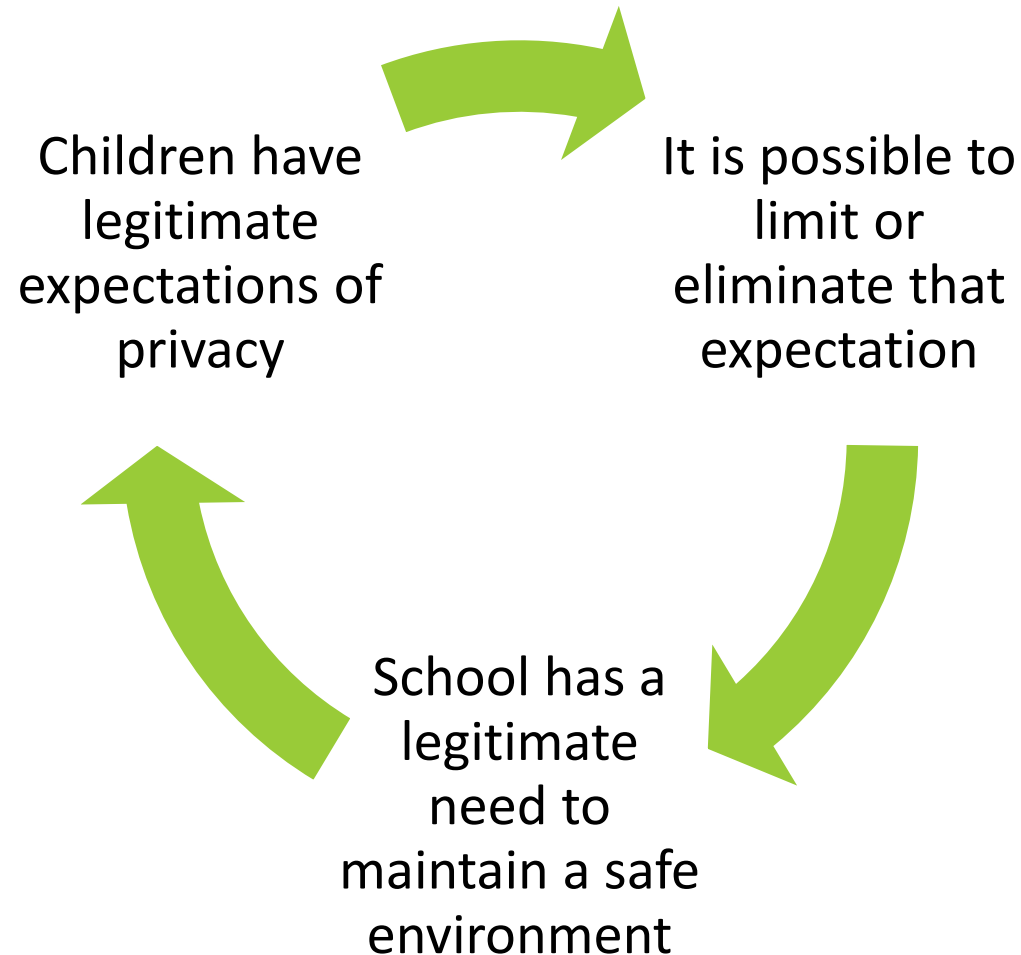
Reasonableness

- Justified at its inception
 - grounds for suspecting search will produce evidence
- permissible in scope
 - measures reasonably related to objectives of the search and not excessively intrusive in light of age and sex of the child and infraction.

Reasonableness Factors

- ✓ Child's age, history or record
- ✓ Prevalence and seriousness of the problem in school
- ✓ Exigency
- ✓ Reliability of the information
- ✓ Experience with the child
- ✓ Individualized suspicion

Reasonableness Balancing Test





Strip Searches



- Rarely found reasonable in the Courts
- Should never be done for money or valuables
- Should only be considered in extreme circumstances when there is an immediate threat to health & safety

Student Drug Testing

TCA 49-6-4218 permits student drug testing:

- If there is reasonable suspicion that a student may have used or is under the influence of drugs; or
- If the student is participating in voluntary extracurricular activities the student may be subject to random drug testing

Suspicion Based Drug Testing

- There must be a board policy
- Notice must be given at enrollment
- Board bears the cost
- School personnel must be given training on recognizing the signs of drug use

Random Drug Testing

- Only applies to students in voluntary extra-curricular programs
- Board must adopt a policy
- Students must be advised in writing at enrollment
- Parents must be notified prior to testing
- Board pays the cost of the testing
- Student may NOT be suspended based on the results of the test

PARENTAL RIGHTS

In loco parentis

- Common law recognized school officials as acting “in the place of parents”
- Early school law cases recognize this in matters of student discipline and control
- CAUTION: this is about the relationship between parents and school NOT between parents and student

How Far Do Parent Rights Go?

- To test this out...try the following:
 - Set up a student assembly to address safe sex and AIDS awareness
 - Make it mandatory and don't tell the parents
 - Hire a company to do the presentation called: "Hot, Sexy and Safer Productions, Inc."
 - Buy some popcorn and sit back and watch what happens

What Happened?

- A 90-minute , very lively and entertaining presentation
- Sexually explicit speech and simulations
- Endorsement of oral sex, masturbation, homosexuality, and premarital sex
- 18 references to orgasm, 6 to male genitalia, 8 to female
- Someone was definitely counting

What Did the Court Say?

- Finding for the school district the Court stated: “If all parents had a fundamental constitutional right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school's choice of subject matter. We cannot see that the Constitution imposes such a burden on state educational systems.”
- The constitution does not give parents the right to direct the curriculum but some states have “opt out” provisions under certain circumstances

STUDENT RIGHTS

Key Decisions on Student Constitutional Rights

STUDENT PRIVACY

Supreme Court Cases – Student Privacy

- *New Jersey v. T.L.O.* (1985) established that the Fourth Amendment applies to searches of students and student property
- *Vernonia v. Action* (1995) goes into greater detail. While there is a right to privacy, it is diminished in the school setting...particularly athletics
- Tenn. Code Ann. § 49-6-4213 permits both suspicion based drug testing and random drug testing in Tennessee Schools under certain circumstances.

Sensitive Issues: Pregnancy

- *Arnold v. Board of Education of Escambia County* (11th Circuit, 1989) it is possible for actions of school officials to improperly violate the privacy of the familial relationship between parents and their children.
- The allegations, if true, would be such a violation. What was alleged?
- SEE NEXT SLIDE!

The Allegations in *Arnold*

- That the vice principal and school counselor procured a pregnancy test for the girl;
- That they gave her and the boy tasks to do to raise money for an abortion;
- That they paid a driver to transport them to an abortion facility; and
- That they required the students NOT to inform their parents.

The Case of the Curious Swim Coach

- Swim coach pressured a girl to take a pregnancy test...mother sued.
- Court found that the coach was NOT entitled to qualified immunity for invasion of the student's privacy.
- Coach also violated substantive due process right to familial privacy...but since this was not "clearly established" the coach was immune.
- Court noted that the coach had no need to know. *Gruenke v Seip*, (3rd Circuit. 1990)

Contrast: The School Nurse

- *Villanueva v. San Marcos CISD* (5th Circuit, 2007). The Court concluded that the pregnancy test was voluntary and thus not an invasion of parental rights.
- Note: the swim coach did not need to know if the girl was pregnant, and the court noted that he acted out of curiosity. The school nurse had reason to inquire into the girl's condition.

RELEVANT FEDERAL LAWS

Title IX

- Regarding pregnancy, remember that title IX prohibits any pregnancy test as a condition for attendance or participation in any school activity.
- *QUESTION TO PONDER:* If school policy requires notice to the parents that a girl is pregnant, would Title IX require notice also to the parents of the boy?

Other Federal Laws

- FERPA guarantees parents or adult students the right of access to records held by the school.
- PPRA (Protection of Pupil Rights Act, aka Hatch Amendment) requires instructional materials used in federally funded surveys be made available to parents; also that parental consent be obtained before a federally funded survey that would reveal sensitive information.

Quote from *Tinker v. Des Moines* (1969)

Justice Abe Fortas, (a Tennessean), writing for the majority stated...

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.



Questions...
Comments...
Horror Stories!

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