

NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

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NEW HAMPSHIRE SUPREME COURT RULING: New Hampshire Supreme Court Reaffirms “Reasonable Suspicion” Standard for Student Searches – Administrator’s Search Deemed Legal

The New Hampshire Supreme Court recently issued a decision clarifying the rights and responsibilities regarding school officials conducting student searches. In Re Juvenile 2006-406, the Supreme Court held that a school administrator acted reasonably, and therefore legally, when he unilaterally searched a student’s locker after receiving information that the student had drug paraphernalia in the locker. The Court’s opinion was issued September 25, 2007.

The facts of the case involved a high school teacher who had heard two days in succession that a student had in his possession “a large pot pipe.” No immediate action was taken on the first day because the juvenile had already left school by the time the assistant principal had been informed of the situation. The teacher did not divulge the names of the students from whom he heard about the pipe. Based upon both reports, on two successive days the assistant principal searched the juvenile’s locker and found a backpack containing a pot pipe which smelled of burnt marijuana, vegetative matter that he believed to be marijuana, a lighter and thirty-two dollars in cash.

The juvenile argued that there were no reasonable grounds for the search because: (1) the assistant principal did not know the identities of the students who had made the reports to the teacher himself and thus the information upon which the search was based could not be relied upon; (2) possession of a pot pipe is not unlawful; and (3) the assistant principal was given no specific information identifying the student’s locker as a place where the pot pipe might be found. The Court disagreed with each of these arguments.

The Court reasoned that while public school officials are not exempt from the constitutional prohibitions against unreasonable searches and seizures they are, however, afforded greater flexibility than are law enforcement officials when searching for contraband.

The Court reiterated the belief stated in State v. Drake, 139 N.H. 662 (1995) that school officials have obligation to maintain a safe and healthy school environment and to protect students from dangers arising from anti-social behavior, weapons, drugs and other prohibited articles and contraband. In order to be effective, the remedy to any violations of school rules had to be swift and informal.

The Court also reiterated the legal test set forth by the United States Supreme Court in New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733, (1985) that “determining the reasonableness of any search involves a twofold inquiry: first, one must consider whether the action was justified at its inception; second, one must determine whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place.”

Based upon the similarities between the facts of T.L.O. and the facts of this case, the Court had little difficulty concluding that the search of the student’s locker did not violate any of his constitutional rights and dismissed all three of the student’s arguments.

First, the fact that the assistant principal did not know the identity of the student informants was irrelevant and did not invalidate the search. The teacher had vouched for the reliability of the information by his silence on the matter. If he had any concerns over the validity of the information, it was reasonable to assume that he would have expressed them. This point is similar to Drake where the information about a student’s wrongdoing was based partly upon an anonymous tip.

Second, even though the possession of a pot pipe is not unlawful, the purpose of a pot pipe is to facilitate the use of marijuana. Therefore it was reasonable for the assistant principal to believe that a search for the pipe would also turn up marijuana. In T.L.O., the Supreme Court held that the student’s possession of cigarettes was not illegal but was evidence to a School Principal that the student may have been smoking in the lavatory in violation of school rules.

Third, the constitutionality of the search was not compromised by the fact that the assistant principal searched the juvenile’s locker without information specifically identifying the locker as a place where the pot pipe might be found. The school official had relied upon the initial report that referred to the student’s possession of “a large pot pipe.” It was reasonable for him to begin his search by examining the juvenile’s locker, which was a plausible location for storing “a large pot pipe.”

The Court ruled against the student stating that the possible unlawful possession of any controlled drug in any school was a serious problem and one that needed to be identified and addressed expeditiously. Accordingly the Court held that the search was justified at its inception and reasonable under all the circumstances.

This case is uniquely beneficial for school boards and school administrators, as the Court included helpful guidance as to what they considered to be reasonable in school searches. The important factors for school officials to consider prior to instigating a search are:

- The child’s age, history and record in school;
- The prevalence and seriousness of the problem in the school to which the search was directed;
- The exigencies in making a search without delay and further investigation;
- The probative value and reliability of the information used as a justification for the search;
- The particular teacher or school official’s experience with the student.

The Court recognized these factors simply as “a starting point and not a complete and exhaustive list of all possible considerations.”

The NHSBA recommends that school officials proceed with caution and act reasonably under the law prior to instigating a search on school grounds and premises. NHSBA Sample Policies JIH, JIH-R (Appendix) and JIHB are pertinent to school searches and are to be used for guidance purposes only, should school boards wish to adopt policies on this subject. When doing so, school boards should attempt to incorporate the word “reasonable” and the terms or phrases “reasonable suspicion” and “reasonable grounds exist to suspect” within their own policies. Using these words, terms and phrases will ensure that your school policy will mirror the legal terms and phrases used by the Courts in adjudicating upon whether a search is legal or illegal and will assist in reducing the likelihood of costly and time-consuming lawsuits.

The material presented in this document is intended as reference material only and is not intended as specific legal advice. You should consult your own attorney regarding specific situations and for answer to specific legal questions.

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