



Legal Issues in Student Searches

Published online in [TASB School Law eSource](#)

School officials' authority to search a student's person or belongings is a necessary part of maintaining school discipline and a safe learning environment. Nonetheless, student searches lead to some of the most persistent questions in school law. The following questions and answers offer a guide to some of the most common legal issues related to searching students.

What is a *search*?

This may seem like a common sense question, but the legal definition of a search does not always apply to situations that might be called a search in everyday language. In order for an inspection of someone's person or property to qualify as a *search*, the person must have a reasonable expectation of privacy in the area or item being inspected.¹ Without the key element of privacy, it's not a search. A person's expectation of privacy can be limited by appropriate notice. For example, district policies and handbooks typically notify students that they do not have an expectation of privacy when using district-owned property such as desks, lockers, or even district-issued technology. (See TASB Policies FNF and CQ.) Therefore, these items may often be inspected with little or no impact on a student's Fourth Amendment rights.

In contrast, a student has a reasonable expectation of privacy in his or her own person as well as in the student's clothing, purse, backpack, vehicle, and cell phone. When a student has a reasonable expectation of privacy, school officials may only carry out a search in compliance with the law.

What are the legal requirements for a search?

Under both the United States and Texas Constitutions, students have a right to be free from *unreasonable* searches while on school premises or attending school activities.² A search must be reasonable, which means the search is justified at its inception (i.e., at the beginning of the search) and the scope of the search is reasonably related to the circumstances that justified the search in the first place.

¹ See *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (finding "[s]choolchildren have legitimate expectations of privacy").

² U.S. Const. amend. IV; Tex. Const. art. I, § 9; *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

What is reasonable?

The answer depends on *who* carries out the search and the *type of search*.

Typically, criminal searches conducted by law enforcement officials must be based on *probable cause* that a violation of law has occurred. However, the U.S. Supreme Court established in *New Jersey v. T.L.O.* that the legality of searches conducted by school employees is based upon a lower standard—whether the search is *reasonable* under the circumstances.³

The meaning of *reasonable* also depends on the type of search.

Searches of a student’s person or belongings: A search of a student’s person or belongings by a school official must be reasonable, but no warrant is required. The official must have more than a hunch. The official must have reasonable suspicion to believe that an individual student has committed, or is committing, an act that is subject to discipline. Under ordinary circumstances, a search of a student by a teacher or other school official will be justified at the inception when there are grounds to suspect the search will uncover evidence that the student violated or is violating the law or a school rule.⁴ Consent can justify a search, when freely and voluntarily offered. Coercion, either express or implied, may overturn a student’s apparent consent.⁵

Of course, reasonable suspicion is only the first prong of the reasonableness test; the search must also be appropriate in its scope. In general, a search of a student will be permissible in scope when the action that is taken is 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.⁶ Sometimes, finding one piece of evidence during a search can provide justification to expand the scope of a search in progress. For example, a court found that a female administrator’s reaching into a male sixth grade student’s front and back skinny jean pockets was a reasonable search for other weapons after she found knuckles in the pocket of the student’s hoodie.⁷

Surprise discoveries: If a search was reasonable, because it was justified at its inception and limited in scope, the results of the search may be used as evidence of a student’s wrongdoing, even if the contraband or other evidence discovered during the search was not the item the school official was looking for. For example, if an administrator searches a student’s possessions for drugs based on evidence that the student was “high” but finds an illegal weapon instead, the search is not rendered unlawful just because the results of the search were unexpected.⁸

³ *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995); *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

⁴ *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

⁵ *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *see also Jones v. Latexo Indep. Sch. Dist.*, 499 F. Supp. 223 (E.D. Tex. 1980) (mem.) (finding students were coerced into consenting to further searches after a drug dog alerted school officials to the presence of drugs).

⁶ *Porter v. Ascension Parish Sch. Bd.*, 393 F.3d 608 (5th Cir. 2004).

⁷ *Deyo ex rel. D.N. v. Tomball Indep. Sch. Dist.*, 144 F. Supp. 3d 905 (S.D. Tex. 2015) (mem.).

⁸ *In re S.M.C.*, 338 S.W.3d 161 (Tex. App.—El Paso 2011, no pet.).

Underwear searches: The practice of searching beneath a student’s clothing, or so-called “strip searches,” is not necessarily illegal; however, school officials should proceed with great caution. The U.S. Supreme Court has established that searching underneath a student’s clothing is impermissibly intrusive unless the official reasonably believes that the object of the search is dangerous or likely to be hidden in the student’s underwear.⁹ Due to the legal risks involved in searching a student’s underwear, and the likelihood of complaints, some districts choose to ban this type of search altogether. If a student is suspected of hiding a truly dangerous item, such as a weapon or drugs, in his or her underwear, school officials may elect to involve law enforcement in the search, as described below.

Cell phones and other devices: As with any search, a school official’s search of a student’s electronic device must follow the same legal principles of reasonableness in inception and in scope. However, determining the reasonableness of a cell phone search can be more difficult than a backpack search because the nature of the evidence is different. For example, a search of digital information may change rapidly from a surface-level inspection to a deeper inquiry into the content of a student’s private communications.¹⁰ Administrators should also be aware of unique privacy concerns related to digital information.

When a search involves a student’s smart phone, the student’s privacy interests may have greater constitutional protection. Because they are capable of holding so much information, the U.S. Supreme Court has described smart phones as holding “the privacies of life.”¹¹

To complicate things further, the Stored Wire and Electronic Communications and Transactional Records Access Act applies when school officials search a device capable of storing electronic communications.¹² Unless consent is obtained, the school official should only access information on a student’s device that (1) is not an electronic communication (e.g., a photograph taken with the cell phone camera) or (2) is an electronic communication but is stored on the device and not only in the cell phone service provider’s electronic storage (e.g., a message sent to the student which has been saved to the device).¹³ As a practical matter, data currently stored on the device can be isolated by placing the phone in airplane mode.

These legal principles are a good reason to proceed with caution, but school officials should not be afraid to search a student’s device when necessary to ensure school safety. Courts have recognized that school administrators may have a compelling interest in protecting student safety that can, under certain circumstances, override a particular student’s privacy interest. For example, in a case

⁹ *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364 (2009).

¹⁰ *See Mendoza ex rel. A.M. v. Klein Indep. Sch. Dist.*, Civil Action No. H-09-3895, 2011 WL 13254310 (S.D. Tex. Mar. 16, 2011) (finding administrator’s search into content of student’s email and text messages exceeded the justification of the search to determine whether the phone had been used during the school day in violation of district policy).

¹¹ *Riley v. California*, 134 S. Ct. 2473, 2495 (2014).

¹² 18 U.S.C. ch. 121.

¹³ *See Fraser v. Nationwide Mut. Ins. Co.*, 352 F.3d 107 (3d Cir. 2004) (defining “electronic storage” as “temporary, intermediate storage”).

from California, a student's cell phone was searched in connection with a firearm found in a trash can at school. Campus protocol required administrators to search a student's cell phone upon reasonable suspicion of a communication that could put students or staff at harm. Administrators searched the student's phone to find pictures of the firearm, which they downloaded and printed. The court rejected the argument that searching a student's smart phone requires a search warrant, reasoning that the U.S. Supreme Court based its holding in *Riley* on warrant requirements for law enforcement, whereas the Court in *T.L.O.* recognized an exception to the warrant and probable cause requirements in the special context of student discipline.¹⁴ Nonetheless, administrators should seek parental consent when feasible and be prepared to provide legal justification for the reasonableness of searching a student's smart phone.

When should we involve law enforcement in conducting a search?

If the alleged conduct at issue would constitute a crime and determining the facts necessarily involves a more in-depth search, the district may wish to involve local law enforcement. Generally, when law enforcement officials conduct a search, they are required to follow the higher standard of *probable cause*—law enforcement must have probable cause to believe that the subject of the search has violated or is violating a law. If a peace officer determines that probable cause exists, a search warrant must typically be obtained to search a student's person or belongings unless an exception applies, such as an immediate life-threatening situation.¹⁵

The U.S. Supreme Court has left open the issue of what standard should apply to a search in the school context involving a law enforcement official.¹⁶ Courts that have considered this question have found three categories of situations:

- When school officials initiate a search or where police involvement is minimal, courts have held that the reasonable suspicion test should be used.
- When school police or liaison officers act on their own authority, courts have held that the reasonable suspicion test should be used because the officers are acting as school officials.
- When outside police officers initiate a search or when school officials act at the direction of outside law enforcement agencies, the probable cause standard has been applied.¹⁷

¹⁴ *In re Rafael C.*, 245 Cal.App.4th (Mar. 25, 2016) pet. granted, 372 P.3d 903 (Cal. 2016); see also *Jackson v. McCurry*, 2019 WL 1122999 (11th Cir. Mar. 12, 2019) (finding "room for a reasonable school official to conclude that *Riley* has no application to school searches" in affirming qualified immunity for assistant principal who searched student's cell phone for evidence of bullying texts).

¹⁵ Tex. Code Crim. Proc. art. 18.02(a), .0215.

¹⁶ See *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (limiting the Court's opinion to the legality of searches conducted by public school officials).

¹⁷ *Russell v. State*, 74 S.W.3d 887 (Tex. App.—Waco 2002, pet. denied), citing *People v. Dilworth*, 169 Ill.2d 195 (Ill. 1996).

Generally, school districts have a practical choice about whether to involve law enforcement officials, either district or outside peace officers, in a student search. If a public school student is searched by a school administrator, the lower standard of reasonable suspicion will apply. Once law enforcement becomes involved, the legal standard may change dramatically, particularly if the officers initiate or control the search. Nonetheless, when behavior may be criminal and stakes are high, district officials may be wise to consult with law enforcement. When appropriate, involving law enforcement early on in an investigation can also help to preserve the chain of custody of evidence.

Is drug testing considered a search?

Testing for drugs or alcohol is considered a search under the Fourth Amendment, and therefore students have a right to be tested only in reasonable circumstances. The definition of a reasonable drug test depends on whether the district is requiring a specific student to be tested based on suspicion or whether the district is carrying out mandatory, suspicionless drug testing.

Drug testing based on individualized suspicion: If a district requires a specific student to undergo testing because of a belief that the student may be using drugs or alcohol, the legal analysis is similar to the other types of searches discussed above. That is, the district must have reasonable suspicion that the student used drugs or alcohol in violation of the law or a school rule, making the test reasonable in inception, and the test must also be reasonable in scope, i.e., reasonably related to the district's objectives and not excessively intrusive. A drug test is clearly intrusive because it reveals personal information, but a district can limit the intrusion by administering tests to students in private locations, testing only for the substance(s) the student is suspected of using, and limiting the disclosure of the testing results.¹⁸

Typically, if a student is suspected of using, possessing, or being under the influence of alcohol or illegal drugs, most districts will conduct a search of the student's person or belongings as a first step. This trend may have developed because it is administratively easier to search a student's personal belongings than to conduct chemical testing. Additionally, some districts or school officials may consider a drug test to be more invasive to a student's privacy rights.

Random drug testing: A different standard applies when a district adopts a policy requiring drug testing on a random or routine basis. In 1995, the U.S. Supreme Court approved a testing program aimed at student athletes, and school districts across the country began instituting similar programs. Later, the Court found programs for all extracurricular activity participants constitutional. Today, many Texas school districts have approved random drug testing programs.

Testing student athletes: In the 1995 case, *Vernonia School District 47J v. Acton*, the U.S. Supreme Court upheld an Oregon school district's random drug testing program for students involved in interscholastic athletics.¹⁹ In its analysis, the Court balanced three factors:

¹⁸ *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995).

¹⁹ *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995).

- the nature of the students' privacy interest;
- the character of the intrusion; and
- the nature and immediacy of the district's concerns and the efficacy of the policy in meeting those concerns.

The Court found that student athletes have a reduced expectation of privacy due to the usual activities of athletes, such as changing and showering in the locker room. In addition, athletes voluntarily subject themselves to other school regulations beyond what is required of most students.

The Court also focused on the reliability and safeguards built into the testing program. For example, all students wishing to play sports were required to sign a form consenting to the testing and obtain the written consent of their parents. If a sample tested positive, a confirmation test was administered. If a confirmation test was positive, the principal met with the student and parents and offered the student a choice between participating in an assistance program that included weekly urinalysis or being suspended from athletics.

Perhaps the most significant element in the case was that the Oregon school officials adopted the policy "in furtherance of the government's responsibilities, under a public school system, as guardian and tutor of children entrusted to its care."²⁰

Testing all extracurricular activity participants: In 2002, the U.S. Supreme Court upheld the constitutionality of an Oklahoma school district's policy requiring random drug testing of students participating in extracurricular activities in the case of *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*.²¹ The Court again focused on the specifics of the drug testing policy. Students were required to provide a urine sample in a closed bathroom stall while a faculty monitor waited outside the stall. Test results were kept confidential. In addition, test results were not turned over to law enforcement nor used to discipline students; the only consequence of a confirmed positive test was to limit the student's participation in extracurricular activities.

The Court concluded that students generally have a limited privacy interest in the public school environment because a public school serves as the students' guardian and tutor and is responsible for maintaining discipline, health, and safety. Furthermore, students in competitive nonathletic extracurricular activities voluntarily subjected themselves to many of the same intrusions on their privacy as student athletes do. Thus, the nonathletic students did not have a stronger expectation of privacy than student athletes.

²⁰ *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 665 (1995).

²¹ *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822 (2002).

The Court also found no significant invasion of the students' privacy under the policy. The Court concluded that the urine collection method in *Earls* was less intrusive than the one approved in *Vernonia*, that the test results were kept in separate, confidential files from the students' other educational records, and that the test results were not used for either criminal or negative academic purposes.

Balancing the testing procedures and privacy interests with the nature of the district's concerns, the Court reasoned that preventing drug use was a pressing concern in every school because of the nationwide epidemic of drug use. As a result, the Court stated that evidence of an identifiable drug problem would not be required prior to instituting any testing program, although it was present at the Oklahoma district.

The Court concluded that "testing students who participate in extracurricular activities is a reasonably effective means of addressing the School District's legitimate concerns in preventing, deterring, and detecting drug use."²²

Can we conduct random drug testing of students who do not participate in extracurricular activities?

There is some legal risk involved in adopting any random drug testing program outside of what the Court approved in *Vernonia* and *Earls*. The amount of risk involved depends on the circumstances.

Do not test all students: A school district may not adopt a policy requiring all students to submit to random drug testing. In 1999, Lockney ISD adopted a policy requiring all students in the sixth through twelfth grades to submit to random drug testing. The court examining the policy concluded that the district failed to prove a special need for suspicionless testing. The court found that a school's student body as a whole holds a higher expectation of privacy than that of student athletes. Additionally, the district had a reasonable suspicion drug testing program for years, under which no student was ever tested, and drug use had not increased prior to the adoption of the policy at issue. The district lacked a compelling interest in conducting the searches. Thus, the program was unreasonable and unconstitutional.²³

Testing student drivers may be permissible: Many school districts have adopted random student drug testing programs for students who participate in extracurricular activities *and* students who drive to school and park on school premises.

The Fifth Circuit Court of Appeals has issued no reported opinion in a case involving drug testing programs directed at student drivers and school driving privileges. However, courts in other jurisdictions have approved random drug testing of student drivers who park on school grounds. For example, the Seventh Circuit Court of Appeals approved two random drug testing programs

²² *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822, 837 (2002).

²³ *Tannahill ex rel. Tannahill v. Lockney Indep. Sch. Dist.*, 133 F. Supp. 2d 919 (N.D. Tex. 2001) (mem.).

that included students driving to and from school and students who parked on school property.²⁴ In these cases, the Seventh Circuit noted that parking at school was a privilege and that student drivers subjected themselves to rules and regulations not applicable to the entire student body. Additionally, testing these students affirmed a school district's purpose of providing for student health and safety.

Because testing student drivers is distinguishable from programs approved by the U.S. Supreme Court and increases the risk that a district's testing program will be challenged, TASB Legal Services recommends that districts seek legal advice before adopting such a program.

Voluntary testing: Some districts opt to extend their random drug testing programs to students who are not required to submit to testing as a condition of participating in extracurricular activities or parking on campus, as long as the students freely volunteer to enter the program. In order to retain the nature of a random testing program, the volunteer students must be tested under the same rules and procedures as the extracurricular students. However, since the volunteer students probably do not participate in extracurricular activities, the penalties for a positive test would necessarily be different. The safest penalties for these students are remedial ones, such as substance abuse counseling, meetings with parents, and student assistance programs. When deciding on procedures for families to opt in to random drug testing, districts may want to seek input from the Student Health Advisory Council.²⁵

What should district policy or regulations say about drug testing?

While it is not strictly necessary to adopt a board policy allowing *suspicion-based* or *individualized suspicion* drug testing, districts should set out guidelines for parents, students, and employees. Regulations allowing suspicion-based drug testing should clearly identify what factors might lead to reasonable suspicion (such as physical appearance, odor, possession of drug paraphernalia), put students on written notice that they may be required to submit to a drug test if reasonable suspicion exists, and require appropriate training for school employees who will be evaluating reasonable suspicion.²⁶

If your school district is considering implementing a *random* or *suspicionless* drug testing program, it is crucial to specify clear and thorough procedures, so that students will be put on notice of their rights and obligations under the program. TASB Policy Service can provide

²⁴ *Joy v. Penn-Harris-Madison Sch. Corp.*, 212 F.3d 1052 (7th Cir. 2000); *Todd v. Rush County Schs.*, 133 F.3d 984 (7th Cir. 1998).

²⁵ See Tex. Educ. Code § 28.004(c) (duties of student health advisory council include recommendations on policies, procedures, strategies, and curriculum appropriate for a safe and health school environment).

²⁶ See *Hedges v. Musco*, 204 F.3d 109 (3d Cir. 2000) (the district's decision to conduct a blood-alcohol test after observing student's behavior and appearance did not violate the Fourth Amendment rights of the student); *Bridgman ex rel. Bridgman v. New Trier High Sch. Dist. No. 203*, 128 F.3d 1146 (7th Cir. 1997) (student's behavior and physical "symptoms" supported an indication of drug use, and therefore, the medical assessment was not an excessively intrusive search under the Fourth Amendment).

sample procedures at FNF(REGULATION), but these procedures should be tailored to fit the needs of each district. When developing policy or regulations in this area, school leaders should consider several factors in consultation with the school district's attorney:

- **Purpose of the drug testing program:** In both of its cases approving random drug testing for extracurricular participants, the U.S. Supreme Court relied heavily on the statements of purpose adopted as part of the policies in question. Thus, the purpose of the program should be stated clearly. For example, many school districts believe that drug testing will increase student safety, prevent accidents, preserve the educational environment, deter student use, and educate students regarding the harmful effects of illegal drugs.
- **Evidence of drug use in the school:** The Court in *Earls* stated that a school district does not have to wait until a substantial portion of its students begins using drugs before conducting suspicionless drug testing. Nor does a school district have to show that the students subject to testing have an identifiable drug abuse problem that will be redressed by testing that group of students. Nevertheless, the Court discussed specific evidence of the school district's drug problem in finding that the district substantiated the need for its program. Consequently, it is prudent to document any history of drug problems in the district. Consider whether school records or other data show a high incidence of drug possession or other drug-related discipline problems. If there is not already an active drug culture in the district, student surveys could show drug use trends among the students. Local juvenile and criminal authorities likely can provide drug use statistics for the area to support the district's efforts.
- **Previous efforts to eliminate the drug problem:** Document whether the district has attempted to eliminate the student drug use by other, less intrusive means—like traditional disciplinary methods, drug-detecting dogs, or counseling programs.
- **Identification of students to be tested:** Students must be notified if they will be subject to random drug testing. If the program does not include all extracurricular activities, district regulations should list the activities for which drug testing is required (e.g., athletics, band, and cheerleading). Additionally, if students may voluntarily participate in the program, include details on their participation.
- **Prior written permission:** The district should provide each parent and student a copy of the drug-testing policy and require written consent from the parents and students on a consent form prior to the student's participation in an affected activity. The consent form should explain the consequences of a refusal to consent and of a positive test result. Advance notice to students and parents is essential to facilitating compliance with the drug testing program. Moreover, obtaining written verification that students and parents received and reviewed the drug testing policy in advance provides important evidence that participants were fully informed about their rights and obligations.
- **Substances for which the district will test:** District procedures should list the controlled substances for which the district will test. The selection of substances to be tested for should align with the stated purpose of the program.

- **Procedures for the drug testing:** *Earls* relied heavily on the minimally intrusive nature of the sample collection method and the confidentiality of the test results. Straying from the testing procedures in *Earls* might invite a legal challenge to your policy. District regulations should also address who will conduct the testing, whether the district will use internal staff or contract out the testing program, how the testing will be conducted, how often students will be subject to testing, how many students will be tested each time, and who will pay for the testing.
- **Cost of the testing and/or counseling:** Provisions requiring students to pay for mandatory drug testing or completion of an approved drug education program at the parent's or student's expense could lead to complaints that the district is effectively charging an illegal fee. The Texas Education Code does not provide express authorization for districts to charge for mandatory drug testing.²⁷ The attorney general has ruled that, absent specific statutory authority, a school district is prohibited from requiring payment of a fee.²⁸ Therefore, district procedures should not place the burden of paying for a required test on students or parents, and approved drug education programs should include at least one cost-free option.
- **Reliability of results:** If the district plans to use district employees to collect the samples, the district should institute procedures to preserve the integrity of the transfer from the employees to the drug testing company. The district should also evaluate the reputation and accuracy of the testing laboratory and document its efforts to research the drug testing company.
- **Use of test results:** In *Earls*, test results were used for limited purposes. Positive test results were not turned over to law enforcement or used for discipline or academic purposes. The most defensible testing programs, therefore, will use positive test results only for suspension from an athletic or other extracurricular activity. The district should consider other consequences of a positive test, such as referral to a substance abuse counseling program. Many districts have policies that require re-testing at district expense before the student may be reinstated to the activity and that increase consequences for second and third positive tests.
- **Testing after student ends participation:** Many policies require students who test positive to be subjected to additional drug tests during the school year. This requirement should not apply to students who choose not to be involved in extracurricular activities after the positive result, as the testing would then no longer be related to the district's stated objectives and interests regarding extracurricular activities.
- **Confidentiality:** The district should have procedures in place to ensure the confidentiality of student records. Only school employees with a need to know, such as the activity sponsor or coach, should be informed of the results.

²⁷ Tex. Educ. Code § 11.158.

²⁸ Tex. Att'y Gen. Op. No. JC-207 (2000).

- **An appeal process for positive test results:** The drug testing procedures should provide an appeal process for positive test results. The procedures should also address whether the district will allow students who test positive to re-test and outline the steps for that testing.

Can we use breathalyzers with students?

No court with jurisdiction over Texas school districts has ruled on whether a district may reasonably require students to submit to breathalyzer testing, but courts in other jurisdictions have upheld this practice in legal challenges.²⁹ Arguably, requiring students to submit to a breathalyzer test to measure blood alcohol level as a condition of participating in an extracurricular activity such as prom is similar to requiring students to submit to routine drug testing or walk through a metal detector. Since the likelihood of a complaint in connection with prom or graduation is high, districts would be wise to work with local counsel and law enforcement before deciding to use breathalyzer tests at a specific event. A school district's breathalyzer search is more likely to be upheld if the district provides appropriate notice and takes steps to address student privacy rights before conducting the testing.³⁰

Can we use drug sniffing dogs to search for drugs on campus?

Yes, but don't go too far. A student has no expectation of privacy in that which he or she exposes to public observation, including observation by sight, smell, or sound.³¹ As such, using drug dogs to sniff vehicles, vacant classrooms, or lockers, is not considered a search for purposes of the Fourth Amendment. If a drug dog alerts to a substance in a locker or vehicle, the alert may be enough evidence to cause a reasonable suspicion that the search will reveal contraband and, therefore, allow school officials to search that property.³²

Using a drug dog to sniff a person, however, constitutes a search and must be based on reasonable suspicion. For example, the Fifth Circuit Court of Appeals found that a district's allowing drug dogs to sniff students was unconstitutionally intrusive because the dogs sniffed around each child, put their noses on the child, and scratched and manifested other signs of excitement in the case of an alert.³³

²⁹ See *Ziegler v. Martin County Sch. Dist.*, 831 F.3d 1309 (11th Cir. 2016) (holding school officials' search of party bus and administration of breathalyzer test to 37-40 students attending prom did not violate students' established constitutional rights); *Juran v. Independence Or. Cent. Sch. Dist.* 13J, 898 F. Supp. 728 (D. Or. 1995) (upholding warrantless breathalyzer test of student by school and law enforcement officials).

³⁰ See, e.g., *Ziegler v. Martin County Sch. Dist.*, 831 F.3d 1309 (11th Cir. 2016) (noting that each student attending prom was required to sign form stating that students and guests may be subject to breath tests).

³¹ *Jones v. Latexo Indep. Sch. Dist.*, 499 F. Supp. 223 (E.D. Tex. 1980) (mem.).

³² *Horton ex rel. Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470 (5th Cir. 1982) (per curiam).

³³ *Horton ex rel. Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470 (5th Cir. 1982) (per curiam).

In order to avoid a constitutional violation, districts typically use drug dogs only to sniff around an area or property rather than with students. TASB Policy FNF(LOCAL) states:

The District reserves the right to use trained dogs to conduct screening for concealed prohibited items. Such procedures shall be unannounced. The dogs shall not be used with students; however, students may be asked to leave personal belongings in an area that will be screened. If a dog alerts to an item or an area, it may be searched by District officials.

Can students be searched with metal detectors?

In light of increasing concerns regarding school safety, many districts have instituted metal detection programs, including walk-through metal detectors at campus entrances and searches using handheld wands. The U.S. Supreme Court has not addressed the legality of such searches, but lower courts have applied the Court's analysis of drug testing in *Vernonia* to uphold other types of general or administrative searches, such as a policy of searching all students in the course of normal daily operations, by applying a balancing test in which the intrusion involved must be "no greater than necessary to satisfy the governmental interest underlying the need for the search."³⁴ When used properly in accordance with appropriate procedures, metal detectors can meet the legal standards of a nonintrusive administrative search.³⁵

For example, a Texas court of appeals upheld a search procedure at an alternative learning center that required all students entering the center to empty their pockets and walk through a metal detector. In upholding the search, the court relied on the school district's interest in maintaining a safe and disciplined learning environment at the alternative learning center, which the court considered to be at high risk for drugs and violence. Also, all students and their parents were given notice of the procedures, and the uniform searching of all students protected against administrative abuse of discretion in deciding which students to search.³⁶ Courts in other states have also upheld the use of metal detectors as a reasonable method of promoting school safety.³⁷ For a more complete discussion of legal and practical issues related to using metal detectors with students, see TASB Legal Services' article, [Metal Detectors in Schools](#).

³⁴ See, e.g., *In re P.P., III*, No. 04-08-00634-CV, 2009 WL 331887 (Tex. App.—San Antonio Feb. 11, 2009, no pet.) (mem. op.) (upholding alternative school policy requiring students to remove shoes, socks, and belts and submit to a pat-down search before entering facility).

³⁵ See *Gibson v. State*, 921 S.W.2d 747 (Tex. App.—El Paso 1996, pet. denied) (describing metal detector searches as "relatively inoffensive" and "much less intrusive than a 'pat-down'").

³⁶ *In re O.E.*, No. 03-02-00516-CV, 2003 WL22669014 (Tex. App.—Austin Nov. 13, 2003, no pet.) (mem. op.).

³⁷ See *Day v. Chicago Bd. of Educ.*, No. 97 C 6296, 1998 WL 60770 (N.D. Ill. Feb. 5, 1998) (mem.) (requiring people to walk through metal detector at board administration building was not unreasonable search under Fourth Amendment); *People v. Dukes*, 151 Misc.2d 295 (1992) (upholding random point-of-entry search of student using hand-held scanning device).

Can we be sued for illegally searching a student?

Yes. Lawsuits regarding allegedly illegal student searches are common. To the extent that these cases allege violations of a student's constitutional rights, they are an exception to a school district's general immunity under state law. District officials should take care to train campus administrators on how to conduct student searches lawfully and without bias. A district's failure to provide training on the legalities of student searches may constitute deliberate indifference under Section 1983, a federal law that allows individuals to sue school districts and employees for constitutional violations.³⁸

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-essource/students/documents/legal-issues-in-student-searches.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

³⁸ See *Littell ex rel. I.L. v. Houston Indep. Sch. Dist.*, 894 F.3d 616 (5th Cir. 2018) (finding parents of middle school students who were subjected to unconstitutional search of their underwear plausibly stated Section 1983 claim of deliberate indifference).