

# Student Search and Seizure

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# Agenda

- Basic Constitutional Provisions
- Searches in School
  - Justifications
  - Procedures
  - Examples
- Seizures in school
  - School's Role in Law Enforcements Interrogations
- Questions

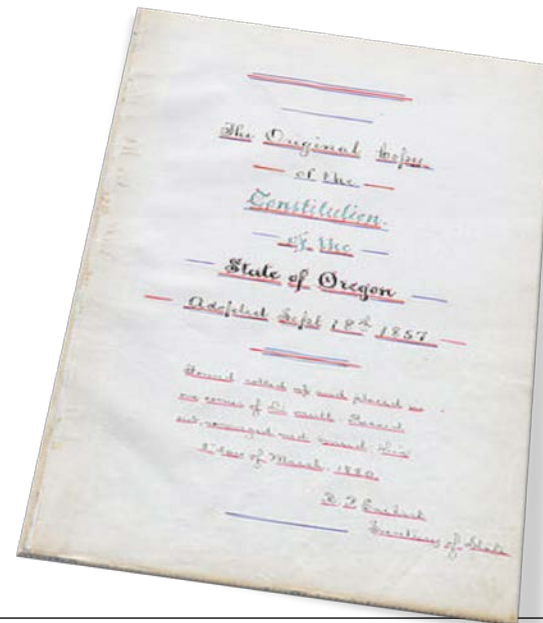
# U.S. Constitution: 4<sup>th</sup> Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable** searches and seizures, shall not be violated



# § 1, Art. 9 of the Oregon Constitution

No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable** search, or seizure



# Basic Take-Away:

- Searches are not per-se illegal
- They simply must be conducted in a reasonable fashion
- Which leads us to:
  - What is a search?
  - What is reasonable?

# What is a Search?

- Generally defined as an invasion of an individual's privacy interest
- This is a fancy way of saying that you are uncovering something somehow concealed or hidden
  - If the student considers something hidden or private, and you take it out of hiding, it is a search

# But what about...?

- Lockers?
- Things in plain view?

or...

- Things not on an individual's person?
- Drug sniffing dogs?



# What is a Reasonable Search?

- In the school context, it must be based on **reasonable suspicion**
  - This means that you have a moderate chance of finding a violation of law or policy when you search the student
- There are differences between Oregon Law and Federal Law – but they largely work together
  - Oregon law only permits reasonable suspicion for issues that present a student safety or health risk



# Reasonable Suspicion

- Generally a fluid concept
- Based on:
  - The specificity of information received
  - The reliability of the source



# Conducting the Search

- To be reasonable as a whole, it must meet a two part test:
  - Reasonable at it's inception
    - Meaning based on reasonable suspicion
  - Reasonably related in scope to the purpose of the search
    - You can't search beyond what gave you suspicion
    - The potential indignity of the search bears on the reasonableness (general rule, no strip searches)

# Special Considerations

- Consent by the student to be searched will make the search reasonable
  - This can come from the student or the parent, if you wish to contact them

# Example 1:

- You receive information from a boy that his very recent ex-girlfriend and some of her friends are smoking in the girl's bathroom, you call the girls into the office to talk about it.

## Example 2:

- Your school has been combating a prescription drug problem, and you receive information that a female student has several prescription pills with her today, and she plans on distributing them at lunch. She is called into the office, she is wearing a dress with no pockets and her bag is in her locker.

## Example 3:

- Staff member in the hallway looks over the shoulder of a student and sees them texting something that appears to be arranging a drug deal. They confiscate the phone and bring it and the student down to your office. While sitting there, the phone continues to beep and receive text messages.

# Student Seizures

- Similar to searches, students have a right to be free from unreasonable seizures during the school day
- Increasing litigation over law enforcement interrogations in the school environment
  - Many lawsuits against both law enforcement and the schools involved

# What is a Seizure?

- A seizure occurs “when there is a governmental termination of freedom of movement through means intentionally applied”
- In the school context, this is usually when a student is interrogated at school by law enforcement





# Law Enforcement

- A seizure usually is only going to occur when law enforcement is questioning a student at school
- Not applicable to school personnel questioning
  - Students have to be at school anyways, therefore you cannot really 'seize' them in the constitutional sense

# When is it Reasonable?

- Law enforcement must have:
  - Warrant,
  - Court order
  - Some kind of exigency
  - Consent from the parents



# What to do as a school admin?

- When law enforcement wants to interview a student:
  - Should you Contact parents? Default should be YES unless told otherwise by law enforcement
  - Document why the police are interviewing the student, and their justification
  - Put the burden on law enforcement to demonstrate why they need to interview the student

# Should you sit in on the interview?

- If the interrogation is unreasonable, and you participated and facilitated it, potential liability for the District?
- If you do not participate and law enforcement violates the student's rights, potential liability for not intervening?

# Questions?

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