Searches and Detentions on School Grounds

"[D]rug use and violent crime in the schools have become major social problems."[1]

There are very few things that virtually everyone agrees on. But here's one: Schools are places in which the students must be safe.[2] School safety is not only essential for the students' physical and emotional health, it is necessary in order to create an environment in which students can learn. As the California Supreme Court observed, "Teaching and learning cannot take place without the physical and mental well-being of the students."[3] To put it another way, "Without first establishing discipline and maintaining order, teachers cannot begin to educate their students."[4]

An important part of this effort is eliminating drugs and weapons from school grounds. Another is keeping people off school property if they have no legitimate reason for being there. One of the difficulties in accomplishing these objectives is that they often require searches and detentions of students and others. And this can be dangerous.

As a result, many school districts now have their own police departments staffed by sworn officers.[5] Another significant development is the school resource officer program in which law enforcement officers are assigned to work closely with school administrators. Over the years, these officers have become invaluable because they provide both an authoritative presence and a wealth of specialized knowledge on how to detect and combat crime on school grounds.

The courts have also assisted in this effort. As we will explain in this article, they have determined that it has become necessary to ease the restrictions on searches and detentions that occur on school grounds. As the court pointed out in *People* v. *Randy G.*:

> [School officials] must be permitted to exercise their broad supervisory and disciplinary powers, without worrying that every encounter with a student will be converted into an opportunity for constitutional review.[6]

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[1] *New Jersey* v. *T.L.O.* (1985) 469 U.S. 325, 339.

[2] See Cal. Const., art. I, § 28(c) ["All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure, and peaceful."].

[3] *People* v. *William G.* (1985) 40 Cal.3d 550, 563.

[4] *People* v. *Randy G.* (2001) 26 Cal.4th 556, 562.

[5] See Ed. Code § 38001. ALSO SEE *People* v. *Randy G.* (2001) 26 Cal.4th 556, 562 ["California fulfills its obligations [for campus security] by requiring each school board to establish rules and regulations to govern student conduct and discipline (Ed. Code § 3529) and by permitting the local district to establish a police or security department to enforce those rules. (Ed. Code § 38000.)].

[6] (2001) 26 Cal.4th 556, 566. ALSO SEE *New Jersey* v. *T.L.O.* (1985) 469 U.S. 325, 340 ["It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject."]; *Wofford* v. *Evans* (4th Cir. 2004) 390 F.3d 318, 321 ["School officials must have the leeway to maintain order on school premises and secure a safe environment in which learning can flourish."].

Searches on school grounds

School officers may search students and their property on school grounds if they have reasonable suspicion that the search will turn up evidence of a crime or a violation of school rules.[7] As the United States Supreme Court explained:

> Under ordinary circumstances, a search of a student by a teacher or other school official will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating the law or the rules of the school.[8]

Because only reasonable suspicion is required, a search will be upheld even though the probability of finding evidence is "considerably less" than a preponderance of the evidence; i.e., considerably less than a 50% chance.[9] On the other hand, a search would be unlawful if it was based on "mere curiosity, rumor, or hunch."[10]

Not surprisingly, searches for weapons are especially likely to be upheld because, as the Fourth Circuit observed, "Weapons are a matter with which schools can take no chances."[11] For example, in *People* v. *Alexander B.*[12] the dean of students at a high school in Los Angeles and two officers with the school's police force were trying to defuse an encounter between the members of two gangs on the school grounds. As the tension mounted, one of the participants said, "Don't pick on us. One of those guys has a gun." As he said this, he gestured toward five or six students who had been standing around, "yelling and making gang signs." Upon hearing this, the dean told an officer to "check the group over there. One of them is supposed to have a weapon." When the officer ordered

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[7] See *People* v. *William G.* (1985) 40 Cal.3d 550, 562 ["[T]he unique characteristics of the school setting require that the applicable standard be reasonable suspicion."]; *People* v. *Bobby B.* (1985) 172 Cal.App.3d 377, 381 ["[T]he legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search."]; *People* v. *Lisa G.* (2005) 125 Cal.App.4th 801, 806 ["Ordinarily, a search of a student by a teacher or other school official will be justified at its inception when there are reasonable grounds for suspecting the search will disclose evidence the student has violated or is violating the law or school rules"; student's disruptive behavior did not provide grounds to search her purse]; *People* v. *Cody S.* (2004) 121 Cal.App.4th 86; *People* v. *Joseph G.* (1995) 32 Cal.App.4th 1735; *People* v. *Guillermo M.* (1982) 130 Cal.App.3d 642 [pat search for suspected knives].

[8] *New Jersey* v. *T.L.O.* (1985) 469 U.S. 325, 341.

[9] See *United States* v. *Sokolow* (1989) 490 U.S. 1, 7 ["That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence."]; *Illinois* v. *Wardlow* (2000) 528 U.S. 119, 123 ["'[R]easonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence."]; *United States* v. *Arvizu* (2002) 534 U.S. 266, 274; *Richards* v. *Wisconsin* (1997) 520 U.S. 385, 394 ["This showing [for reasonable suspicion] is not high"]; *Alabama* v. *White* (1990) 496 U.S. 325, 330 ["Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause."].

[10] See *People* v. *William G.* (1985) 40 Cal.3d 550, 564 ["[A] search of a student by a public school official is unlawful if predicated on mere curiosity, rumor, or hunch."].

[11] *Wofford* v. *Evans* (4th Cir. 2004) 390 F.3d 318, 328. ALSO SEE *People* v. *Alexander B.* (1990) 220 Cal.App.3d 1572, 1577 ["Of greater importance is the fact that the gravity of the danger posed by possession of a firearm or other weapon on campus was great"]; *People* v. *Guillermo M.* (1982) 130 Cal.App.3d 642 [pat search for suspected knives].

[12] (1990) 220 Cal.App.3d 1572. ALSO SEE *People* v. *Bobby B.* (1985) 172 Cal.App.3d 377.

the students to sit on the curb, one of them, Alexander, started to walk off. The officer wrestled him to the ground and, in the process, spotted the handle of a machete under his clothing. After Alexander was handcuffed, the officer reached in and seized the weapon.

On appeal, Alexander contended that the officer did not have reasonable suspicion to search him because, (1) only one of the five or six students in the group was alleged to have a gun (so there was only about a 20% chance that he was the one), and (2) there was no reason for the officer to believe that the student who made the allegation was reliable. But the court rejected the argument, pointing out that one of the circumstances that can be properly considered is the potential for violence if officers neglected to act. Said the court, "Here, suspicion was focused on a group of five or six students. Given the potential danger to students and staff which would have resulted from inaction, a weapons search of the several accused students was reasonable."

Similarly, in *People* v. *Joseph G.*[13] a high school vice-principal in Spring Valley, California received a phone call from a parent who said that her son had been attending a high school football game a few days earlier when saw another student, Joseph G., carrying a handgun. The next morning, the vice-principal and a campus security officer searched Joseph's locker and found a handgun in his backpack. In upholding the search, the court noted, "The fact the mother named a particular student, apparently identified herself, and was a citizen-informant are all factors which weigh in favor of investigating the truth of her accusation by the minimal intrusion on Joseph's privacy of opening his locker, particularly when weighed against the gravity of the danger posed by possession of a firearm or other weapon on campus."

Furthermore, although the caller did not know where the gun was located, the court noted that the locker was a logical place to look for it because a student who carries a weapon to school will probably keep it there or on his person. Thus, the court ruled the vice-principal had sufficient grounds to believe that a gun was located in Joseph's backpack.

As noted, a search is permitted even if its purpose was to investigate a violation of a school rule. For example, in *New Jersey* v. *T.L.O.*[14] the United States Supreme Court ruled that a vice-principal's search of a high school student's purse for cigarettes was lawful because the student had been caught smoking in a lavatory in violation of school rules.

Detentions on school grounds

The requirements for detaining students on school grounds are even less demanding than those for searches. In fact, neither probable cause nor reasonable suspicion is required. Instead, the only requirement is that the detention must not have been conducted for some arbitrary or capricious reason, or for the purpose of harassment.[15]

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[13] (1995) 32 Cal.App.4th 1735. COMPARE *People* v. *Lisa G.* (2005) 125 Cal.App.4th 801, 807 ["Mere disruptive behavior does not authorize a school official to rummage through his or her students' personal belongings."].

[14] (1985) 469 U.S. 325.

[15] See *People* v. *Randy G.* (2001) 26 Cal.4th 556, 567 ["[D]etentions of minor students on school grounds do not offend the Constitution, so long as they are not arbitrary, capricious, or for the purposes of harassment."]. **NOTE**: Although the officer who detained Randy was not a school resource officer or district police officer, and although the court stated it was not ruling on whether sworn officers could make suspicionless detentions (at fn.3), the court seemingly disposed of the issue when it observed that the "mere detention and questioning of a student

The reason for such an undemanding requirement is that school officials must be able to address safety and misbehavior concerns on school grounds without undue delay. In addition, detentions of students on school grounds are relatively unintrusive because a student's freedom of movement is necessarily restricted simply by virtue of being on school property. As the California Supreme Court observed:

> While at school, a student may be stopped, told to remain in or leave a classroom, directed to go to a particular classroom, given an errand, sent to study hall, called to the office, or held after school. Unlike a citizen on the street, a minor student is subject to the ordering and direction of teachers and administrators.[16]

Consequently, a student may be detained for merely violating a school rule. For example, in *People* v. *William V.*[17] a school resource officer at Hayward High School saw that a student named William "had a neatly folded red bandanna hanging from the back pocket of his pants." This caught the officer's attention because, as he testified, colored bandannas "commonly indicate gang affiliation" and are therefore not permitted on campus.

Furthermore, he explained that the manner in which the bandanna was folded and hanging from the pocket indicated to him that "something was about to happen or that William was getting ready for a confrontation." The officer's suspicions were heightened when, as William made eye contact with him, he "became nervous and started pacing," and he began "trembling quite heavily, his entire body, especially his hands, his lips, his jaw." At that point, the officer detained William, seized the bandanna, and pat searched him. In the course of the search, he found a knife.

William contended the detention was unlawful because the officer did not have reasonable suspicion to believe he was committing a crime. It didn't matter, said the court, because "William's violation of the school rule prohibiting bandannas on school grounds justified the initial detention."[18]

As for detaining non-students, it appears that reasonable suspicion is still required. Even so, a non-student can be detained during school hours to confirm he has registered with the office as required by law.[19] He may also be detained after school hours to confirm he has a legitimate reason for being there. For example, in *People* v. *Joseph F.*[20] an assistant principal and resource officer at a middle school in Fairfield saw Joseph, a high school student, on campus at about 3 P.M. At the request of the assistant principal, the officer tried to detain him to determine whether he should be arrested for being an unregistered visitor on campus during school hours in violation of Penal Code § 627.2. But Joseph refused to stop, and the officer had to forcibly detain him. As the result,

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constitutes a more limited intrusion than a search of his person and effects." Quoting from *In re D.E.M.* (1999) 727 A.2d 570, 577, fn.18]. ALSO SEE *Wofford* v. *Evans* (4th Cir. 2004) 390 F.3d 318, 326 ["The facts of *T.L.O.* involved only a search. But the policies underlying that decision easily supports its extension to seizures of students by school officials." Citations omitted.].

[16] *People* v. *Randy G.* (2001) 26 Cal.4th 556, 563.

[17] (2003) 111 Cal.App.4th 1464.

[18] **NOTE**: The court summarily ruled the pat search was lawful, noting, "In light of William's bulky clothes, [the officer] reasonably lifted William's jacket to search his waistband."

[19] See Penal Code § 627.2

[20] (2000) 85 Cal.App.4th 975.

Joseph was arrested for battery on a peace officer engaged in the performance of his duties.

On appeal, Joseph argued that the officer was not acting in the performance of his duties because school hours had ended an hour earlier. The court responded that the detention of a high school student on a middle school campus is plainly lawful, if only to ascertain whether he has a legitimate reason for being there. Said the court, "[S]chool officials, or their designees, responsible for the security and safety of campuses should reasonably be permitted to detain an outsider for the limited purpose of determining such person's identity and purpose regardless of 'school hours.'"

Searches and detentions by police officers

There had been some uncertainty as to whether the less-restrictive rules pertaining to school searches and detentions apply when they were conducted by, or "at the behest of," school resource officers or school district police officers, as opposed to unsworn school security officers.[21] This uncertainty was, however, eliminated by the Court of Appeal in *People* v. *William V.*[22] Said the court:

> We see no reason to distinguish for this purpose between a non-law enforcement security officer and a police officer on assignment to a school as a resource officer.

The court added that requiring sworn officers to work under different—more demanding—rules than unsworn security officers would make no sense because it would "focus on the insignificant factor of who pays the officer's salary, rather than on the officer's function at the school and the special nature of the public school."

Moreover, it is apparent that school resource officers and district police officers have been specially designated by school administrators to discharge certain duties that, while they could be undertaken by school administrators and teachers, are better suited for law enforcement officers with special training and experience.[23] Thus, in discussing this issue, the Wisconsin Supreme Court observed:

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[21] See *New Jersey* v. *T.L.O.* (1985) 469 U.S. 325, 341, fn.7 [Court expresses "no opinion" on "the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies"]; *People* v. *Alexander B.* (1990) 220 Cal.App.3d 1572, 1577, fn.1 ["Since the search of appellant and his companions was undertaken by police at the request of a school official, we need not consider the appropriate standard for assessing the legality of searches undertaken by school officials at the behest of police."].

[22] (2003) 111 Cal.App.4th 1464. ALSO SEE *Wofford* v. *Evans* (4th Cir. 2004) 390 F.3d 318, 327 ["But when a student is suspected of also breaching a criminal law, both school officials and law enforcement officers may proceed under the lesser standards"].

[23] ALSO SEE Cal. Ed. Code §38000(a) ["It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers."]; *People* v. *Randy G.* (2001) 26 Cal.4th 556, 568 ["If we were to draw the distinction urged by the minor, the extent of a student's rights would depend not on the nature of the asserted infringement but on the happenstance of the status of the employee who observed and investigated the misconduct."]; *Wofford* v. *Evans* (4th Cir. 2004) 390 F.3d 318, 327 ["Law enforcement officers, not school administrators, have a particular expertise in safely retrieving hidden weapons."]; *People* v. *Dilworth* (1996) 169 Ill.2d 195; *Hussan* v. *Lubbock Indep. School Dist.* (5th Cir. 1995) 55 F.3d 1075, 1080 ["Nor do we perceive anything in [juvenile probation officer] Atkins' role as a Center employee, or his actions in this incident, that warrants the application of a different standard to

> Were we to conclude otherwise, our decision might serve to encourage teachers and school officials, who generally are untrained in proper pat down procedures or in neutralizing dangerous weapons, to conduct a search of a student suspected of carrying a dangerous weapon on school grounds without the assistance of a school liaison officer or other law enforcement official.[24]

It should be noted that school resource officers and district police officers, as well as school administrators, are "state actors" for purposes of determining the lawfulness of searches and seizures on public school grounds.[25] Thus, as we discussed in the accompanying article "Searches by Civilians and Police Agents," evidence and statements obtained by them in violation of the Fourth Amendment may be suppressed. POV

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his conduct. He acted at the behest of school officials and at all times his control over Hassan remained subject to the direction of Thomas and Williams."].

[24] *State* v. *Angelia D.B.* (1997) 564 N.W. 682, 690.

[25] See *New Jersey* v. *T.L.O.* (1985) 469 U.S. 325, 336-7 ["In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State [and cannot claim] immunity from the strictures of the Fourth Amendment."]; *In re William G.* (1985) 40 Cal.3d 550, 561 ["[P]ublic school officials are governmental agents within the purview of [the Fourth Amendment]."]; *People* v. *Alexander B.* (1990) 220 Cal.App.3d 1572, 1576 ["State and federal constitutional prohibitions against unreasonable searches and seizures apply to the actions of public school authorities as well as law enforcement officers."].