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**THE FOURTH AMENDMENT RIGHTS OF PUBLIC  
SCHOOL STUDENTS**

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# THE FOURTH AMENDMENT RIGHTS OF PUBLIC SCHOOL STUDENTS

## INTRODUCTION

**“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”**

***Tinker v. Des Moines Independent Community School District* (1969) 393 U.S. 503, 506.**

**“We are faced initially with the question of whether [the Fourth] Amendment’s prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. We hold that it does.”**

***New Jersey v. T.L.O.* (1985) 469 U.S. 325, 333.**

**Among the constitutional rights afforded to minor students “is the guarantee of freedom from unreasonable searches and seizures contained in the Fourth Amendment of the United States Constitution and article I, section 13 of the California Constitution.”**  
***In re William G.* (1985) 40 Cal. 3d 550, 557.**

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It is clear that public school students have Fourth Amendment rights and that on-campus searches and seizures of these students by school officials must be “reasonable”. However, it is also beyond dispute that the Fourth Amendment rights of public school students are more limited than those guaranteed to adults and minors outside of the school environment. Both the United States Supreme Court and the California Supreme Court have determined the standards for school searches and detentions by applying the reasonableness balancing test, which weighs the governmental interest against the intrusiveness of the privacy invasion. Specifically, the Courts have balanced the schools’ legitimate need to maintain a safe and secure environment where learning can take place against the students’ reasonable expectations of privacy in their persons and belongings. These expectations that are less than those of adults and minors in non-school settings because students are necessarily subject to supervision and control while on K-12 school campuses.

In the landmark case of *New Jersey v. T.L.O.* (1985) 469 U.S. 325, 341-42, the Supreme Court ruled that neither a warrant or probable cause is required for an on-campus search of a student or her personal property by a school official; reasonable suspicion is sufficient. The search “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 either the law or the rules of the school.” Such a search “will be permissible in scope when the measures adopted are 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.” That same year, the California Supreme Court also adopted the reasonable suspicion standard for public school searches.

In *In re William G.* (1985) 40 Cal. 3d 550, 564, the Court said: “In balancing students’ privacy interests with the governmental interest in promoting a safe learning environment, we conclude that searches of students by public school officials must be based on a reasonable suspicion that the student or students to be searched have engaged, or are engaging, in a proscribed activity (that is, violation of a school rule or regulation, or a criminal statute).”

The United States Supreme Court has also approved searches of public school students, conducted without any individualized suspicion whatsoever, in light of a particular special need. In divided opinions, the Court approved programs permitting random urinalysis drug testing of student athletes and students participating in competitive extracurricular activities to detect and deter documented on-campus drug use. (*Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646 [students participating in school athletic programs]; *Board of Education v. Earls* (2002) 536 U.S. 822 [students participating in any competitive extracurricular activities].)

The United States Supreme Court has not articulated a standard for on-campus detentions of students by public school officials, but the California Supreme Court, in *In re Randy G.* (2001) 26 Cal. 4<sup>th</sup> 556, considered school officials’ authority to detain a student by sending her in or out of the classroom, directing her to move in or out of a certain area, or summoning her to the school office. The court held that reasonable suspicion is not necessary for an on-campus detention: “[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.” (*Randy G., supra*, at 567.)

Along with courts around the nation, the California Courts of Appeal have applied the standards articulated by the United States and California Supreme Courts to differing fact situations. In these materials, I discuss the seminal cases discussed above, as well as California appellate court decisions in five general categories:

- I. The Leading United States Supreme Court Cases
- II. On-Campus Detentions of Students by School Officials
- III. On-Campus Searches of Students and Their Property by School Officials
  - A. The General Rule: Reasonable Suspicion
  - B. School Locker Searches
  - C. Suspicionless Searches of Students Pursuant to School Policy
- IV. Detentions and Searches of Students by Security Officers, School Resource Officers or by School Administrators With Police Officer Involvement
- V. On-Campus Searches of Minors Who Are Not Enrolled Students

Reading through these cases, one can discern a trend over time -- the Courts are generally making it easier for school officials, as well as police officers on campus, to search students, their lockers, and their belongings. These trends have been powered by increasing concerns for school security and the desire to prevent and interdict weapons (particularly guns) and drugs on K-12 campuses. Whatever, the legitimacy of those goals, the sharp line separating public school students from persons detained and incarcerated in jails and prisons is beginning to blur.<sup>1</sup>

Here are three examples of this trend of students' diminishing Fourth Amendment rights: 1) The California appellate courts have expanded school officials' authority to search school-issued lockers in which students store their personal belongings. (See *In re Joseph G.* (1995) 32 Cal. App. 4<sup>th</sup> 1735; *In re Cody S.* (2004) 121 Cal. App. 4<sup>th</sup> 86; *In re J.D.* (2014) 225 Cal. App. 4<sup>th</sup> 709.) 2) In the interest of keeping weapons and drugs off K-12 campuses, the courts have approved suspicionless programmatic searches, in circumstances where the schools' concerns are not based on the documented evidence presented in *Vernonia* and *Earls*. (See *In re Latasha W.* (1998) 60 Ca. App. 4<sup>th</sup> 1524 [high school's random metal detector searches for weapons did not violate the Fourth Amendment]; *In re Sean A* (2010) 191 Cal. App. 4<sup>th</sup> 182 [upholding suspicionless searches

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<sup>1</sup> One notable exception to this trend is *Safford United School District No. 1 v. Redding* (2009) 557 U.S. 364, in which the Supreme Court held that a public school official's reasonable suspicion that a 13-year-old female student was distributing Ibuprofen pills on campus did not justify a strip search.

of students who return to school after being off-campus during the school day, pursuant to a school policy].) 3) The courts have held that the relaxed reasonable suspicion standard for public school searches apply to school resource officers, i.e. regular police officers assigned to school campuses (see *In re William V.* (2003) 111 Cal. App. 4<sup>th</sup> 1464), and to on-campus searches conducted in coordination with regular law enforcement officers. (See *In re K.S.* (2010) 183 Cal. App. 4<sup>th</sup> 72; *In re J.D.* (2014) 225 Cal. App. 4<sup>th</sup> 709; *In re K.J.* (2018) 18 Cal. App. 5<sup>th</sup> 1123.)

In addition to expanding school officials' authority to intrude on student's privacy, the fact that these rules are making it easier for the officials to detain and search students and their belongings provides an interesting civics lesson. As Justice Stevens stated in his concurring and dissenting opinion in *T.L.O.*:

"The schoolroom is the first opportunity most citizens have to experience the power of government. Through it passes every citizen and public official, from schoolteachers to policemen and prison guards. The values they learn there, they take with them in life. One of our most cherished ideals is the one contained in the Fourth Amendment: that the government may not intrude on the personal privacy of its citizens without a warrant or compelling circumstance. The Court's decision today is a curious moral for the Nation's youth." (*T.L.O.*, *supra*, 369 U.S. at 385-86.)

## APPELLATE DECISIONS

### I. The Leading United States Supreme Court Cases

***New Jersey v. T.L.O.* (1985) 469 U.S. 325: The Fourth Amendment applies to on-campus searches of public school students and their personal belongings by school officials, but neither a warrant or probable cause is required. A school search is reasonable at its inception where there are reasonable grounds for suspecting that the intrusion will turn up evidence of a violation of the law or a school rule.<sup>2</sup>**

A teacher at a New Jersey public high school discovered T.L.O., age 14, and another girl smoking cigarettes in the restroom. Because smoking in the lavatory was a violation of school rules, the teacher took the two girls to the office where they met with Assistant Vice Principal Choplick. In response to questioning by Choplick, the other girl admitted violating the no smoking rule, but T.L.O denied smoking in the lavatory. Choplick ushered T.L.O into his private office and searched her purse. Upon opening the purse, he saw a pack of cigarettes. As he reached into the purse to seize the pack, he noticed a package of cigarette rolling papers that he associated with the use of marijuana. Suspecting that he might find further evidence of drug use in the purse, Choplick searched more thoroughly. He found a small amount of marijuana, a pipe, empty plastic bags, a quantity of one-dollar bills, a list of students who apparently owed T.L.O. money and letters implicating her in marijuana dealing. T.L.O. confessed to selling marijuana at the high school. She was adjudicated a delinquent and placed on probation.

The juvenile court denied appellant's motion to suppress evidence, finding that the search by the assistant vice principal was reasonable, as he had a well-founded suspicion that T.L.O. had violated a school rule. The New Jersey Supreme Court reversed, finding that the search of the purse was unreasonable and ordering suppression of the evidence. The U.S. Supreme Court originally granted certiorari to determine if the exclusionary rule

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<sup>2</sup> There are five opinions in this seminal case: 1) Justice White wrote the majority opinion, in which four other justices joined in full. 2) Justice Powell wrote a concurring opinion, joined by Justice O'Connor. 3) Justice Blackmun filed a separate concurring opinion. 4) Justice Brennan file an opinion concurring in part and dissenting in part, joined by Justice Marshall. 5) Justice Stevens filed an opinion concurring in part and dissenting in part, joined by Justice Brennan.

was a proper remedy for unconstitutional searches by school officials. The Court then expanded the grant to determine what limits, if any, the Fourth Amendment places on searches of students by school authorities.

In the majority opinion, Justice White first held that the Fourth Amendment by virtue of the Fourteenth Amendment protects the rights of students against encroachments by public school officials.<sup>3</sup> Next, the Court considered the standard of reasonableness governing this specific class of searches by balancing the government's need to search against the invasion of privacy that the search entails. Justice White noted that any search of a person, as well as a search of a closed item of personal property (e.g. a purse) violates the individual's expectation of privacy. This expectation of privacy was reasonable for public school students who are entitled to bring legitimate items of personal property onto school grounds.<sup>4</sup> On the other hand, the Court acknowledged "the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds." (*T.L.O.*, *supra*, 469 U.S. at 339.)

Striking the balance between the student's reasonable expectation of privacy in her person and property and the school's legitimate need to maintain a safe and secure environment in which learning can take place, Justice White wrote: "It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject." (*T.L.O.*, *supra*, at 340.) To conduct an on-campus search of a school student, the teacher or school administrator need not obtain a warrant. Nor did the school official need probable cause. The school search would be reasonable if it was justified at its inception and reasonably related in scope to those justifying circumstances. A search by a 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 either the law or the rules of the school." Such a search "will be permissible in its scope when the measures adopted are

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<sup>3</sup> The Court made clear that they were addressing only searches conducted by school authorities acting alone or on their own authority. The Court was not considering the appropriate standard for assessing the reasonableness of searches conducted by school officials at the behest of law enforcement officers or agencies. (*T.L.O.*, *supra*, 469 U.S. at 341, fn. 7.)

<sup>4</sup> The Court did not address the question of whether a school student has a reasonable expectation of privacy in lockers, desks or other school property provided for the storage of school supplies. (*T.L.O.*, *supra*, at 337, fn. 5.)

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.” (*Id.*, at 341-42.)

Applying these rules to the facts of the case before it, the Court held that both of the initial search of T.L.O.’s purse for cigarettes (which yielded the pack of cigarettes and the rolling papers) and the second search of the purse for marijuana (which yielded the drug and evidence of sales) were justified at inception and not excessive in scope.

In his concurring opinion, joined by Justice O’Connor, Justice Powell placed greater emphasis on the “special characteristics of elementary and secondary schools that make it unnecessary to afford students the same constitutional protections granted adults and juveniles in a non-school setting.” (*T.L.O.*, *supra*, 469 U.S. at 348.) In his separate concurring opinion, Justice Blackmun wrote that “the Court omits a crucial step in its analysis of whether a school search must be based on probable cause.” (*Id.*, at 351.) The Court should only apply the reasonableness balancing test, rather than the Fourth Amendment’s explicit warrant and probable cause requirements, in exceptional circumstances generating a need for greater flexibility and a quick response. Blackmun reasoned that such exceptional circumstances exist when a teacher or school official searches a student to respond to misbehavior, maintain discipline and protect students; there is no time to secure a warrant and school officials lack the training or experience in the complexities of assessing probable cause.

Justice Brennan filed a long opinion, joined by Justice Marshall, in which he concurred in part and dissented in part from the majority opinion. Brennan agreed with only two points in the majority decision: 1)that public school students have Fourth Amendment rights; and 2)that school officials do not need a warrant to search a student or her personal belongings because of exigent circumstances – the need to act quickly to impose discipline and protect student safety. Brennan disagreed with all other aspects of the majority opinion, particularly the abandonment of the probable cause standard.

Justice Brennan criticized the majority for casting aside the Fourth Amendment’s explicit probable cause standard when assessing the constitutionality of a school house search, in favor of its innovative “Rohrshach-like balancing test” with its pre-ordained result. (*Id.*, at 357-58.) Brennan emphasized that in an unbroken line of cases, the Court had held that probable cause is a pre-requisite for a full-scale search aimed at discovering incriminating evidence, like the search of T.L.O.s purse. The balancing test employed by the majority overstated the social costs that a probable cause standard entails and failed to accord adequate weight to the serious privacy interests at stake. Requiring probable cause for a full-scale search would not unduly burden teachers and administrators. That standard

has been interpreted in many precedents; it is the majority's amorphous "reasonableness under all circumstances standard" which "will likely spawn increased litigation and greater uncertainty among teachers and administrators." (*Id.*, at 365.)

Justice Stevens wrote the last opinion, joined by Justices Marshall and Brennan, concurring in part and dissenting in part. Stevens reasoned that immediate warrantless searches by school administrators are reasonable only when undertaken to search students for evidence of violent, unlawful or seriously disruptive behavior - conduct fundamentally inconsistent with a school's important teaching function. However, the standard adopted by the majority permits teachers and school officials to search students when they suspect that the search will reveal evidence of even the most trivial school regulations - e.g., a search of T.L.O.'s purse for evidence of smoking in the bathroom or a search for sunglasses, which violate the school's dress code. Stevens also criticized the majority's standard for evaluating the scope of the intrusion - whether the measures adopted were 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. While designed to prohibit physically intrusive searches of students by persons of the opposite sex for relatively minor offenses, this standard would create uncertainty. Justice Stevens concluded by explaining why public school teachers and administrators should be bound by Fourth Amendment requirements:

"The schoolroom is the first opportunity most citizens have to experience the power of government. Through it passes every citizen and public official, from schoolteachers to policemen and prison guards. The values they learn there, they take with them in life. One of our most cherished ideals is the one contained in the Fourth Amendment: that the government may not intrude on the personal privacy of its citizens without a warrant or compelling circumstance. The Court's decision today is a curious moral for the Nation's youth." (*T.L.O.*, *supra*, 369 U.S. at 385-86.)

***Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646: A school district’s policy authorizing random urinalysis drug testing of all students who participate in school athletic programs, without any individualized suspicion of drug use, does not violate the Fourth Amendment; it is reasonable and hence constitutional.<sup>5</sup>**

The Vernonia, Oregon school district (District) operated three grade schools and one high school. School sports played a prominent role in Vernonia. In the mid-to-late 1980's school teachers and administrators noticed a sharp increase in drug use in Vernonia schools. Along with more drugs came increasing disciplinary problems. The District determined that student athletes, often role models, were leaders of this drug culture. The administrators were concerned because drug use increased the risk of sports-related injuries. After ineffectually attempting to curb and deter drug use by offering special classes, speakers and presentations, the District drafted a drug-testing program which the school board approved for implementation in the Fall of 1989.

The Student Athlete Drug Policy (Policy) applied to all Vernonia students participating in interscholastic athletics. Students wanting to play sports, as well as their parents, had to consent in writing to the drug-testing. All of these student athletes were tested at the start of the season for their sport. Thereafter, 10% of all student-athletes were randomly chosen and tested every week of the season for that sport. The testing involved submitting a urine sample which was analyzed for the presence of amphetamines, cocaine and marijuana. If a sample tested positive, a confirming test was administered. If this second test was also positive, the school principal met with the student and the parents to discuss options, which generally involved suspension from athletics for the remainder of the current season and one or more future seasons.

In the Fall of 1991, Respondent James Acton, a seventh grader, signed up to play football at a Vernonia grade school. James and his parents refused to sign the drug testing consent forms, so James was denied participation. James and his parents then filed suit, seeking injunctive relief from the enforcement of the policy on the ground that it violated both the Fourth and Fourteenth Amendments. After a bench trial, the District Court denied their claims on the merits and dismissed the action. The Court of Appeals for the Ninth Circuit reversed, finding that the Policy violated both the Fourth and Fourteenth Amendments. The Supreme Court then granted certiorari.

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<sup>5</sup> This is a 6-3 opinion. Justice Scalia wrote the majority opinion, joined by Justices Rehnquist (C.J.), Kennedy, Thomas, Ginsburg and Breyer. Justice Ginsburg filed a concurrence. Justice O’Connor wrote a dissent, joined by Justices Stevens and Souter.

Justice Scalia first acknowledged that state-compelled collection and testing of urine for drugs, such as required by the Policy, is a “search” subject to the demands of the Fourth Amendment. Thus, the Court had to determine if the particular search met the reasonableness standard by balancing the intrusion on the individual’s Fourth Amendment interests against the search’s promotion of legitimate governmental interests. A search undertaken by law enforcement to discover evidence of criminal wrongdoing generally requires a warrant supported by probable cause. When a governmental search does not require a warrant, probable cause is not invariably required either, so long as “special needs” beyond the need or law enforcement make the warrant and probable cause requirements impracticable. Scalia cited to *New Jersey v. T.L.O* , *supra*, 469 U.S. at 340-41, in finding that such “special needs” occur in the public school context, allowing school officials to search students without a warrant or probable cause, although still requiring individualized suspicion. Scalia noted that other “special needs” cases have upheld suspicionless searches, including random drug testing of railroad personnel involved in train accidents (*Skinner v. Railway Labor Executives Assn.* (1989) 489 U.S. 602), and of armed federal customs officers involved in drug interdiction. (*National Treasury Employees Union v. Von Raab* (1989) 489 U.S. 656.)

As to the privacy interested implicated, Scalia noted that schools have custodial and tutelary power over school children, “permitting a degree of supervision and control that could not be exercised over free adults.” (*Vernonia, supra*, 515 U.S. at 655.) Therefore, public school students have a reasonable expectation of privacy that is less than adult members of the general population in non-school settings. Legitimate privacy expectations are even less with regard to student athletes who often undress in communal locker rooms and use communal showers. “By choosing to ‘go out for the team’, they voluntarily subject themselves to a degree of regulation even higher than that imposed on students generally.” (*Id.*, at 657.) School athletes must often submit to pre-season medical exams, acquire adequate insurance, maintain minimum grade point averages, and abide by a dress code and rules of conduct.

The nature and immediacy of the governmental interest at issue in this case – preventing drug use by student athletes – was very important. “Deterring drug use by our Nation’s school children is at least as important as deterring drug use by engineers and trainmen, which was the governmental concern in *Skinner, supra*, at 628. School years are the time when the physical, psychological and addictive effects of drugs are most severe.” (*Vernonia, supra*, 515 U.S. at 661.) Rampant drug use effected the entire student body and faculty as the educational process is disrupted. Also, the Policy was directed at drug use by school athletes, “where the risk of immediate physical harm to the drug user or those with whom he is playing his sport is particularly high.” (*Id.*, at 662.) Scalia opined

that the Policy was a particularly effective way to address student athletes' drug use, without relying on a determination of individual suspicion which would target particular students, and could be arbitrarily applied to "troublesome but not drug-likely students". (*Id.*, at 663.) Scalia concluded:

"Taking into account all the factors we have considered above – the decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met by the search - we conclude Vernonia's Policy is reasonable and hence constitutional." (*Id.*, at 664-65.)<sup>6</sup>

Justice O'Connor filed a dissenting opinion, joined by Justices Stevens and Souter, in which she criticized the majority's abandonment of the individualized reasonable suspicion requirement, which was not justified by the facts of the case. O'Connor noted that "[t]he view that mass suspicionless searches, however evenhanded are generally unreasonable remains inviolate in the criminal law enforcement context." (*Vernonia, supra*, at 671.) O'Connor acknowledged that outside the criminal context, the Supreme Court had sometimes upheld evenhanded blanket searches. But she found those cases distinguishable based on the governmental interests involved, the fact that the searches were not personally intrusive, and the unique contexts in which they arose. "[T]he individualized suspicion requirement has a legal pedigree as old as the Fourth Amendment itself, and it may not be easily cast aside in the name of policy concerns. It may only be forsaken.....if a suspicion-based regime would likely be ineffectual." (*Id.*, at 678.) According to O'Connor, the majority opinion never explained why requiring individualized suspicion of drug use for testing of student athletes would be impractical or ineffectual. In most schools, students are under the constant supervision of teachers, administrators and coaches in multiple locations where their behavior could be observed for signs drug use. Finally, even if "a suspicion-based scheme may not be as effective as a mass, suspicionless testing regime.... there is nothing new in the realization that Fourth Amendment protections come with a price." (*Id.*, at 680; quoting *Arizona v. Hicks* (1987) 480 U.S. 321, 329.)

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<sup>6</sup> Justice Scalia warned against assuming that suspicionless drug testing will readily pass constitutional muster in other contexts. In her short concurring opinion, Justice Ginsburg emphasized that the Vernonia School District's drug-testing policy applied only to students who voluntarily participate in interscholastic athletics. Moreover, the most severe sanction allowed by the policy was suspension from the school's athletic programs. The Court did not allow school districts to impose routine drug testing on all students required to attend school. (*Vernonia, supra*, at 666.)

***Bd. of Education v. Earls (2002) 536 U.S.822: The school district’s program of requiring middle and high school students to consent to urinalysis testing for drugs in order to participate in any competitive extracurricular activities served the district’s important interest in preventing and deterring drug use among its students and did not violate the Fourth Amendment.***<sup>7</sup>

Tecumesh, Oklahoma is a rural community. In the fall of 1998, the Tecumesh School District (District) adopted the Student Activities Drug Testing Policy (Policy) which required all middle and high school students to consent to drug testing in order to participate in any extracurricular activities. In practice, the Policy applied only to competitive extracurricular activities including the Academic Team, Future Farmers of America, band, choir and athletics. Students had to take a drug test before participating in the chosen activity and submit to random drug testing during the course of participation. They agreed to be tested at any time upon reasonable suspicion. The urinalysis tests were designed to detect illegal drugs, not medical conditions or authorized prescription medications. The consequences of a failed drug test was suspension from participation in extracurricular activities for a limited time.

Respondent Lindsay Earls was a member of the choir, the marching band, the Academic Team and the National Honor Society. Respondent Daniel James sought to participate in the Academic Team. Together with their parents, Earls and James filed a section 1983 action against the District, challenging the policy on its face and as applied to their participation in extracurricular activities. They alleged that the Policy violated the Fourth Amendment and requested injunctive relief. Applying the principles articulated by the Supreme Court in *Vernonia*, the District Court held that the policy was constitutional and granted summary judgment to the District. The Court of Appeals for the Tenth Circuit reversed the District Court and found that the Policy violated the Fourth Amendment. The Supreme Court granted certiorari.

Justice Thomas noted that in determining the reasonableness of searches in public schools, the Court had dispensed with the warrant and probable cause requirements for searches conducted for purposes other than criminal investigation. The question presented in this case, was whether individualized suspicion was needed to drug-test

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<sup>7</sup> This is a 5-4 opinion. Justice Thomas wrote the majority opinion, joined by Justices Rehnquist (C.J.), Scalia, Kennedy, and Breyer. Justice Breyer filed a concurring opinion. Dissents were written by Justice O’Connor, joined by Justice Souter, and by Justice Ginsburg, joined by Justices Stevens, O’Connor and Souter.

students participating in extracurricular activities other than athletics. Because of the public school students' limited Fourth Amendment rights and the pressing need for schools to meet their custodial and tutelary responsibilities "a finding of individualized suspicion may not be necessary when a school conducts drug testing." (*Earls, supra*, 536 U.S. at 830.) In *Vernonia*, the Court upheld suspicionless drug testing of student athletes as constitutional, but did not authorize such drug testing of all public school students. "Applying the principles of *Vernonia* to the somewhat different facts of this case, [the Court concluded] that Tecumseh's Policy is also constitutional." (*Ibid.*)

Justice Thomas first considered the privacy interest at stake for the affected public school students -- children committed to the temporary custody of the State for educational purposes. He noted, "[a] student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health and safety.... Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults." (*Id.*, at 830-31.) Like student-athletes, those who engage in the extracurricular activities also voluntarily subject themselves to intrusions on their privacy, including occasional communal undress, and governance by rules and regulations enforced by a faculty sponsor.

Justice Thomas next evaluated the nature and immediacy of the government's concerns and the efficacy of the Policy in meeting them. He noted that in *Vernonia*, the Court had already recognized the importance of the government's concern in preventing drug use by school children and the attendant health and safety risks. Thomas cited evidence demonstrating that the drug abuse problem among the nation's youth had worsened since *Vernonia* was decided in 1995 (seven years earlier). "Indeed, the nationwide drug epidemic makes the war against drugs a pressing concern in every school." (*Earls, supra*, 536 U.S. at 834.) Although the District presented some specific evidence of drug use at Tecumseh schools, they did not show the particularized and persuasive evidence produced in *Vernonia*. But Thomas found that this was not necessary. According to Thomas, a school district need not wait for a substantial portion of its students to begin using drugs before instituting a drug testing program designed to deter drug use. Thomas found that drug testing students who participate in extracurricular activities is a reasonably effective means of addressing the District's legitimate concerns in preventing and detecting drug use, even though there was no showing, as in *Vernonia*, that the participants in those activities were "role models" or particularly active in the school's drug culture. Balancing the interests, "it was entirely reasonable for the School District to enact this particular drug testing policy" without requiring individualized suspicion. (*Id.*, at 836.)

Agreeing that the Court's previous opinion in *Vernonia* governed this case and that the Tecumseh School District drug-testing program was constitutional, Justice Breyer wrote a concurring opinion to "emphasize several underlying considerations, which I understand to be consistent with the Court's opinion." (*Earls, supra*, 536 U.S. at 839.) With respect to the school's need to drug test its students, Breyer emphasized three points: 1) The drug problem in U.S. schools was serious in terms of size, the kind of drugs used and the consequences; public schools needed to find effective ways to deal with this problem. 2) Data showed that the government's emphasis upon supply side interdiction had not reduced teenage drug use. 3) The Tecumseh program sought to discourage demand for drugs by "changing the school environment to combat the single most important factor leading school children to take drugs, namely, peer pressure." (*Id.*, at 840.) With respect to the burden that drug testing imposed upon students, Justice Breyer made two observations: 1) Testing those who chose to participate in extracurricular activities avoided subjecting the entire school to drug testing; those who did not want to be tested could choose non-participation. 2) Requiring individualized suspicion for drug testing students would invite the use of subjective criteria that might ultimately target students who were unpopular or acted differently.

Justice Ginsburg, joined by Justices Stevens, O'Connor and Souter wrote a strong dissent, explaining why the Tecumseh District's Policy requiring suspicionless drug tests for all students participating in competitive extracurricular activities was unconstitutional and distinguishable from the drug testing of student athletes approved by the Court in *Vernonia*. Ginsburg stated: "The particular testing program upheld today is not reasonable; it is capricious, even perverse: Petitioners' policy targets for testing a student population least likely to be at risk from illicit drugs and their damaging effects." (*Earls, supra*, 536 U.S. at 843.) Ginsburg noted that the Tecumseh students participating in extracurricular activities other than athletics shared two relevant characteristics with the student athletes of *Vernonia*: both groups are public school students, and they both engaged in voluntary activities sponsored by their schools with attendant rules and regulations. However, extracurricular activities are "voluntary" only because they are not required for graduation. Participation in such activities is a key component of school life, essential in reality for those applying to college.

According to Justice Ginsburg, student athletes have lesser legitimate privacy expectations than other public school students. Because athletes expose themselves to physical risks, they are subject to safety and health regulations. They undress and shower in communal facilities. These conditions affecting students' privacy expectations do not exist for students participating in other extracurricular activities.

The nature and immediacy of the governmental concerns underlying the drug testing policies were also different in the Tecumseh and Vernonia schools. Vernonia faced a much larger drug abuse problem leading to extreme disciplinary problems in the schools. The Tecumseh District reported that in the period leading up to the adoption of the drug-testing policy, drugs other than alcohol and tobacco were present in the schools but were not “major problems”. (*Earls, supra*, at 849.) The Vernonia District had two good reasons for drug testing their athletes: 1) The District recognized that students who played sports and combined illicit drug use with physical exertion faced particular health and safety risks. 2) Their student athletes were known as leaders of the schools’ drug culture. No similar justifications motivated Tecumseh’s decision to drug-test students participating in all competitive extracurricular activities. The great majority of students tested in the Tecumseh schools were “engaged in activities that are not safety sensitive to an unusual degree.” (*Id.*, at 851-52.) “[S]tudents who participate in extracurricular activities are significantly less likely to develop substance abuse problems than are their less-involved peers.” (*Id.*, at 853.) Although some students might be deterred from drug use so they could participate in extracurricular activities, others might forego these activities to avoid detection of drug use. “Tecumseh’s policy thus falls short doubly if deterrence is its aim: It invades the privacy of students who need deterrence least, and risks steering students at greatest risk for substance abuse away from extracurricular involvement that potentially may palliate drug problems.” (*Ibid.*)

***Safford United School District No. 1 v. Redding* (2009) 557 U.S. 364: A public school administrator’s reasonable suspicion that a 13-year old female student was distributing drugs did not justify a strip search under the facts of the case.<sup>8</sup>**

The individual who was strip searched was 13-year-old Savana Redding, a student at Safford Middle School. One week before the search, another student, Jordan, contacted Assistant Principal Wilson and told him that certain students were bringing drugs on campus, and that he had gotten sick from pills he had received from a classmate. Jordan handed Wilson a white pill that had been given to him by a classmate named Marissa. The pill was Ibuprofen 400 mg, available only by prescription; it’s possession on campus violated a school rule. Assistant Principal Wilson called Marissa out of class. A day planner in her possession contained contraband items. Wilson took Marissa to his office, and a search of her pockets and wallet revealed a blue pill (an over-the-counter anti-

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<sup>8</sup> This is a 6-3 opinion: Justice Souter wrote the majority opinion, joined by Justices Roberts (C.J.), Scalia, Kennedy, Breyer and Alito. Justices Stevens, Ginsburg and Thomas all filed separate opinions concurring in part and dissenting in part.

inflammatory drug) and several white ones (Ibuprofen 400s). Marissa claimed that Savana had given her these pills. Assistant Principal Wilson then brought Savana to the office. He showed Savana the four white Ibuprofen 400s and the blue anti-inflammatory pill, and she said she knew nothing about them. Savana denied that she had been giving these types of pills to fellow students. Savana agreed to let Wilson search her belongings. After a female administrative assistant entered the office, they searched Savana's backpack, finding nothing. Savana was taken to the school nurse's office for a search of her clothes. The nurse and the female assistant asked Savana to strip down to her underwear. They told her to pull her bra out and to the side and to pull out the elastic waistband of her underpants. As Savana did this, her breasts and pelvic area were exposed. No pills were found.

Savana's mother filed suit against the Safford Unified School District, Assistant Principal Wilson, the female assistant and the nurse for conducting a strip search of Savana, in violation of her Fourth Amendment rights. The school administrators claimed qualified immunity. A divided Ninth Circuit en banc panel found that the strip search was unjustified under the Fourth Amendment, and that the proscription against subjecting students to these kinds of search was clear. Thus, a finding of qualified immunity was reversed for the assistant principal, who made the decision to conduct the search, but not for the nurse and assistant.

Writing for the majority, Justice Souter reiterated that although a Fourth Amendment search generally requires probable cause, public school administrators need only reasonable suspicion to believe evidence of a crime or a school rule violation will be found in the place searched (*New Jersey v. T.L.O.* (1985) 469 U.S. 325.) Under the facts of this matter, Assistant Principal Wilson had sufficient reasonable suspicion that Savana was carrying and distributing prohibited pills to justify a search of Savana's backpack and outer clothing. However, this reasonable suspicion did not justify a strip search.<sup>9</sup> Savana had a reasonable expectation of privacy in the areas of her body exposed to the school administrators' view. This was a particularly invasive search and "the content of the suspicion failed to match the degree of intrusion." (*Safford, supra*, 557 U.S. at 375.) Nothing in the facts reasonably indicated that the drugs were particularly harmful, that

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<sup>9</sup> Justice Souter held that the search in this case (requiring Savana to pull out her underwear, exposing her breast and pelvic area) qualified as a strip search. It did not matter that the school nurse and female assistant stated that they did not see anything when Savana followed their instructions. That fact that they were able to see these private areas was sufficient.

Savana was distributing large quantities of these drugs, or that Savana was carrying pills in her underwear. Although school administrators might be able to strip search students under some circumstances, the search here was excessive in scope, not reasonably related to the circumstances justifying the intrusion.<sup>10</sup>

Justice Stevens filed an opinion concurring in part and dissenting in part that was joined by Justice Ginsburg, and Justice Ginsburg filed her own opinion doing the same. Essentially, both justices agreed that under the framework established by *New Jersey v. T.L.O.*, the humiliating strip search of 13-year-old Savana was excessive in scope and violated the Fourth Amendment. They both dissented from the majority's holding that the school administrators were entitled to qualified immunity.

In his separate opinion, concurring in part and dissenting in part, Justice Thomas concurred only with the majority's holding that the school administrators were covered by qualified immunity, but disagreed with the majority's "regrettable decision" that the administrator's search of Savana violated the Fourth Amendment. (*Safford, supra*, 557 U.S. at 403.) The majority's ruling granted judges sweeping authority to second-guess measures that school administrators took to ensure the safety and health of the students in their charge. Justice Thomas opined that the Court should return to "the common law doctrine of *in loco parentis*", leaving it up to school administrators to decide how best to maintain order and discipline on their campuses. (*Id.*, at 383.) Particularly in the present day, schools should be empowered to decide how to best deal with school disorder caused by rampant drug use and violent crimes.

Justice Thomas that agreed the assistant principal had reasonable suspicion that Savana had violated a school rule – i.e. possession of drugs on campus without permission. And a search of Savana's underwear, like a search of her backpack and outer clothing, was reasonably related to the justification for the intrusion; the inside of Savana's underwear was certainly an area capable of concealing the pills that were the object of the search. Particularly, after the search of Savana's backpack turned up nothing, it was reasonable to assume she might have concealed the medications in a place she assumed no one would look. Thomas also criticized the majority for promulgating an unworkable standard whereby the reasonableness of an underwear search depends on the seriousness of the harm prevented by the school rule.

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<sup>10</sup> Justice Souter held that the school administrators were entitled to qualified immunity, because established law did not clearly show that the strip search of a student violated the Fourth Amendment.

## II. On-Campus Detentions of Students by School Officials

***In re Randy G.* (2001) 26 Cal. 4<sup>th</sup> 556: School officials have the authority to stop a minor student on campus in order to ask questions or conduct an investigation, without needing a reasonable suspicion that the student has committed a crime or violated a school rule. This authority, however, may not be exercised in an arbitrary, capricious or harassing manner.<sup>11</sup>**

The 14-year-old minor, Randy G., was a public high school student. During passing time at the high school, about 9:00 a.m., Campus Security Officer Worthy saw Randy and a friend in an outside on-campus area where students are not permitted to congregate. When Randy noticed Worthy, he fixed the lining in his pocket. Worthy asked the two students if they needed anything and instructed them to go to class. Randy complied, but Worthy followed him because he had acted “very paranoid and nervous”. Worthy summoned another security officer. They went to Randy’s class and asked if they could see him outside. Once Randy came into the hallway, Worthy asked him if he had anything on him; Randy said “no”. The second officer asked Randy if he could search Randy’s bag and conduct a pat search, and Randy consented to both searches. The second officer frisked Randy and found a knife in his pocket. During the 10 minutes that Randy was in the hall being questioned and searched by the two officers, he was not free to leave.

Randy was charged in a Welfare and Institutions Code section 602 petition with possessing a knife with a locking blade on campus. Randy filed a motion to suppress evidence, contending that he was detained without reasonable suspicion when he consented to the pat search. The juvenile court denied the suppression motion. The Court of Appeal found that the reasonable suspicion standard applied to the on-campus detention by school officials, and found that the facts known to the security officers provided the requisite suspicion that appellant had violated a school rule. The question presented to the California Supreme Court was whether school officials could detain a student on school grounds without reasonable suspicion of criminal activity or violation of a school rule. The Court ruled that they could, as long as the detention was not arbitrary, capricious or for purposes of harassment.

The Court first addressed the question of whether Randy was detained when the school security officers called him out of the classroom and talked to him in the hallway – a

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<sup>11</sup> California Supreme Court Justice Baxter wrote the majority opinion. Justice Werdegar authored a concurring opinion.

question it did not ultimately resolve. The Court noted that minor students are required by state law to be in school and are deprived of their liberty to some degree from the moment they enter the campus. To establish and maintain order so that teachers can educate the students, teachers and school administrators must have broad supervisory and disciplinary powers. California law permits school officials to exercise the same degree of physical control over a student that a parent would be legally privileged to exercise. While at school, students may be stopped and told to remain in or leave a particular location. Thus, when a school official stops a student or removes him from the classroom to ask questions, this would not seem to qualify as a Fourth Amendment detention, although it might be defined as depriving the student of substantive due process under the Fourteenth Amendment, if the official acted in an arbitrary manner. Unlike some federal circuit courts, neither the U.S. Supreme Court nor the California Supreme Court had previously ruled that stopping a student on campus grounds during school hours, calling the student into the hallway for questioning or taking that student to the principal's office qualified as a Fourth Amendment seizure. The Court found it unnecessary to decide whether this conduct was properly analyzed as a detention or a deprivation of due process, because the same test applied in either case – whether the school official's conduct was arbitrary, capricious or harassing.<sup>12</sup>

Assuming that the security officers' interaction with Randy qualified as a detention, the Court next considered whether it needed to be supported by individualized suspicion. The Court noted that the usual Fourth Amendment prerequisites could be modified when special needs render those rules impracticable. Because of the special needs that exist in the public school context, the Supreme Court had not required a warrant and/or probable cause for school searches.<sup>13</sup> The current case involved a seizure, not a search, but the reasonableness of the intrusion would still be determined by balancing the government's need to search against the extent of the intrusion. The Court noted that

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<sup>12</sup> In her concurring opinion, Justice Werdegar noted that although the majority found it unnecessary to decide whether the security guards in this case subjected Randy to a Fourth Amendment detention, the majority did not foreclose the possibility that a teacher or school official may be found to have detained a student in a future case.

<sup>13</sup> In *T.L.O.*, *supra*, 469 U.S. at 340-42, the Court permitted an on-campus search of a student and her personal belongings if there was reasonable suspicion that it would uncover evidence of a violation of the law or a school rule. In *Vernonia*, *supra*, 515 U.S. at 653-57, the Supreme Court had approved drug testing of student athletes without any individualized suspicion of drug use.

“[t]he governmental interest at stake is of the highest order” – the need to maintain discipline and order so that the educational function could be performed. (*Randy G., supra*, 26 Cal. 4<sup>th</sup> at 566.) School officials should be permitted to send students in and out of the classroom and summon students to the office without familiarizing themselves with the intricacies of Fourth Amendment law. The Court found that the intrusion on the minor student is trivial since his or her liberty at school is already curtailed. Since a detention is generally less intrusive than a search, and reasonable suspicion is required for a search of a school student, that standard need not be required for a seizure.

“[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.” (*Id.*, at 567.)<sup>14</sup> In the current case, because Randy never contended that the two security officers acted arbitrarily, capriciously or in a harassing manner when they called him into the hall for questioning, no Fourth Amendment violation occurred.<sup>15</sup>

***In re Corey L.* (1988) 203 Cal. App. 3d 1020 [First Dist., Div Two]: School officials are not required to advise a student of his *Miranda* rights after detaining him and before questioning him about violations of the law or school rules.**

Three students individually and separately told Middle School Principal Randall that someone on the school campus had cocaine. One of the students stated the Corey L., a student at the school, possessed the cocaine. Principal Randall and another school employee removed Corey from a classroom and took him to the on-campus woodshop. Once inside the woodshop, Randall did not advise Corey of his *Miranda* rights before asking him questions. Principal Randall told Corey that he’d been informed that Corey was carrying drugs and asked if this was true. Corey denied having drugs but told the principal, “You can search me if you want to.” Randall searched Corey; in his jacket pocket, Randall found two baggies containing a white crystallized substance, subsequently identified as cocaine. Randall asked Corey what he was doing with “this stuff,” and Corey said he had gotten it from someone else. In response to Randall’s next question, Corey said he had no intention to sell the drugs. He said that he had the substance as he was afraid to leave it at home. The principal then called the police who

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<sup>14</sup> The Court held that to the extent that *In re Alexander B.* (1990) 220 Cal. App. 3d 1572, and *In re Frederick B.* (1987) 192 Cal. App. 3d 79, were inconsistent with this holding, they were disapproved.

<sup>15</sup> The Court found that the same rules that apply to school administrators and teachers also apply to encounters between students and school security officers.

took Corey into custody. Corey was charged with felony possession of cocaine in a Welfare and Institutions Code section 602 petition. After Corey's motion to suppress evidence was denied, the juvenile court sustained the petition. Corey appealed.

Corey claimed that the principal's failure to advise him of his *Miranda* rights before questioning rendered the interrogation and search unconstitutional; thus, the drugs and Corey's incriminating admissions should be excluded from evidence. The Court of Appeal disagreed. The Court emphasized that *Miranda* warnings are only required when law enforcement officials question a person after he has been taken into custody or otherwise deprived of his freedom of action in a significant way. Corey was not in custody when the principal called him out of class and took him to the woodshed to question him.<sup>16</sup> "Questioning by a principal, whose duties include the obligations to maintain order, protect the health and safety of pupils and maintain conditions conducive to learning cannot be equated with custodial interrogation by law enforcement officers." (*Corey L., supra*, 203 Cal. App. 3d at 1024.) The Court noted that other federal and state courts which had considered the question had held that school officials did not need to give *Miranda* advisements before questioning students on campus about suspected violations of school rules or criminal activity.

***In re K.J.* (2018) 11 Cal. App. 5<sup>th</sup> 1123 [First Dist., Div. Four]: The detention, handcuffing and search of a high school student by a school resource officer and a regular police officer were reasonable under the standards established for public school students, where the school administrators and the officers relied on an anonymous tip that a student at school possessed a loaded gun.**

At about 1:30 in the afternoon on a school day, Fairfield High School Assistant Principal Cushman received a text message from a student alerting him that "there's a kid with a loaded gun on Yeto campus." (Sam Yeto High is a smaller public school located on the Fairfield High campus.) Cushman knew the identify of the student who had texted him but declined to reveal it due to the student's fear of retaliation. Consequently, the parties stipulated that the student would be treated as an anonymous tipster. After advising his secretary to call the police, Assistant Principal Cushman immediately went to the Yeto

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<sup>16</sup> *Corey L.* was decided in 1988, 13 years before the California Supreme Court decided *Randy G.*, which held that school officials could stop a student on campus, call him out of class and direct him to another location for questioning, without having a reasonable suspicion that the student had committed a crime or violated a school rule. (See *Randy G., supra*, 26 Cal. 4<sup>th</sup> at 556.)

campus to report the tip to McCormick, the Yeto High principal. Shortly after Assistant Principal Cushman arrived at Yeto, he was met by Fairfield Police Officer Gulian, the school resource officer (SRO) for Fairfield High, who had been informed of the tip. SRO Gulian called for a back up police officer to come to the school campus. In the meantime, SRO Gulian advised Assistant Principal Cushman to contact the anonymous student tipster for more information. Ten minutes after receiving the text message, Cushman called the tipster and she told Cushman that she had received a message via SnapChat with a video showing a student, sitting in a classroom, displaying a gun and a magazine clip. The student tipster described the suspect's gender, race, and hairstyle (dread locks). She did not know the suspect's name but she knew who he was and that he had previously attended Fairfield High. Cushman and Yeto Principal McCormick came up with the names of two students who fit the description. Cushman gave these names to the student tipster and she identified appellant as the student in the video.

Once Fairfield Police Officer Quinn arrived to back up SRO Gulian, the two officers and Principal McCormick went to appellant's classroom. SRO Gulian directed McCormick to escort appellant from the classroom, and as soon as appellant exited, Gulian removed appellant's backpack and handcuffed him. SRO Gulian searched appellant and found a bullet magazine in the left front pocket of his jeans. Officer Quinn participated in this search and found a semi-automatic firearm in the shorts that appellant was wearing under his jeans. The gun was not loaded, but the magazine contained seven rounds of ammunition. At the jurisdictional hearing, the juvenile court denied appellant's motion to suppress and sustained the finding that he possessed a weapon on school grounds.

The Court of Appeal reviewed the established rules for on-campus detentions and searches of public school students: 1) A school official may detain a student for questioning on campus, without reasonable suspicion, so long as the detention is not arbitrary, capricious or for purposes of harassment. (*Randy G.*, *supra*, 26 Cal. 4<sup>th</sup> at 565.) 2) A school official may search a student's person and personal effects based on a reasonable suspicion that the search will disclose evidence that the student is violating the law or a school rule. (*T.L.O.*, *supra*, 469 U.S. at 341-42.) Initially, the court held that these standards applied to the actions of both SRO Gulian and Officer Quinn, a regular police officer who was called by Gulian to provide back-up.<sup>17</sup>

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<sup>17</sup> This aspect of the ruling will be discussed in Section IV, *infra*: "Detention and Searches of Students by Security Officers, School Resource Officers or by School Administrators with Police Officer Involvement."

Next, the court determined that the detention was lawful under the *Randy G.* standard because SRO Gulian's direction to Principal McCormick to remove appellant, a student reported to have a gun, from the classroom was a minimally intrusive action necessary to protect the students and staff. It was neither arbitrary, capricious or for purposes of harassment. The court rejected appellant's contention that the *Randy G.* standard should not apply here because as soon as appellant was out of the classroom, his backpack was removed and he was handcuffed and searched, thus effectuating a more intrusive de facto arrest. Although handcuffing substantially increases the intrusiveness of a stop and is not part of a typical detention, it is justified if necessary to protect officer safety and maintain the status quo during the detention. Examining the circumstances in this case, the court found it was reasonably necessary to remove appellant from the classroom to prevent a possible shooting and then to immediately handcuff to make sure he could not access the reported gun. The safety of the students, staff, and officers was thus assured.

The court found that the immediate search of appellant was justified at its inception because the school administrators and the two officers had a reasonable suspicion that the search would turn up evidence that appellant was carrying a gun. Rejecting appellant's reliance on *Florida v. J.L.* (2000) 529 U.S. 266, the court held that the school officials were justified in relying on the anonymous tip that appellant was armed, even though they did not independently corroborate the allegation of firearm possession. Unlike the informant in *J.L.*, the tipster in the current case was not truly anonymous. Assistant Principal Cushman, who received the tip, knew the tipster's identity and her information was corroborated by a detailed description of the gunman, her corroboration of the suspect's name, and her provision of the video showing a student sitting in a classroom displaying a gun and magazine clip. It did not matter that neither Cushman nor SRO Gulian watched the video before detaining and searching appellant. Also, in *J.L.*, the Supreme Court had acknowledged that a possibility of extraordinary danger might justify a search even without a showing of the anonymous tipster's reliability. "Thus, even if we were to view the indicia of reliability of the informant's tip her to be marginal, we would still conclude that the search was reasonable based on the 'extraordinary dangers' presented by the possibility that a student was brandishing a handgun at school." (*In re K.J.*, *supra*, 18 Cal. App. 5<sup>th</sup> at 1134-35 )

### III. On-Campus Searches of Students and Their Property by School Officials

#### A. The General Rule: Reasonable Suspicion

***In re William G.* (1985) 40 Cal. 3d 550<sup>18</sup>: On-campus searches of students by public school officials must be based on a reasonable suspicion that the students has engaged or is engaging in the violation of a school rule or criminal statute. Probable cause is not required.<sup>19</sup>**

William G. was a 16-year-old public high school student when he was approached in the early afternoon, during school hours, by Assistant Principal Lorenz. Prior to approaching William, Lorenz had no prior knowledge that he was violated the law or a school rules. William and two other male students were walking through the center of campus. As Principal Lorenz approached, he noticed that William was carrying a small black bag, later identified as a vinyl calculator case with an odd-looking bulge. Lorenz asked the students why they were late for class and William explained that he did not have any classes after noon. As Lorenz spoke to the students, William placed the case in a palm-like gesture to his side and then behind his back. When Lorenz asked William what he had in his hand, William answered "Nothing." When Lorenz tried to see the case, William stated that the assistant principal could not search without a warrant. Lorenz then took William by the arm and escorted him to the assistant principal's office. After bringing in another school official to serve as a witness, Assistant Principal Lorenz forcefully took the bag from William and unzipped it. Inside, were four baggies of marijuana, together weighing less than one-half ounce, a small scale, and some Zigzag cigarette papers. Lorenz telephoned the police who arrested William. During a pat-search, the police officer found \$135 in William's pockets. William was charged with marijuana for sale. The juvenile court had denied William's motion to suppress evidence, finding that the search was reasonable.

The Supreme Court stated that the U.S. Supreme Court had recently confirmed, in *New*

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<sup>18</sup> This California Supreme Court opinion was filed in December 1985, 11 months after the U.S. Supreme Court filed its opinion in *New Jersey v. T.L.O.* (1985) 469 U.S. 325.

<sup>19</sup> California Supreme Court Justice Reynoso wrote the majority opinion. Chief Justice Bird wrote an opinion concurring in part and dissenting in part. Justice Mosk wrote a separate dissenting opinion.

*Jersey v. T.L.O.*, that minor students have Fourth Amendment rights, and that public school officials are subject to the constitutional proscription against unreasonable searches and seizures. The Court rejected the holdings of prior California Court of Appeal cases that public school officials were private persons, not subject to the Fourth Amendment, rather than government actors.<sup>20</sup> The Court confirmed that public school officials were indeed governmental agents.

The Court next considered which standard should apply in determining the reasonableness of searches of students by public school officials. The Court balanced the important privacy interests of students against the governmental interest in providing a safe and securing environment for learning and protecting the students from anti-social activities. Balancing these interests, the Court concluded that probable cause was not required for these school searches. The appropriate standard was a reasonable suspicion that the student to be searched had engaged or was engaging in the violation of a school rule or a criminal statute. This reasonable suspicion needed to be based on articulable facts. A search of a student by a school official could not be predicated on mere curiosity, rumor or a hunch. The Court emphasized that even with this lower standard, school officials must still be sensitive to students' privacy interests. "[A] student always has the highest privacy interests in his or her own person, belongings and physical enclaves, such as lockers." (*William G.*, *supra*, 40 Cal. 3d at 563.) "Neither indiscriminate searches of lockers nor more discreet individual searches of a locker, a purse or a person, here a student, can take place absent the existence of reasonable suspicion. Respect for privacy is the rule - a search is an exception." (*Id.*, at 564.)

Finally, the Court held that Assistant Principal Lorenz lacked the requisite reasonable suspicion that William was engaged in a proscribed activity violating a school rule or a criminal statute. At the time of the search, Lorenz had no prior information that William possessed, used or sold illegal drugs or other contraband. Lorenz's suspicion that William was tardy or truant from class did not provide a reasonable basis for a search. Williams "furtive gestures" in attempting to hide his calculator case from Lorenz's view, standing alone, did not furnish sufficient cause for the search. The search was unconstitutional.

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<sup>20</sup> These prior cases, including *In re Donaldson* (1969) 269 Cal. App. 2d 509, had relied on the doctrine of *loco parentis*, the idea that parents delegated their authority to the private tutor or school master. The Court noted that the application of this doctrine ignored the realities of modern public school education. Parents did not voluntarily delegate a portion of their authority to school officials as they were required by law to send their children to school.

Chief Justice Bird wrote her own opinion concurring and dissenting. Bird dissented from the majority's conclusion that probable cause was not necessary, and that reasonable suspicion would suffice for a school search. Agreeing with Justice Brennan's dissent in *T.L.O.*, Bird stated that probable cause should apply in the school setting, under the California Constitution's search and seizure provision.<sup>21</sup> Bird did approve of the majority's requirement of individualized suspicion which would discourage searches of a group, a class, or the entire student body where the school official had reasonable suspicion that there had been a legal violation but was unable to focus that suspicion on a particular individual. Bird concurred with the majority's conclusion that Assistant Principal Lorenz's search of William's calculator case was predicated on neither probable cause nor reasonable suspicion.

Justice Mosk wrote a dissenting opinion. He agreed with the majority's reasonable suspicion test, but disagreed with the grounds for that holding and with the disposition of the appeal. Mosk stated that he believed that the majority equated school officials with police officers and prematurely rejected the doctrine of *loco parentis*. (*William G.*, *supra*, at 571.) The doctrine of *loco parentis* is not dead in California but codified in Education Code section 44807, which provides that teachers, school administrators, and other school employees may exercise "the same degree of physical control over a pupil that a parent would be legally privileged to exercise" for purpose of physical control on school grounds to maintain order, protect student safety and maintain conditions conducive to learning. (*Ibid.*) Implicit in these statutory duties is the right of school officials to search a student and his/her property on reasonable suspicion of misconduct if they sincerely believe the search is necessary to maintain a secure, safe, and calm atmosphere.

Finally, Mosk believed that Vice Principal Lorenz's search of William was justified, and that the juvenile court properly denied the motion to suppress. Lorenz was acting in his supervisory role and pursuant to his statutory authority when he stopped the minor. William's "evasive responses and evident recalcitrance gave him reasonable suspicion justifying the search. There was no evidence that the vice principal acted in furtherance of law enforcement goals. His concerns and actions were fully appropriate and to and consistent with his position as a school official." (*Id.*, at 573-74.)

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<sup>21</sup> Chief Justice Bird was relying on the independent state doctrine, reliance that was precluded in motion to suppress cases after the passage of Proposition 8.

***In re Lisa G.* (2004) 125 Cal. App. 4<sup>th</sup> 801 [Fourth Dist., Div. One]: Because the public school teacher's search of the student's purse was not justified by the requisite reasonable suspicion, the knife found in the student's purse was properly excluded from evidence.**

Lisa was a student who had just started attending a particular high school, and Ms. Craig was her fourth period teacher. Lisa showed Ms. Craig a schedule showing that she was enrolled in the class. During class, Lisa and other students were disruptive. Lisa stood up and asked to go to the bathroom; Ms. Craig refused to release her from the classroom. The teacher did not know there was information in the nurse's office directing school officials to permit Lisa to go to the bathroom at any time because of a medical condition. Lisa stayed in class and was not disruptive, but she became agitated and repeatedly insisted that she needed to go to the bathroom. Ms. Craig still refused to let her leave the classroom. Finally, Lisa walked to the classroom door and Ms. Craig blocked the door. Lisa moved Ms. Craig's hand away and walked out of her classroom, leaving her purse behind. Ms. Craig moved the purse to her own desk and locked the classroom door so that Lisa could not re-enter. At the end of the class period, Ms. Craig decided to write a disciplinary referral for Lisa's behavior but she did not recall her name or student I.D. number. Ms. Craig opened Lisa's purse to see if her schedule or I.D. was inside and found a knife inside the purse. Ms. Craig called security. Lisa was arrested and charged with possession of a knife at school. After the juvenile court denied her motion to suppress evidence, she admitted this charge and was declared a ward of the court.

Relying on the standard set forth in *New Jersey v. T.L.O.*, *supra*, 469 U.S. at 341-42 and *In re William G.*, *supra*, 40 Cal. 3d at 564, the Court of Appeal agreed that the search of Lisa's purse would be justified only if Ms. Craig, a public school teacher, reasonably suspected that the search would disclose evidence that Lisa had violated the law or school rules. The court held that the teacher lacked such a reasonable suspicion. There were no facts in the record suggesting that Ms. Craig suspected that Lisa had engaged in proscribed activity justifying a search or that she was carrying a knife or another prohibited item. Lisa engaged in disruptive behavior in class, but "mere disruptive behavior does not authorize a school official to rummage through his or her student's personal belongings." (*Lisa G.*, *supra*, at 166.)

Ms. Craig admittedly opened Lisa's purse to search for identification. The court rejected the prosecution's argument that Ms. Craig's search of the purse was a limited search for identification, justified by the teacher's name to ascertain Lisa's name to write a referral for disruptive behavior. The court distinguished precedents upholding searches inside

vehicles for identification, after lawfully detained car occupants had been unable to provide it. (See *In re Arturo D.* (2002) 27 Cal. 4<sup>th</sup> 60; *People v. Hart* (1999) 74 Cal. App. 4<sup>th</sup> 479.) The Court note that, in contrast to the defendants in these cases, Lisa did not refuse a request for identification under circumstances in which she was legally required to produce it. Lisa was never asked by Ms. Craig to produce identification although she was available outside the classroom door, and she never refused to provide an I.D.. Moreover, although occupants have a reduced expectation of privacy in property that they transport in their cars, “students in public schools have a legitimate expectation of privacy in the personal effects they bring to school.” (*Lisa G., supra*, at 167.) Because the teacher’s search of Lisa’s purse violated her Fourth Amendment rights, the knife found in that purse should have been suppressed.

## **B. School Locker Searches**

***In re Joseph G.* (1995) 32 Cal. App. 4<sup>th</sup> 1735 [Fourth Dist., Div. One]: The Vice Principal had reasonable suspicion to search the student’s on-campus locker for a gun, based on a tip from a parent reporting that her son had seen the student with a pistol at a high school football game five days earlier.**

On a Wednesday afternoon, a parent of a student called the high school vice principal and stated that her son had seen Joseph with a pistol at a high school football game the previous Friday evening, five days earlier. The parent identified herself but asked for confidentiality because she feared for her son’s safety. She explained that she was reporting the incident in the interests of safety. The next morning, the vice principal, accompanied by a campus security guard, opened and searched Joseph’s locker. They found only books. Several minutes later, as they were leaving a classroom, the vice principal and security guard saw Joseph put a backpack into his locker. They waited a few minutes until the next class had begun and then opened Joseph’s locker for the second time. They searched his backpack and found a loaded handgun inside. Joseph was charged in juvenile court with firearm offenses, including carrying a gun on school grounds. After his motion to suppress evidence was denied, the charges were sustained.

The Court of Appeal affirmed the denial of the motion to suppress. The court found that the Vice Principal had a reasonable suspicion that he would find a gun in the locker or in the backpack, justifying the searches under the standard set forth in both *New Jersey v. T.L.O., supra*, 469 U.S. at 341-42, and *In re William G., supra*, 40 Cal. 3d at 564.) Joseph had asserted a lack of reasonable suspicion based on two facts: 1) the tip about the gun came from an anonymous source; and 2) the information that he had a gun five days

earlier at a different venue was remote as to time and place. The court noted that the tip was not actually anonymous as the parent had identified herself but asked for confidentiality; the vice principal knew her name. The court did not find the five-or six-day interval between the observation of the gun and the search rendered the information stale. Finally, the court held that even though the vice principal and the security guard had not found a gun in the locker the first time they searched it, they had reasonable cause to search again after they saw Joseph place the backpack in the locker. A backpack is one of the three places (along with the person and the locker) where a student would likely keep a gun.

***In re Cody S. (2004) 121 Cal. App. 4<sup>th</sup> 86 [Fourth Dist., Div. Two]: By ordering the high school student to remove his backpack from the locker assigned for his use only during physical education class, because he was being taken from that class to the office, the campus safety officers did not conduct a locker search. Subsequently, another campus safety officer had the right to search the student's backpack after he admitted that it contained a knife.***

Campus Safety Officer (CSO) Stanley received an anonymous telephone call reporting that Cody had a knife in his backpack. The caller, who sounded like a young male, did not explain how he knew about the knife or whether he had seen it. Stanley directed two safety officers to escort Cody from his physical education (P.E.) class to the office and to have Cody bring his belongings with him. According to Cody, the safety officers ordered him to open his P.E. locker. They took his clothing and backpack out of locker and carried it to the office. Cody reported to CSO Stanley's office in his gym clothes. Once they were in the office, Stanley told Cody what the caller had reported. Cody initially denied having a knife but then recalled that he had a knife in his backpack; he had left it there after a camping trip. Stanley started searching the backpack. Opening the first zippered compartment, she found three baggies of suspected marijuana residue. Opening the second zippered compartment, she found a knife. In the third zippered compartment, Stanley found a baggie of suspected marijuana. In Cody's trousers, which were stuffed inside the backpack, Stanley found \$190 in cash. Stanley then told Cody that they were going to search his car, which was parked off campus. Cody consented. In the vehicle, the safety officers found more suspected marijuana and paraphernalia.

Cody was charged with possessing a knife on school grounds and possessing marijuana for sale. He filed a motion to suppress evidence, challenging the constitutionality of the searches of his P.E. locker, his backpack, his pants, and his car. The suppression motion was granted as to the search of the vehicle, but denied as to the other three searches.

Cody then admitted possessing a knife on school grounds and the marijuana charge was dismissed. He appealed the denial of the motion to suppress, contending that the campus security officers lacked the requisite reasonable suspicion to search his P.E. locker, based on the anonymous tip, and that his admission that he had a knife in his backpack was the product of the illicit locker search.

The Court of Appeal acknowledged the reasonable suspicion standard for a search of a student, his belongings and his locker. The court, however, stated that it did not need to decide whether the anonymous tip received by CSO Stanley provided reasonable suspicion for a search, because there was no “search” of the minor’s locker. The court reasoned that although a student has an expectation of privacy in his school locker, citing *In re William G., supra*, 40 Cal. 3d at 563, the scope of the student’s legitimate privacy expectation in a school-provided locker may be limited under some circumstances. It was limited in this case because the locker in question was Cody’s gym locker. He was permitted to store his street clothing, backpack and other personal effects in the locker only while he was in P.E. class. At all other times, he could only store his gym clothes in that locker. Because Cody was being removed from his P.E. class to go to the office, he had no reasonable expectation that his backpack and street clothing could remain in the locker. When the campus security officers ordered Cody to remove the backpack and his clothing from the locker, he was merely being directed to comply with a known school rule. The officers’ order did not constitute a “search” of Cody’s P.E. locker.

Thereafter, in the office, Cody’s statement to Campus Security Officer Stanley that he had a knife in his backpack was sufficient, standing alone, to create reasonable suspicion that he did indeed have a knife in the back without even considering the anonymous tip. Because there had been no search of Cody’s locker, this admission that he had a knife in the backpack was not the fruit of the illicit locker search. The scope of the search, in opening the three zippered compartments of the backpack, was also justified.

***In re J.D.* (2014) 225 Cal. App. 4<sup>th</sup> 709 [First Dist., Div. One]: In following up on a tip that T.H., a high school student, had shot someone on a city bus the previous day, school security officers were justified in searching lockers assigned to other students, including J.D., because they knew that T.H. had been seen “hanging out” in front of the bank of lockers where J.D.’s locker was located. Thus, the firearm found in J.D.’s locker need not be suppressed. The Court found this search reasonable even though the school officials lacked any individualized suspicion that J.D. had stored evidence of a law or rule violation in his locker.**

The facts of this case are complicated. After conversing with a female student at Richmond High School, Campus Security Officer (CSO) Sanders told CSO Johnson that this student reported that on the previous day, Richmond High student T.H. had pulled out a gun and shot someone on a city bus. The female student had heard this from another student who had actually witnessed the shooting. CSO Johnson met with school administrators who directed him to detain T.H. and determine if he had a locker. Richmond Police Sergeant Russell was visiting the school and Russell asked Johnson to determine where T.H.’s locker was located. Johnson met with CSO Driscoll who dealt with the student lockers and had information about which students were assigned to specific lockers. When Driscoll ascertained the locker assigned to T.H., he told Johnson that T.H. actually hung out around a different set of lockers; he had seen T.H. several times, including the previous day, in the area of locker #2499. Driscoll also advised Johnson that Richmond High students often shared their assigned lockers with other students for the purpose of concealing contraband and items not allowed on campus. Apparently abandoning any intention of searching T.H.’s actual locker, the two campus security officers, Johnson and Driscoll, along with Sergeant Russell, searched locker #2499, finding only books inside. Driscoll then opened locker #2501, the locker assigned to student J.D., which was next to #2499. Inside locker #2501, the officers found a backpack. As they removed it from the locker, they noted the butt of a sawed-off shotgun protruding from the pack. Inside the backpack, the officers found school papers belonging to J.D.. They located J.D.. After waiving his *Miranda* rights, J.D. admitted that the shotgun belonged to him. In the meantime, Richmond Police Officers found T.H. on campus. T.H. admitted that he had a handgun in his backpack, and the officers recovered that gun. J.D. was charged with possessing a firearm at school. He appealed from the juvenile court’s denial of his motion to suppress the shotgun found in his locker.

The Court of Appeal found that the search of multiple lockers, including J.D.’s locker, was justified even though the campus security officers lacked an individualized reasonable suspicion that evidence of a law or rule violation by J.D. would be found in that locker.

The court began by discussing the increasing incidents of gun violence on school campuses and the sense of students and the public that these campuses were not safe. Then, the court related the use of the balancing test by the United States and California Supreme Courts to determine that the important need to maintain order and discipline in schools justified dispensing with traditional Fourth Amendment warrant and probable cause requirements for public school searches by school personnel. The court acknowledged the rule of *T.L.O.*, *supra*, 469 U.S. 341-42, that a school search is justified at its inception by reasonable suspicion for suspecting that the search will turn up evidence that the student has violated the law or a school rule. However, the Court relied in this case on the special needs cases, *Acton*, *supra*, 515 U.S. at 664-65, and *Earls*, *supra*, 536 U.S. at 829-30, which had approved random searches of students participating in school sports or competitive extracurricular activities without any need to show individualized suspicion.<sup>22</sup>

The report that on the previous day (that high school student T.H. had shot someone on a bus) called for a flexible but reasonable response. It was reasonable for the campus security officers to: 1) determine if T.H. was on campus with a weapon; and 2) inspect lockers that could have been used by T.H. to store a weapon, particularly after they learned that T.H. may have stored contraband in another student's locker. This was a more limited response to the problem presented than the random searches condoned in *Vernonia* and *Earls*. The campus security officers searched only two lockers. "The fact that minor J.D., rather than T.H. had stored an illegal weapon in locker 2501 should not disturb the legal validity of this search." (*J.D.*, *supra*, 225 Cal. App. 4<sup>th</sup> at 720.)

Finally, the court expressed no concern about the fact that regular Richmond police officers assisted school security personnel in carrying out these searches because they played a secondary role. The CSOs were the ones who heard the report of the shooting from a high school student, and they acted at the behest of school administrators in the interests of campus safety. The fact that Sergeant Russell accompanied the CSOs and called other officers to the school was not significant.

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<sup>22</sup> The court also relied on cases from other states, specifically Maryland and Iowa that had approved searches of multiple school lockers based on a generalized report of drugs and weapons in the "middle school area" of campus, *In re Patrick Y.* (2000) 358 Md. 50, and pursuant to a school policy, *State v. Jones* (2003) 666 N.W. 2d 142.

### C. Suspicionless Searches of Students Pursuant to School Policy

***In re Latasha W.* (1998) 60 Cal. App. 4<sup>th</sup> 1524 [Second Dist., Div. Seven]: A knife was discovered in the minor's possession after a random metal detector search for weapons at her high school. The Court of Appeal held that such random metal detector searches did not violate the Fourth Amendment, despite the lack of individualized suspicion.**

Latasha was a public high school student. Before she enrolled, the high school had instituted a written policy for daily metal detector weapons searches. Parents were given notice of this policy before it was instituted and again at frequent intervals. A group of students were randomly selected to be searched each day based on neutral criteria. The searches were conducted using a hand-held metal detector, waved next to the student's body. Students were asked to open jackets or pockets to reveal items which had triggered the detector. On the day that Latasha was searched, the assistant principal had decided to use the metal detector on all students who were within a half-hour late to school and all who entered the attendance office without hall passes. Latasha was one of eight to ten students who met these criteria. While Latasha was being searched, the metal detector beeped. Latasha was asked to open her pocket, revealing a knife. Latasha was charged with bringing a knife to school. The juvenile court denied her suppression motion challenging the search and sustained the offense. Latasha appealed.

The Court of Appeal noted there were no California cases addressing the propriety of random metal detector searches of school students, but noted that other state courts had upheld such searches, conducted without individualized suspicion. The court reasoned that the search at issue in this case was a "special needs" search. Such searches are permitted without individualized suspicion "where the government need is great, the intrusion on the individual is limited, and a more rigorous standard of suspicion is unworkable." (*Latasha W., supra*, 60 Cal. App. 4<sup>th</sup> at 1527.) The Court found the following: 1) The need to keep guns and knives off school campuses is substantial as they pose a threat of death or serious injury to students and staff; 2) the searches in this case were minimally intrusive as students were not touched during the search and were required to open their jackets and pockets only if the metal detector was triggered; and 3) a system of searches based on individualized suspicion would be unworkable. There would generally be no way to determine if the students had concealed weapons on their persons before entering the school campus. By the time a student brandishes or displays a weapon, it might be too late to prevent their use.

***In re Sean A.* (2010) 191 Cal. App. 4<sup>th</sup> 182 [Fourth Dist., Div. One]: In a 2-1 decision, the Court upheld the constitutionality of a suspicionless search of the minor, because he was searched pursuant to a written school policy that students who return to campus after being off-campus are subject to a search of their persons, possessions and vehicles. The court characterized this as a special needs search, analogous to the suspicionless drug testing of student athletes approved by the Supreme Court in *Vernonia School Dist. 47J v. Acton*.**

Sean, a public high school student, was observed by an attendance clerk as he was returning to campus in the middle of the school day. The assistant principal reviewed Sean's record and discovered that he had been present for his third period class, but missed his fourth period class. Informed of this fact, the assistant principal called Sean into his office. Sean explained that he had gone home to retrieve a notebook. The assistant principal then asked Sean to empty his pockets and one of those pockets held a plastic bag containing 44 Ecstasy pills. The assistant principal searched Sean pursuant to a policy set forth in writing in the school's student handbook. That policy stated that "students who return to campus after being 'out-of-bounds' are subject to a search of their persons, their possessions and vehicle when appropriate."<sup>23</sup> The Assistant Principal stated that the searched every student who left campus and came back. Charged with possession of a controlled substance and possession for sale, Sean unsuccessfully tried to suppress the drug evidence as discovered during an unconstitutional suspicionless search. He appealed from the trial court's denial of the motion to suppress.

The court's majority opinion held that the search of Sean pursuant to the policy, without any individualized suspicion, was a permissible special needs search. The court acknowledged that in *New Jersey v. T.L.O.*, *supra*, 469 U.S. at 325, the Supreme Court held that a search of an individual high school student was only justified if the school administrator has reasonable suspicion that the search will turn up evidence of a school rule or law violation. Nevertheless, the Supreme Court had recognized that the special need or protecting school safety justified a lowering of the individualized suspicion standard from probable cause to reasonable suspicion. The court, in this case, distinguished *T.L.O.*, because the assistant principal's search of Sean was not targeted to a particular individual; it was pursuant to a policy that applied to all students who leave campus and return in violation of the school's attendance rules. The court found that the search in this case was more analogous to the search in *Latasha W.*, *supra*, 60 Cal. App.

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<sup>23</sup> The handbook states that "out of bounds" areas include parking areas for vehicles, bikes and mopeds, athletic fields and areas surrounding the campus.

4<sup>th</sup> at 1524, where the student was subject to a random metal detector search, pursuant to a policy motivated by the legitimate interest in keeping weapons off campus. The court noted that the policy here, authorizing searches of all students who leave and then return to campus, serves the same purpose as the suspicionless drug testing for student athletes approved in *Vernonia, supra*, 515 U.S. at 646, which was to prevent students from possessing and using drugs.

The court's majority concluded that a significant government interest motivated this policy: the need to prevent students who left and returned to school from bringing in harmful objects such as weapons or drugs in order to assure a safe learning environment for students. The search of Sean, conducted by the assistant principal was minimally intrusive as the administrator did not touch Sean, but merely ordered him to empty his pockets and open his backpack. This was a far less intimate intrusion than the drug-testing approved in *Vernonia*. Given the special needs promoted by the school policy, individualized suspicion was not required.

The vigorous dissent by Justice Irion is much longer than the majority opinion. Irion concluded that the assistant principal's search of Sean, pursuant to the school policy and without reasonable suspicion was unconstitutional. Justice Irion first noted that both the U.S. Supreme Court, in *New Jersey v. T.L.O., supra*, 469 U.S. at 325, and the California Supreme Court, in *William G., supra*, 40 Cal. 3d at 550, had adopted a reasonable suspicion requirement for school officials' searches of students. Moreover, in *William G.*, the Court had specifically held that knowledge that a student was tardy or truant from class did not provide reasonable suspicion for a search.<sup>24</sup> Next, Justice Irion cited *Vernonia, supra*, 515 U.S. at 646 and *Board of Education v. Earls, supra*, 536 U.S. 822, noting that the Supreme Court had approved suspicionless searches in public school only in the context of drug testing programs imposed on students who chose to participate in school sports or extracurricular activities, and only to address demonstrated and particularized drug abuse problems among the students at those schools.

In performing the Fourth Amendment's balancing test, Justice Irion discussed various factors. First, considering the nature and immediacy of the governmental concern, the dissenting justice found that Sean's high school had not established a "special need" justifying the policy of searching every student who leaves and then returns to campus,

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<sup>24</sup> The dissenting justice cited decisions from Massachusetts and Washington, which held that a student's absence from campus during the school day, without more, did not provide reasonable suspicion for a search.

without individualized suspicion. There was no evidence that this particular high school had a problem with weapons or drugs, or a specific problem with students bringing those items onto campus after leaving for part of the school day. Second, the government had not demonstrated the efficacy of this policy for keeping drugs and weapons off the campus at Sean's school. Many students who do not leave campus during the day may bring weapons and drugs to school. Third, the search policy significantly intrudes on the students' legitimate expectation of privacy in their persons and personal belongings. The high school's policy allows the results of these searches to be reported to law enforcement, as demonstrated by this case. Even though the assistant principal did not touch Sean and merely ordered him to open his backpack and empty pockets, the policy allows a full search of the person. Finally, the high school policy gives too much discretion to school administrators as it merely stated that students who leave campus and then return may be subject to a search; the searches are not mandatory. Thus, school administrators could use the policy to target particular individuals. Balancing the governmental interest against the invasion of privacy, the dissenting justice determined that the policy allowing suspicionless searches was unconstitutional. A showing of reasonable suspicion directed at Sean was required, and it was plainly lacking in this case.

Justice Irion noted that both the Eighth Circuit and the Ninth Circuit had rejected similar attempts, unsupported by the record to invoke "weapons and drugs" as a justification for suspicionless searches. (See *Doe v. Little Rock School Dist.* (8<sup>th</sup> Cir. 2004) 380 F.3d 349 [rejected the public school's attempt to conduct suspicionless searches of randomly selected classrooms in which students backpacks, pockets and purses would be searched because of generalized apprehension about weapons and drugs]; *B.C. v. Plumas Unified School Dist.* (9<sup>th</sup> Cir. 1999) 192 F.3d 1260 [ruling that random and suspicionless dog sniff searches of students in a high school were unconstitutional, as record did not disclose a concrete drug problem at the high school].) The 9<sup>th</sup> Circuit opinion also cites to cases involving dog sniffs of public school students from other federal circuit courts.

#### **IV. Detention and Searches of Students by Security Officers, School Resource Officers or by School Administrators with Police Officer Involvement.**

***In re Randy G.* (2001) 26 Cal. 4<sup>th</sup> 556: School officials may stop a student on campus to ask questions or conduct an investigation without having a reasonable suspicion that the student has committed a crime or violated a school rule.<sup>25</sup> This no-individualized-suspicion standard applies to detentions by school security officers, as well as school administrators and teachers.**

The 14-year-old minor, Randy G., was a public high school student. He was stopped by two campus security officers, who obtained Randy's consent to search during the detention. During passing time at the high school, about 9:00 a.m., Campus Security Officer Worthy saw Randy and a friend in an outside on-campus area where students are not permitted to congregate. When Randy noticed Worthy, he fixed the lining in his pocket. Worthy asked the two students if they needed anything and instructed them to go to class. Randy complied, but Worthy followed him because he had acted "very paranoid and nervous." Worthy summoned another security officer. They went to Randy's class and asked if they could see him outside. Once Randy came into the hallway, Worthy asked him if he had anything on him; Randy said "no." The second officer asked Randy if he could search Randy's bag and conduct a pat search. Randy consented to both searches. The officer frisked Randy and found a knife in his pocket.

In the final portion of its opinion, the California Supreme Court rejected the minor's argument that school security officers, employed by the school district, should be treated differently than teachers and administrators; they should still be required to have reasonable suspicion for a detention. Any school official could have conducted the stop and searches in this matter. "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." (*Randy G.*, *supra*, at 568.) Moreover, holding school security officers to a higher standard than other school officials would discourage schools from employing them to monitor students' activities on campus.

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<sup>25</sup> This major holding from *Randy G.* is discussed above on pp. 23-25.

***In re William V.* (2003) 111 Cal. App. 4<sup>th</sup> 1464 [First Dist., Div. Three]: A school resource officer, a regular police officer assigned to a public high school, is held to the same standard as a school official when conducting on-campus searches; the school resource officer needs only reasonable suspicion, not probable cause.**

Hayward Police Officer Johannes, who was paid and employed by the city as a regular police officer, was assigned to Hayward High School as a school resource officer (SRO) for a two-year term. He was on the school campus approximately eight hours a day and his duties included acting as a resource for school administrators, teachers and students, as well as enforcing criminal laws. At about 9:15 a.m., as SRO Johannes walked toward the high school's administration building, he observed William standing along in the hallway. Johannes noticed that William had a neatly folded red bandana hanging from the back pocket of his pants. School rules forbid possession of bandanas on campus as colored bandanas were known to indicate gang affiliation. When SRO Johannes made eye contact with William, William's behavior changed; he appeared nervous and started pacing. When asked about the red bandana, William claimed he did not know it was there. The officer removed the bandana from William's pocket and decided to take William to the principal's office for discipline. Before escorting William to the office, SRO Johannes decided to pat-search William for weapons, based primarily on the student's possession of the red bandana, which Johannes believed was gang-related; the school had recently experienced gang activity, and the bandana was folded in a manner which indicated preparation for a confrontation. Also, William appeared increasingly nervous. As he patted down William's baggy outer clothing, SRO Johannes detected bulk around William's concealed waistband but could not determine what was causing the bulk. Johannes lifted William's windbreaker jacket and observed a handle protruding from his front pocket. Johannes then removed the item, which was a steak knife with a five-inch serrated metal blade. William was charged in the juvenile court with felony possession of a knife on campus. His motion to suppress the knife as the fruit of an unconstitutional police search, unsupported by probable cause, was denied. William appealed.

The issue on appeal was whether a school resource officer, a regular police officer assigned to a public school campus, should be held to the probable cause standard applied to searches conducted by police officers or to the lower reasonable suspicion standard required for on-campus searches of students by school officials by *New Jersey v. T.L.O.*, *supra*, 469 U.S. at 325 and *In re William G.*, *supra*, 40 Cal. 3d at 550. The Court of Appeal noted that both the U.S. Supreme Court, in *T.L.O.*, and the California Supreme Court, in *William G.*, had expressly declined to consider whether the reasonable suspicion standard would be applicable to school searches conducted by school officials in

conjunction with or at the behest of law enforcement agencies. The court also recognized that in *In re Randy G.*, *supra*, 26 Cal. 4<sup>th</sup> 556, the California Supreme Court did not consider this issue but held non-law enforcement security officers, employed by the school, would be held to the relaxed standards for on-campus detentions and searches.

The Court of Appeal held a school resource officer should be held to the same standard as a non-law enforcement security officer or any school official. To fulfill the duty of assuring a safe environment in which education is possible, teachers and school administrators have broad supervisory and disciplinary powers, including the right to search based on reasonable suspicion. The fulfillment of the school's duty should not be dependent on whether the school district of the city employs the official and pays his salary. The fact that SRO Johannes was employed by Hayward as a regular police officer was insignificant. It did not matter to the court that School Resource Officers were trained, like all law enforcement officers, in Fourth Amendment search and seizure law and the differences between probable cause and reasonable suspicion. In *T.L.O.*, the Supreme Court had stated that requiring only reasonable suspicion for a search would "spare teachers and administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense. (*T.L.O.*, *supra*, at 342-43.) The Court of Appeal held, however, that "[w]hile the advantage of utilizing a standard that does not require special training in Fourth Amendment jurisprudence may not apply in the case of a police officer who had received such training, the court's decision [in *T.L.O.*] does not rest primarily on this rationale." (*William V.*, *supra*, 111 Cal. App. 4<sup>th</sup> at 1471.) The court held that the facts that some officials enforcing the law and school rules may have had greater or lesser Fourth Amendment training was not determinative. All were held to the reasonable suspicion standard for on-campus searches of public school standards.<sup>26</sup>

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<sup>26</sup> The Court of Appeal also held that SRO Johannes had the right to detain and pat-search William and to lift his shirt under the standards applied to school officials.

***In re K.S.* (2010) 183 Cal. App. 4<sup>th</sup> 72 [First Dist., Div. Five]: When a school official independently decides to search a student's belonging and conducts the search, the *T.L.O* reasonable suspicion standard applies even though a regular police officer provided the information justifying the search and was present when the search was conducted by the school official.**

Shortly past noon, Livermore Narcotics Detective Harrison received information from a reliable confidential informant that K.S., a Livermore High School student, possessed Ecstasy pills hidden in a slit in his pants. Detective Harris immediately called Livermore Police Office Officer Cabral, who was the school resource officer (SRO) at Granada High School, relayed the tip and asked SRO Cabral to follow-up. SRO Cabral contacted Livermore High School Vice Principal Dolid and summarized what Detective Harrison had told him. He did not ask Dolid to investigate or search K.S. SRO Cabral told Detective Harrison that he had passed on the information to Vice Principal Dolid, and Harrison went to the high school to see if school officials were going to follow-up on this information, although he did not ask the school to do anything. Vice Principal Dolid believed the information regarding K.S. was reliable. She confirmed K.S. was at school that day and decided to search him to assure the safety of school students. Dolid learned from a school security officer that K.S. was in P.E. class in his gym clothing. Vice Principal Dolid decided to search K.S.'s P.E. locker, where his street clothes were presumably stored. Accompanied by Police Detective Harrison and a second regular police officer, Dolid went to K.S.'s locker and had another school official open it. She asked the police officers to accompany her so they could safely secure the Ecstasy pills if they were found. She did not ask either police officer to conduct the search. Vice Principal Dolid searched the locker and found the jeans with a slit. Inside the slit, she found a plastic bag containing several pills, which were confirmed as Ecstasy in an amount consistent with sale. K.S. was arrested and charged in a juvenile petition with possession of Ecstasy. After his motion to suppress evidence was denied, he admitted the charge and appealed.

The question of whether reasonable suspicion or probable cause was required for an on-campus search of student by a school official, but with the participation of regular police officers, was an issue of first impression in the California courts. K.S. asserted that because Vice Principal Dolid, in conducting the locker search with two police officers present was "carrying out a police initiated investigation in cooperation with the police for law enforcement purposes", the *T.L.O* reasonable suspicion standard for police searches should not apply; probable cause was required due to the level of law enforcement involvement. The Court of Appeal rejected this argument.

As had Division Three in *William V., supra*, 111 Cal. App. 4<sup>th</sup> at 1464, Division Five noted that both the U.S. Supreme Court, in *T.L.O.*, and the California Supreme Court, in *William G.*, had adopted a reasonable suspicion standard for searches of public school students conducted by teachers and school officials. However, neither high court had determined the applicable standard when school officials conduct the search in conjunction with or at the behest of law enforcement officers. Division Five noted that “[a] certain level of cooperation between school and police officials is likely when violations of the criminal law, as well as the student code of conduct, are the basis for discipline.” (*K.S., supra*, 183 Cal. App. 4<sup>th</sup> at 80.) The court noted that, in *William V.*, the appellate court had determined the appropriate standard to be applied when the party detaining and searching the student was a school resource officer, finding that the T.L.O. reasonable suspicion standard applied. The court emphasized that in *William V.*, there was actually a greater level of police involvement since the school resource officer, who was employed by the police department, stopped the student and conducted the search. Here, the police merely conveyed information to the vice-principal and two police officers were present when the vice principal was the one who conducted the search.

The vice principal was the one who decided to conduct the search and did so, and “the police role in the search of [K.S.] was at all times subordinate to the role of the vice principal. For that reason, the *T.L.O.* standard applies.” (*K.S., supra*, at 80.) For this level of law enforcement involvement, probable cause was not required. The court reasoned that the fact that the police officer supplied the information to the school officials, which led to the vice principal’s decision to search did not “change the balance of interests that led to the decision in *T.L.O.*.” (*Ibid.*) The two police officers’ presence at the invitation of the vice principal, when she searched K.S. should not change the analysis. The court concluded that the extent of the police role in a student search at school should govern whether the *T.L.O.* standard applies. In this case, the level of police involvement was not sufficient to require probable cause.

***In re J.D.* (2014) 225 Cal. App. 4<sup>th</sup> 709 [First Dist., Div. One]: The school security officers had reasonable suspicion to believe that high school student T.H. had a gun, and this justified a search of the J.D.'s locker because T.H. had been seen "hanging out" near J.D.'s locker.<sup>27</sup> Although Richmond police officers were present and assisted school officials in carrying out the investigation and the searches, their secondary role did not support deviating from the T.L.O. reasonable suspicion standard.**

A female student at Richmond High School told Campus Security Officer (CSO) Sanders that on the previous day, Richmond High student T.H. had pulled out a gun and shot someone on a city bus. The female student had heard this from another student who had actually witnessed the shooting. CSO Sanders conveyed this information to CSO Johnson. Johnson met with school administrators who directed him to detain T.H. and determine if he had a locker. Richmond Police Sergeant Russell was visiting the school and Officer Russell advised CSO Johnson to locate T.H., but not to confront him, and to determine where T.H.'s locker was located. CSO Johnson met with CSO Driscoll who knew which students were assigned to specific lockers. When Driscoll ascertained the locker assigned to T.H., he told CSO Johnson that T.H. actually hung out around a different set of lockers; he had seen T.H. several times, including the previous day, in the area of locker #2499. Apparently abandoning any intention of searching T.H.'s actual locker, the two campus security officers, Johnson and Driscoll, along with Richmond Police Sergeant Russell, went to the block of lockers intending to check them for weapons. They searched locker #2499, finding only books inside. Police Sergeant Russell told CSO Driscoll to check adjacent lockers. Driscoll then opened locker #2501, the locker assigned to student J.D., which was next to #2499. Inside locker #2501, the officers found a backpack. As they removed it from the locker, they noted the butt of a sawed-off shotgun protruding from the pack. Inside the backpack, the officers found school papers belonging to J.D.. They located J.D.. After waiving his *Miranda* rights, J.D. admitted to a police sergeant that the shotgun belonged to him. J.D. was charged with possessing a firearm at school. In the meantime, Richmond Police Sergeant Russell had contacted two of his fellow Richmond police officers to come Richmond High to locate and confront T.H. Richmond Police Sergeant Gray and another officer responded to Sergeant Russell's call and found T.H. on campus. T.H. admitted that he had a handgun in his backpack, and the officers recovered that gun.

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<sup>27</sup> This major ruling from *In re J.D.* is discussed above on pp. 36-37.

To summarize, the extent of Richmond Police Sergeant Russell's involvement in the investigation that led to the search of J.D.'s locker and the search itself, was as follows: 1) Sergeant Russell, who was visiting Richmond High School on the date when they learned of T.H.'s possession and discharge of a gun on the previous day, told Campus Security Officer Johnson to locate T.H. but not confront him and to determine the location of T.H.'s locker. 2) Sergeant Russell was with Campus Security Officers Johnson and Driscoll when they searched locker #2499, although it is not clear if Russell actually participated in the search of that locker. 3) When only books were found in locker #2499, Sergeant Russell directed CSO Driscoll to open adjacent lockers, and Driscoll responded by opening locker #2501, J. D.'s locker, in which they located a shotgun. 4) Sergeant Russell called to of his fellow Richmond police officers to come to Richmond High to locate and confront T.H, and they did so.

Relying on *In re K.S., supra*, 183 Cal. App. 4<sup>th</sup> at 72, the Court of Appeal found that Richmond Police Sergeant's involvement in the investigation of the report regarding T.H. and his role in searching J.D.'s locker did not rise to a level of police involvement that necessitated abandoning the *T.L.O.* reasonable suspicion standard for the locker search in favor of probable cause. The initial report on T.H.'s possession and discharge of a weapon on the previous day was made to a campus security officer, and not to a Richmond police officer. Sergeant Russell then assisted the campus security officers in their actions in the interest of campus safety. Russell merely accompanied the officers as they went to search the area of lockers near #2499 and he called two fellow Richmond police officers to come to the high school to locate and confront T.H.<sup>28</sup> The police officers played a "secondary role" which did not "cancel the fundamental feature of this case - administrators seeking to secure the school premises from the potential for violence. (*In re J.D., supra*, at 720.)

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<sup>28</sup> The Court of Appeal ignored other aspects of Police Sergeant Russell's involvement: that he told CSO Johnson to locate T.H. and not confront him and to locate T.H.'s locker; and that he directed CSO Driscoll to open adjacent lockers, including J.D.'s locker (#2501) after a weapon was not found in locker #2499.

***In re K.J.* (2018) 18 Cal. App. 5<sup>th</sup> 1123 [First Dist., Div. Four]: The search of a high school student performed jointly by a school resource officer and a regular police officer was reasonable under the standards established for public school students.<sup>29</sup>**

On a school day afternoon, Fairfield High School Assistant Principal Cushman received a text message from a student alerting him that “there’s a kid with a loaded gun on Yeto campus.” (Sam Yeto High is a smaller public school located on the Fairfield High campus.) Cushman knew the identify of the student who texted him but declined to reveal it due to the student’s fear of retaliation. Consequently, the parties stipulated that the student would be treated as an anonymous tipster. After advising his secretary to call the police, Assistant Principal Cushman immediately went to the Yeto campus to report the tip to McCormick, the Yeto High principal. Shortly after arrived at Yeto, he was met by School Resource Officer (SRO) Gulian, the school resource officer for Fairfield High, who had been informed of the tip. SRO Gulian called for a back up police officer to come to the school campus. In the meantime, SRO Gulian advised Assistant Principal Cushman to contact the anonymous student tipster for more information. Cushman called the tipster and she told Cushman that she had received a message via SnapChat with a video showing a student, sitting in a classroom, displaying a gun and a magazine clip. The student tipster described the suspect’s gender, race, and hairstyle (dread locks). She did not know the suspect’s name, but she knew who he was and that he had previously attended Fairfield High. Cushman and Yeto Principal McCormick came up with the names of two students who fit the description. Cushman gave these names to the student tipster and she identified appellant as the student in the video.

Once Fairfield Police Officer Quinn arrived to back-up SRO Gulian, the two officers and Principal McCormick went to appellant’s classroom. SRO Gulian directed McCormick to escort appellant from the classroom, and as soon as appellant exited, Gulian removed appellant’s backpack and handcuffed him. SRO Gulian searched appellant and found a bullet magazine in the left front pocket of his jeans. Officer Quinn participated in this search and found a semi-automatic firearm in the shorts that appellant was wearing under his jeans. The gun was not loaded but the magazine contained seven rounds of ammunition.

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<sup>29</sup> The Court of Appeal’s analysis of why the detention and search were reasonable in this case is discussed above on pp. 26-28.

The Court of Appeal extended the *William V.* ruling to regular police officers called to school to assist school resource officers. The court rejected appellant's claim that the relaxed standards for justifying on-campus detentions and searches of public school students should not apply in this case because SRO Gulian performed the search along with Officer Quinn, a regular Fairfield Police Officer whom Gulian called to provide back-up. The Court noted that in *William V.*, the Court had refused to require a higher standard of suspicion for a police officer assigned to campus as a school resource officer, as opposed to a non-law enforcement security officer, based on "who pays the officer's salary, rather than the officer's function at the school and special nature of a public school." (*William V.*, *supra*, 111 Cal. App. 4<sup>th</sup> at 1472.) Both the security guard and the school resource officer had the same relationship to the students and the same responsibility for maintaining school order and discipline. Similarly, "[t]he relationship between a student and a campus resource officer is no different than between a student and the back-up officer merely because one is assigned to work at the school and the other is not." (*In re K.J.*, *supra*, at 1130.)

In the current case, SRO Gulian properly called a regular police officer to provide back-up due to the seriousness of the situation, and that precaution should not be discouraged. Because both officers had specialized training in Fourth Amendment jurisprudence, the protection of student's rights would be the same regardless of the officers' distinct assignments. "For purposes of Fourth Amendment analysis, 'school officials' include police officers.... who are assigned to high schools as resource officers.....as well as he back-up officers who are called to assist them." (*Id.*, at 1131.)

## **V. On-Campus Searches of Minors Who Are Not Enrolled Students**

***In re Jose Y.* (2006) 141 Cal. App. 4<sup>th</sup> 748 [Second Dist., Div. Four]: The school resource officer's patdown search of a minor who was not enrolled in the school was justified; the mere fact that he had no legitimate business on campus created a reasonable need to determine whether or not he posed a danger.**

At around 11:30 in the morning of a school day, at South Gate High, Campus Security Officer (CSO) Sanchez saw three young teenaged men, ages 16 to 18, sitting on the lawn area of the school grounds during school hours. Jose was one of the three. Sanchez did not recognize them. Sanchez notified School Resource Officer (SRO) Chung, who met him in the front of the school. SRO Chung approached the three men and asked them if they had any identification. All three said they did not, but Jose produced a piece of paper

with his name on it; it was a registration slip from a school other than South Gate High School. SRO Chung decided to take all three teenagers to his officer to verify their identity and determine which schools they attended. Before doing so, he decided to pat search them, as he was alone with them and concerned for his safety. Chung patted down Jose's clothing and felt a hard object in his pocket. When asked what the object was, Jose said it was a knife and SRO Chung recovered the weapon. In the juvenile court, after Jose's motion to suppress evidence was denied, he admitted the charge of possessing a locking blade knife on school grounds. Jose challenged only the constitutionality of the pat search and not his detention.

The Court of Appeal acknowledged that neither the Supreme Court or California courts had clearly set forth the standard for school officials conducting an on-campus pat search of an enrolled student. Would it be the standard for pat searches of adults and minors off school grounds – a reasonable belief that the detainee is armed and dangerous – or would some lesser standard apply due to the need of schools to maintain a safe and orderly environment for learning? Ultimately, the court did not decide this issue. However, it rejected Jose's claim that "a patdown conducted on a person who appears to have no legitimate business on campus may be justified only by a belief that the person was armed and dangerous." (*In re Jose Y., supra*, at 751.)

The key factor for the Court of Appeal was that Jose was not a student at South Gate High School and thus had a lesser right of privacy than a student who was properly and legitimately on school grounds. SRO Chung had reason to believe that Jose and his companions did not belong on the South Gate High campus. He did not know who they were or why they were there. The mere fact that Jose had no legitimate business on the campus created a reasonable need to determine whether he had a weapon and posed a danger to the school resource officer or anyone else on campus. "The governmental interest in preventing violence on campus outweighs the minimal invasion of the minor's privacy rights which occurred here." (*In re Jose Y., supra*, at 752.)