Worcester – School Admin.  
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Search & Seizure Issues 

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The 4th Amendment
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

What is a Search & Seizure

A search of a student is an examination of a student's person or property with the intent of discovering concealed contraband, the possession of which is prohibited by state law, or policy or regulation of the county board. A seizure is the act of taking possession of the discovered contraband.
Who may conduct a Search & Seizure

A principal, assistant principal or school security guard (not a school resource police officer) has the authority to make a reasonable search of a student pursuant to Md. Code Ann., Ed. Art. § 7-308(a). Note that Md. Code Ann., Ed. Art. § 7-308(b) permits a teacher who is designated and trained to conduct reasonable searches only on school-sponsored trips.

Who may conduct a Search & Seizure

It is also important to recognize that any student search must be made in the presence of a third party, to serve as a witness, according to Md. Code Ann., Ed. Art. § 7-308(c). Similar provisions regarding student searches and seizures are set forth in COMAR 13A.08.01.14E-F.
Is a warrant required for Searches & Seizures

No, school officials are not required to obtain a warrant from a judge, before searching a student’s possessions or person. While the Fourth Amendment does apply to schools, the legality of a search of a student depends on the reasonableness, under all of the circumstances, of the search.
Is probable cause required for Searches & Seizures

No, school administrators are not required to produce evidence of probable cause before searching a student's possessions or person. School administrators need have only a reasonable suspicion, which is a less rigorous standard than that of probable cause, in order to conduct a legal search. New Jersey v. T.L.O., 469 U.S. 325 (1985)

What is the standard for school Searches & Seizures

Under New Jersey v. T.L.O., two questions must be posed in determining if a student search is valid, they are:

1. Was the search justified at its inception?
2. Was the scope of the search reasonable?
What is the standard for school Searches & Seizures

In Maryland, the standard for searches is more restrictive under Md. Code Ann., Ed. Art. § 7-308(a), which requires that an appropriate school official have a reasonable basis to believe that the student is in current possession of contraband which violates Maryland criminal or civil laws or local board of education rules or regulations.

When is a Search justified at its inception

New Jersey v. T.L.O. held, "Under ordinary circumstances, a search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school".
When is a Search reasonable in scope

New Jersey v. T.L.O. held, "Such a search will be permissible in its 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".

When is a Search reasonable in scope

For example, a much more intrusive search would be reasonable if there were reasonable grounds to believe that a student possessed a weapon in school. On the other hand, a far less intrusive search might be all that was reasonable when searching a student for a cigarette. Strip searches of students, for example, are very nearly always found to be unreasonable in scope.
Is individualized suspicion required for a Search

Yes, in order to search a student in school, an administrator must have some degree of individualized suspicion before searching any particular student for contraband. Additionally, a search of large groups of students has been held unreasonable, the same holds true for the search of an individual student without specific knowledge of rules violations by that particular student.

What is a consensual Search

If a student, with the capacity to refuse, consents to a search of his or her property or person, then an administrator may validly search without being subject to the various constitutional and statutory constraints set forth elsewhere herein. Consent could be defined as a student knowing that they can say no to a search, and still saying yes.
What is a student’s expectation of privacy

The level of student expectation of privacy in the area of the search ranges across a spectrum where student lockers have the lowest expectation of privacy, and items of student clothing being worn by the student have the highest expectation of privacy. Purses, backpacks, and automobiles fall somewhere in between the two extremes as far as a student’s entitlement to an expectation of privacy.
What about Searches of cellphones and other devices

Student cellphones and personal electronic devices have a higher student expectation of privacy than that which exists for student lockers. This is a logical distinction between a portion of the school facility (lockers) and the personal property and technology owned by the students. In order to conduct such a search, reasonable grounds and an individualized suspicion must exist.
What about Searches of cellphones and other devices

Of particular concern with such devices is the fact that it is usually not necessary to search the contents of the cellphone or electronic device to establish that the student was using it in a way banned by school rules when observed by a teacher or other staff member. Thus conducting a more detailed search of the contents of the offending cellphone or electronic device should be done only when there is also indication that it was used for purposes that specifically violate additional school rules such as cheating.
What about Searches of student clothing and persons

A student's clothing and person have a higher student expectation of privacy than that which exists for student lockers, purses and backpacks and automobiles. Even so, pat downs and other searches of student outerwear, pockets and shoes are generally permissible provided that the TLO standard has been met. Strip searches are never a good idea and should not be conducted.
What about drug sniffing dogs as a basis for Searches

The Supreme Court in a non-school case generally upheld the use of canines for sniffing items for the location of drugs as not constituting an invalid search, based upon a finding that no expectation of privacy extends to the airspace around an item and that this “public smell” is the equivalent of contra-band being found in “plain sight”.
How do school and police interact in student Searches

Police searches on school premises require a warrant, and are generally restricted to prevent imminent danger to students. COMAR 13A.08.01.14 sets forth:

D. Police officers shall conduct searches of students and the school premises in accordance with their established policies and procedures.
E. A school official may not conduct a search of the person of a student at the request of a police officer unless a search warrant has been issued authorizing the search.
F. Every effort shall be made to conduct searches in a manner which will minimize disruption of the normal school routine and minimize embarrassment to students affected.
Seizure of Physical Evidence

- Get it, if it exists.
- Put it in a bag (if possible) for labeling.
- Label it: date, time, initials of person who obtained it for school system and where found.
- Photograph it.
- Measure it.
- Keep it in a secure location.
Concluding the Search

A. Analyze and evaluate the evidence collected.
   Are there loose ends that need follow-up?
   Are there holes that need to be filled?
   Are there inconsistencies that should be confirmed?

B. When appropriate, draw conclusions from the credible evidence, including timeline.

Making Decisions

Was the policy followed or was there wrongdoing? If so, consider the available and appropriate range of responses and consequences that resolve the situation.

Consider thoughtfully the basis for your final decision by:
✓ considering the seriousness of the situation
✓ the impact on the school and involved parties
✓ the handling of similar past situations
✓ the impact on the educational environment, and
✓ the overall impact of your final decision.