

## Search and Seizure

### 1. *New Jersey v. T.L.O.*, 469 U.S. 325, 83 L.Ed.2d 720 (1985)

**The Facts:** A New Jersey high school teacher found a 14-year-old student smoking in the bathroom. Under questioning from an assistant principal, the student denied smoking. Not believing the student, the principal opened the student's purse and found a pack of cigarettes and cigarette rolling papers. The principal kept searching, and also found a small amount of marijuana, a pipe, a number of empty plastic bags, a lot of one-dollar bills, an index card listing other students who owed the student money, and letters that implicated the student as a marijuana dealer.

**The Holding:** In short, the U.S. Supreme Court held that the pivotal question in any search and seizure case involving a student in school is: **was the search conducted by a police officer or a school official?** School officials are still subject to some theoretical limits under the Fourth Amendment, but not the same ones that police officers are.

More specifically, the majority held that for **school officials**, “the legality of the search of a student should depend simply on the **reasonableness**, under all the circumstances, of the search ... 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 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 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.”

**Notes:**

## Recent North Carolina Cases

### 1. *In re Jason Patrick Murray*, 136 N.C. App. 648, 525 S.E.2d 496 (2000)

**The Facts:** A student told a middle school assistant principal that the defendant had something in his book bag that he shouldn't have at school. The principal questioned the defendant, who first told her he didn't have a bag and then denied that there was anything inappropriate in his bag. The defendant would not let the principal search the bag, and asked to call his father. The assistant principal contacted the dean of students and the school resource officer. The officer cuffed the defendant when he still refused to turn over the bag, and the principal opened the bag and found a pellet gun. At this point, the principal called the defendant's father.

**The Holding:** In applying *T.L.O.* to these facts, the Court of Appeals decided that the search was conducted by a school official (the principal) and not a police officer (the resource officer). As such, the Court applied the *T.L.O.* "reasonableness" standard and upheld the search because the tip from the other student, combined with the defendant's lie claiming that he did not have a bag, provided "sufficient grounds for a reasonable person" to believe that searching the bag would yield evidence that the defendant had "broken a school rule or law"

Significantly, the Court noted that the resource officer "acted to enable [the principal] to obtain the bag and search it. He did not search the bag himself, nor did he conduct any investigation of the bag on his own."

**Notes:**

2. *In re D.D.*, 146 N.C. App. 309, 554 S.E.2d 346 (2001)

**The Facts:** A substitute teacher overheard students say that a group of girls was coming onto campus to fight at the end of the school day. The substitute told the school's principal. About ten minutes before the end of the school day, the principal contacted the school resource officer and they positioned themselves at opposite ends of the school building. The principal saw four female students, including one of his students, standing in the parking lot.

The principal then "gathered" the resource officer and two other uniformed officers and approached the girls. The officers had guns. In the parking lot, the principal asked the students why they were there, and the defendant said she was waiting to catch a bus to an appointment at the public bus stop in the parking lot. The students tried to walk away from the principal and the officers, and officers "told them to 'hold on.'" The principal asked the girls their names, and called other schools to try to find out what school they attended.

The school resource officer asked one of the students for permission to search her purse. The student testified that he officer grabbed the purse before she could give it to him. The officer found a box cutter in the purse. The principal took the students to the office and asked the girls to empty their pockets. The defendant had a knife in her pocket. The principal and one of the officers (not he resource officer) testified that they both made the decision to charge the defendant.

**The Holding:** The Court determined that the *T.L.O.* "reasonableness" standard applied, not only to searches by school officials, but also to searches where police officers work "**in conjunction with**" school officials, so long as they do so "to maintain a safe and educational environment." The Court applied the reasonableness standard and found that the search was both "justified at its inception" and "reasonably related in scope to the circumstances which justified the interference in the first place."

Further, the Court held that the officers' involvement was "minimal" relative to the principal's. The Court held that the officers did not initiate the investigation, nor did they direct the principal's actions. The Court believed that the officers simply held the girls in place so that the principal could act.

The Court also noted that the school resource officer performed the function of "maintaining a safe and proper educational environment."

3. *In re J.M.F. and T.J.B.*, 168 N.C. App. 143, 607 S.E.2d 304 (2005)

**The Facts:** A school resource officer (also a Forsyth County sheriff's deputy) was investigating a fight at school involving T.B. When he saw T.B. leaving the school, the officer told T.B. to stop, but she did not listen. Later, at about 3 pm, the officer saw T.B. standing at a bus stop on school grounds. The officer told T.B. to come back to the school office to talk to the school administrator about the fight and find out if she would be suspended. T.B. refused, and her sister told the officer to get his hands off her. T.B. ran, and the officer grabbed her sister, J.M., who resisted and then also ran. The two sisters were apprehended a short time later.

**The Holding:** Relying heavily on *D.D.*, the Court held that the *T.L.O.* "reasonableness" standard applies to cases where "a resource officer, acting in conjunction with a school official, **detains** a student on school premises."

In so holding, the Court noted that the officer was still on duty and on school property (the bus stop) when he attempted to detain T.B. The Court also held that the officer's sole purpose in detaining T.B. was to bring her to the school administrator.

**Notes:**

4. ***In re S.W.*, 171 N.C. App. 335, 614 S.E.2d 424 (2005)**

**The Facts:** S.W. was walking through the hall of his school with another student. When he passed by the school's resource officer (a Durham County sheriff's deputy), the officer noticed the smell of marijuana. The officer stopped S.W., took him from the hallway to the school's weight room, and asked him "if he had anything on him." S.W. said he did not, and the officer asked "do you mind if I search?" S.W. said he did not mind. There were two assistant principals present, but they did not question or search S.W. The officer found marijuana when he searched S.W.

**The Holding:** In light of the above cases, the real questions here were whether the officer was acting as a law enforcement officer, as a school official, or at the direction of a school official. The Court held that the officer was "not an outside officer conducting an investigation" into a non-school crime. The Court applied the *T.L.O.* standard, and upheld the search based on the odor of marijuana.

In reaching the conclusion that *T.L.O.* applied, the Court noted that the officer was an employee of the Durham County Sheriff's Department, but that he "assisted school officials with school discipline matters and taught law enforcement related subjects." Also, the officer "was exclusively a school resource officer, who was present in the school hallways during school hours and was furthering the school's educational related goals when he stopped the juvenile."

**Notes:**

## Interrogation

### 1. *In re Krystal Nicole Phillips*, 128 N.C. App. 732, 497 S.E.2d 292 (1998)

**The Facts:** An assistant principal noticed that a school bank bag was stored under the office counter. The principal also saw Phillips in the office, while the secretary was not at the counter. When the secretary returned, Phillips left the office. The secretary found the bank bag was missing. When the assistant principal began to search for the money, he saw Phillips leave a women's bathroom. The principal and a female teacher searched the bathroom and found the bank bag in the trashcan. The principal asked the student to lead him to the money, and the student went in a bathroom stall and returned with the cash.

**The Holding:** The Court here did not cite *T.L.O.*, but used suspiciously similar reasoning to reach its decision in this case. The Court acknowledged that custodial statements obtained without *Miranda* warnings are inadmissible, and that a custodial interrogation may be conducted by an individual acting as an agent of the police.

However, the Court held that the defendant in this case was **not "in custody"** when she was questioned by the principal, because **the principal was not acting as an agent of the law enforcement.** The Court also noted that the principal did not question the defendant to "obtain information to use in criminal proceedings" but simply "for school disciplinary purposes."

**Notes:**

### Some Other Helpful Cases

1. *Tinker v. Des Moines Independent School Dist.*, 393 U.S. 503, 21 L.E.2d 733 (1969): Authority for the basic idea that students retain constitutional rights while in school.
2. *In re Ewing*, 83 N.C. App. 535, 350 S.E.2d 887 (1986): A parent may not waive a juvenile's rights.
3. *Picha v. Weiglos*, 410 F.Supp. 1214 (N.D. Ill. 1976): Pre-*T.L.O.* case that held that *any* search involving a police officer required probable cause. It is cited in a footnote in *T.L.O.*, in anticipation of cases that will involve both police and school officials.
4. *State v. Young*, 234 Ga. 488, 216 S.E.2d 586 (1975): Applied "reasonableness" standard only when a "search is free of involvement by law enforcement personnel."
5. *State v. Tywayne H.*, 123 N.M. 42, 933 P.2d 251 (1997): "Police" searches are intended to obtain evidence for prosecution, while "school" administrator searches are intended to maintain school discipline.
6. *State v. Branham*, 153 N.C. App. 91, 569 S.E.2d 24 (2002): Under § 7B-2101, custodial interrogation must cease if a juvenile asks for his parent.
7. *State v. Jones*, 147 N.C. App. 527, 556 S.E.2d 644 (2001): Defendant's aunt was considered a "guardian" for purposes of § 7B-2101, because she clothed, housed, and fed him, and enrolled him in school.