When Can Educators Search Student Cell Phones?

Posted by Justin W. Patchin on February 10, 2011

Do students have an expectation of privacy on their cell phones while at school? The short answer to this is a qualified yes. Whether educators have the authority to search the contents of student cell phones depends on a lot of factors. The key issue in this analysis (that we have raised **before** on this **blog**) is the standard of reasonableness. According to **New Jersey v. T.L.O (1985)** students are protected by the Fourth Amendment to the U.S. Constitution which protects citizens against unreasonable searches and seizures. In T.L.O., the Supreme Court goes on to say that the standard that law enforcement officers must reach to conduct a search (probable cause that a crime has been committed), is not required of educators. In general, the standard applied to school officials is whether the search is "justified at its inception and reasonable in scope." Of course there is a bit of subjectivity to this standard and what appears to be reasonable for one person may not be for another. In T.L.O., the Court ruled that for a search of student property to be justified, there must exist: "reasonable grounds for believing that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." This seems to be the standard by which schools should determine whether a search of a student cell phone is allowable.

Caselaw on Educator Searches of Cell Phones

There are a couple of cases which have been decided that shed some light on how this particular standard would apply to the search of student cell phones. The case most often cited is **Klump v. Nazareth Area School District (2006)**. In this case, a teacher confiscated a student's cell phone because it was visible during class – which was in violation of school policy (it accidentally fell out of the student's pocket). The teacher and assistant principal then searched through the cell phone's number directory and attempted to call nine other Nazareth students to determine if they too were in violation of the policy. They also accessed text and voice mail messages and communicated with the

student's brother without indicating to him that they were school staff.

The Court agreed that the school was justified in seizing the phone, but should not have used the phone to "catch other students' violations." In summary, the U.S. District Court in Klump concluded: "Although the meaning of 'unreasonable searches and seizures' is different in the school context than elsewhere, it is nonetheless evident that there must be some basis for initiating a search. A reasonable person could not believe otherwise."

In November 2010, a Mississippi federal court identified no Fourth Amendment violation when a teacher seized, and administrators reviewed, photos and text messages in a cell phone confiscated from a boy who used it in violation of a schoolwide ban (**J.W. v. Desoto County School District, 2010**). Of course, the seizure was allowed because the school had a policy prohibiting the possession or use of cell phones at school. The issue in this case was the legitimacy of the search of the phone's contents, which included incriminating pictures of the student wearing what appeared to be gang clothing.

The court ruled that the school was justified in searching the cell phone: "Upon witnessing a student improperly using a cell phone at school, it strikes this court as being reasonable for a school official to seek to determine to what end the student was improperly using that phone. For example, it may well be the case that the student was engaged in some form of cheating, such as by viewing information improperly stored in the cell phone. It is also true that a student using his cell phone at school may reasonably be suspected of communicating with another student who would also be subject to disciplinary action for improper cell phone usage" (J.W. v. Desoto County School District, 2010).

I personally believe that the Mississippi court got this case wrong. Searching the student's phone will not yield any additional evidence that he is in violation of the school's policy prohibiting possession of the phone at school. Seeing the phone in school already sufficiently established that point. The court argues that "…a student's decision to violate school rules by bringing contraband on campus and using that contraband within view of teachers appropriately results in a diminished privacy expectation in that contraband." Clearly the court in Klump did not agree with this reasoning as the court sided with the student. And while New Jersey v. T.L.O. established a different search and seizure standard for educators, the Supreme Court did not in this case suggest that any policy violation whatsoever negated any expectation of privacy a student previously held. The court in J.W. seems to suggest that if a student chooses to deliberately violate a school policy, that student should also be willing to shed any other constitutional protections with respect to the contraband. It should be noted, though, that the Mississippi court did attempt to distinguish the facts of J.W. from Klump by saying J.W. intentionally violated school policy whereas Klump accidentally violated the policy. I'm unconvinced that this should be a salient factor. Does it really matter that much if a policy is accidentally or intentionally violated? Given the many apparent contradictions between Klump and J.W. (and other student cell phone search cases), I would love to see the U.S. Supreme Court review this issue to provide much needed clarity to educators and school law enforcement officers.

What is Reasonable?

At both ends of the continuum of circumstances, the law is fairly clear. For example, if a reputable student advises a staff member that another student has the answers to the math exam on his mobile device, this would almost certainly allow for a search by an administrator. At the other extreme, conducting a search of a cell phone that was confiscated because it was ringing in a student's backpack would likely not be allowed. Of course, there is quite a bit of gray ground in between to cover.

With all of this said, schools would be wise to include a specific statement in their policies that regulate student-owned devices brought to school. The policy should advise everyone that students who bring their own devices to school are subject to a reasonable search if suspicion arises that the device contains evidence of a violation of school policy or the law. Students, staff, parents, and law enforcement officers working in the schools need to be aware of this policy so that no one is surprised if/when certain actions are taken.

What do you think? Given your knowledge of current law, are educators allowed to search student cell phones simply when they are possessed (with the possession being the sole school policy violation)? Or, should they be allowed to search student cell phones only if they can articulate that they reasonably believe that evidence on the phone will reveal another policy violation? Do you believe the laws need to be changed in this area? Increasing numbers of schools are opening their doors and classrooms to cell phones and other mobile devices. As such, it is imperative that clarity is established in this area of case law and policy.