Searches of students by school personnel

Number: INFORMAL

Date: January 10, 2007

Subject:
Searches of students by school personnel

Ms. Beverly A. Morris
Marion County School Board Attorney
808 S.E. Fort King Street
Ocala, Florida 34471

Dear Ms. Morris:

As attorney for the Marion County School Board you have asked for assistance relating to searches of students by school personnel. You have identified information in the Attorney General's "School Search Manual" and requested authority for certain statements in the manual.

Florida courts have determined that the appropriate standard for school searches is reasonable suspicion. In order for reasonable suspicion to exist, the action must be justified at its inception, and the search must be reasonably related in scope to the reason for the search.[1] The state is required to elicit specific and articulable facts which may reasonably warrant the intrusion when taken together with rational inferences from those facts.[2]

Following the United States Supreme Court decision in *New Jersey v. T.L.O.,*[3] Florida courts have recognized that, under ordinary circumstances, a search of a student 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.[4] As the Fourth District Court of Appeal recently stated in *State v. Bullard*, [5] "[t]o have either a reasonable or founded suspicion, the detaining officer must have a particularized and objective basis for suspecting the particular person stopped of criminal activity based upon the totality of the circumstances."[6] It is this requirement of individualized suspicion that the text of concern in the "School Search Manual" appears to address.

Determining whether a particular search of a school student is justified is a mixed question of law and fact that must be addressed on a case-by-case basis. This office has attempted to provide helpful information and guidelines in the "School Search Manual," but legal counsel for a school district may be aware of school policies and local concerns that would not be reflected in these materials and could be taken into consideration by a court.

I trust that these informal comments will be helpful to you. Thank you for contacting this office to request additional assistance in this matter.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See, e.g., State v. Bullard*, 891 So. 2d 1158 (4th DCA Fla. 2005) and *State v. Whorley*, 720 So. 2d 282 (Fla. 2d DCA 1998).

[2] *See*, *A.H. v. State*, 846 So. 2d 1215 (Fla. 5th DCA 2003); *A.N.H. v. State*, 832 So. 2d 170 (Fla. 3d DCA 2002) (citing *Terry v. Ohio,* 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 [1968].)

[3] 469 U.S. 325, 83 L.Ed. 2d 720, 105 S.Ct. 733 (1985).

[4] *New Jersey v. T.L.O, id* at 341-342.

[5] *State v. Bullard, id.* n.1 at 1159.

[6] Citing *Felton v. State*, 753 So. 2d 640 (Fla. 4th DCA 2000).