Cell Phone Searches

We are immersed in the digital age. Nearly every high school student has her or his own cell phone. Even in the elementary schools, many students have cell phones – and these phones are no longer just "communication devices." They are cameras, entertainment tools, and hand-held computers that contain volumes of personal information and data. While some schools had a practice of banning cell phone use in schools, such a ban is impractical as phones and other devices are often encouraged for learning activities. Converging with this reality is the fact that security issues in schools, as well as student safety issues, are becoming more prevalent. Since student cell phones can contain a wealth of information regarding student misconduct and other safety concerns (e.g., bullying, threats, substance abuse, weapons, videos of fights, etc.), school officials often ask, *"When may school personnel lawfully search a student's cell phone?"* This article, prepared by Diana Brown, provides some guidance concerning lawful cell phone searches.

The Law Regarding Searches of Students' Cell Phones by School Personnel

The Fourth Amendment to the United States Constitution protects individuals against unreasonable searches and seizures.[1] Warrantless searches are, by definition, "unreasonable searches," except in some narrowly drawn exceptions. Searches of information/data on cell phones are considered "searches" that fall under the Fourth Amendment.

In March 2013, the United States Court of Appeals for the Sixth Circuit[2] reaffirmed the rule set forth by the U.S. Supreme Court concerning searches of students' cell phones by school personnel. The Court stated that the lawfulness of a search in a school setting is based on the "reasonableness, under all the circumstances, of the search." The determination of "reasonableness" is based on a two-part inquiry:

1. Was the search justified at its inception?
2. Was the scope of the search reasonably related to the circumstances that justified the search?

Justified At Its Inception

The Sixth Circuit provided some guidance for the application of these standards. A search will be justified at its inception if there are reasonable grounds to believe that the search will uncover evidence that the student is violating or has violated a rule or law or that a student is in imminent danger of harm on the school premises.[3] The Court expressly cautioned that the fact that a student uses a cell phone in contravention of school rules does not automatically grant school personnel the right to search any and all content on the phone that is not related to the infraction. In this case, the Court ruled that school officials did not have justification to search text messages on the student's cell phone simply because the student was seen by his teacher sending a text message while in class. Based on these facts, there were no reasonable grounds to suspect that a search of the cell phone would uncover any misconduct or danger.

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1 Article I, Section 14 of the Ohio Constitution provides the same protections as the Fourth Amendment.

2 The U.S. Court of Appeals for the Sixth Circuit is the federal appeals court for the state of Ohio. As such, its decisions are binding legal authority in our state.

3 *Citing Brannum v. Overton Cnty, Sch. Bd.,* 516 F.3d 489, 495-96 (6th Cir. 2008).

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In contrast, the Court found the search of the student's cell phone to be justified when the student walked out of a meeting with a counselor, made a call on his cell phone in the parking lot, returned to the counselor's office, and admitted that he was having suicidal thoughts. In addition, a security officer observed tobacco products in plain view in the student's car. Under these facts, it was reasonable to believe that a search of the student's phone may uncover information that the student may harm himself or may be contemplating violation of school rules.

Reasonable in its Scope

In general terms, the Court stated that a search is reasonable 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."[4] The Court agreed that the scope of a search of a student's cell phone exceeded the bounds of "reasonableness" when, upon seeing a student using his cell phone in violation of school rules, the school officials seized the phone, accessed text and voicemail messages, reviewed contacts, used the phone to call other students and spoke with the student's brother on the phone.[5] Even though the school officials eventually found evidence of drug activity by searching the phone, they had "no reason to suspect at the outset" that the search would uncover any evidence of misconduct. In assessing an alleged violation of the Fourth Amendment, the relevant analysis is of what the officials knew at the inception of the search.

Recent U.S. Supreme Court Ruling on Cell Phone Searches

One exception to the Fourth Amendment prohibition against warrantless searches is a search "incident to arrest." In 2014, the U.S. Supreme Court ruled that the search of an arrestee's cell phone does not fall within the exception of a search incident to arrest.[6] Weighing the immense privacy concerns implicated by the volume of personal data that may be stored on a cell phone, the Court ruled that "a warrant is generally required before such a search, even when a cell phone is seized under incident to arrest." This elevation of privacy over the government's right to search incident to arrest, although in the criminal context involving police searches, may have implications for the searches of student's cell phones by school officials. The case indicates a trend toward a heightened sensitivity to the privacy of the contents of cell phones.

At present, the legal standards by which searches of students' cell phones are assessed have not changed, yet school officials should be diligent in executing such searches in strict compliance with the existing standards by always ensuring that the search is justified at its inception and is reasonable in its scope.

The *Legal Update*, prepared by the Education Law attorneys of Bricker & Eckler, is intended to provide general information and is not to be considered legal advice for any specific problem or issue. If specific legal advice is sought, please consult with an attorney.

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4 Citing *New Jersey v. T.L.O.*, 469 U.S. 325, 342 (1985).
5 Reviewing the facts in *Klump v. Nazareth Area School Dist.*, 425 F. Supp. 2d 622 (E.D. Pa. 2006).
6 *Riley v. California,* 134 S. Ct. 2473; 2014 U.S. LEXIS 4497 (2014).

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