

TEXAS SCHOOL FOR THE DEAF

**STUDENT RIGHTS AND RESPONSIBILITIES:
INTERROGATIONS AND SEARCHES**

FNF

**QUESTIONING
STUDENTS**

School officials may question a student regarding the student's own conduct or the conduct of other students. In the context of school discipline, students may not refuse to answer questions based on a right not to incriminate themselves.

For provisions pertaining to student questioning by law enforcement officials or other state or local governmental authorities, see GRA.

TSD PROPERTY

Desks, lockers, school-provided technology, and similar items are the property of TSD and are provided for student use as a matter of convenience. TSD property is subject to search at any time without notice. Students have no expectation of privacy in school property.

Students shall be fully responsible for the security and contents of school property assigned to them. No student shall place or keep in a desk, locker, school-provided technology, or similar item any article or material prohibited by law, TSD policy, or the Student Code of Conduct. Students shall be responsible for any prohibited item found in or on TSD property proof their lockers, and for vehicles parked on school property. It is the student' responsibility to ensure that lockers and vehicles are locked and that the keys and combinations are not given to others. TSD requires that combinations or a key to locks placed on lockers be provided to the appropriate school administrator. Students shall not place, keep, or maintain any article or material that is forbidden by School policy in lockers or in vehicles parked on school property.

**SEARCHES IN
GENERAL**

School officials may conduct searches of students, their belonging, and their vehicles in accordance with state and federal law and school policy. Searches of students shall be conducted in a reasonable and nondiscriminatory manner.

School officials may initiate a search in accordance with law, including, for example, based on reasonable suspicion, voluntary consent, or pursuant to school policy providing for suspicion less security procedures, including the use of metal detectors.

**REASONABLE
SUSPICION
SEARCHES**

Searches should be reasonable at their inception and in scope. If there is reasonable suspicion to believe that searching a student's person, belongs, or vehicle will reveal evidence of a violation of the Student Code of Conduct, a school official may conduct a search in accordance with law and school procedures.

**SUSPICIONLESS
SEARCHES**

For purposes of this policy, a suspicion less search is a search carried out based on lawful security procedures, such as metal detector searches or random drug testing.

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- 2. Intentionally exceeding an authorization to access that facility.

EXCEPTIONS

This section does not apply with respect to conduct authorized:

- 1. By the person or entity providing a wire or electronic communications service;
- 2. By a user of that service with respect to a communication of or intended for that user; or
- 3. By sections 18 U.S.C. 2703, 2704, or 2518.

18 U.S.C. 2701(a), (c)

ELECTRONIC
COMMUNICATION

“Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system that affects interstate or foreign commerce. 18 U.S.C. 2510(12)

ELECTRONIC
STORAGE

“Electronic storage” means:

- 1. Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
- 2. Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

18 U.S.C. 2510(17)

Messages that have been sent to a person, but not yet opened, are in temporary, intermediate storage and are considered to be in electronic storage. See *Steve Jackson Games, Inc. v. U. S. Secret Service*, 36 F.3d 457 (5th Cir. 1994). Electronic communications that are opened and stored separately from the provider are considered to be in post-transmission storage, not electronic storage. See *Fraser v. Nationwide Mut. Ins. Co.*, 352 F.3d 107 (3d Cir. 2004).

BY LAW
ENFORCEMENT

A peace officer may not search a person’s cellular telephone or other wireless communications device, pursuant to a lawful arrest of the person, without obtaining a warrant under Code of Criminal Procedure 18.0215.

A peace officer may search a cellular telephone or other wireless communications device without a warrant if:

- 1. The owner or possessor of the telephone or device consents to the search;

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- 2. The telephone or device is reported stolen by the owner or possessor; or
- 3. The officer reasonably believes that:
 - a. The telephone or device is in the possession of a fugitive from justice from whom an arrest warrant has been issued for committing a felony offense; or
 - b. There exists an immediate life-threatening situation, as defined by Code of Criminal Procedure 18A.201.

Code of Crim. Proc. 18.0215

USE OF TRAINED DOGS

The School reserves the right to use trained dogs to conduct screening for concealed prohibited items. This program is implemented in response to drug and alcohol related problems in the School, with the objective of maintaining a safe school environment conducive to education.

Such visit to schools and residences shall be unannounced. The dogs shall be used to sniff vacant classrooms, vacant common areas, the areas around student lockers, and the areas around vehicles parked on school property. The dogs shall not be used with students; however, students may be asked to leave personal belongings in an area that will be screened. If a dog alerts to a locker, a vehicle, or an item in a classroom, it may be searched by school officials. Searches of vehicles shall be conducted as described above.

Trained dogs' sniffing of cars and lockers does not constitute a search under the Fourth Amendment. The alert of a trained dog to a locker or car provides reasonable cause for a search of the locker or car if the dog is reasonably reliable in indicating that contraband is currently present. The School need not show that the dog is infallible or even that it is reliable enough to give probable cause.

Trained dogs' sniffing of students does constitute a search and requires individualized reasonable suspicion.

Horton v. Goose Creek Indep. Sch. Dist., 690 F.2d 470 (5th Cir. 1982)

NOTICE

At the beginning of the school year, the School shall inform students and parents of the School's policy on searches, as outlined above, and shall specifically notify students that:

- 1. Lockers may be sniffed by trained dogs at any time.
- 2. Vehicles parked on school property may be sniffed by trained dogs at any time.
- 3. Classrooms, residences and other common areas may be sniffed by trained dogs at any time when students are not present.

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PARENT NOTIFICATION The student’s parent or guardian shall be notified if any prohibited articles or materials are found in a student’s locker, in a student’s vehicle parked on school property, or on the student’s person, as a result of a search conducted in accordance with this policy.

SEARCHES OF STUDENTS Students shall be free from unreasonable searches and seizures by school officials. School officials may search a student's outer clothing, pockets, or property by establishing reasonable cause or securing the student's voluntary consent. Coercion, either expressed or implied, such as threatening to contact parents or police, invalidates apparent consent.

U.S.C. Const., Amend. 4.; *New Jersey v. T.L.O.*, 469 U.S. 325 (1985); *Jones v. Latexo Indep. Sch. Dist.*, 499 F. Supp. 223 (E. D. Tex. 1980)

A search is reasonable if it meets both of the following criteria:

1. The action is justified at the inception; i.e., the school official has reasonable grounds for suspecting that the search will uncover evidence of a rule violation or a criminal violation.
2. The scope of the search is reasonably related to the circumstances that justified the search in the first place; i.e., the measures adopted are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

***New Jersey v. T.L.O.*, 469 U.S. 325 (1985)**

INTRUSIVE SEARCHES A search of a student’s underwear is impermissibly intrusive unless the school officials reasonably suspect either that the object of the search is dangerous or that it is likely to be hidden in the student’s underwear. *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364 (2009), *Littell v. Houston Indep. Sch. Dist.*, 894 F.3d 616 (5th Cir. 2018)

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