## STUDENT RIGHTS AND RESPONSIBILITIES: INTERROGATIONS AND SEARCHES

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### 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.

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.

TSD 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, of 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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Metal Detector Searches In order to maintain a safe and disciplined learning environment, the School reserves the right to subject students to metal detector searches when entering campus or a school building and at off-campus school-sponsored activities.

# SEARCHES OF VEHICLES

In accordance with the Student Code of Conduct, students are responsible for prohibited items found in their possession, including items in their personal belongings or in vehicles parked on school property.

School officials may search vehicles parked on school property, if there is reasonable cause to believe that they contain articles or materials prohibited by School policy. Students shall be responsible for any prohibited items found in their vehicles parked on school property.

If a vehicle subject to search is locked, the student shall be asked to unlock the vehicle. If the student refuses, the School shall contact the student's parents. If the parents also refuse to permit a search of the vehicle, the School may turn the matter over to local law enforcement officials.

#### RANDOM DRUG TESTING

Whether a particular search is reasonable is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. Thus, the reasonableness of a random student drug-testing policy is determined by balancing the following factors:

- 1. The nature of the privacy interest compromised by the drug-testing policy.
- 2. The character of the intrusion imposed by the drug-testing policy.
- 3. The nature and immediacy of the governmental interests involved and the efficacy of the drug-testing policy for meeting them.

Vernonia Sch. Dist 47J v. Acton, 515 U.S. 646 (1995) (upholding a policy requiring urinalysis drug testing as a condition of participating in athletics); Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls, 122 S.Ct. 2559 (2002) (upholding a policy requirement urinalysis drug testing as a condition of participating in competitive extracurricular activities)

The School reserves the right to implement a random drug testing program for students who participate in competitive extracurricular activities and/or who park a vehicle on TSD property.

SEARCHES OF TELECOMMUNICA-TIONS / ELECTRONIC DEVICES A person is prohibited from obtaining, altering, or preventing authorized access to a wire or electronic communication while it is in electronic storage by:

1. Intentionally accessing without authorization, a facility through which an electronic communication service is provided; or

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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:

- 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 posttransmission 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:
  - 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
  - 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 probably 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)

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#### 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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