



May Teachers Search Students' Cell Phones?

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I have a "friend" whose teenage son was caught using his cell phone in class. The teacher saw him using it and took the phone. She looked at the phone when she picked it up and saw displayed on its screen a snapchat from another student in the class. So she took the other student's phone too. My friend wanted to know what the teacher's options were after that. Could she search the contents of the cell phones she had seized?

Does the Fourth Amendment apply? The Fourth Amendment's prohibition on unreasonable searches **does apply** to searches of students and student property conducted by school authorities. See *New Jersey v. T.L.O.*, 469 U.S. 325, 332 (1985). Even though school officials sometimes act as surrogates for parents (whose searches are unquestionably exempt from the Fourth Amendment, no matter how "unreasonable" their children may deem them), school officials act as representatives of the State when they carry out searches related to school discipline. *Id.* at 336-37.

Do school officials need a warrant? No. The United States Supreme Court recognized decades ago that the warrant requirement was "unsuited to the school environment," since requiring a teacher to obtain a warrant before searching a child suspected of violating school rules or the criminal law would "unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools." *Id.* at 340.

What's the standard for suspicion? While a search normally must be based upon probable cause that a violation of the law has occurred, that standard is lowered in the school context. The legality of a search of a student or his or her property by a school authority is based on its reasonableness under the circumstances. *Id.* at 341 (1985). To be lawful, the school authority's actions must be justified at their inception. *Id.* at 341-42. A search is so justified when there are **reasonable grounds** for suspecting that it will turn up evidence that the student has violated or is violating the law or school rules. *Id.* The ensuing search must be reasonably related in scope to the circumstances that initially justified the interference and must not be excessively intrusive in light of the age and sex of the student and the nature of the infraction. *Id.*

How does this apply to cell phone searches? The United States Supreme Court noted in *Riley v. California*, ___ U.S. ___, 134 S. Ct. 2473 (2014), that cell phones are "such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy." *Id.* at ___; 134 S. Ct. at 2484. This sort of device attachment is just as pronounced for teenagers as it is for adults. And teenagers, like adults, use their phones to store information that creates a digital record of their lives, from the mundane to the intensely personal. The pervasiveness of these handheld digital records of private information led the *Riley* court to conclude that a warrant is generally required before a cell phone may be searched by a law enforcement officer, even when the cell phone is seized incident to the person's arrest. *Id.* at ___; 134 S. Ct. at 2493.

Riley did not, of course, address searches of cell phones by school officials; therefore, it does not alter the decades-old rule that warrants are not required for school searches. *Riley's* consideration of the privacy interests implicated by cell phone searches does, however, indicate that school officials should carefully limit their searches of students' cell phones to ensure that the data they search relates to the suspected violation.

A case in point. The Court of Appeals for the Sixth Circuit considered in *G.C. v. Owensboro Public Schools*, 711 F.3d

623 (6th Cir. 2013), whether an assistant principal lawfully read the text messages on a student's phone after a teacher saw the student send two text messages during class. The court reasoned that using a cell phone on school grounds "does not automatically trigger an essentially unlimited right enabling a school official to search any content stored on the phone that is not related either substantively or temporally to the infraction." *Id.* at 633. The court determined that school officials did not have reasonable suspicion to justify the search as they failed to demonstrate how searching the phone would reveal evidence of criminal activity, impending contravention of additional school rules, or potential harm to anyone in the school. *Id.* at 634.

So what's the answer? The *G.C.* court's conclusions indicate that the teacher could not search the cell phone in the facts set out above. But not every court has applied that analysis. See, e.g., *J.W. v. Desoto County School Dist.*, 2010 WL 4394059 (N.D. Miss. Nov. 1, 2010) (unpublished) ("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."). There is no North Carolina or Fourth Circuit case on point. As a practical matter, I suspect that policy guidance on this issue may vary among school districts.