



September 17, 2013

Dear Texas School Superintendent,

On this Constitution Day, we write to stress the importance of protecting students' Fourth Amendment rights in the school setting. The American Civil Liberties Union of Texas is a nonprofit, nonpartisan organization dedicated to defending the individual liberties set forth in the Bill of Rights. We often receive complaints from students about drug tests and invasive searches at school. As a new school year begins, we urge you to respect students' Fourth Amendment rights and to champion constitutional principles in your schools.

Schools Are Not Constitution-Free Zones

Students undeniably retain their constitutional rights in school. As the U.S. Supreme Court famously said, students do not “shed their constitutional rights . . . at the schoolhouse gate.”¹ The Fourth Amendment protects students against unreasonable searches and seizures,² including mass drug testing or random searches of students' persons and belongings. Arbitrary searches of students not suspected of wrongdoing not only violate the Constitution, but also conflict with a core Texan value—the right to be left alone by the government.

Searches Must Be Supported by Reasonable Suspicion of Wrongdoing

While courts allow some flexibility with Fourth Amendment strictures in the school environment, school administrators must still have reasonable suspicion about a particular student to justify a search:

State-operated schools may not operate as enclaves of totalitarianism where students are searched at the caprice of school officials. Thus, while the unique role of education in our society is a factor to be taken into account in assessing the reasonableness of this search, it does not necessarily outweigh all other factors. Some articulable facts which focus suspicion on specific students must be demonstrated before any school search can be carried out.³

¹ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506, (1969).

² *Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470, 480 (5th Cir. 1982) (Noting that “it is beyond question that the school official . . . is an agent of the government and is constrained by the fourth amendment.”).

³ *Jones v. Latexo Indep. Sch. Dist.*, 499 F. Supp. 223, 236 (E.D. Tex. 1980) (holding use of drug sniffing dog unconstitutional without individualized suspicion).

School searches also must be “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

Texas Federal Courts Reject Random Drug Tests and Searches

Texas federal courts have enforced these principles again and again. In *Tannahill v. Lockney Independent School District*, for example, the court held unconstitutional a school district’s mandatory policy of randomly drug testing all students in grades six through twelve.⁵ Suspicionless dog sniff searches of students also have been ruled unconstitutional.⁶ Courts are quite clear that such fishing expeditions do not pass constitutional muster: “The blanket search or dragnet is, except in the most unusual and compelling circumstances, anathema to the protection accorded citizens under the fourth amendment. The state may not constitutionally use its authority to fish for evidence of wrongdoing.”⁷ Without “specific evidence of drug use”⁸ or “a real and immediate threat,”⁹ schools may not subject students to such searches.

Educators Should Teach Students to Respect the Constitution by Example

Individual liberty is the bedrock of our democracy, and respect for the Constitution should inform all aspects of school life: That schools “are educating the young for citizenship is reason for scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.”¹⁰ Our students learn these constitutional values not only from textbooks but also from your example. We trust you will set a good one. We’ll be watching.

Sincerely,



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⁴ *Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364, 370 (2009) (internal citations and quotation marks omitted).

⁵ 133 F. Supp. 2d 919, 930 (N.D. Tex. 2001).

⁶ *Horton*, 690 F.2d at 481 (holding mass suspicionless canine sniff searches unconstitutional and requiring individualized suspicion in order to perform a search on a student).

⁷ *Jones*, 499 F. Supp. at 928.

⁸ *Bd. of Educ. of Indp. Sch. Dist. No. 92 of Pottawatomie v. Earls*, 536 U.S. 822, 832-38 (2002) (upholding drug testing of students who participate in extra-curricular activities where school district presented specific evidence of drug use and test results were not shared with law enforcement officials).

⁹ *Veronia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 665 (1995) (upholding drug testing of student athletes where school faced real and immediate threat of drug use among athletes and results were not shared with law enforcement).

¹⁰ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943).