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SEARCH AND SEIZURE OF MOBILE PHONES

Most school districts in Pennsylvania have policies in place to regulate the use of mobile telephones by their students. Ever increasingly, the regulation of mobile phones in school has become a discipline issue not just in high schools, but also in middle and elementary schools too. A recent study by the Pew Center for Internet & American Life found that now 75% of teens ages 12-17 own cell phones, up from just 45% in 2004. Yet beyond merely regulating the possession and use of mobile telephones, school administrators often encounter mobile devices in the investigation of other discipline incidents such as bullying, fighting, and cheating. It is in those investigations that school administrators easily run afoul of the law.

The Fourth Amendment to the United States Constitution protects students from unreasonable searches and seizures. In *New Jersey v. T.L.O.* (1985), the United States Supreme Court established the parameters for a search of a student's property in school. The Court held that under ordinary circumstances, a search of a student by a teacher or other school official will be justified when there are *reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school*. However, the court also clarified that even though a search may be justified, it must also be reasonable in scope given the circumstances. The same standard applies when school officials search the contents of a Student's mobile device.

In *Klump v. Nazareth School District* (2006), a Pennsylvania federal court refused to dismiss a lawsuit brought by a student against the school district and district officials for, among other things, unlawfully searching the student's mobile telephone. The student alleged that his mobile phone was confiscated and that a teacher and principal had used the student's phone to call other students in school and accessed his text messages and voicemails. The court held that, if proven, the student's allegations that the teacher and principal had called other students using his phone would amount to an unreasonable search. The court found that there were no reasonable grounds to suspect that the search would turn up evidence that the student violated the law or school rules.

School administrators must be aware that when a mobile device is involved in a discipline incident, they do not have carte blanche authority to search the device merely because the device is located in school. Rather, there must be reasonable grounds for the search, and the search must be reasonable in scope. For example, if a school principal seizes a phone that is alleged to have inappropriate pictures on it, the principal must constrain his search of the device to what is reasonable (e.g. the photos on the phone). The principal would NOT have authority to listen to the student's voicemails, read e-mails, and look at the student's Facebook page via the device. In fact, exceeding ones' authority to access stored communications on a mobile phone is a crime in Pennsylvania! (18 Pa.C.S. §5741).

Moreover, when law enforcement is involved in an incident (e.g. for sexting, fighting), a school administrator may very easily compromise the integrity of valuable evidence by accessing the device and its contents. Where it is evident that law enforcement will be investigating an incident, school officials are well-served to hold the device in a secure location until police arrive rather than executing the search themselves.

New technologies in our schools continually provide new challenges for school administrators. Sweet, Stevens, Katz & Williams LLP provides legal counsel as well as in-service training for teachers and administrators on how to handle these new technological challenges from cyber-bullying to sexting to social networking.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.