

New Jersey v. T.L.O. / School Cell Phone Search Policy PSA

Directions:

1. Read the **Background** section below.
 2. Complete the **PSA Activity** described on page 2, using the handouts (page 3) to guide your work.
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Background

Although the body of law around school searches has developed for decades, students, lower courts, and school administrators have struggled with the Fourth Amendment and its application to cellphone searches conducted by school administrators. The Supreme Court has not accepted a case involving cellphone searches in the context of schools. *New Jersey v. T.L.O.* (1985), *Vernonia School District v. Acton* (1995), and *Safford v. Redding* (2009)—the cases that set precedent regarding school searches—were all decided prior to a ruling about cell phone privacy during searches, which happened in 2014 in *Riley v. California*. According to the precedent in the above cases, school officials only need reasonable suspicion to search the student’s person or possession(s). Read more about the ruling in these cases on the **School Search Cases Reference Sheet** (page 10).

However, in *Riley v. California*, the Supreme Court acknowledged that the storage capacity of cellphones presents significant concerns protecting individual privacy against unreasonable searches. Read the following excerpt from the majority opinion in *Riley v. California* (2014):

“...a cell phone collects in one place many distinct types of information—an address, a note, a prescription, a bank statement, a video—that reveal much more in combination than any isolated record. Second, a cell phone’s capacity allows even just one type of information to convey far more than previously possible. The sum of an individual’s private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the same cannot be said of a photograph or two of loved ones tucked into a wallet. Third, the data on a phone can date back to the purchase of the phone, or even earlier. A person might carry in his pocket a slip of paper reminding him to call Mr. Jones; he would not carry a record of all his communications with Mr. Jones for the past several months, as would routinely be kept on a phone...”

In conclusion, the parameters of constitutional cellphone searches conducted by school administrators remains unknown. Therefore, school districts across the nation are trying to carefully

apply the rulings in *T.L.O.*, *Vernonia*, and *Redding* and balance them with the privacy implicated in the *Riley* ruling.

PSA Activity

You will be assigned one of two roles: a school administrator or a high school student. Collectively, students assigned to each role will gather with their groups and assume the role of an interest group. An interest group is a body of people that seeks to influence an area of policy. In this activity, the classroom group of school administrators will portray the role of the American Association of High School Principals. The classroom group of students will represent the League of Freedom for Students. Each group has been very active in your school district advocating for policy outlining clear guidelines for administrators engaging in searches of cellphones and each with a specific interest to represent.

Each group will create a 2- to 3-minute public service announcement (PSA), tailored to the audience of the local school board, advocating your groups' concerns and suggested guidelines for cellphone searches conducted by administrators. PSAs highlight a policy issue by providing information to citizens, bringing awareness, and advocating for action on a specific issue of policy. Each student will be utilizing their individual task sheets to plan and craft their message for effective school policy change. Groups will present their PSAs at the end of the class period.

Handout IA: School Cell Phone Search Policy PSA

Role: School Administrators

Directions: Your group will portray the role of the American Association of High School Principals. The AAHSP's mission is to advocate for effective policy change for school administrators across the nation.

Areas of Concern:

Need for cellphone searches:

- Maintaining order of the school (e.g., drug use)
- Changing nature of school discipline concerns (e.g., cyberbullying and sexting)
- Increased usage of cellphones for instructional purposes during class increases risks of:
 - Opportunity to use phone to break rules
 - Cheating

Concerns with searching cellphones:

- Increased ownership and usage of cellphones
- Storage capabilities of cellphones with personal information
- Unsure of what is permissible to search in cellphones that will not violate the student's right to privacy
- Inability to effectively investigate matters of school policy due to overwhelming amount of privacy in a student's cellphone
- Inability to investigate policy will lead to order of the school not being maintained

Example of concern applied in lower-court case:

In *G.C. v. Owensboro Public Schools* (2013), G.C., a student, had his cellphone confiscated by a teacher for using the device in class, violating the schools no cellphone usage policy. The school's administration was concerned with G.C., because he had a history of drug use, depression, suicidal thoughts, and breaking rules in school. The school's administration decided to read text messages in G.C.'s phone out of concern for his wellbeing.

Handout 2A: PSA Planning Guide

Role: School Administrators

Tips for Writing a Good PSA

- Capture the attention of the audience with a creative hook
- Provide information to the audience regarding the issue
- Bring awareness surrounding the issue
 - Why should the audience care? What makes the issue so pressing that they should act?
 - Make your message persuasive
 - Consider your public service announcement to be an argumentative essay. How can you craft your message to make it more convincing?
 - Providing statistics and citations of information you have researched will make your points stronger (think argumentative essay when providing an example)
 - Clearly advocate the change in policy you hope for. Your goal will be to advocate for the school board to enact clear guidelines, in line with Supreme Court precedent, to enable school administrators to maintain the order of the school and to protect the rights of students.

Analysis of Issues

1. In your opinion, what are the most pressing issues administrators have regarding cellphone searches? Choose five that you think are the most compelling and focus your public service announcement around these issues. Use the space below to plan your answer. Be sure to include statistics to make your arguments more convincing.

2. Predict how the lower court ruled in your provided case using precedent. Why do situations such as the one provided cause great concern for administrators?

Handout 2A: PSA Planning Guide (cont.)

Script Planning Outline:

Names of Students Responsible	Main Speaking Points (in order)
	Hook:

Additional Notes:

Handout IB: School Cell Phone Search Policy PSA

Role: Student Advocates

Directions: Your group will portray the role of the League of Freedom for Students. The LFS's mission is advocate and protect against abridgement of student's rights by schools across the nation, vehemently believing that "students' rights don't stop at the schoolhouse gate."

Areas of Concern:

Changing Body of Law Regarding Cellphones

- The Supreme Court has not taken a case regarding the Fourth Amendment and how it applies to searches in the digital age. Student's rights are no longer protected as they were at the time of *New Jersey v. T.L.O* (1985).
- The Supreme court recognizes in *Riley v. California* (2014) that there is a vast amount of information found out about a person in a cellphone. Although Riley referred to a search after a lawful arrest, the Supreme Court has acknowledged that data in cellphones is comparable to a record of one's entire life.
- Vast ownership of cellphones
- Amount of private information stored in phone
- School districts have written guidelines into their search and seizure policies defining where students may not enjoy a reasonable expectation of privacy (i.e. "*Students shall have no expectations of privacy in the use of the lockers in which have been assigned to them. The School Board reserves the right to inspect or search at any time lockers, desks, or any facilities, objects, or vehicles on the school campus, or used by students.*"- *Calcasieu Parish School Board Search and Seizure Policy, 2019-2020*)
 - Where can a student store their phones (hosting a vast amount of personal information) if they wish to keep that information private?
 - Inability to leave phones at home

Concerns with Searching Cellphones

- Limits on a cellphone search
- Broad cellphone searches are an unreasonable search because they are excessively intrusive

Example of concerns applied in lower-court case:

In *Klump v. Nazareth Area School District* (2006), a student's cellphone fell out of his pocket during class. The student's phone was confiscated, as the school's rules state that students were not allowed to use or display cellphones during school hours. When the administrators had the phone, a notification of a text message regarding marijuana was seen. The school administrators then called several students who had left voicemails on the phone using the confiscated phone.

Handout 2B: PSA Planning Guide

Role: Student Advocates

Tips for Writing a Good PSA

- Capture the attention of the audience with a creative hook
- Provide information to the audience regarding the issue
- Bring awareness surrounding the issue
 - Why should the audience care? What makes the issue so pressing that they should act?
 - Make your message persuasive
 - Consider your public service announcement to be an argumentative essay. How can you craft your message to make it more convincing?
 - Providing statistics and citations of information you have researched will make your points stronger (think argumentative essay when providing an example)
 - Clearly advocate the change in policy you hope for. Your goal will be to advocate for the school board to enact clear guidelines, in line with Supreme Court precedent, to enable school administrators to maintain the order of the school and to protect the rights of students.

Analysis of Issues

1. In your opinion, what are the most pressing issues students are facing regarding cellphone searches? Choose five that you think are the most compelling and focus your public service announcement around these issues. Use the space below to plan your answer. Be sure to include statistics to make your arguments more convincing.

2. Predict how the lower court ruled in your provided case using precedent. Why do situations such as the one provided cause great concern for students?

Handout 2B: PSA Planning Guide (cont.)

Script Planning Outline:

Names of Students Responsible	Main Speaking Points (in order)
	Hook:

Additional Notes:

Handout 3: School Cell Phone Search Policy—Search for Consensus

Cellphone Search Policy

As a class, you will search for consensus on a cellphone search policy that best represents the balance between the necessity of the school administrators to maintain the order of the school and the protection of students’ rights.

Your policy must be representative of the following:

- The ability for school administrators to investigate violations of school rules
- Safeguards against overly intrusive cellphone searches by administrators
- Consideration of *T.L.O.*, *Vernonia*, and *Safford* rulings

Write a draft of a cell phone search policy for schools that you believe both administrators and students will support:

Handout 4: Search Cases Reference Sheet

Case	Facts and Decision
<i>New Jersey v. T.L.O.</i> (1985)	<ul style="list-style-type: none"> – School officials searched a high school student’s purse on suspicion that she may have cigarettes. During the search, school officials discovered marijuana, which was illegal, and reported the discovery of the marijuana to police. While T.L.O. argued that school officials needed a warrant to search her purse, the majority held that school searches only need a reasonable suspicion to pass the “reasonableness” standard. – According to the Supreme Court, a search must be justified at its inception and as the search was conducted, it must be reasonably related in scope to the complaint in which they are investigating.
<i>Vernonia School District 47J v. Acton</i> (1995)	<ul style="list-style-type: none"> – Upheld a school district policy requiring students who are members of an athletic team participate in random drug testing as a reasonable search, making an exception to individualized suspicion requirement. – The Court used balanced three factors to determine the reasonableness of the search: “decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met by the search.” – The school had a legitimate government interest in curbing a significant drug usage problem among student athletes and that athletes had a low expectation of privacy due to having “voluntarily subject themselves to a degree of regulation even higher than that imposed on students generally.”
<i>Safford v. Redding</i> (2009)	<ul style="list-style-type: none"> – Ruled that strip searching a 13-year-old student suspected of having over the counter medicine at school was not a reasonable school search and violated the Fourth Amendment. – Although the school administrator’s search was justified at its inception due to having proof, the search was not reasonable in scope and the degree of intrusion outweighed the threat over the counter medicine had to school safety and order.
<i>Riley v. California</i> (2014) Note: not a school search case	<ul style="list-style-type: none"> – Ruled that cellphone searches after a lawful arrest are a violation of the Fourth Amendment due to the vast amount of personal and private information stored in smartphones. Some information, such as data in cloud storage, isn’t even on the “person” when arrested. – Concurring opinion stressed that the purpose of searches incident to arrest are to protect the safety of the officer and to preserve evidence. There is nothing in a person’s cellphone that would harm the officer.