SCHOOL SAFETY & CURRENT LEGAL REFORM

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Decision-making on safe schools will then no longer be driven by ad hoc responses to incidents, but by policies carefully implemented in response to known campus needs.
WHAT ATTITUDE SHOULD THE SAFE SCHOOLS TEAM TAKE IN RESPONSE TO THE LAW? HOW MUCH ROOM FOR CREATIVE does legal reform allow, especially for jurisdictions with unique campus challenges? WHAT APPROACH TO IMPLEMENTING THE LEGAL REFORM IS MOST EFFECTIVE? IN SHORT, WHAT ARE THE CHARACTERISTICS OF A SAFE SCHOOL IN LIGHT OF ALL THE NEW LAW?

Happily, local educators and SROs already know, sometimes without realizing it, a great deal about the details of safe schools law. By reacting to specific incidents of student misconduct, they can piece together the foundation for implementing effective policies. For example, they know that educators possess special authority to make decisions in the best interests of campus safety. This power is a form of the common law notion of in loco parentis. It empowers school officials “to protect pupils from mistreatment by other children and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern.” Board of Education v. Earls, (536 U.S. 822, 825 (2002)). They also know that student rights have been downgraded to assist educators in this regard. Therefore, while children assuredly do not shed their constitutional rights at the schoolhouse gate, the nature of those rights is what is appropriate for children in school.” Vemonia School District v. Acton (513 U.S. 435, 441 (1995)).

Therefore, it is safe to say, as a foundational matter, that educators can lawfully search to make certain that all is well on campus. Lockers, desks, book bags, pockets, hats and jackets may be the basis for searches based on the good-faith belief “that a crime has been or is in the process of being committed, or reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies.” New Jersey v. T.L.O. 469 U.S. 325, 331 (1985).

The goal of fine-tuning the educator/SRO relationship may be reached by understanding the recent expansion of these basic principles. First, the U.S. Supreme Court, after T.L.O., more fully endorsed the safe school movement by giving educators the widest latitude possible to proactively insure a safe campus. Second, the lower courts joined the high court by boldly applying the cases and by announcing its own new rules on collaboration between educators and law enforcement.


discussions on the subject of school safety are increasingly turning from law to policy. Although many educators and school resource officers (SRO) are beginning to understand what the law permits and requires in their collaborative efforts, the policy implications of this body of law are often missed. Indeed, the larger policy questions are usually not considered at all; most of the time the priority is to get a direct answer on a specific question of law regarding the authority of the educator or the SRO in a situation that demands it now. However, when one turns to the larger picture the challenges and solutions are easily seen.

THE U.S. SUPREME COURT AND SCHOOL SAFETY EMPOWERMENT

The contribution of the U.S. Supreme Court to the safe schools movement did not end with the well-known decision of New Jersey v. T.L.O. The ruling in T.L.O. is significant; it relaxes the requirements of the Fourth Amendment for educators. As the discussion below of state courts rulings will illustrate, T.L.O. would have been enough had the U.S. Supreme Court stopped there. However, no one could have anticipated the broader statement of support for the efforts of educators in Vemonia School District v. Acton (513 U.S. 435 (1995)), and Board of Education v. Earls (536 U.S. 822 (2002)). The Court in these cases ruled that “[t]he interest to keep children safe is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure of individualized suspicion.” Board of Education v. Earls, (536 U.S. at 828). The immediate impact of the rulings was to endorse random, mandatory, suspicionless searches when it “reasonably serves the School District’s important interest in detecting and preventing drug use among its students.” Board of Education v. Earls (536 U.S. at 825). The downstream effect of the Earls and Vemonia cases was to signal to judges in the lower courts (both state and federal) that doubts regarding safe school policies were to be decided in favor of educators. If there was any doubt about this message, it was soon removed after the case of Morse v. Frederick (127 S. Ct. 2618 (2007)). In Morse, the Court upheld the suspension of a student who refused to take down a pro-drug banner stating “BONG HITS 4 JESUS” at a school-sponsored event. The Court resolved doubts about the school discipline (because the misconduct occurred off-campus and on the city streets) in favor of educators. First, the Court said “[t]he special characteristics of the school environment...allow schools to restrict student expression that they reasonably regard as promoting [drug] abuse.” (127 S. Ct. at 2629). Second, the Court reasoned “failing to act would send a powerful message to the students...about how serious the school was about the dangers of illegal drug use”. (127 S. Ct. at 2629).

THE LOWER COURTS AND THE NEW RULES ON COLLABORATION

Policymakers who wish to be more effective in fine-tuning their school safety efforts will certainly find empowerment in the decisions of the U.S. Supreme Court. However, more significant are the rulings of the lower courts. These cases apply the letter and the spirit of the high court cases and serve to provide an operators manual for the collaboration of educators and law enforcement. The lower courts have contributed primarily in two areas.

First, the lower courts have applied T.L.O., Vemonia, and Earls, to a wide range of cases in favor of the authority of educa-
tors. Vernonia and Earls have been applied to uphold suspicionless drug testing of students who engage in extra-curricular and co-curricular activities, (Northwest Schools v. Linke, 763 N.E.2d 972 (2002) and Weber v. Oakridge Sch. Dist. 76, 184 Ore. App. 415 (2002)). Similarly, Vernonia and Earls have been expanded to support random, suspicionless pat-down searches of students in search of drug or weapons, (In Re F.B. v. Pennsylvania, 555 Pa. 661, (Pa. 1999), Brousseau v. Westerly, 1998 W.3d 332 (D.R.I., 1998), and Des Roches v. Caprio, 156 F.3d 571 (4th Cir. 1998)).

Second, the lower courts have supervised the introduction of the SRO as an essential partner in the implementation of safe school policies. One court said, that, “we conclude otherwise, our decision might serve to encourage all are untrained in proper pat down procedures or in neutralizing dangerous weapons, to conduct a search of a student suspected of carrying a dangerous weapon on school grounds without the assistance of a school liaison officer or other law enforcement official.” (State of Wisconsin v. Angela D.B., 211 Wis. 2d 140, 155; 564 N.W.2d 682, 688 (1997)). Another court notes, “[otherwise] there would be no reason for a school to employ them or delegate to them duties relating to school safety,” (In Re Randy G., 26 Cal. 4th 556; 28 P.3d 239 (2001)).

The lower courts, in supporting the inclusion of law enforcement onto the safe schools team, provide a matter-of-fact guide for educators who work closely with SROs. Law enforcement officials who act in their capacity as SROs are considered “school officials” and their activities fall under TLO, Vernonia and Earls. In this sense, educators may bring SROs into the school community, effectively delegating to the SRO a more efficient set of tools for keeping schools safe. (Cason v. Cook, 810 F.2d 188 (8th Cir. 1987), cert. den., 482 U.S. 930 (1987), In re William V., 4 Cal. Rptr. 3d 695 (2003), cert. den., 541 U.S. 1051 (2004), and D.L. v. State, 877 N.E.2d 500 (Ind. Ct. App. 2007)).

On the other hand, “outside” law enforcement officers who come onto campus without a collaborative relationship and act without the involvement and supervision of school officials are subject to the stricter requirements of the Fourth Amendment and other constitutional provisions. (See In re Killitz, 59 Ore. App. 720, 651 P.2d 1382 (1982) and In re Welfare of G.S.P., 610 N.W.2d 651 (2000)).

The challenge going forward is to make effective tools out of the cases and statutes. Decision-making on safe schools will then no longer be driven by ad hoc responses to incidents, but by policies carefully implemented in response to known campus needs. This will be particularly important in the next few years, because it is unlikely that the legal reform on school safety will continue at the dizzying pace of the last 15 years. Unless local policymakers begin to assess how well educators and SROs absorb and apply the law, the likelihood of making errors that force courts and legislatures to reconsider current rules, will remain unacceptably high.

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