

Informants, Tips & Reasonable Suspicion

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The challenge to keep public school campuses free from crime and disruption can be dynamic. However, most disruptions are not random but foreseeable and preventable. With timely information, efficient investigation and prompt action, the learning environment can be kept safe for students.

As a means to this end, the U.S. Supreme Court has restated the law, empowering educators to leap over constitutional limitations on searches and seizures. In *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), the Court announced that the efforts of the safe schools team would be valid if "reasonable," even when no warrant has been obtained and probable cause not found to exist. "Under ordinary circumstances, a search of a student by a teacher or other school official will be 'justified at its inception' 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." (*T.L.O.*, 469 U.S. at 341-42).

The reliability of the information on which a search is based is an essential element to avoid liability for violating the constitutional rights of students. The issue of liability will, in a few cases, turn on concerns about the reliability of tips from informants. The word "informant" in this article means students, parents or other individuals who provide tips on school safety.

In the informant cases, the courts are taking a harder look at tips that come from questionable sources or have no corroboration. This issue has moved closer to center stage because of the popularity of "Crime Stoppers" and "Silent Observer" hotlines that solicit information while keeping the identity of the informer and their motives private. A related issue arises when the informant first contacts the SRO - who then tells the educator. Both scenarios may compromise school safety by depriving the educator of reasonable suspicion, either because of the unreliability of the tip or because the educator is deemed to be the agent of law enforcement, triggering the probable cause standard.

Test your "Informant IQ" on the following scenarios:

1) An anonymous parent called a school administrator twice to report that she had discovered her daughter with marijuana cigarettes purchased from a specific student who was selling drugs in the school. The student was brought to the principal's office, questioned for 45 minutes and refused to consent to a search. Eventually, the student was convinced to empty his pockets and a pipe with marijuana was discovered. Did the anonymous phone tip give the educator reasonable suspicion to search?

Y___ N___

2) A school administrator received information from the school's "Crime Stoppers" service that a specific student was in possession of drugs concealed in the headband of his baseball cap. The educators asked the SRO to bring the student and his baseball cap to the office. The educator told the student of the Crime Stoppers tip and asked if he had anything illegal in his possession. The student denied having any drugs. The educator asked the student to empty his pockets and to give his coat to the SRO. The student's coat contained a small bottle of tablets and a loose tablet.

The baseball cap contained a substance in the headband. A search of the book bag turned up pills. The student then admitted to having marijuana and Valium. Did the anonymous "Crime Stoppers" tip justify the search?

Y___ N___

3) A police officer was given a tip by a juvenile that two students were planning to sell marijuana at the local public high school. The police officer immediately told the principal what he had heard. The educator conducted an extensive search of the two students, but turned up nothing. The educator, not content to let things sit, extended the search to a third student with whom one of the suspects had rode to school with as well as the car, now parked in the school parking lot. Nothing was found on the driver, but an SRO searching the car found a large amount of marijuana. Is the educator acting as an agent of law enforcement?

Y___ N___

4) A teacher at a public high school heard students talking about another student who was said to have two marijuana pipes. The teacher reported this information to the school administrator. When asked, the teacher said that she could not recall the names of the students from whom she heard the information. When the vice principal saw the suspect waiting for the bus, he took her back to his office. There was nothing unusual about her appearance or speech as they talked, but the principal asked her to empty her purse, threatening her that he would call the police if she did not comply. The student submitted to the search and two marijuana pipes were discovered. Did the tip supply reasonable suspicion to search?

Y___ N___

5) The school district's Silent Observer hotline received an anonymous tip about drugs at the local high school. The tipster stated that he had previously been a friend with a drug dealer at the school, but that the tipster had given up drugs and now wished to report his former friend. The tipster provided the names of and details about other "big dealers", including extensive information about his former friend ("he sells marijuana from school in his truck") and less-detailed information about the other alleged dealers. The Silent Observer tip was forwarded to school officials. The SRO and principal verified that the vehicles identified by the tipster were registered to the students. The principal also knew that the former friend of the tipster was involved with some drug-related problems at a local junior high school, so he searched his truck and found drugs. The student argued that the search was not justified because, "it was based on an uncorroborated anonymous tip." Is the search justified on these facts?

Y___ N___

Informant Basics

In education law, educators operating under the T.L.O. standard may search a student's person based merely on "reasonable suspicion". The property of a student is also subject to search under this standard, unless it is in, or on, school property which educators control as part of the physical plant dedicated for educational purposes (i.e. lockers, parking lots, gymnasiums,

stadiums, school hardware and software), in which case, no suspicion is needed at all to justify the search. (See *State v. Jones*, 666 N.W.2d 142 (Iowa 2003) (lockers); See also *Myers v. State*, 806 N.E.2d 350 (Ind. Ct. App. 2004) (parking lots)).

For the SRO and other persons who collaborate with educators, it is important to know that reasonable suspicion requires much less than the level of suspicion required for probable cause.

In over 90% of student searches, there is no dispute over the quality of information that leads to the search under the T.L.O. standard. Direct observation by a teacher, administrator or SRO is sufficient without more to justify a search. The discussions among the safe schools team over observations of a student or incident will support a decision to search. Similarly, a pattern of incidents, documented over time may, after an assessment of the facts, lead to reasonable suspicion that a search of a student is necessary. However, in a small, but growing number of cases, it matters how information supplied by a tipster is put to use.

Information provided by an informant can serve as a basis for reasonable suspicion that a student has violated or is violating either the law or the rules of the school. An anonymous tip will provide reasonable suspicion when it is placed in context with other information or events, so that the "totality of the circumstances" shows that the tip is reliable. (See *Illinois v. Gates*, 462 U.S. 213 (1983)). Such tips will support any search when it is reasonably related to the duty of educators to maintain a safe learning environment and not excessively intrusive.

The informant rules are firmly established and well understood by the courts. However, some courts apply the rules more strictly than others do in the school setting and some confusion may result. Most of the confusion results because the U.S. Supreme Court, while agreeing that the anonymous tip rules of criminal procedure in the school setting do not apply to educators, has not clarified when, or how, the lower standard of T.L.O. is to operate. (See *Florida v. J.L.*, 529 U.S. 266 (2000)). In *J.L.*, the Court merely implies that where the expectation of privacy is diminished, such as in airports or schools, an anonymous tip about a dangerous event might be so great as to justify a search without corroborating the reliability of the tip. (See 529 U.S. at 275).

However, any doubt about the compelling interest of school officials to use the lower standard for informant tips is easily cleared up by taking into account the Court's school safety cases on suspicion-less searches. The U.S. Supreme Court has stated, on two occasions, that the reasonable expectation of privacy is reduced in public schools enough to support searches without reasonable suspicion of any kind because the interest in maintaining safe schools is "compelling". (See *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995)). (See also, *Board of Education v. Earls*, 536 U.S. 822, 843 (2002)).

Despite this, a few lower courts mishandle the informant cases involving students, applying more rigorous rules than other courts. The majority of lower courts get it right, recognizing the compelling interest of educators to use anonymous tips with greater flexibility, especially under the "danger exception" that allows school searches when weapons or drugs are the subject of the tip. (See *S.D. v. State*, 650 So. 2d 198 (Fla. Dist. Ct. App. 3d Dist. 1995)). However, a few courts limit the application of this greater flexibility to cases involving weapons only, not drugs or other contraband. (See *In re K.C.B.*, 141 S.W.3d 303,309 (Ct. App. Tex. 2004). ("The presence of

drugs on a student, however, does not tip the balance far enough for the search in this case to be deemed justified at its inception. Immediacy of action is not as necessary as could be found with a tip regarding a weapon.") (See also, *In re J.N.Y.*, 2007 PA Super 227, 931 A.2d 685 (Pa. Super. Ct. 2007)).

“Danger” – Exception and Tip Contents

A tip may immediately trigger a special need to search, standing alone, when it pertains to a dangerous condition, or crisis, which requires an immediate response to insure that all is well on campus. (See *In Re D.E.M.*, 1999 PA Super 59, 727 A.2d 570 (Pa. Super. 1999)). When an uncorroborated tip pertains to the presence of weapons or explosives on campus, the safe schools team is in crisis mode and this tips the balance far enough for a search to be conducted immediately.

Outside of the "emergency exception" that allows the use of tips, an anonymous tip, standing alone, will rarely provide the reasonable suspicion necessary to justify a search by a school official. This is especially the case when both the identity of the tipster or his motive is also unknown.

Judges are reluctant to elevate this type of information above the level of mere rumor without something - however slight - to corroborate the information to justify the search of a student. For example, a tip may be corroborated by direct observation of something unusual about the suspect when approached, or acts previously known about the student, or other concerns that are seen in a different light after the tip. An educator's (or and SRO's) experience and prior knowledge, along with corroboration of the details of the tip, will supply reasonable suspicion.

“Detain and Interrogate” – Exception to Reasonable Suspicion

School officials may use their broad supervisory and disciplinary authority to detain a student and investigate a tip without worrying about the Fourth Amendment. This "detain and interrogate" exception in the response to an anonymous tip serves well the interest of educators and SRO to keep the campus safe.

As one court puts it, "[t]o allow minor students to challenge [such a] decision...as lacking articulable facts supporting reasonable suspicion would make a mockery of school discipline and order." (*In re Randy G.*, 26 Cal. 4th 556, 28 P.3d 239, 245 (Cal. 2001)). Another court says of this, "when a school official stops a student to ask a question, it would appear that the student's liberty has not been restrained over and above the limitations he or she already experiences by attending school". (*J.D. v. State*, 920 So. 2d 117, 121 (Fla. Dist. Ct. App. 4th Dist. 2006)).

A school official may detain a student for questioning on campus, without reasonable suspicion of any kind, so long as the detention is not arbitrary, capricious or for the purpose of harassment. (*In re Randy G.*, 26 Cal.4th 556, at p. 565 (2001)); *J.D. v. State*, 920 So.2d 117 (Fla. Ct. App. 2006)). In other words, when school authorities receive information, whether verified or not,

involving illegal activities occurring on their campus, calling the suspected student out of class to investigate the report is always permissible. This may result in the creation of reasonable suspicion to search based on the demeanor and responses of the student during the questioning.

Best Practices for Use of Anonymous Tips

Educators can effectively combine anonymous tips with their authority to maintain a safe campus by remembering the following rules:

- A tip from an informant who has provided information in the past, and whose trustworthiness is proven or whose basis of knowledge is known, establishes enough of a factual predicate to meet the reasonable suspicion standard.
- The detailed nature of a tip weighs in favor of its accuracy. A tip that specifies a particular student, in a particular place, at a particular time of day contains predictive information and meets the reasonable suspicion standard.
- Receiving an informant's information in-person provides enough elements of reliability to create reasonable suspicion.
- An uncorroborated tip about the presence of weapons or explosives creates an emergency that justifies an immediate search.
- A school official can always stop a student to ask a question without worrying about the Fourth Amendment.

In the I.Q. test, the information received was reliable to support the searches in every case EXCEPT in Question Four.

In Question One, the court upheld the search and seizure of the drugs based on the anonymous tip. The educator had reasonable suspicions and probably probable cause to search the student. The anonymous tip was sufficient to satisfy even the higher standard. Because of the safety issue created by drugs on campus, a tip was credible enough to support the search. The tip was specific as to the person and the location where the drugs could be discovered. See *Martens v. District No. 220, Bd. of Education*, 620 F. Supp. 29 (N.D. Ill. 1985).

In Question Two, the searches and seizure based on the tip were valid. The tip to the "crime stoppers" system gave the educator reasonable suspicion. The evidence of the marijuana and Valium do not have to be suppressed. See *In re L.A.*, 270 Kan. 879, 270 Kan. 879; 21 P.3d 952 (2001).

Question Three involves a tip from a person known to law enforcement but not to the educator. And the response to the information results in collaboration between an SRO, the educator and the police officer that brought the tip to the school. The court upheld the search, applying the T.L.O. reasonableness standard and holding that the extended scope of the search was

reasonable. Moreover, the principal and the SRO were not acting as agents of the police when they conducted the searches. The fact that an outside police officer supplied information that initiated the investigation was not significant. See *People in Interest of P.E.A.*, 754 P.2d 382 (1988).

In Question Four, the court ruled that the anonymous, uncorroborated tip did not, without more, provide reasonable suspicion to conduct a search and seizure of the defendant's purse. The court reasoned that the teacher's inability to recall from whom she had received the information about the student doomed that case, and that the school administrator testified that there was nothing unusual about student's appearance or speech at any time. See *In re J.N.Y.*, 2007 PA Super 227, 931 A.2d 685 (Pa. Super. Ct. 2007).

In Question Five, the court held that the anonymous tip, considered in light of the totality of the circumstances, provided the principal with reasonable suspicion that the student was trafficking in drugs on school property, justifying the search of defendant's vehicle. There was corroborating information to indicate that the tipster's information was reliable. See *People v. Perreault*, 486 Mich. 914, 781 N.W.2d 796 (2010).

Article reprinted from the Winter 2010 edition of the NASRO Journal of School Safety.