LEGAL MAILBAG – FEBRUARY 13, 2025

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The "Legal Mailbag Question of the Week" is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors.
Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

I received an angry call recently from a parent of a student in my elementary school, where I serve as principal. The parent went on and on about what he claimed to be an illegal search by one of my teachers.

I talked with the teacher, and it seems that some Pokémon cards went missing in her fourth grade classroom, and the teacher took things into her own hands. Specifically, when a student reported to her that someone had taken his Pokémon cards, she told the class that they could help the student by letting her check their bookbags and backpacks. She then asked the students if they were OK with her doing so, and all the students were fine with it. The teacher then looked through the bookbags and backpacks of the students, and she came up empty.

I understand that the teacher acts in a *in loco parentis* role, and her actions here seem totally fine to me. Moreover, how can the parent claim an illegal search when the students all consented to her actions? Can I just tell this irate parent that there is nothing to see here?

Signed,
Just Poking Around

Dear Poking:

In a word, no. To be sure, teachers (and administrators) continue to act *in loco parentis* (in the place of the parent) in many ways, and as such they are permitted to direct students to follow their instructions. However, in 1985 the United States Supreme Court decided that the Fourth Amendment prohibition against unreasonable searches and seizures applies to searches of students by school officials, albeit with a refinement. The restrictions on searches that apply to law enforcement (probable cause, exigent circumstances) do not apply to school officials. Rather, a search will be considered reasonable (and as such consistent with the Fourth Amendment) if (1) there is reasonable cause at the inception of the search to believe that the search will yield evidence of a violation of school rules or the law, and (2) the scope of the search is reasonably related to the purpose of the search and not excessively intrusive in light of the age and sex of the student who is being searched. *T.L.O. v. New Jersey*, 469 U.S. 235 (1985).

You also claim that the students consented to the search. However, in a seminal Fourth Amendment decision, the United States Supreme Court stated that "When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely and voluntarily given. This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority." *Bumper v. State of North Carolina*, 391 U.S. 543 (1968).

Legal Mailbag questions whether consistent with this standard a student could ever give consent to a search in the school setting. Given the power imbalance between a school official and a student in school, how could one reasonably argue that a student's consent to a search was "freely and voluntarily given"? Accordingly, Legal Mailbag advises that any and all searches of students in the school setting be conducted in accordance with the *T.L.O. v. New Jersey* standard described above and that school officials not claim instead that the student consented to the search. It is, of course, fine to be polite and for the administrator to ask whether he or she may search a student or a student's effects. However, no matter how politely it is phrased, that request will be considered a directive that will be lawful only if it meets the standard announced by the United States Supreme Court in *T.L.O.*

In this case, Legal Mailbag also questions whether the search met the *T.L.O.* standard. A search intrudes on the privacy interests of the person being searched, and thus reasonable cause typically exists only when school officials can articulate what they are looking for and why they believe that a search of a specific student may result in finding the object being sought. Dragnet searches, *i.e.*, searches of a number of students without individualized suspicion, will almost always be considered unreasonable.

Finally, school districts generally limit the authority to conduct searches to administrators. Teachers would not typically have the experience or training to decide when there is reasonable cause for a search and/or to assure that the scope of the search is reasonably related to the object of the search. Legal Mailbag advises, therefore, that teachers be instructed to reach out to their supervisors if ever they believe that a search of a student is necessary.