



# Can a school official search the contents of a student's cell phone?

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It is indisputable that cell phones pervade the public school arena. In fact, it is estimated that approximately 75% of American teenagers between the ages of twelve and seventeen carry cell phones with them to school. The increased presence of cell phones on school grounds has resulted in mounting uncertainty as to whether school officials may search through students' cell phones without violating their Fourth Amendment rights.

A number of school officials assert that in order to maintain an orderly educational environment, school officials have the authority not only to seize students' cell phones but to read the messages stored in these devices as well. In justifying their actions, these school officials rely on *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), where the Supreme Court announced that Fourth Amendment rights of students are diminished in the school setting, and that in order for a search to be constitutional, school officials need only show a "reasonable suspicion" that the area to be searched contains evidence of a violation of the law or of school rules. Similar to how the Court in *New Jersey v. T.L.O.* held that it was constitutional to search a student's backpack or purse, today school officials argue that searches of students' cell phones are constitutional and needed in order to "maintain discipline in the classroom...particularly in the context of drug use and violent crime."

Conversely, students argue that there is a distinction between a school official being able to confiscate a student's cell phone, and the ability of this school official to constitutionally search through the contents of the confiscated cell phone. In support of this distinction, students argue that the ability of a school official to confiscate a student's cell phone does not destroy a student's expectation that the contents of the cell phone will not be searched. In distinguishing *New Jersey v. T.L.O.*, students argue that since a large quantity of personal information may be stored on a cell phone, the privacy interests at stake when school officials search a cell phone are more serious than the interests at stake in searching a purse or backpack.

While several courts across the country have struggled with the question of whether school officials may constitutionally, under Fourth Amendment jurisprudence, confiscate and search through students' cell phones, the law is far from settled. In *J.W. v. Desoto County School District*, 2010 WL 4394059, No. 09-155 (N.D. Miss. Nov. 11, 2010), a federal district court in Mississippi ruled that school officials did not violate the Fourth Amendment when they searched the contents of the student's cell phone after confiscating it pursuant to school district policy prohibiting the possession and use of cell phones at school.

Conversely, some courts agree with students that searching through the contents of a confiscated cell phone does in fact violate the Fourth Amendment. In *Klump v. Nazareth Area School District*, 425 F. Supp. 2d 622, 639-41

(E.D. Pa. 2006), a teacher confiscated a student's cell phone because it was visible in class – which was in violation of school policy. The teacher and assistant principal then searched through the cell phone's directory and attempted to call nine other students to determine if they too were in violation of the school policy banning cell phones. The court held that while the school official was justified in seizing the phone, the school official's search of a student's cell phone violated the Fourth Amendment.

The pervasiveness of cell phone devices has given rise to new concerns for teachers, school administrators and school districts across the country. If your institution has questions or concerns about this topic and you would like further information, please email Jim Ryan at [jryan@cullenanddykman.com](mailto:jryan@cullenanddykman.com) or call him at 516-357-3750. *A special thanks to Hayley Dryer, a third-year law student at Benjamin N. Cardozo School of Law, for helping with this post.*