

## USE OF METAL DETECTORS — STUDENT SEARCHES

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### Summary

Several courts have ruled the use of a metal detector by public officials to scan a person or a personal item for a weapon or other illegal metal objects is a search for Fourth Amendment purposes. School administrators have two options in using metal detectors to search students for weapons or other metal objects: 1) conduct the search based upon individualized reasonable suspicion or 2) conduct the search as an administrative search. An administrative search is a search aimed at a group in order to prevent a violent or dangerous event from occurring at school. There are various procedural safeguards that must be in place in order for an administrative search to be upheld as constitutional. These safeguards are set out in more detail at the end of this document.

ISBA has developed sample policies and guidelines for the use of metal detectors in a search based upon reasonable suspicion and as an administrative search.

### Reasonable Suspicion -- the Legal Standard for Student Searches by School Officials

As a reminder and review, the United States Supreme Court set the legal standard for public school searches of students in the case New Jersey v. T.L.O., 469 U.S. 325 (1985), which involved the search of a 14 year-old student's purse after a teacher saw her smoking in the restroom. The administrator opened the purse to look for cigarettes after the student denied smoking. Not only did he find cigarettes, he saw rolling papers which led him to go further in the search to uncover marijuana, drug paraphernalia, considerable cash, and when he opened a zippered compartment, discovered a list of students' names indicating those who owed her money.

In upholding the legality of the search, the Court stated the legal standard for the search of a student by school officials is one of the reasonableness, taking into consideration all the circumstances, of the search. Determining the reasonableness of any search is a twofold inquiry: first, whether the search conducted by the school official was justified at its inception; and second, whether the search as actually conducted was reasonably related in scope to the circumstances which justified the search in the first place. A search of a student by a 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 either a law or a rule(s) of the school. A search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the violation. The first inquiry is generally known as "reasonable suspicion" and this standard has been applied to every individualized student search case in the country since 1985.

### Administrative Searches

Over the years, courts have made exceptions to the general standard of reasonable suspicion for student searches. Courts have referred to these exceptions as "administrative searches." Such searches are aimed at a particular group or class of people, not at an individual person, and are designed to prevent a dangerous or violent event. This type of search does not require the consent of the persons being searched.

Administrative searches are held as reasonable when the intrusion of the search is only necessary to satisfy the governmental interest underlying the need or reason for the search. It involves a balancing of the degree of the intrusion (search), which includes the discretion given to the persons conducting the search, against the severity of the danger posed by the group or class of persons searched. This legal concept has been used to uphold the use of metal detectors on passengers at airports and members of the public visiting courthouses and other public buildings. It has been used to uphold the use of metal detectors in schools. (Albeit, there are only a handful of cases that have addressed the use of metal detectors specifically, and most of them are from state courts. See the end of this document for a list of the cases reviewed in preparing this document.)

The courts have looked at the nature of the privacy interest of the persons being searched (scanned), the character of the intrusion of the search, and the nature of the government's concerns. The courts have stated that students do have a lower expectation of privacy in schools due to school administrators and teachers being supervisors of the students and in the place of parents while at school. The character of the search using a metal detector is not intrusive in that it does not involve touching the person's body and when balanced against the serious nature of the school's interest in maintaining a safe, comfortable, and proper educational environment. Some of the school districts in the cases provided evidence of school violence involving weapons in the school and/or around the school's neighborhood as the reason for instituting the metal detector searches. But other schools did not provide such school-specific evidence and the courts upheld the metal detector searches on the basis of the increase in school violence in the country in general.

In reviewing these cases, the courts have made it clear the use of a metal detector by a school official or employee to determine if a student is in possession of a weapon is a search for Fourth Amendment purposes. The cases set out certain criteria and procedures that must be in place in order for a court to uphold the legality of searches of students using a metal detector as an administrative search. The use of the metal detector in these cases varied but most were used to search students for weapons upon their entry into the school building. In some cases, all the students were searched. In other cases, some students were randomly selected when entering the school at the beginning of the school day or at various times during the school day.

Following are the criteria and procedures that **are required to be in place and followed** to meet the legal standard of an administrative search:

- ✓ The school corporation should have written procedures on the use of metal detectors for searches other than a reasonable suspicion search. The policy or procedures should state the purpose of the search is to maintain a safe educational environment for all students. (The purpose of the search must never be to investigate or secure evidence of a crime.)
- ✓ The procedures should be in the student handbook.
- ✓ Notice of the procedures should be given at the beginning of every school year and at regular intervals during the school year to every parent and student that may be subjected to the search.
- ✓ The metal detectors must be owned by the school corporation.

- ✓ The metal detectors must be used by law enforcement officers, whether assigned to the school to conduct the search or as part of their regular duties, school resource officers, and school personnel trained to use the metal detectors. In the cases reviewed, only law enforcement officers conducted the searches involving the use of a metal detector.
- ✓ The person conducting the search must follow the procedures set out by the school corporation and cannot have the discretion to search a student outside of the stated procedures.
- ✓ The search must be conducted under the supervision of the school administrator.
- ✓ A search of a student must be conducted by a person of the same sex as the student being searched.
- ✓ The metal detector wand or hand-held device must not touch the student's body when being used to conduct the search.
- ✓ The students must be asked to remove all metal objects from their pockets and clothing before the metal detector search is conducted. These objects along with the student's belongings (i.e., backpack, purses, bags, etc.) should be set aside and scanned separately by the person conducting the metal detector scan.
- ✓ When the metal detector indicates a metal object is present, the person conducting the search must ask the student to remove the object. If the student does not, the student must be escorted to a private area where the student may be patted down only in the area where the metal detector indicated a metal object was present. A second scan of the person may be conducted to determine if any other metal objects are present.
- ✓ If a personal item of a student is scanned and the metal detector indicates a metal object is present, the student should be asked to open the personal item, or the student may be asked what is in the item and to remove the object from the item, or the person conducting the scan may search the item for the metal object. Once the metal object is found, the search of the item should not continue.
- ✓ The search may be conducted on a random basis, but the criteria used must be neutral and nondiscriminatory. Some examples are every third person is searched when coming into the building, or a bus or classroom is picked by a random draw.

#### **CASES REVIEWED IN PREPARATION OF THIS DOCUMENT:**

1. People v. Dukes, 580 N.Y.S.2d 850 (Crim. Ct., New York County 1992)
2. People v. Pruitt, 662 N.E.2d 540, (Ill.App. 1996)
3. In re Latasha W., 70 Cal.Rptr.2d 886 (App.Ct. 1998)
4. In the Interest of F.B., 726 A.2d 361 (Pa. 1999)