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Searches and Seizures on N.Y.C. Public Schools

For many years, there has been a struggle to give all humans beings equal rights and protections. Students in New York City public schools fall into their own category as student’s rights are governed by the New York City Department of Education’s Chancellor Rules and regulations which states student’s rights on New York City public school grounds. The Chancellor’s rules and regulations derive from the United States’ Constitution which is the supreme law of the land. It includes the Fourth Amendment which was established to protect our rights against unlawful searches and seizures. It is commonly known as a protection in our private homes but students should acknowledge that this right is present anywhere, including on public schools grounds. Nevertheless, it common that students are not aware of their rights against searches and seizures while on NY public school grounds. Therefore, it is imperative for students to be aware of the procedures and their rights against searches and seizures while allowing school officials to ensure for their safety.

A New York City public school must ensure the safety of their students while on school grounds, but how far can school officials go to maintain safe environments? The Fourth Amendment sets forth procedures which ensure the protection against illegal searches and seizures of student’s lockers, clothes, bodies and personal items. Under the Fourth Amendment, each student must be told of the charges against him/her and must also have the chance to tell his/her side of the story; otherwise any charges or evidence may be dismissed. As stated in the N.Y.C. Dept. Of Education Chancellor’s Rules and Regulations, the steps to recover weapons or search students mirror those techniques used by the police department. However, on school grounds, school officials are allowed to conduct searches and seizures with more leeway than the police department. For instance, outside a school setting, officers need to have “probable cause” which means the need of evidence or a warrant issued by a judge before searching an individual. This is different in school grounds, as school officials only need “reasonable suspicion” and may search a student without a warrant.

New York City public schools have set forth written regulations rendered under the Fourth Amendment. As stated by The New York City Department of Education’s Rules and Regulations of Student’s Searches and Seizures by Chancellor, school officials have the right to search a student and any of their possessions. However, the Principal/Dean must be notified and there must be reasonable suspicion that such search will lead to evidence proving that the student has already violated or can violate the law and/or school rules and regulations. The N.Y.C. Rules and Regulations also state that searches may not be intrusive and must ensure a degree of privacy for the student. Additionally, it requires that officials of the same sex conduct searches, prohibits strip searches and ensures that the student must be given a fair chance to indicate whether he/she is in the possession of any dangerous object(s).

As stated in the NYC Dept. of Education Chancellor Rules and Regulations, school officials can search in a student’s bag if there is reasonable suspicion. Before the search is conducted a Principal is notified and the student has had the chance to make a statement. In the Matter of Gregory M., 82 N.Y.2d 588, 627 N.E.2d 500 (1993), which is often used as precedent in this matter, a student’s bag was searched and a gun was found. Here, the student entered school without proper identification and was asked to leave his bag with a security officer while he went to obtain proper identification. The student tossed his cloth bag on a metal shelf and officer heard an unusual “thud” like sound. The officer felt the bottom of the bag, felt the outline of a gun, took the bag to the head security officer and dean who opened it and found a .38 Titan Tiger Special. The court upheld that the thud was enough to support a reasonable suspicion that a weapon was present. In turn, the frisking of the bag was justified as well as the opening of the bag. The Appellant Division found that if appellant would have been an adult, he would be charged with weapon possession in the fourth degree.

The student appealed and upon review by the Court of Appeals, it was affirmed that the search fell “marginally within a search for constitutional purposes” explaining that the search was deemed legal under the rights against searches and seizure by the U.S. Constitution. Additionally, it was held that the “thud” alone may not have been enough but that a “rigorous premonition” questioning the contents of the bag as sufficient to touch the outside of the appellant’s bag and had enough reasonable suspicion to search inside the bag. This “rigorous premonition”” by the school official was found as a legal, nonintrusive method to allow school officials to act accordingly to protect governmental interest and urgency to prevent guns in New York City public schools as gun possession is a big problem which has caused many in school shootings. Lastly, there is the differential fact that such search was not conducted in the course of a criminal search but solely by school officials and reasonable evidence was present.

The Court of Appeals had one dissenting judge who stated that although he is horrified of the weapons entered into schools; this ruling diminished the fourth amendment’s privacy protections applied in school settings. The dissent further explains that the “thud” was less than reasonable suspicion and that the majority’s attempt to justify it is less than persuasive. He stated that the “thud” may have been a makeup set or a cd player which could make same noise. In addition, the dissent suggested that a path to making school searches seem less intrusive or justifiable and preventing weapons entering schools, is better accomplished by the use of metal detectors in school’s doors. Although, I see the dissent’s point of view I continue to agree with the majority in the N.Y. Court of Appeals who affirmed that this search was conducted without violating student’s rights. I agree because the school official opened the bag only after having reasonable suspicion that a weapon was present and not solely due to fact that the student lacked identification which would then make it an irrational search.

NYC public schools enacted a “zero tolerance” regulation where a student found in possession of a weapon/object whether his/hers or not may still be prosecuted for possession. Where a weapon is confiscated in plain sight is also allowed by NYC public schools’ Rules and Regulations, and the Fourth Amendment. In the Matter of Stevens A., 308 A.D.2d 359 (2003), an officer in charge of security at a public high school responded to a phone call about intruders in a floor and saw students running. One student one dropped an object and the officer asked the student for the object as he was suspicious it may have been a weapon. It turned out to be a box cutter which is considered a dangerous weapon and the student was sent to Family Services for twelve months. Here, the officer had reasonable suspicion to ask for the object as allowed by the Chancellor’s Rules and Regulations and it was also upheld as a reasonable search under the Fourth Amendment. Following the zero tolerance regulation, the student who merely dropped an object was prosecuted and school officials were allowed to ask for the objects.

Due to weather changes, students may wear layers of clothing but can school officials search students’ clothing for possession of weapons or illegal objects? The Fourth Amendment and the Chancellor’s Rules and Regulations allow school officials to do so when school officials have reasonable suspicion that search will turn up evidence that student has violated or will violate the law or school regulation. In re Thomas G, 83 A.D.3d 1065, 922 N.Y.S.2d 453 (N.Y.A.D 2 Dpt’ 2011), student was found in locker room at a time when students were not in session and was brought to the school officer who then took student to Dean’s office. Officer observed the student put his hand in his pocket and the officer asked him not to but student repeatedly put his hand in pockets and then in his jacket. The officer then asked for the student’s jacket and upon its search, he found a white pill later identified as Xanax. The N.Y. Family Court held that officer had reasonable suspicion to search student’s jacket due to student’s behavior that he could be concealing a weapon and that the search was not intrusive. The New York Appellate Division affirmed and the student was placed in juvenile detention.

It is not unusual to see students roam the hallways of their public schools while classes are in session, but are school officers allowed to take students roaming hallways to the Principal’s/Dean’s office where students are ultimately searched? In People v. Dorner, 116 Misc.2d 1087, 458 N.Y.S.2d 982 (1982), school officer observed student in the hallway after classes had commenced and approached the student who produced class schedule but could not state what classes or teachers he had. The school officer took student to Dean’s office and asked a Police Officer to accompany them as well. In the Dean’s office, the Dean stated that student was suspended and must be arrested for trespassing.

Here, the police officer had probable cause, searched student and found a gun on his possession. The student moved to suppress the evidence. The Court upheld that the student was lawfully searched after Police Officer was told that he was trespassing and denied motion to suppress evidence. Accordingly, the Chancellor’s Rules and Regulations were also followed as the school officer took the student to the Dean only after he questioned the student and had reasonable suspicion of student.

Similarly, in People v. Butler, 188 Misc.2d 48, 725 N.Y.S.2d 534 (N.Y. Sup. 2001), a school officer observed a student wearing gang affiliated bandanas and asked student to remove them. When the school official asked him whether he was a student, he said he was but couldn’t produce any identification. The school officer took the student into the Dean’s office where he was asked for information on his program card or to name a guidance counselor, which he couldn’t. School rules required that anyone without identification be sent to the Dean’s office for verification. At the Dean’s request, the school officer searched the student and recovered a black handgun which led to student’s arrest. Student moved to state that he was not given his Miranda Rights after he was arrested and questioned further by the Dean.

The Court upheld that this encounter was in a public school where there is a different relationship between students to school officers and individuals to police officers. Schools have the duty of “loco parentis” (Education Law $ 3210 [1] [a]) where parental-like supervision is exercised. Therefore, Court held that school officer rightfully escorted student to Dean’s office due to reasonable suspicion that he was not a student. The school officer could not let him walk out of building due to the chance that he might be a student (students are required to be at school while classes are in session) and the school official could allow him to stay in the building as he might not be a student and would then be trespassing. Lastly, the Court held that the search was reasonable, not intrusive as school officer did not need probable cause and that Miranda Rights were not needed as the Dean, an individual, questioned the student.

Accordingly, the vast number of situations discussed here gives students an overall idea of how school officials may enforce the Chancellor’s Rules and Regulations, Education Law and the Fourth Amendment without violating student’s rights against searches and seizures. Students must remember that when on school grounds, these Rules and Regulations allow for a lower standard, known as reasonable suspicion in order to stop and search a student. Whereas, outside school grounds, police officers need a much higher standard known as probable cause which would sometimes even require a warrant. In order to ensure a safe environment for all, students who know the law and regulations will be aware of how they are applied can therefore, make smarter decisions as well as be ensure that their rights are never violated.