



## THE GLOUCESTER PUBLIC SCHOOLS

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*Revised*  
**PERSONNEL SUB-COMMITTEE MEETING**

Monday, February 26, 2018  
5:00 pm  
Conference Room — District Office  
2 Blackburn Drive, Gloucester, MA 01930

### *A G E N D A*

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**I. CALL TO ORDER**

**II. REPORTS/DELIBERATIONS/DISCUSSIONS**

**\*A. Review of Policies**

1. Review of Amended Staff Ethics/Conflict of Interest Policy, File: GBEA
2. Review of Amended Drug and Alcohol Free Workplace Policy, File: GBEC
3. Review of Amended Searches and Interrogations, File: JIH

**\*B. Approval of Employee Handbook**

- C. Discussion items that were not reasonably anticipated by the Chairperson, in accordance with M.G.L., Chapter 30A, Section 18-25**

**III. ACTION**

**IV. ADJOURNMENT**

**DISCLAIMER:** The listing of matters is those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

## STAFF ETHICS/CONFLICT OF INTEREST

The School Committee expects members of its professional staff to be familiar with the code of ethics that applies to their profession and to adhere to it in their relationships with students, parents, co-workers, and officials of the school system.

No employee of the School ~~Committee~~ **District** will engage in or have a financial interest in, directly or indirectly, any activity in which the school district has an interest or that conflicts or raises a reasonable question of conflict with his duties and responsibilities in the school district. Nor will any staff member engage in any type of private business during school time or on school property.

Employees will not engage in work of any type where non-public **[or confidential]** information concerning customer, client, or employer originates from any information available to them through school sources.

Moreover, as there should be no conflict of interest in the supervision and evaluation of employees, at no time may any administrators responsible for the supervision and/or evaluation of an employee be directly related to him/her.

At least two (2) weeks before the school district employs a member of the immediate family of the Superintendent, a central office administrator or a school committee member, or before a member of the immediate family of a Principal shall be assigned as an employee at the Principal's building, written notice shall be given to the School Committee of such person's prospective employment assignment.

SOURCE: School Committee Policy Manual File GBEA

LEGAL REF.: M.G.L. 71:52; 71:67; 268A:1 et seq., Policy Manual 3/2010

## **DRUG AND ALCOHOL FREE WORKPLACE POLICY**

The Gloucester Public Schools has a strong commitment to its employees to provide a safe workplace and to establish programs promoting high standards of employee health. Consistent with the spirit and intent of this commitment, the Gloucester Public Schools has established this policy regarding drug and alcohol use or abuse. Our goal is to maintain a work environment that is free from the effects of alcohol and drug use.

Employees of the Gloucester Public Schools are visible and active members of the communities where they live and work. They are inescapably identified with the school district and they are expected to represent it in a reasonable and credible fashion.

While the Gloucester Public Schools has no intention of intruding into the private lives of its employees, the school district does expect employees to report for work in condition to perform their duties. The school district recognizes that employee off-the-job as well as on-the-job involvement with drugs and alcohol can have an impact on the workplace and on our ability to accomplish our goal of an alcohol and drug-free work environment.

### **GOAL:**

Our goal is to send a clear message that use of alcohol and/or **illegal** drugs in the workplace is prohibited, and we encourage employees to voluntarily seek help with alcohol and drug problems.

### **SCOPE:**

This policy shall be in effect for all employees of the Gloucester Public Schools.

### **PROCEDURES:**

1. Pursuant to the Drug-Free Workplace Act of 1988, it is the policy of the Gloucester Public School District to prohibit the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance or alcohol in the workplace. The illegal use, sale, or possession of narcotics, drugs, or controlled substances while on the job or on school property is an offense warranting discharge. Any illegal substances will be turned over to the appropriate law enforcement agency.

2. Employees who are under the influence of alcohol, **non-medical cannabis, or illegal drugs**, either on the job or when reporting to work, or who possess or consume alcohol **non-medical cannabis, or illegal drugs** during work hours have the potential for interfering with their own as well as their coworkers' safe and efficient job performance. Consistent with existing District practices, such condition will be proper cause for administrative action up to and including the termination of employees **in accordance with the collective bargaining agreement**.
3. Visible signs which may indicate alcohol or drug impairment include odor on breath, slurred speech, lack of balance, inappropriate and/or disruptive behavior, glassy eyes, weaving, etc. Administrative action will be taken when two (2) or more witnesses report or document more than one (1) of the above or other symptoms.
4. Off-the-job illegal drug activity which would adversely affect an employee's job performance or which could jeopardize the safety of other employees, the public, or school district property or equipment is proper cause for administrative or disciplinary action up to and including termination of employment.
5. Employees who are involved with off-the-job **illegal drug and/or alcohol** activity may be considered in violation of this policy. In deciding what action to take, management will take into consideration the nature of the charges, the employee's present job assignment, the employee's record with the school district, and other factors relative to the impact of the employee's arrest upon the conduct of school district business.
6. In certain cases, rehabilitation through the Employee Assistance Program may be offered as an alternative to the imposition of such disciplinary action.
7. Some of the drugs which are illegal under federal, state, or local laws include, among others: ~~marijuana~~, heroin, hashish, cocaine, hallucinogens, depressants, and stimulants not prescribed for current personal treatment by an accredited physician.
8. In compliance with Federal Law, the school district requires that as a condition of his or her employment under a federal grant or contract, an employee must notify the employer of any criminal drug **and/or alcohol** statute **charge** for a violation occurring in the workplace no later than five (5) days after the **charge**. The school district will notify the granting agency within 10 days after receiving notice that a covered employee has been **charged with** a criminal drug violation in the workplace or otherwise receiving actual notice of a **charge**.

If a supervisor has a reasonable suspicion that an employee is under the influence of alcohol, after consultation with the Superintendent or his or her designee, the employee will be asked to submit to a breathalyzer test **and/or blood test**. **Failure to submit to a breathalyzer and/or blood test will result in the school department contacting the police for assistance.**

9. Employees are expected to follow any directions of their health care provider concerning prescription medications, and must immediately notify the Director of Human Resources if any prescription drug is likely to have an impact on job performance. The Director of Human Resources will maintain confidentiality at all times regarding this prescription drug while advising the Supervisor of the appropriate job modification and duration indicated.
  
10. In accordance with the Drug-Free Workplace Act of 1988, the school district will establish a drug-free awareness program to make employees aware of any available drug counseling, rehabilitation, and employee assistance programs.

Any employee, while on school property or during that employee's work shift, including without limitation all breaks and meal periods, consumes or uses, or is found to have in his or her personal possession, in his or her locker or desk or other such repository, alcohol or drugs, which are not medically authorized, or is found to have used or to be using such alcohol or drugs, will be suspended immediately pending further investigation. If use or possession is sustained, disciplinary action, up to and including discharge, will be imposed.

The intent of this statement is to clarify the Gloucester Public School's operational stance and to provide for a prompt and effective response to any alcohol or drug-related situation, which has or could have an impact on the operations of the school department. It does not alter in any way the policy of assisting employees in securing proper treatment or extending the coverage of the health benefits plan as indicated for problem drinking, alcoholism, or other drug dependencies.

*Approved by the School Committee on June 10, 2015*

**Attorney Stonberg reviewed policy on 11/21/17**

**The Personnel Sub-Committee referred policy back to its sub-committee on 12/11/17**

## SEARCHES AND INTERROGATIONS

### Searches by Staff

**The Student Handbook has established that lockers are school property and therefore there is no expectation of privacy. The School District has the right to inspect students' school lockers.** is inherent in the authority granted school committees and administrators. This authority may be exercised as needed in the interest of safeguarding children, their own and school property.

Nevertheless, exercise of that authority by school officials places unusual demands upon their judgment so as to protect each child's constitutional rights to personal privacy and protection from coercion and to act in the best interest of all students and the schools.

Searches by school officials of students' automobiles or the student will be based upon a reasonable suspicion and will be conducted in a way that protects the students' rights consistent with the responsibility of the school system to provide an atmosphere conducive to the educational process.

### Interrogations by Police

~~The schools have legal custody of students during the school day and during hours of approved extracurricular activities.~~ It is the responsibility of the school administration to make an effort to protect each student's rights with respect to interrogations by law enforcement officials. Therefore:

1. When law enforcement officials find it necessary to question students during the school day or periods of extracurricular activities, the school Principal or his/her designee will be present when possible. An effort will be made to contact the student's parent or guardian so that the responsible individual may be notified of the situation.
2. If custody and/or arrest are involved, the Principal will request that all procedural safeguards, as prescribed by law, be observed by the law enforcement officials.

SOURCE: MASC

Attorney Stonberg reviewed policy on 10/4/17

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December 22, 2017

Dr. Richard Safier, Superintendent  
Gloucester Public Schools  
Administration Office  
2 Blackburn Drive  
Gloucester, MA 01930

## **Re: Search of Student Property**

Dear Superintendent Safier:

I am responding to the Gloucester Public Schools' request for information regarding search and seizure in schools, particularly searches involving student vehicles. The Fourth Amendment protects a person from governmental intrusions only when a "legitimate expectation of privacy [exists] in the particular circumstances."<sup>1</sup> Students do have a reasonable expectation of privacy in their person and in the items they bring to school, but that right to privacy is balanced with the need for school administrators to maintain a safe learning environment.<sup>2</sup>

A search of a student conducted by a police officer is based on a higher standard than a search conducted by a public school official. Searches conducted by a police officer generally require a warrant and must be based on probable cause to believe that a violation of the law has occurred.<sup>3</sup> If a school official conducts a search at the direction of a police officer, then the higher standard of probable cause and the warrant requirement both apply to that search.<sup>4</sup>

The standard for school officials conducting a search on their own, not at the direction of a law enforcement official, is significantly more permissive. Unlike police officers, school officials do not have to obtain a warrant before searching a student who is under their authority.<sup>5</sup> The United States Supreme Court in *New Jersey v. TLO* determined that the warrant requirement was "unsuited to the school environment," and the lower standard of reasonableness under the totality

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<sup>1</sup> *Commonwealth v. Carey*, 407 Mass. 528, 531 (1990).

<sup>2</sup> *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985); *Commonwealth v. Damien D.*, 434 Mass. 725, 727 (2001).

<sup>3</sup> *Commonwealth v. Upton*, 394 Mass. 363, 369-370 (1985).

<sup>4</sup> *See Commonwealth v. Snyder*, 413 Mass. 521, 528 (1992).

<sup>5</sup> *T.L.O.*, 469 U.S. at 340-341 (1985); *Commonwealth v. Smith*, 72 Mass. App. Ct. 175, 179 (2008), fur. app. rev. den. 452 Mass. 1104 (2008).

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of the circumstances, rather than probable cause, justifies warrantless searches by school officials.<sup>6</sup> The Court created this standard to balance students' privacy interests and the substantial need of school administrators to maintain order and a safe learning environment.<sup>7</sup>

The reasonableness standard outlined by the Supreme Court consists of a two-pronged approach. First, the search must be justified at its inception.<sup>8</sup> This means that just prior to the beginning of the search there must be reasonable grounds that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. A search may be found to be justified at its inception if there is: a tip from a reliable source that a student was in violation of a law or a school rule (e.g., had illegal narcotics in his or her vehicle); or observations of suspicious activity (e.g., observed to be weighing objects in the vehicle on a digital scale); or a prior history of a specific activity in violation of school rules, though this list is not exhaustive.

Second, if the search is justified at its inception, then the scope of the search must be reasonable. This means that the measures taken to conduct the search are "reasonably related to the objectives of the search" and the search must "not be excessively intrusive in light of the age and sex of the student and the nature of the infraction."<sup>9</sup> In *Safford Unified School Dist. #1 v. Redding*, a school administrator found a prescription ibuprofen pill in a student's planner.<sup>10</sup> That student told the administrator the pills were not hers, but belonged to a friend. The administrator had received a report that the student was giving the pills to other students, which she denied. The Court determined it was reasonable to suspect that a student suspected of giving out contraband pills would carry them on her person and/or in her backpack, and that a search of her outer clothing and/or her backpack for such contraband would be reasonable in scope. After searching her backpack, the administrator then had the school nurse conduct a strip search of the student. The Supreme Court found that the strip search was not reasonable in scope, given that the facts did not indicate that the ibuprofen presented a danger to students, or that were they stored in the student's undergarments.<sup>11</sup> Given the Court's decision in this case, schools must confine the scope of their searches to areas in which they reasonably suspect contraband is kept by the student. Under this aspect of the standard, school personnel would be justified in a search of a vehicle on school grounds if, based on the facts available, it would be reasonable to believe that a search of the vehicle would turn up evidence of a violation of school rules or the law.

This two-pronged reasonableness standard is applied to searches of students and their property that are under the authority of the school administrators. This includes vehicles that a student drives onto school grounds.<sup>12</sup> The School Committee Policy Manual for Gloucester Public Schools outlines this in Policy JIH, which states: "Searches by school officials of students' automobiles or the student will be conducted in a way that protects the students' rights consistent with the responsibility of the school system to provide an atmosphere conducive to the educational process." This policy takes into account the two-pronged reasonableness standard that must be

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<sup>6</sup> *T.L.O.*, 469 U.S. at 340.

<sup>7</sup> *Id.* at 340.

<sup>8</sup> *Id.* at 341-42.

<sup>9</sup> *T.L.O.*, 469 U.S. at 342.

<sup>10</sup> *Safford Unified School Dist. #1 v. Redding*, 557 U.S. 364 (2009).

<sup>11</sup> *Id.*

<sup>12</sup> The parking lots appurtenant to the school are on school grounds. See School Committee Policy Manual, Gloucester Public Schools File EEAJ.

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applied to school searches under the law to protect students' privacy rights, while also allowing the administration to conduct reasonable searches as necessary to maintain the safety of all students and staff. In determining whether or not a school official is justified in searching a vehicle on school grounds, the school administrator should consider whether the information available prior to the search provides reasonable suspicion that a search of a student's vehicle will reveal evidence of a violation of school rules or of the law. Examples of reasonable suspicion would be a report from a reliable student that another student had drugs in his car at that time or a student arriving to school under the apparent influence of drugs shortly after having driven himself to school.

There are exceptions to the reasonableness requirement for a search. A school official simply observing an object that is in plain view does not constitute a search under the Fourth Amendment or Article 14 of the Massachusetts Declaration of Rights. This exception applies to objects that are observed intentionally or inadvertently, as long as the person who observes the object is lawfully in a position to view the object.<sup>13</sup> For example, if an administrator were to look through the window of a student's vehicle that was parked in the school parking lot, any items in plain view inside the vehicle would not be subject to the reasonableness requirements for a search. Additionally, objects observed in plain view can provide the reasonable suspicion to search the vehicle. For example, if a school administrator observed a drug or a firearm when looking through the window of a student's vehicle, such plain view observation would provide reasonable suspicion to search that vehicle.

Also, if a student consents to the search, then the reasonableness standard does not apply.<sup>14</sup> Even if a student is a minor under the age of eighteen, he or she can give consent to a search, as long as that consent is given freely and voluntarily.<sup>15</sup> Consent from a parent or legal guardian to the search is not required.

Should you require further guidance on search and seizure law as it applies to schools, please do not hesitate to contact me.

Sincerely,

Michael J. Joyce

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<sup>13</sup> *Commonwealth v. Matos*, 78 Mass. App. Ct. 156, 159 (2010).

<sup>14</sup> *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973); *Commonwealth v. Walker*, 370 Mass. 548, 555, cert. denied, 429 U.S. 943 (1976).

<sup>15</sup> *See Commonwealth v. Sanna*, 424 Mass. 92, 97 (1997).

# Legal News in Public Schools

Sullivan, Nuttall, & MacAvoy, P.C.

The Right to Freedom of Speech in Schools and Breast Cancer Awareness - *For details see page 2.*



## In this edition

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## What's the call? Can the District Search a Student's Cell Phone?

More and more schools are faced with concerns related to cell phone use and the use of other electronic devices: iphones, droids, etc. As incidents of cyber-bullying, texting, and sexting continue to rise, the question often comes up: can administrators view the contents (phone numbers, text messages, photographs) of the cell phone? The answer is: maybe. First, the district must have had reasonable suspicion to seize the cell phone. Second, there must be a reasonable basis to examine the contents of the cell phone. School districts should have a policy stating that it reserves the right to search the cell phone and personal information contained therein of students who bring or use their cell phones in school or use those cell phones in violation of school rules.

For example, if a teacher reports seeing a student use a cell phone to: (1) text during a test (suspected of cheating); (2) take a picture which may be used to harass or bully a classmate; (3) text a classmate who had complained the student was threatening them, the school would likely have reasonable grounds to seize the cell phone and its contents. Unlike police officers, school officials do not have to obtain a warrant in order to conduct a search of student property, including a cell phone. In *New Jersey v. T.L.O.*, 469 U.S. 325, 340-41 (1985), the U.S. Supreme Court stated, "We hold today the school officials need not obtain a warrant before searching a student who is under their authority." The Court went on to state that the warrant requirement is unsuited to the school environment, and reasonableness under the totality of the circumstances, rather than probable cause, justifies warrantless searches by school officials. The T.L.O. Court went on to say that accommodating students' private interests with the substantial need of school administrators to maintain order and a safe learning environment did not require that searches be based on probable cause that a student had violated or was violating the law.

On May 12, 2011, Attorney Matthew W. MacAvoy was recognized by the Middlesex County District Attorney's Office and Middlesex Partnerships for Youth, Inc. for his contributions, trainings and consultation with the Middlesex D.A.'s Office. The District Attorney, Gerard T. Leone, presented Attorney MacAvoy with the award at the 13th annual SECURE Conference that featured cutting edge information relating to school and community safety.



## “I ♥ Boobies!” School’s prohibition of cancer awareness bracelets violates 1<sup>st</sup> Amendment Right to Free Speech

A U.S. District Court in Pennsylvania recently ruled that a middle school’s ban on breast cancer bracelets that had the slogan “I ♥ Boobies (Keep A Breast)” violated the students’ First Amendment rights. On the school’s designated breast cancer awareness day, two female students defied the school’s bracelet prohibition and both were suspended for a day and a half and prohibited from attending an upcoming school dance. The students sued, arguing that the school had violated their First Amendment Right to Freedom of Speech. The court concluded that the use of the word “boobies” in the context of breast cancer awareness could not reasonably be considered lewd and vulgar. It stated that the bracelets are intended to be, and can reasonably be viewed as speech designed to raise awareness of breast cancer and to reduce stigma associated with openly discussing breast health. The court also found that there was no evidence of a “well-founded expectation of material and substantial disruption from wearing these bracelets.”

If the school had shown evidence of material and substantial disruption the outcome may have been different under federal or state law. Massachusetts statutory law gives greater protection to students’ rights to free speech. Massachusetts Law c. 71, Section 82 states that students “freedom of expression in the public schools of the commonwealth shall not be abridged” unless the expression causes “disruption or disorder within the school.” Therefore, under state law, absent a showing of disruption within the school (even if considered vulgar or lewd) Massachusetts public schools cannot limit speech or expression simply on the basis that it is obscene, profane or lewd. Massachusetts public schools can only limit t-shirts, clothing, signs or other forms of expression if those items are disruptive to the school. In one case, a school district sought to ban two brothers from wearing T-shirts which bore various slogans such as:

*School Committee of South Hadley*, the Supreme Judicial Court found that that there was no evidence that the T-shirts caused any disruption or disorder within the school; therefore, they could not be prohibited by the school. In another case in 2007, *Bowler v. the Town of Hudson*, the U.S. District Court denied the school district’s motion for summary judgment arguing that it lawfully censored students’ speech by taking down the posters advertising the high school’s conservative club. The posters contained a link to a national organization of high school conservative clubs, which, in turn, contained a link to another website hosting graphic video footage of hostage beheadings in Iraq and Afghanistan. The federal district court denied the school district’s motion for summary judgment because the school failed to produce evidence that censorship was justified on the basis of a reasonable forecast of disruption or disorder.

For schools in Massachusetts, this means that absent a reasonable forecast of disruption or disorder within the school, the school cannot limit the students’ right to express a viewpoint, even if the clothing or expression may be considered distasteful or inappropriate by school staff.



### Special Education Regulations Regarding Parent Revocation of Consent for Evaluations Amended

On April 27, 2011, the Massachusetts Department of Elementary and Secondary Education updated their state special education regulations to be consistent with the federal Individuals with Disabilities Education Act regulations on revocation of consent by parents (see 603 C.M.R. §§28.07 and 28.08(3)). Under the new amendment, a school district may not request a hearing on a parent's failure or refusal to consent to initial evaluation or initial placement of a student in a special education program, or on a parent's decision to revoke consent to the continued provision of all special education and related services to his or her child under 603 C.M.R. 28.07(1)(a)(4).



# When Can the School Search a Cell Phone?

(Continued from page 1)

“Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search.”

In Massachusetts, in order to assess the legality of a search of a student by a school staff member, the courts engage in a two-step process: First, the search must be justified at its inception. Just prior to the beginning of the search, there must be reasonable grounds that the search will turn up evidence that the student has violated or is violating either the law OR the rules of the school. Second, if a search is justified at its inception it must be determined that it was limited in scope to those measures: “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 infraction.” In other words, just because you have reasonable grounds to seize the cell phone, does not necessarily mean that you have reasonable grounds to expand the scope of the search to the contents of the cell phone.

Therefore, the staff must initially determine if there are reasonable grounds to justify seizing the cell phone. Prior to seizing the cell phone from the student, school staff must have had reasonable grounds to believe that the search (seizure of the cell phone) would turn up evidence of violating a school rule or a violation of law. Once the cell phone is lawfully seized, the next question becomes: Are there reasonable grounds to justify a search of the contents of the cell phone? In *J.W. v. Desoto County School District, NO 2:09-cv-00155-MPM-DAS (N.D. Miss. 11/01/10)*, the school district had a policy prohibiting cell phone use. A teacher observed a student retrieve a text message from his father while in class. The principal opened the phone and examined photographs saved in the memory. The photographs portrayed the student displaying gang symbols, and holding a BB gun. The court upheld the search as reasonable. Bringing a cell phone to school was a violation of school rules. “A student’s decision to violate school rules by bringing contraband on campus and using that contraband within view of teachers appropriately results in a diminished expectation of privacy.”

Under this analysis, the search and seizure of the cell phone was justified because the school had a policy prohibiting cell phone use. The examination of the contents of the phone was also reasonable (and therefore legal) because the teacher observed the student retrieve a message in class, and the court found that it was not unreasonable for the teacher to seek to determine whether or not the student was violating other

school rules, such as cheating or communicating with his classmates. Essentially, because the school had clear rules on the use of cell phones, it was reasonable to seize the phone. It was also reasonable to search its contents because it was reasonable to conclude that such a search would turn up evidence that the student had violated school rules.

In *N.N. v. Tunkhannock Area School District (Pennsylvania)*, the school district reached a settlement in a case involving a teacher’s confiscation of a student’s cell phone. In that case, the teacher confiscated the cell phone of the student for attempting to place a phone call after homeroom began in violation of school policy. Later that morning, the Principal informed the student that he had found sexually explicit photographs of her on the telephone, including photographs of her fully nude. The photographs had been taken on the phone’s built-in camera and required multiple steps to locate them in the telephone. The school district settled the case prior to a court ruling on the reasonableness of the search for the cost of attorney’s fees (approximately \$33,000). Although the court did not rule on the reasonableness of the search prior to settlement, the lesson to take from this case is that just because a teacher has reasonable grounds to seize the cell phone, it does not necessarily follow that the school can search the contents of the cell phone. Unlike *J.W. v. Desoto County School District* in which the student was receiving texts during class, which led to reasonable suspicion that the student may be cheating, in this case, the school district did not, prior to the search of the cell phone’s contents, have reasonable grounds to believe that a search of the photographs would reveal information relative to cheating or another violation of school rules. Violating the school’s rules against the possession of a cell phone in school does not, without more, give reasonable justification for the search of its contents.



## Confidentiality of Victims in Sexual Harassment Investigations

On April 4, 2011, the U.S. Department of Education, Office for Civil Rights (OCR) issued a Dear Colleague Letter which contained an in- depth advisory regarding schools' obligations in responding to allegations of sexual violence, including sexual assault, sexual battery, and sexual coercion under Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination based on gender. OCR reaffirmed that in such cases the school's inquiry must in all cases be prompt, thorough, and impartial. They also reiterated, consistent with the Massachusetts Anti-Bullying Law, M.G.L.c. 71, § 37O, that in cases involving potential criminal conduct, school personnel must determine, consistent with state and local law, whether appropriate law enforcement or other authorities should be notified.

OCR recommended that, in cases of sexual harassment and sexual violence, school districts should also inform and obtain consent from the student's parents (or the student if the victim is over 18) *before* beginning an investigation. If the student's parents request confidentiality or ask that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a student insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited. The school also should tell the student and the parents that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. If the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA). The school should inform the complainant if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence (e.g., memorandum to staff reaffirming policies against sexual harassment; training for staff on the appropriate response to such allegations; utilizing witnesses other than the complainant to establish that sexual harassment has occurred). In cases in which criminal referral is likely necessary, the student and parents should be informed of the school district's obligation to report matters to police, even if the student and parents are requesting confidentiality.

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