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Students Under Siege? Constitutional Considerations for Public Schools Concerned with School Safety

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COMMENT

STUDENTS UNDER SIEGE? CONSTITUTIONAL CONSIDERATIONS FOR PUBLIC SCHOOLS CONCERNED WITH SCHOOL SAFETY

I. INTRODUCTION

Imagine the following scenario: The principal at River City High School receives a telephone call from an anonymous informant, notifying her that he had observed a knife in "Jimmy's" backpack, and indicated that he might also have access to a gun. The principal recalls that Jimmy is the student who has dyed his hair blue and who wanders the halls wearing a black trench coat and a T-shirt that reads "School Sucks," in violation of the school district's dress code. She checks Jimmy's file and discovers that he has been absent on numerous occasions during the school year and has frequently been disruptive in class. Upon learning this, she authorizes a search of his school locker. Pursuant to the principal's order, a security guard finds a large quantity of marijuana in Jimmy's backpack. The principal calls the police. Jimmy is arrested, suspended from school, and subjected to criminal prosecution. As it turns out, the informant had never seen a knife in Jimmy's backpack. He just thought Jimmy looked "creepy."

At Jimmy's criminal trial, his attorney moves to have the evidence of marijuana suppressed, only to find that the exclusionary rule does not apply in this context. Nor does it apply in the subsequent school disciplinary hearing.

Situations like this not only have become more prevalent due to increasing instances of school violence caused by students,[1] but the entire sequence of events–from the anonymous "tip," to the search, to the admission of tainted evidence–is, in most cases, also considered constitutionally permissible. The proliferation of violence in our schools has created a sense of emergency for our nation's school districts.[2] Schools have reacted by implementing mandatory dress codes, searching students and seizing their property, installing metal detectors, and enforcing stricter disciplinary policies.[3] Such responses have inevitably resulted in a restriction of constitutional rights for students.[4]

This comment explores the judicial reception of the constitutional issues raised in attempts by schools to curb violence on campus, focusing in particular on the courts' treatment of First, Fourth, and Fourteenth Amendment claims involving student violence and school prevention. Part II traces the First Amendment protection of speech and expression as applied to school dress codes. The evolution of dress code cases dealing with hair length, obscenity, and gang clothing is likely indicative of how the courts will address the legality of the current movement toward mandatory uniforms in the public schools.

Part III discusses Fourth Amendment rights in the school setting. Students' constitutional rights are not lost at school.[5] Therefore, in the educational environment, public school officials are not exempt from the restrictions of the constitutional search and seizure

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1. In 1994, the National School Boards Association estimated that approximately 135,000 guns are brought to the nation's 85,000 public schools every day. *See* William Celis III, *Schools Getting Tough on Guns in the Classroom*, N.Y. TIMES, Aug. 31, 1994, at A1.

2. *See, e.g.*, Chris Woodcock, *Developing a Security Profile*, AM. SCH. & UNIV., Dec. 1999, *available in* LEXIS, News Library, Magazine Stories, Combined File.

3. *See* Celis, *supra* note 1, at A1. Schools in Corpus Christi, Texas, for example, utilize dogs to sniff for the presence of guns. *See id.* The fear of school violence, however, is not solely limited to our larger cities. In Kings Mountain, North Carolina, a town of only 8500 people, pupils used book bags to bring two pistols into the local middle school, prompting the school district to ban the bags and employ metal detectors to search all its students, from kindergarten to twelfth grade. *See id.* School officials also removed lockers at Sheldon High School in Eugene, Oregon. *See id.*

4. *See generally* Philip T.K. Daniel, *Violence and the Public Schools: Student Rights Have Been Weighed in the Balance and Found Wanting*, 27 J.L. & EDUC. 573 (1998).

5. *See* Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.").

provisions.[6] Part IV describes students' due process claims involving alleged deprivations of property rights or liberty interests under the Fourteenth Amendment. The comment concludes with an analysis of the policy ramifications for both the school districts and the students, and suggests that although schools have a duty to provide a safe learning environment, they also have a duty to protect students' civil liberties.

II. FIRST AMENDMENT CHALLENGES TO APPEARANCE AND DRESS REGULATIONS

The primary purpose of schools is to educate students.[7] Concerns about violence and student safety, however, hinder school officials from promoting an environment conducive to learning. Authorities attribute much of the problem of violence to gang activity, where gang members often distinguish themselves by particular clothing styles and colors.[8] In order to maintain harmony in the classroom, many states and school districts have adopted dress codes that prohibit students from wearing gang-related apparel at school.[9] Although school officials have noted a decline in violence, thefts, and gang activity due to these restrictions,[10] students have raised First Amendment challenges to dress code requirements.[11]

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6. *See* New Jersey v. T.L.O., 469 U.S. 325, 333-35 (1985) (rejecting the state's argument that the Fourth Amendment was only intended to prohibit searches and seizures carried out by law enforcement officers).

7. *See id.* at 350 (Powell, J., concurring) ("The primary duty of school officials and teachers, as the Court states, is the education and training of young people.").

8. *See* Dena M. Sarke, Note, *Coed Naked Constitutional Law: The Benefits and Harms of Uniform Dress Requirements in American Public Schools*, 78 B.U. L. REV. 153, 154 (1998) (citing C. Ronald Huff & Kenneth S. Trump, *Youth Violence and Gangs, School Safety Initiatives in Urban and Suburban School Districts*, 28 EDUC. & URB. SOC'Y 492, 492-93 (1996) (stating that there are over 16,000 gangs in the United States whose more than half-million members commit approximately 600,000 crimes per year, many of which take place in schools)).

9. *See id.* (citing Shelli B. Rossman & Elaine Morley, *Introduction to Safe Schools: Policies and Practices*, 28 EDUC. & URB. SOC'Y 395, 396, 403 (1996) (explaining that many school officials believe flexibility in dress codes for pupils contributes to more incidences of violence)).

10. *See id.* (citing William Modzeleski, *Creating Safe Schools, Roles and Challenges, A Federal Perspective*, 28 EDUC. & URB. SOC'Y 412, 417 (1996) (depicting declines in fights, sex and weapons offenses, assaults, batteries, and vandalism)).

11. *See, e.g.*, Bivens v. Albuquerque Pub. Sch., 899 F. Supp. 556 (D.N.M. 1995); Jeglin v. San Jacinto Unified Sch. Dist., 827 F. Supp. 1459 (C.D. Cal. 1993); Olesen v. Board of Educ., 676 F. Supp. 820 (N.D. Ill. 1987); Pyle v. School Comm. of S. Hadley, 667 N.E.2d 869 (Mass. 1996); Barber v. Colorado Indep. Sch. Dist., 901 S.W.2d 447 (Tex. 1995).

A. *Overview of the First Amendment*

The First Amendment states that "Congress shall make no law . . . abridging the freedom of speech."[12] This restriction on lawmaking power is extended to state governments through the Fourteenth Amendment.[13] There have been several interpretations of the meaning of the First Amendment. Supreme Court Justices Black and Douglas supported the idea that the First Amendment right speaks in absolute terms, as the amendment specifically states, "Congress shall make *no* law."[14] The majority of the Supreme Court, however, has never endorsed such an expansive view.[15] Rather, the Court has applied varying tests to determine whether an individual's rights to free expression of his or her views are subordinate to other interests of society.[16]

To assist in determining First Amendment infringement, the Court has created numerous categories of speech, based on the type of regulation, the type of expression, and the site of the speech.[17] Based upon these categories, different tests are applied to establish the scope of permissible restraints on that type of speech.[18] Thus, in analyzing the constitutionality of public school dress codes, a trial judge must first determine whether the regulated speech receives protection, then examine the scope of that protection as it applies to public school students.

Regulations that restrict speech may be either content-based or content-neutral. Content-based regulations prohibit speech on the basis of the ideas or information contained in the speech.[19] This type of regulation will be sustained only if it is necessary to serve a compelling governmental objective and is narrowly tailored to

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12. U.S. CONST. amend. I.

13. *See* Gitlow v. New York, 268 U.S. 652, 666 (1925) (holding that the First Amendment is applicable to the states through the Fourteenth Amendment).

14. *See* Alison M. Barbarosh, Comment, *Undressing the First Amendment in Public Schools: Do Uniform Dress Codes Violate Students' First Amendment Rights?*, 28 LOY. L.A. L. REV. 1415, 1424 (1995) (emphasis added).

15. *See* Wendy Mahling, Note, *Secondhand Codes: An Analysis of the Constitutionality of Dress Codes in the Public Schools*, 80 MINN. L. REV. 715, 721 (1996) (citing JOHN E. NOWAK ET AL., CONSTITUTIONAL LAW 866 (5th ed. 1995)).

16. *See id.*

17. *See id.*

18. *See id.* at 722.

19. *See* LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW § 12-3, at 794 (2d ed. 1988).

achieve that objective.[20] Such regulations are presumptively unconstitutional.[21]

Content-neutral regulations, on the other hand, are those that limit speech without regard to the content or viewpoint of the message conveyed.[22] These regulations often interfere with speech by regulating the time, place, and manner of speech.[23] A content-neutral regulation will be upheld as long as it promotes a significant governmental interest that cannot be achieved by less restrictive means.[24] The government need not choose the *least* restrictive means of regulation,[25] but it must not close alternative channels of communication.[26] Therefore, such regulations are subject to a much lower level of judicial scrutiny than content-based regulations.[27]

In addition to the regulation classifications, the Court has recognized two different types of speech: "pure speech" and "symbolic speech." All speech that is classified as pure, such as the written word or verbal forms of speech, receives some type of First Amendment protection.[28]

Symbolic speech, in contrast, involves nonverbal conduct that is intended to convey a message. This type of speech receives First Amendment protection only after enduring judicial examination.[29] In assessing symbolic speech on constitutional grounds, courts generally apply a two-part test that examines whether there was an intent to convey a particular message and whether there was a great likelihood that the message would be understood by those who viewed it.[30]

The context in which the symbolic speech occurs is also a significant factor in determining whether First Amendment protection applies. In *Texas v. Johnson*,[31] for example, the Supreme Court used the two-part test from *Spence* to determine whether the defendant's arrest for burning an American flag outside the Republican National

20. *See* Widmar v. Vincent, 454 U.S. 263, 270 (1981).
21. *See* R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992).
22. *See* TRIBE, *supra* note 19, § 12-23, at 977-78.
23. *See id.* § 12-23, at 980.
24. *See id.* § 12-24, at 992; *see also* United States v. Albertini, 472 U.S. 675, 689 (1985).
25. *See* Ward v. Rock Against Racism, 491 U.S. 781, 798 (1989).
26. *See* TRIBE, *supra* note 19, § 12-24, at 992.
27. *See id.* § 12-2, at 792.
28. *See* Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 505-06 (1969).
29. *See* Mahling, *supra* note 15, at 723.
30. *See* Spence v. Washington, 418 U.S. 405, 410-11 (1974).
31. 491 U.S. 397 (1989).

Convention violated the First Amendment.[32] As part of its assessment, the Court examined the context in which the conduct took place.[33] The Court found that the political climate and current national events did, in fact, provide a backdrop for the defendant to convey a particular message.[34] While the message may have been interpreted differently by various groups, this did not place the conduct outside the scope of protected symbolic speech.[35]

Likewise, some lower courts have recognized that dress may constitute symbolic speech. The Ninth Circuit, for example, has held that buttons worn on students' lapels fall within the Constitution's protection of symbolic speech.[36] A Massachusetts state court similarly found that a dress code prohibiting clothing with non-vulgar, non-disruptive speech that "harassed" other students impermissibly censored speech under the First Amendment.[37] Alternatively, other courts have held that dress is not sufficiently communicative to constitute speech,[38] but that it may be protected by a liberty interest in controlling one's own appearance.[39]

B. *Students' First Amendment Rights in Dress Code Requirements*

Due to the important and unique nature of the school setting, the First Amendment affords less protection to public school children

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32. *See id.* at 404.
33. *See id.* at 405-06.
34. *See id.* at 406.
35. *See id.* If the Court had found instead that the conduct did not constitute symbolic speech, then the speech would not have received First Amendment protection.
36. *See* Chandler v. McMinnville Sch. Dist., 978 F.2d 524, 530-31 (9th Cir. 1992).
37. *See* Pyle v. School Comm., 667 N.E.2d 869, 870-71 (Mass. 1996).
38. *See, e.g.,* Freeman v. Flake, 448 F.2d 258, 260 (10th Cir. 1971) (holding that hair length "is not akin to pure speech" that contributes to the "storehouse of ideas," but is at most "indicative of expressions of individuality"); King v. Saddleback Junior College Dist., 445 F.2d 932, 937 (9th Cir. 1971) (finding that a public school regulation concerning "personal appearance, style of clothing, or deportment" did not conflict with First Amendment protections because the "students [who violated the regulation] were not purporting to say anything"); Jackson v. Dorrier, 424 F.2d 213, 217 (6th Cir. 1970) (stating that First Amendment protections were not triggered because the record did not establish that the students disciplined for wearing their hair long chose this style to convey a message).
39. *See* East Hartford Educ. Ass'n v. Board of Educ., 562 F.2d 838, 841-42 (2d Cir. 1977) (finding that there is a liberty interest in the right to control one's body, including one's hair and dress).

than to adults in other contexts.[40] Although students are considered "persons" under the Constitution and do retain some constitutional rights to freedom of speech and expression while in public schools, the Supreme Court has held that these rights are limited.[41] As a result, schools can censor speech that cannot be censored elsewhere.[42]

The Court, however, has not given school districts unlimited discretion in determining what types of speech are permissible in schools.[43] Public school administrators may not, for example, prohibit speech simply because they dislike the message.[44] The ability of public schools to restrict student speech has been the subject of varying interpretations in First Amendment appearance and dress regulation jurisprudence, however, reflecting dramatic shifts in constitutional theory.

1. Historical Attempts to Regulate Student Appearance

The historical view, as demonstrated by the 1923 case of *Pugsley v. Sellmeyer*,[45] is that courts will not question the reasonableness of school rules pertaining to student conduct or appearance. In *Pugsley*, the Arkansas Supreme Court upheld a rule that prohibited "immodesty in dress."[46] The court stated that it had other, more important functions to perform than that of hearing discontented students complain about school rules.[47] The court added that respect for authority and obedience are essential lessons to be taught in school, and courts should be reluctant to substitute their judgment for that of school officials.[48]

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40. *See* Bethel Sch. Dist. v. Fraser, 478 U.S. 675, 682 (1986) (citing New Jersey v. T.L.O., 469 U.S. 325, 340-42 (1985), for the proposition that students' constitutional rights "are not automatically coextensive with the rights of adults in other settings"); Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969) (explaining that the Court considers students' First Amendment rights in relation to the special circumstances of the educational environment).

41. *See Tinker*, 393 U.S. at 511.

42. *See* Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 266 (1988).

43. *See Tinker*, 393 U.S. at 511.

44. *See* Board of Educ. v. Pico, 457 U.S. 853, 870-72 (1982).

45. 250 S.W. 538 (Ark. 1923).

46. *Id.* at 540.

47. *See id.* at 539.

48. *See id.* In reviewing the rule at issue, the court stated that the rule was reasonable in all respects because it aided in the discipline of the school. *See id.* at 539-40.

Like *Pugsley*, other regulations of appearance, such as hair length requirements, were traditionally upheld without much inquiry into the educational need to keep hair short. For example, in *Leonard v. School Committee of Attleboro*,[49] a school regulation barring students with "extreme haircuts" from attending classes was upheld as reasonable.[50] The court determined that school officials have broad discretion in implementing rules that affect student conduct and classroom behavior, and are charged with a duty to protect the general welfare of the school.[51] The fact that the plaintiff was an excellent student and well-behaved was irrelevant, in the court's view, because his haircut was a "conspicuous departure[ ] from accepted customs."[52] As such, it violated a rule that was reasonably related to preventing disruptions and maintaining order.[53]

The deference given to schools regarding the regulation of appearance has given way, however, to a willingness of courts to examine closely the reasoning behind rules governing students' attire to determine if there is a legitimate educational goal being promoted.[54] By the late 1960s, school authorities were required to demonstrate that any regulation prohibiting expression was promulgated to prevent a material and substantial disruption of the educational environment.[55]

2. The *Tinker* Coup d'Etat

Tinker v. Des Moines Independent Community School District[56] was a landmark case in establishing the boundaries of students' freedom of expression. In *Tinker*, three students were suspended for wearing black armbands to school in protest of the Vietnam War.[57] The Court determined that the students' conduct was "closely akin to 'pure speech,'" and, therefore, was protected by the First Amendment.[58] The Court explained that it would sustain a regulation limiting students' speech if the conduct invaded the rights of other

49. 212 N.E.2d 468 (Mass. 1965).
50. *See id.* at 473.
51. *See id.* at 472.
52. *Id.*
53. *See id.*
54. *See* Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 509 (1969).
55. *See id.*
56. 393 U.S. 503 (1969).
57. *See id.* at 504.
58. *Id.* at 505-06.

students,[59] or "'materially and substantially interfere[d] with the requirements of appropriate discipline in the operation of the school.'"[60] In other words, the Court ruled that school officials must provide a constitutionally valid reason for any regulation that curtails students' speech.[61] The Court then determined that the school authorities could not have reasonably concluded that black armbands would disturb school activities,[62] firmly demonstrating that students have First Amendment rights that are worthy of protection, even in the public school setting.

3. Modern Regulations of Dress and Appearance Aimed at Alleviating School Safety Concerns

Other cases seem to offer much less protection of student rights to freedom of expression than did *Tinker*. Most recently, the Supreme Court has endorsed an inculcative theory of public school education.[63] In other words, schools exist to impart school-sponsored knowledge and ideals.[64] School officials may therefore prohibit expression that is disruptive or inconsistent with their educational mission.[65] As a result, in several instances, courts have found that First Amendment protection does not apply to restrictions that do not affect political speech or a student's access to information in upholding regulations that affect dress or appearance.

In *Gano v. School District*,[66] for example, the district court held that the expressive message of a T-shirt depicting school officials in a drunken state was unclear, and therefore not eligible for protection.[67] The court explained that even if it had believed that the T-

59. *See id.* at 513.
60. *Id.* at 509 (quoting Burnside v. Byars, 363 F.2d 744, 749 (5th Cir. 1966)).
61. *See id.* at 511.
62. *See id.* at 514.
63. *See* Bethel Sch. Dist. v. Fraser, 478 U.S. 675, 681 (1986) (arguing that courts have adopted the view that the work of the public schools is the inculcation of values).
64. *See id.* ("The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior.").
65. *See id.* at 685; *see also* Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988) (holding that school authorities "do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns").
66. 674 F. Supp. 796 (D. Idaho 1987).
67. *See id.* at 798.

shirts were expressive, the representation of school administrators as drunk was unworthy of First Amendment protection.[68]

Similarly, in *Bivens v. Albuquerque Public Schools*,[69] a school dress provision prohibiting sagging pants was upheld because the district court found that the clothing style of sagging pants did not constitute expressive speech.[70] The plaintiff argued that wearing sagging pants expressed his urban black identity.[71] The court, however, found that wearing sagging pants could be interpreted in several ways. For example, it could signify gang affiliation or it could simply represent a growing fashion trend among adolescents across the country.[72] Therefore, the plaintiff did not send a particularized message that would be clearly understood by others.[73]

Courts additionally appear willing to defer to school authorities' legitimate interests in preventing gang activity in the schools. In *Olesen v. Board of Education*,[74] a high school student challenged the constitutionality of a school anti-gang rule prohibiting male students from wearing earrings.[75] The student argued that the school regulation violated his right of free speech and expression under the First Amendment.[76] Holding that the school's policy did not unconstitutionally infringe on his "freedom to choose his own appearance," the district court focused on the school's concern for its students' safety.[77] The court further determined that the student's "message" was one of individuality, and thus did not fall within the protection of the First Amendment.[78]

Alternatively, in *Jeglin v. San Jacinto Unified School District*,[79] a California district court held that a ban on wearing clothing identifying any collegiate or professional sports team violated the free speech rights of elementary and middle school students.[80] The

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68. *See id.* (deciding that to permit the shirt to be worn would compromise the administrators' authority).
69. 899 F. Supp. 556 (D.N.M. 1995).
70. *See id.* at 560.
71. *See id.* at 561.
72. *See id.* at 560-61.
73. *See id.* at 561.
74. 676 F. Supp. 820 (N.D. Ill. 1987).
75. *See id.* at 821.
76. *See id.*
77. *Id.* at 823.
78. *See id.* at 822.
79. 827 F. Supp. 1459 (C.D. Cal. 1993).
80. *See id.* at 1462. The court did, however, uphold the regulation as it applied to high school students. *See id.*

school district adopted the regulation because it was concerned that sports-oriented clothing expressed association with gangs.[81] Applying the standard originally established in *Tinker*, the court concluded that there was no threatened disruption or interference of school activities because the school district could not prove any significant presence of gang activity in the schools.[82] Thus, it is evident that a school must show an actual need for the restriction, and not simply a preventative one.

III. FOURTH AMENDMENT CLAIMS OF UNREASONABLE SCHOOL SEARCHES AND SEIZURES

In addition to instituting dress code regulations, a school may also search students and their belongings for evidence of weapons, drugs, or other contraband as a means of preventing school violence. As school dress codes often give rise to First Amendment challenges, disputes about a school's authority to search and seize frequently arise among students and school officials. The central issue of these claims, however, is whether such school-based searches or seizures violate the Fourth Amendment.

The Fourth Amendment provides in part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . . ."[83] The Framers' intent is said to have been two-fold: to protect an individual's reasonable expectations of privacy,[84] and to protect "against arbitrary invasions by governmental officials."[85] The Amendment does not apply to acts by private actors, but, like the First Amendment, is enforceable against the states, and hence their educational agencies, through the Fourteenth Amendment.[86]

Because school-aged children are obligated to attend school, the nation's school districts assume a duty to protect them while at school. In fact, given the increased violence and drug use in schools

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81. *See id.*
82. *See id.* at 1461-62.
83. U.S. CONST. amend. IV.
84. *See* Katz v. United States, 389 U.S. 347, 351-52 (1967).
85. Camara v. Municipal Court, 387 U.S. 523, 528 (1967).
86. *See* Mapp v. Ohio, 367 U.S. 643, 655 (1961) (holding that the Fourth Amendment is applicable to the states through the Fourteenth Amendment).

today, school officials may be remiss if they *do not* search for and seize objects that might pose a threat to the well-being of other students or of school officials. The problem then becomes how to balance the state's interest in maintaining a safe learning environment with the student's interest in personal privacy.

A. *The Fourth Amendment in a School Setting*

The Supreme Court announced for the first time in 1985, in *New Jersey v. T.L.O.*,[87] that the Fourth Amendment protects the rights of public school students against searches or seizures by school officials,[88] and that even a limited search constitutes an invasion of privacy.[89] The Court noted, however, that a warrantless search of a student by school authorities is constitutional if reasonably justified at its inception and if related in scope to the circumstances that originally justified the interference.[90] In *T.L.O.*, a teacher discovered two students smoking in a school restroom in violation of a school rule, and reported the incident to an assistant principal.[91] One student admitted to smoking; the other denied it.[92] The assistant principal searched the second student's purse and found both cigarettes and cigarette rolling paper.[93] A further search produced marijuana and revealed additional drug paraphernalia and evidence of drug trafficking.[94] At the suppression hearing, the student claimed that the search was a violation of her Fourth Amendment rights because the school administrator did not have probable cause or a warrant, as is prescribed by the Constitution.[95]

Ultimately, the Court ruled that the Fourth Amendment applies in the school setting, as school officials are government officials, not private citizens, when they conduct searches of their students.[96] The Court held, however, that a less stringent test is applicable to these searches than to searches by law enforcement officers.[97] The police

87. 469 U.S. 325 (1985).
88. *See id.* at 333.
89. *See id.* at 337-38; *see also* Terry v. Ohio, 392 U.S. 1, 24-25 (1967).
90. *See T.L.O.*, 469 U.S. at 340-41.
91. *See id.* at 328.
92. *See id.*
93. *See id.*
94. *See id.*
95. *See id.* at 329.
96. *See id.* at 335-36.
97. *See id.* at 341.

search is governed by the "probable cause" standard,[98] while a search by school officials is controlled by the lesser "reasonable suspicion" standard, which accommodates the school's substantial need to maintain order and preserve a proper educational environment.[99] In other words, if a school official reasonably suspects, through articulated facts, that a student has violated or is violating the law or the rules of the school, a reasonable search may be conducted to determine whether proof of such a violation is present.[100] The search must be reasonable, and may not be excessively intrusive in light of the age and experience of the student and the nature of the alleged infraction.[101] Specifically, reasonable grounds must exist at the time of the search, and the scope of the search must be reasonably related to its objectives.[102] Thus, in *T.L.O.*, the reporting of the incident by the teacher to the assistant principal represented the reasonable suspicion for searching the student's purse for cigarettes.[103] Then, the sight of the rolling papers raised more reasonable suspicion, which supported the additional search for drugs.[104] The evidence recovered from the search, considering the totality of the surrounding circumstances, was deemed by the Court to have been properly obtained.[105]

The Court in *T.L.O.*, however, expressly refused to decide four unresolved issues that it was not required to consider: (1) whether the exclusionary rule is the appropriate remedy for violations of the Fourth Amendment by school officials;[106] (2) whether a student has a reasonable expectation of privacy in "lockers, desks, or other school property provided for the storage of school supplies," and whether the rules governing searches of these areas are different;[107] (3) what is the "appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies;"[108] and (4) "whether individual-

98. *See id.* at 340; *see also* Almeida-Sanchez v. United States, 413 U.S. 266, 273 (1973); Sibron v. New York, 392 U.S. 40, 62-66 (1968).
99. *See T.L.O.*, 469 U.S. at 341.
100. *See id.* at 341-42.
101. *See id.* at 342.
102. *See id.*
103. *See id.* at 345-46.
104. *See id.* at 347.
105. *See id.* at 343.
106. *See id.* at 333 n.3.
107. *Id.* at 337 n.5.
108. *Id.* at 341 n.7.

ized suspicion is an essential element of the reasonableness standard" required for school searches.[109]

B. *Reasonable Suspicion*

As evidenced in *T.L.O.*, reasonable suspicion depends on the unique circumstances involved.[110] It merely requires "reason and common sense,"[111] and permits a "'common-sense conclusio[n] about human behavior' upon which 'practical people'–including government officials–are entitled to rely."[112] Absolute certainty is not required, because "'sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment.'"[113] Although the Court asserted that states can apply more demanding standards under their own statutes or constitutions,[114] the Fourth Amendment would be violated if school officials only possessed an "inchoate and unparticularized suspicion or 'hunch.'"[115]

This reasonableness standard applies no less in a school environment when violent activity is suspected by school officials than when, as in *T.L.O.*, a school rule is known to have been broken. In *United States v. White*,[116] for example, school officials suspected gang membership when four non-students entered school grounds.[117] The police, upon being called to the scene, conducted a search based on an informant's tip.[118] The Court of Appeals for the Seventh Circuit ruled that the reasonableness of a search must be reviewed in light of the totality of the circumstances, "which includes 'the officers' experience and knowledge, the characteristics of persons engaged in illegal activities, and the behavior of the suspects.'"[119] The court noted that the tip, gang clothing, suspicion of gang association among the suspects, and relevant criminal conduct involving the suspects were all components of reasonable suspicion

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109. *Id.* at 342 n.8.
110. *See id.* at 341-42.
111. *Id.* at 343.
112. *Id.* at 346 (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)).
113. *Id.* (quoting Hill v. California, 401 U.S. 797, 804 (1971)).
114. *See id.* at 343 n.10.
115. *Id.* at 346 (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)).
116. No. 94-2575, 1995 WL 62887 (7th Cir. Feb. 13, 1995).
117. *See id.* at *1.
118. *See id.*
119. *Id.* at *4 (quoting United States v. Sterling, 909 F.2d 1078, 1083-84 (7th Cir. 1990)).

justifying a search.[120] The court also held that while gang membership alone carries some weight in the totality of circumstances, courts will more often rely on gang membership when the gang has been connected to some suspected criminal or school rule-breaking activity.[121]

The reasonableness standard articulated in *T.L.O.* applies not only to school searches, but to seizures as well. In *Edwards v. Rees*,[122] a junior high school vice principal interrogated a student based upon a tip about a bomb threat.[123] The student claimed he was illegally seized and taken to the school office.[124] The Court of Appeals for the Tenth Circuit ruled that the seizure was justified at its inception, as two students implicated the defendant, and he never refuted those allegations.[125] This led the principal to believe that questioning the subject would reveal evidence that he had broken either the law or a school rule.[126] In fact, the court stated that the magnitude of the suspected offense justified detaining and questioning the student to uncover information regarding the bomb threat.[127] Accordingly, seizure of the student by school personnel was reasonable in light of the threat to the health, safety, and welfare of the other students and staff.

As the previous two cases indicate, many Fourth Amendment school claims involve the use of informants. The existence of student informants, however, does not invalidate the application of the *T.L.O.* two-prong test. The involvement of other students in the incidents leading to the questionable search does not make the search unreasonable.[128] In this instance, the school official conducting the search must have personal knowledge of the searched student's conduct, or have reliable reports that such conduct would give rise to reasonable suspicion of a violation of the law or of a

120. *See id.* at *6.
121. *See id.* at *5.
122. 883 F.2d 882 (10th Cir. 1989).
123. *See id.* at 883.
124. *See id.* at 884.
125. *See id.*
126. *See id.*
127. *See id.*
128. See, for example, *Berry u. State*, 561 N.E.2d 832, 834-35 (Ind. Ct. App. 1990), where a teacher overheard an argument between students, one accusing the other of drug-dealing, and proceeded to search one student's jacket. The search was held to be reasonable. *See id.* at 837.

school rule.[129] If the student informant is known to the official as likely to render reliable information, no independent corroborating evidence is required before conducting the search.[130] However, if the informant is anonymous to school personnel or is unreliable, further investigation may be needed before a search is authorized. Moreover, if the report is made out of malice or other improper motive, it should be considered unreliable and school officials must continue to investigate before a search may be performed.[131]

Under the *T.L.O.* standard, school personnel have a great deal of discretion in conducting searches. Teachers and administrators need not become experts in Fourth Amendment search and seizure law, however.[132] All that is required is that their actions be justified at the time of the search and be reasonably related to preserving order.[133]

Despite this lower threshold, *T.L.O.* gives school officials no more power to invade the rights and interests of students than is necessary.[134] Suspicion of possession of weapons, for example, probably only permits a limited weapons search. Accordingly, in *T.J. v. State*,[135] a Florida court held that an overly thorough search of a student's purse, which revealed a bag of cocaine, was too excessive when only a knife was sought.[136] The court noted that although the search for the knife might have been justified, in this particular case, the search was merely a "scavenger hunt," as there was no indication that the plastic bag found in the purse pocket contained a weapon.[137] Therefore, the court suppressed the drug evidence.[138]

Likewise, the more intrusive the search, the greater the burden is on school officials to justify a search as reasonable. In *Cales v. Howell Public Schools*,[139] a strip search for drugs was held invalid when a student's only suspicious behavior was ducking behind a car

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129. *See In re* Appeal in Pima County Juv. Action No. 80484-1, 733 P.2d 316, 317-18 (Ariz. Ct. App. 1987).
130. *See* Bahr v. Jenkins, 539 F. Supp. 483, 488 (E.D. Ky. 1982); People v. Singletary, 333 N.E.2d 369, 370 (N.Y. 1975); State v. Slattery, 787 P.2d 932, 934 (Wash. Ct. App. 1990).
131. *See* Florida v. J.L., 2000 WL 309131, at *3 (U.S. Mar. 28, 2000); Alabama v. White, 496 U.S. 325, 329 (1990).
132. *See T.L.O.*, 469 U.S. at 343.
133. *See id.*
134. *See id.* at 343-44.
135. 538 So. 2d 1320 (Fla. Dist. Ct. App. 1989).
136. *See id.* at 1321-22.
137. *Id.* at 1322.
138. *See id.* at 1320.
139. 635 F. Supp. 454 (E.D. Mich. 1985).

in the school parking lot and giving a false name to the school security guard while she should have been in class.[140] The court observed that the student's conduct "created reasonable grounds for suspecting that some school rule or law had been violated," but it did not create a reasonable suspicion that she possessed drugs sufficient enough to justify the search.[141]

C. *Individualized Suspicion*

Students accused of violent acts may also raise concerns about "individualized" or "particularized" suspicion, an issue that the *T.L.O.* Court specifically declined to address. Individualized suspicion exists when the school official conducting the search has evidence of a particular student's violation of the law or a school rule. Generally, some level of individualized suspicion is necessary for a search to be reasonable under the Fourth Amendment.[142] Strip searches, like the one in *Cales*, clearly require it.[143] Thus, where individualized suspicion is lacking, a search will generally be unreasonable.[144] As with all generalizations, however, there are exceptions.

In *Vernonia School District 47J v. Acton*,[145] the Court addressed an issue it had left unanswered in *T.L.O.*; that is, under what circumstances can a search be reasonable, absent individualized suspicion? In *Vernonia*, the Court held that random urinalysis drug testing of student-athletes was constitutional under the Fourth

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140. *See id.* at 455.

141. *Id.* at 457. The court refused to

> read *TLO* so broadly as to allow a school administrator the right to search a student because that student acts in such a way so as to create a reasonable suspicion that the student has violated *some* rule or law. Rather, the burden is on the administrator to establish that the student's conduct is such that it creates a reasonable suspicion that a specific rule or law has been violated and that a search could reasonably be expected to produce evidence of that violation.

Id.

142. *See, e.g., In re* Doe, 887 P.2d 645, 655 (Haw. 1994) (holding that individualized suspicion is constitutionally required for Fourth Amendment purposes).

143. *See* Cornfield v. Consolidated High Sch. Dist. No. 230, 991 F.2d 1316, 1320-21 (7th Cir. 1993); Tartar v. Raybuck, 742 F.2d 977, 982-83 (6th Cir. 1984); Doe v. Renfrow, 631 F.2d 91, 92-93 (7th Cir. 1980).

144. *See, e.g.*, Bellnier v. Lund, 438 F. Supp. 47, 54 (N.D.N.Y. 1977) (holding that searches of public elementary school students by school officials are unconstitutional under the Fourth Amendment where individualized suspicion is not present); *see also* Burnham v. West, 681 F. Supp. 1160, 1165 (E.D. Va. 1987).

145. 515 U.S. 646 (1995).

Amendment, even though individualized suspicion was not present.[146] The Court noted that public school students, in general, are routinely subjected to various physical examinations and vaccinations, and, therefore, should have a lower expectation of privacy with regard to medical examinations and procedures.[147] Furthermore, student-athletes possess even less of an expectation of privacy, as they are accustomed to changing clothes and showering in common areas, and voluntarily subject themselves to a higher level of regulation by choosing to participate in sports.[148] The Court, therefore, ruled that the student athletes' minimal privacy interests were outweighed by the compelling state interest in eliminating student drug use and the need for immediacy in solving this crisis.[149] The Court did caution, however, that random, suspicionless drug testing in contexts outside of the public school setting could pose constitutional difficulties.[150]

Increased concern for the safety of students and staff may also legitimize group searches of broader student populations. In *Thompson v. Carthage School District*,[151] for example, the Eighth Circuit upheld a group search of all male students in grades six through twelve that was conducted due to a report that a student had concealed a knife.[152] Although no weapon was recovered, school officials found one student in possession of crack cocaine.[153] The court noted that individualized suspicion is not always required for school searches,[154] and reasoned that the search was "minimally intrusive" and, therefore, constitutionally valid.[155]

In *DesRoches v. Caprio*,[156] a student in an art class was suspected of stealing a pair of shoes.[157] Members of the class were asked if they objected to a search of their backpacks; those who refused were threatened with a ten-day suspension.[158] The search of the entire class was carried out except for one objecting student, who was

146. *See id.* at 664-65.
147. *See id.* at 656-57
148. *See id.* at 657.
149. *See id.* at 661-63.
150. *See id.* at 665.
151. 87 F.3d 979 (8th Cir. 1996).
152. *See id.* at 980.
153. *See id.*
154. *See id.* at 982.
155. *Id.* at 983.
156. 156 F.3d 571 (4th Cir. 1998).
157. *See id.* at 573.
158. *See id.*

summarily suspended.[159] The student filed a civil rights action, alleging a violation of his right to be free from an unreasonable search.[160] The district court ruled in the student's favor, observing that: "[T]his case does not present an extraordinary situation in which the school's interest was sufficiently substantial or compelling; a stolen pair of tennis shoes simply does not present exigent circumstances or a future danger to other students."[161] The court found that the school lacked the requisite individualized suspicion to carry out a search and that the student was justified in refusing to cooperate with school authorities.[162]

The Court of Appeals for the Fourth Circuit reversed, however, stating that the search was reasonable because the school officials had individualized suspicion to search the student in question based on the failure to find the shoes in consensual searches of the rest of the class.[163] Viewing the situation from the time of the student's first refusal, rather than from the time school officials first announced their intent to search the class, the court found the search to be constitutional,[164] even though it might not have been "justified at its inception."[165]

D. *Students' Expectations of Privacy*

The issue of student privacy is also a core consideration in any application of search and seizure law in public schools. The Fourth Amendment does not protect all expectations of privacy, but rather only those that are reasonable or legitimate.[166] Therefore, Fourth Amendment challenges to the actions of school officials must be further assessed on the basis of whether the particular search in question encroached upon a student's legitimate expectation of privacy.

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159. *See id.*
160. *See id.*
161. DesRoches v. Caprio, 974 F. Supp. 542, 549 (E.D. Va. 1997), *rev'd*, 156 F.3d 571 (4th Cir. 1998).
162. *See id.* at 549-50.
163. *See DesRoches*, 156 F.3d at 577-78.
164. *See id.*
165. *Id.* at 577.
166. *See* Katz v. United States, 389 U.S. 347, 351 (1967). The Fourth Amendment's protection of people, rather than policies, is legitimate. *See id.*

In the context of school searches, courts are split as to when a legitimate expectation of privacy is present and where it applies. For example, the Fifth Circuit, in *Horton v. Goose Creek Independent School District*,[167] held that although students do have a legitimate expectation of privacy in the airspace surrounding their persons, they do not have a reasonable expectation of privacy in the airspace around their lockers or automobiles.[168] *Horton* involved the constitutionality of canine drug sniffs of students, their lockers, and their automobiles.[169] The court invalidated the sniff searches of the individual students and stressed that the canine sniffing occurred in close proximity to the students' bodies, an area that is "certainly . . . not the subject of lowered expectations of privacy."[170] The students' lockers and cars, however, were inanimate objects located in public view to which the students' expectations of privacy were minimal.[171] Accordingly, the sniff searches of these areas were upheld.[172]

Alternatively, in *Burnham v. West*,[173] a district court ruled that students do not have a legitimate expectation of privacy in the airspace surrounding their persons.[174] In this case, the court found that when a teacher sniffed a student's hand to detect whether the odor of marijuana was present, a search had not occurred.[175]

Additionally, several courts have held that students have a reasonable expectation of privacy in their lockers.[176] The court in *In re Dumas*[177] explained that, because students store personal and intimate items in their lockers, they have a legitimate expectation of privacy in their lockers.[178] Two judges concurred in the decision, revealing that the record did not indicate that the school had placed

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167. 690 F.2d 470 (5th Cir. 1982).
168. *See id.* at 477-79.
169. *See id.* at 474.
170. *Id.* at 478. The court also held that "[i]ntentional close proximity sniffing of the person is offensive whether the sniffer be canine or human." *Id.* at 479.
171. *See id.* at 477.
172. *See id.* at 488.
173. 681 F. Supp. 1160 (E.D. Va. 1987).
174. *See id.* at 1164.
175. *See id.* Interestingly, the court did not discuss whether the detention of the student for the purpose of sniffing his hands was a seizure under the Fourth Amendment which required reasonable suspicion as prescribed by the Court in *T.L.O.*
176. *See, e.g., In re* Patrick Y., 723 A.2d 523, 528 (Md. Ct. Spec. App. 1999); Commonwealth v. Snyder, 597 N.E.2d 1363, 1366 (Mass. 1992).
177. 515 A.2d 984 (Pa. Super. Ct. 1986).
178. *See id.* at 985. Nevertheless, the court held that the assistant principal had reasonable suspicion to search the student's locker. *See id.* at 986.

"any special restrictions with regard to the nature of the items which could be stored in the locker," or that the students had been notified "that use of the lockers would be subject to random or periodic inspection or search."[179] The court in *State v. Joseph T.*[180] similarly noted that the West Virginia Board of Education handbook provided that students "may reasonably expect that their lockers will not be searched unless appropriate school officials consider a search absolutely necessary to maintain the integrity of the school environment and to protect other students."[181]

Other courts, however, have held that students do not have a reasonable expectation of privacy in their lockers. Since school lockers are generally the property of the school, these courts have found that schools have a right to control and search them.[182] In fact, the courts in these cases often do not even consider an inspection of a student's locker to be a "search" within the meaning of the Fourth Amendment.[183] In *Isiah B. v. State*,[184] for example, the random search of a student's locker by a school official looking for a gun was entirely permissible.[185]

IV. FOURTEENTH AMENDMENT CONCERNS ABOUT DUE PROCESS VIOLATIONS

In addition to seeking relief under the Fourth Amendment, students accused of violent activity may also challenge school administrators for deprivations of property rights or liberty interests without due process of law under the Fourteenth Amendment.[186] As states provide for public education and compel attendance, students essentially have a property right in this education.[187] This right, therefore, cannot be denied for misconduct without provisions for fundamentally fair procedures to determine

179. *Id.* at 986 (Kelly, J., concurring).
180. 336 S.E.2d 728 (W. Va. 1985).
181. *Id.* at 737 n.10.
182. *See, e.g.*, People v. Overton, 249 N.E.2d 366, 368 (N.Y. 1969); Isiah B. v. State, 500 N.W.2d 637, 641 (Wis. 1993).
183. *See, e.g.*, Isiah B. v. State, 500 N.W.2d 637, 641 (Wis. 1993).
184. 500 N.W.2d 637 (Wis. 1993).
185. *See id.* at 638.
186. *See* U.S. CONST. amend. XIV.
187. *See* Goss v. Lopez, 419 U.S. 565, 572-73 (1975) (noting that because a state statute directed authorities to provide a free education to all residents of a certain age, the state was in effect providing a property right).

whether the misconduct has even occurred.[188] Students punished for such conduct typically declare that imposition of discipline occurred without proper notice and a hearing[189] or without notification of their rights.[190]

Suspension and expulsion are likely the most common disciplinary measures for violent activity.[191] Suspension represents a temporary leave from school, usually of not more than ten days.[192] Expulsion, by implication, represents an extended period of time away from school of greater than ten days.[193] The proper safeguards provided to students sanctioned with such a punishment were first determined by the Supreme Court in *Goss v. Lopez*,[194] where a state law empowered school officials to suspend students for up to ten days without providing a hearing prior to the suspension.[195] Students who were punished under the rule and denied hearings challenged the constitutionality of the law.[196] The Court held that suspension for up to ten days implicated the property rights and liberty interests of students.[197] Thus, prior to the imposition of sanctions, students are entitled to receive oral or written notice of the charges, an opportunity to hear the evidence against them, and an opportunity to be heard.[198] The Court noted that both the notice and the hearing could occur within "minutes" of the misconduct.[199] If this is not feasible, then notice and a hearing should take place as soon as practicable.[200] In any case, however, a hearing need only be an "informal give-and-take" between the student and the school official.[201]

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188. *See id.* at 574 ("Having chosen to extend the right to an education . . . [the state] may not withdraw that right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct has occurred.").

189. *See, e.g., id.* at 567; Draper v. Columbus Pub. Sch., 760 F. Supp. 131, 131-32 (S.D. Ohio 1991).

190. *See, e.g.*, Edwards v. Rees, 883 F.2d 882, 883 (10th Cir. 1989); Boynton v. Casey, 543 F. Supp. 995, 996-97 (D. Me. 1982).

191. *See* Philip T.K. Daniel & Karen Bond Coriell, *Suspension and Expulsion in America's Public Schools: Has Unfairness Resulted from a Narrowing of Due Process?*, 13 HAMLINE J. PUB. L. & POL'Y 1, 7 (1992).

192. *See id.* at 11.

193. *See id.* at 7.

194. 419 U.S. 565 (1975).

195. *See id.* at 567.

196. *See id.* at 568-69.

197. *See id.* at 573-74.

198. *See id.* at 581.

199. *Id.* at 582.

200. *See id.* at 582-83.

201. *Id.* at 584.

As *Goss* pertained only to short-term suspensions not exceeding ten days, a more severe punishment, according to the Court, "[might] require more formal procedures."[202] This issue was addressed in subsequent court cases. In *Draper v. Columbus Public Schools*,[203] for example, a district court provided that in order to determine the requirements of procedural due process for a student who has been expelled, the student's interest in reputation and uninterrupted education had to be balanced against the state's interest in maintaining safe, orderly, and effective public schools.[204] In this way, procedural protections should be determined on a case-by-case basis, as is demanded by the particular circumstances.[205] The court thus held that due process requirements for expelling a student who allegedly threatened other students with a knife, and who was then reassigned to another school, were satisfied by an informal hearing before the principal; written notice sent to his parents informing them of his formal hearing before an officer of the school system superintendent; the right to appeal to the school board; the right to a formal written record of the hearing; and the right to have legal counsel present.[206]

As a general rule, notice and a hearing should precede removal of a student from school. However, students involved in violent activity are not entitled to immediate due process protection if the student's presence on or around campus poses a continuing danger to staff or other students.[207] In other words, the notice and hearing ordinarily required can be temporarily delayed. The student can be removed immediately from any school function or activity with due process procedures to be followed as soon thereafter as is reasonable.[208] Courts have customarily followed this "dangerousness" exception

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202. *Id.*

203. 760 F. Supp. 131 (S.D. Ohio 1991).

204. *See id.* at 133. This balancing formula derives from *Morrissey v. Brewer*, 408 U.S. 471 (1972) (holding that the interests of a parolee must be balanced against the interests of the state in revoking parole).

205. *See Draper*, 760 F. Supp. at 133.

206. *See id.* at 134; *see also* Gonzales v. McEuen, 435 F. Supp. 460, 467 (C.D. Cal. 1977) ("In an expulsion hearing, the notice given to the student must include a statement not only of the specific charge, but also the basic rights to be afforded the student: to be represented by counsel, to present evidence, and to confront and cross-examine adverse witnesses.").

207. *See Goss*, 419 U.S. at 582.

208. *See id.*

where students are suspected of trafficking drugs or possessing dangerous weapons.[209]

Schools that use only minor disciplinary actions in dealing with gang activity are also unlikely to run into any due process problems. For example, withholding participation in extracurricular activities may not rise to the level of a constitutional violation of students' rights. The Supreme Court has ruled that student participation in extracurricular activities is voluntary, and unlike compulsory attendance, it carries little in the way of constitutional protection.[210] As the punishment of nonparticipation is mild and often reversible if the student later complies with the violated rule, any balancing of rights among the parties usually weighs in favor of the school and other students.

The other frequent challenge on Fourteenth Amendment due process grounds concerns the limits on interrogations of students. A complication can arise when, without having been informed of their right to remain silent, students are questioned for the purpose of uncovering a crime or criminal activity. The limitations on school interrogations, however, are not as strict as those in law enforcement, presumably because the goal is not to elucidate confessions, but to preserve order on campus.[211]

As such, a twenty-minute interrogation by a school official to determine whether a student had made a bomb threat did not deprive the student of a due process property right or liberty interest when two other students had implicated him.[212] Similarly, in *Boynton v. Casey*,[213] a federal district court found that due process requirements were met during the proceedings that resulted in a student's suspension and expulsion because the student had not been subjected to a "custodial interrogation" by school officials,

209. *See, e.g.*, Newsome v. Batavia Local Sch. Dist., 842 F.2d 920, 921 (6th Cir. 1988) (discussing marijuana trafficking); Brewer v. Austin Indep. Sch. Dist., 779 F.2d 260, 261 (5th Cir. 1985) (discussing possession of marijuana and drug paraphernalia).

210. *See* Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 657 (1995).

211. *See* Boynton v. Casey, 543 F. Supp. 995, 997 (D. Me. 1982) ("[T]he Court can find [no authority] supporting an extension of the *Miranda* rule . . . to interrogations conducted by school officials in furtherance of their disciplinary duties." (citation omitted) (footnote omitted)).

212. *See* Edwards v. Rees, 883 F.2d 882, 885-86 (10th Cir. 1989).

213. 543 F. Supp. 995 (D. Me. 1982).

although he was held for questioning and had not been permitted to leave.[214]

V. CONCLUSION

Public school students should feel and be safe at school. They should be free from violence by other students as well as from unreasonable invasions of privacy and regulations of individuality by school officials. The current state of constitutional law as applied in the school setting, however, seems to require one at the expense of the other.

It appears, therefore, that a dress code calling for uniforms will be upheld as constitutional by the courts. When the Fourth Amendment applies, schools will rarely be unable to establish the existence of reasonable suspicion to search and seize. Due process considerations for students will be relaxed. Courts, foreseeably, will defer all authority to school boards and administrators regarding the disciplining and care of students, and such a trend appears to be in line with the current educational climate. Certainly, with the accelerated incidence of drugs, weapons, and even explosives entering public schools today, it is highly probable that this trend will accelerate as well. The result, however, will be a weakening of individual student rights. Arguably, it is already underway; very few cases of late favor the student-complainant.

Because of the importance of assuring a safe school atmosphere as well as proper student discipline, school officials will continue to employ the necessary means to detect, and to deter, misconduct. Students' constitutional rights, however, albeit minimal, will continue to exist. This accommodation of competing interests will allow school personnel the flexibility to maintain a stable learning environment, but it must demand that they be respectful of students' civil rights as well.

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214. *See id.* at 997.