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# Comments: No Expectation of Privacy: Should School Officials Be Able to Search Students' Lockers without Any Suspicion of Wrong Doing? A Study of In re Patrick Y. and Its Effect on Maryland Public School Students

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# NO EXPECTATION OF PRIVACY: SHOULD SCHOOL OFFICIALS BE ABLE TO SEARCH STUDENTS' LOCKERS WITHOUT ANY SUSPICION OF WRONG DOING? A STUDY OF *IN RE PATRICK Y.* AND ITS EFFECT ON MARYLAND PUBLIC SCHOOL STUDENTS

## I. INTRODUCTION

In a recent study, the Federal Bureau of Investigation estimated that nearly 100,000 students carry guns to school every day.<sup>1</sup> Although the odds of a student being murdered in school are less than the odds of being struck by lightning, the chance that a student will be the victim of a serious crime is about one in two hundred.<sup>2</sup> Because of the increase in school violence, school authorities should be able to search a student's school locker in order to protect the other students. However, this authority to search should not be unlimited. School administrators should only be able to search a student's locker when they have a reasonable suspicion of the student's wrongdoing.

The intrusion of a student's right to privacy should not be without legal limitations. Millions of students go to school everyday with no weapons. Most students expect that while they are in class, their belongings will be left alone.<sup>3</sup> If there is no standard required before school officials may gain access to the lockers, students' belongings will be subject to search anytime they are placed in a locker.<sup>4</sup>

The schools' interest in keeping students safe is undoubtedly compelling, but there must be a balance between this interest and the students' interest in privacy. Schools must maintain order, but students need to be given some freedom to bring personal belongings without constant fear that school authorities will be looking through their things.<sup>5</sup> As stated by the United States Supreme Court, "the situ-

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1. Charles Patrick Ewing, Special to The News, *Why Violence in Schools Cannot Be Tolerated; Zero-Tolerance Policies Have Led to Absurd Situations in a Few Rare Cases, but Growing Crime in Schools Suggests that Even Seemingly Minor Incidents Must be Dealt with Swiftly and Severely*, BUFF. NEWS, Sept. 10, 2000, at 1F.

2. *Id.*

3. See *State ex rel T.L.O.*, 463 A.2d 934, 943 (N.J. 1983), *rev'd by New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (stating that a student's school locker "is a home away from home" and that the student had a privacy interest in his personal belongings in the locker).

4. See *Zamora v. Pomeroy*, 639 F.2d 662, 665 (10th Cir. 1981).

5. See George M. Dery, III, *The Coarsening of Our National Manners: The Supreme Court's Failure to Protect Privacy Interests of School Children - Vernonia School District 47J v. Acton*, 29 SUFFOLK U. L. REV. 693, 734 (1995). The author, quoting *Acton v. Vernonia Sch. Dist.*, 23 F.3d 1514, 1527 (9th Cir. 1994), *vacated by Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995), points out that, until recently, the Supreme Court understood that keeping constitutional

ation is not so dire that students . . . may claim no legitimate expectations of privacy."<sup>6</sup>

In Maryland, school officials now have unlimited authority to access and search students' lockers.<sup>7</sup> The recent Court of Appeals of Maryland decision, *In re Patrick Y.*,<sup>8</sup> held that a student does not have a reasonable expectation of privacy in his locker; thus, lockers can be subject to a search by school officials without any level of suspicion.<sup>9</sup> The court in *Patrick Y.* held that, although the school had a policy that lockers would not be searched without probable cause, the policy was invalid because it was different than the state statute,<sup>10</sup> which required no standard of suspicion.<sup>11</sup> The school policy was adopted by the school and signed by the student and parents.<sup>12</sup> By setting forth a requirement of probable cause as the standard upon which lockers would be searched, the policy may have provided students with a basis for having a reasonable expectation of privacy in their lockers.<sup>13</sup>

This Comment will describe how the Court of Appeals of Maryland has severely impacted the Fourth Amendment rights of students through its decision in *In re Patrick Y.*<sup>14</sup> First, Part II of this Comment will give a brief overview of the Fourth Amendment.<sup>15</sup> Next, Part III will provide a history of cases dealing with student searches, beginning

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rights intact involves living "with a certain amount of discomfort, even danger." *Id.*

6. *New Jersey v. T.L.O.*, 469 U.S. 325, 338 (1985) (noting that prisoners retain no expectation of privacy in their cells because of a need to maintain order, but that public schools do not need to be equated with prisons for Fourth Amendment purposes).
7. *See In re Patrick Y.*, 358 Md. 50, 67, 746 A.2d 405, 414 (2000) (holding that a student had no expectation of privacy in his locker because of state law that provided that school lockers were subject to search by school officials in the same manner as other school property).
8. 358 Md. 50, 746 A.2d 405 (2000).
9. *Id.* at 67, 746 A.2d at 414. The court stated that "[a]s petitioner could have no reasonable expectation of privacy in the school locker, the search of it by the school security officer . . . did not violate any Fourth Amendment right of petitioner." *Id.*
10. MD. CODE ANN., EDUC. § 7-308 (1999); *see also Patrick Y.*, 358 Md. at 66, 746 A.2d at 414.
11. The school policy stated that a school official "may conduct a search of a student's locker if there is probable cause to believe that the student has in his/her possession" an item of contraband. *Patrick Y.*, 358 Md. at 52-53, 746 A.2d at 406-07. However, section 7-308 of the Annotated Code of Maryland, Education Article provided that a school administrator may search the school "and its appurtenances including the lockers of students," but required that this right to search must "be announced or published previously in the school." MD. CODE ANN., EDUC. § 7-308 (b).
12. *Patrick Y.*, 358 Md. at 52, 746 A.2d at 406.
13. *See id.* at 73-74, 746 A.2d at 418 (Bell, C.J., dissenting).
14. *See infra* Part V.
15. *See infra* Part II.A.

with the landmark decision of *New Jersey v. T.L.O.*<sup>16</sup> Additionally, Part III will examine other jurisdictions' treatment of locker searches.<sup>17</sup>

Part IV of this Comment will focus on how Maryland courts have historically treated searches of students.<sup>18</sup> Most significantly, Part IV will address the effect of *In re Patrick Y.* on Maryland law: that school officials in Maryland can search a student's locker without any suspicion of wrongdoing.<sup>19</sup>

Finally, Part V of this Comment will argue that students in Maryland should not be subject to standardless searches.<sup>20</sup> Part V will argue that instead of standardless searches, reasonable suspicion should be required before school officials may search school students' lockers.<sup>21</sup> This argument is based upon (1) similar cases in other jurisdictions;<sup>22</sup> (2) the school policy;<sup>23</sup> (3) the Court of Appeals of Maryland's failure to apply the entire statute in their holding;<sup>24</sup> and (4) the more persuasive rationale offered by the Court of Special Appeals of Maryland in its holding in *In re Patrick Y.*<sup>25</sup>

## II. PROTECTION AGAINST UNREASONABLE SEARCHES AND SEIZURES: THE FOCUS OF THE FOURTH AMENDMENT

### A. *An Examination of the Fourth Amendment*

The Fourth Amendment protects citizens from unreasonable searches and seizures by public officials.<sup>26</sup> Enforced against the states through the Fourteenth Amendment,<sup>27</sup> the bedrock principle of the

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16. 469 U.S. 325 (1985); *see also infra* Part III.A.

17. *See infra* Part III.B.

18. *See infra* Part IV.A.

19. *See infra* Part IV.B.

20. *See infra* Part V.

21. *See infra* Part V.

22. *See infra* Part V.A.

23. *See infra* Part V.B.

24. *See infra* Part V.C.

25. *See infra* Part V.D.

26. The Fourth Amendment provides:

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, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

27. U.S. CONST. amend. XIV. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." *Id.*; *see also* Jennifer Barnes, Comment, *Students Under Seige? Constitutional Consideration for Public Schools Concerned with School Safety*, 34 U. RICH. L. REV. 621, 631 (2000) (citing *Mapp v. Ohio*, 367 U.S. 643, 655 (1961)). *Mapp v. Ohio* held that the Fourth Amendment is applicable to the states through the Fourteenth Amendment. *Mapp*, 367 U.S. at 655.

Fourth Amendment is the "recognition of 'the right to be let alone – the most comprehensive of rights and the right most valued by civilized men.'"<sup>28</sup> The Fourth Amendment protects against unreasonable government intrusions on an individual's reasonable expectation of privacy.<sup>29</sup> In *Katz v. United States*,<sup>30</sup> the Supreme Court first interpreted the Fourth Amendment to provide protection of an individual's reasonable expectation of privacy.<sup>31</sup> Prior to *Katz*, determination of a Fourth Amendment violation focused solely on an analysis of the area searched.<sup>32</sup> According to the cases before *Katz*, only "constitutionally protected areas" were covered by the Fourth Amendment.<sup>33</sup> However, the Court in *Katz* broadened the scope of the Fourth Amendment and rejected the previous precedent by stating that "the Fourth Amendment protects people, not places."<sup>34</sup>

In his concurrence, Justice Harlan coined the term a "reasonable expectation of privacy" to describe an area subject to the protection of the Fourth Amendment.<sup>35</sup> Justice Harlan articulated a two-pronged test to determine whether Fourth Amendment protection applies.<sup>36</sup> First, a person must "have exhibited an actual . . . expectation of privacy" and, second, society must recognize the expectation as reasonable.<sup>37</sup> Absent a subjective and objective expectation of privacy, the

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28. *New Jersey v. T.L.O.*, 469 U.S. 325, 362 (1985) (Brennan, J., concurring in part and dissenting in part) (citing *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting)).
  29. JON M. VAN DYKE & MELVIN M. SAKURAI, CHECKLISTS FOR SEARCHES AND SEIZURES IN PUBLIC SCHOOLS § 1.2 at 1-2 (West Group 2000) (interpreting the view set forth in *Terry v. Ohio*, 392 U.S. 1, 9 (1967)).
  30. 389 U.S. 347 (1967).
  31. *Id.* at 360-61. *Katz* changed the Fourth Amendment analysis from a focus on the place searched to a determination of whether the individual sought to keep the searched item or place private. *Id.* at 351-52.
  32. *Id.* at 351 n.9.
  33. *Id.* at 351 n.8 (noting that previous courts have determined that an individual's home is a constitutionally protected area, but that an open field is not).
  34. *Id.* at 351 (noting that what a person seeks to keep private, even in public, may be constitutionally protected).
  35. *Id.* at 360 (Harlan, J., concurring).
  36. *Id.* at 361.
  37. *Id.* A subjective "expectation of privacy" refers to that which a person seeks to keep as private. *Id.* For example, a person in his or her home expects privacy. *Id.* Because society also recognizes this subjective expectation as reasonable, this person has an expectation of privacy in their home for Fourth Amendment purposes. *Id.* On the other hand, in public, a person would not expect privacy if the general public could witness his or her activities or conversations because these activities would be exposed to the general public. *Id.* Additionally, society would not recognize as private what a person exposes in public. *Id.* Therefore, without a subjective or objective privacy expectation, there will be no Fourth Amendment protection given to this person for what they expose to the public. *Id.*

Fourth Amendment is not applicable because a search has not taken place.<sup>38</sup>

Once a court determines that a search has taken place, there are two interpretations used by courts to decide whether the search was reasonable.<sup>39</sup> First, the scope of reasonableness is formulated by balancing the “‘need to search against the invasion which the search entails.’”<sup>40</sup> This “conventional” view establishes a presumption that without a warrant exception<sup>41</sup> or a warrant based on probable cause,<sup>42</sup> a search is unreasonable.<sup>43</sup>

Second, some courts have adopted a “general reasonableness” test.<sup>44</sup> The general reasonableness test is based on the distinction between the warrant requirement and the reasonableness requirement

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38. Stuart C. Berman, Note, *Student Fourth Amendment Rights: Defining the Scope of the T.L.O. School Search Exception*, 66 N.Y.U. L. REV. 1077, 1083 n.24 (1991). If the behavior does not rise to the level of a search or seizure, “the law does not give a constitutional damn” whether the conduct complies with the Fourth Amendment. *Id.* (citing Moylan, *The Fourth Amendment Inapplicable vs. The Fourth Amendment Satisfied: The Neglected Threshold of “So What?”*, 1 S. ILL. U. L.J. 75, 76 (1977)).

39. *See id.* at 1084; VAN DYKE, *supra* note 29, § 1.2 at 1-2 (noting that governmental conduct considered to be a search must be reasonable according to the Fourth Amendment); *see also* U.S. CONST. amend. IV. “The right of people to be secure . . . against unreasonable searches . . .” *Id.* (emphasis added). Reasonable searches are constitutionally permissible. *See id.*

40. *T.L.O.*, 469 U.S. at 337 (citing *Camara v. Municipal Court of City & County of San Francisco*, 387 U.S. 523, 536-37 (1967)).

41. Berman, *supra* note 38, at 1084 n.33. Warrant exceptions include automobile searches, items in plain view, inventory searches, searches incident to arrest, administrative searches, hot pursuit searches, and border searches. *See United States v. Ross*, 456 U.S. 798, 800 (1982) (holding that a warrantless police search of a drug dealer’s vehicle was justified based on probable cause because packages inside the vehicle could reasonably contain narcotics); *South Dakota v. Opperman*, 428 U.S. 364, 376 (1976) (ruling that a search warrant was unnecessary for the seizure of marijuana by police during a routine inventory of an impounded vehicle); *United States v. Santana*, 427 U.S. 38, 42-43 (1976) (ruling that a warrant is unnecessary to seize evidence resulting from a police pursuit that began in a public place and ended inside the suspect’s home); *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973) (holding that routine searches by government agents at an international border, or its fundamental equivalent, may be conducted without a search warrant); *United States v. Biswell*, 406 U.S. 311, 316 (1972) (holding that a warrantless search of a locked storeroom during business hours was reasonable and the resulting seizure of unlicensed firearms was not a violation of the Fourth Amendment); *Chimel v. California*, 395 U.S. 752, 762-63 (1969) (holding that an arresting officer may make a search of the arrestee and the area within the arrestee’s immediate control).

42. Probable Cause is defined as “[a] reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime.” BLACK’S LAW DICTIONARY 1219 (7th ed. 1999).

43. *See Berman, supra* note 38, at 1084-85.

44. *Id.* at 1086.

of the Fourth Amendment.<sup>45</sup> Courts that have used this test weigh the governmental need to conduct the search against the intrusion to the person's expectation of privacy to determine the validity of the search.<sup>46</sup> This analysis has been used by the United States Supreme Court in limited cases involving special governmental needs,<sup>47</sup> administrative searches,<sup>48</sup> and school settings.<sup>49</sup>

### B. *Application of the Constitution to Children*

The Supreme Court has generally recognized that the Constitution affords rights to children.<sup>50</sup> However, the Court has expressed that although children possess these constitutional rights, they are limited. For example, in *Bellotti v. Baird*,<sup>51</sup> a case dealing with the constitutionality of a statute requiring minors to obtain parental consent before having an abortion, Justice Powell opined that there are:

[T]hree reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.<sup>52</sup>

Although Justice Powell expressed this opinion, the Court still held that the statute was unconstitutional.<sup>53</sup> The Court noted that the pro-

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45. *Id.*

46. *Id.*; *Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665-66 (1989) (noting that when there is a special governmental need, the individual's privacy expectations are balanced against the government's interest to determine whether a warrant is impractical); *see also infra* Part III.A.

47. *Berman*, *supra* note 38, at 1087 n.42. This author notes that "where a Fourth Amendment intrusion serves special governmental needs, beyond the normal need for law enforcement . . . it is necessary to balance the individual's privacy expectations against the Government's interests to determine whether it is impractical to require a warrant or some level of individualized suspicion in the particular context." *Id.* (quoting *Von Raab*, 489 U.S. at 665-66); *see also* *Griffin v. Wisconsin*, 483 U.S. 868, 873-74 (1987) (analogizing the operation of a state's probation system with the operation of its schools as being special needs situations); *O'Connor v. Ortega*, 480 U.S. 709, 725-26 (1987) (holding that a state government's intrusions on the privacy interests of its employees for work-related reasons are permissible based on the special needs exception).

48. *Berman*, *supra* note 38, at 1087. An administrative search is defined as "[a] search of public or commercial premises carried out by a regulatory authority for the purpose of enforcing compliance with health, safety, or security regulations." *BLACK'S LAW DICTIONARY* 1351 (7th ed. 1999).

49. *T.L.O.*, 469 U.S. at 341.

50. Janet McDonald, Comment, *New Jersey v. T.L.O. - Closing the School House Gate on the Fourth Amendment*, 14 N.Y.U. REV. L. & SOC. CHANGE 455, 460 (1986).

51. 443 U.S. 622 (1979).

52. *Id.* at 634.

53. *Id.* at 651.

tection of the constitution extends to children,<sup>54</sup> and that to require consent before having an abortion would place an undue burden on a minor to exercise this right.<sup>55</sup> Thus, although the rights of children are limited, they are actual rights.

The Court also considered the constitutional rights of children in *In re Gault*.<sup>56</sup> This case involved a fourteen-year-old child charged with making obscene phone calls.<sup>57</sup> At trial, the teenager was sentenced to incarceration until the age of twenty-one.<sup>58</sup> The juvenile had never received notice of the charges against him, of his right to counsel, or of his right to cross-examine witnesses.<sup>59</sup> However, an adult charged with the same crime would have been given such notice and rights, and would have only received a small fine or a short jail term.<sup>60</sup> The Supreme Court reversed the conviction, holding that the Fourteenth Amendment gives children due process rights.<sup>61</sup>

Furthermore, the Court in *Tinker v. Des Moines School District*<sup>62</sup> recognized that children have First Amendment rights.<sup>63</sup> In *Tinker*, students who were suspended for wearing black armbands to protest the Vietnam War alleged that the suspension was a violation of their First Amendment rights.<sup>64</sup> The Supreme Court agreed, holding that the suspension of the students violated their right to free speech because the armbands did not interfere with the school's interests.<sup>65</sup> In its holding, the Court balanced the students' right of free speech against

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54. *Id.* at 633. The Court asserted that "[a] child, merely on account of his minority, is not beyond the protection of the Constitution." *Id.*

55. *Id.* at 647. The Court stated, "[w]e think that, construed in this manner, [section] 12S would impose an undue burden upon the exercise by minors of the right to seek an abortion." *Id.*

56. 387 U.S. 1 (1967).

57. *Id.* at 4. Gault's neighbor complained to the police about lewd telephone calls that she received. Police subsequently arrested Gault and took him to the Children's Detention Home. *Id.*

58. *Id.* at 7-8.

59. *Id.* at 9-10.

60. *Id.* at 8-10. The child was charged with violating section 13-377 of the Arizona Revised Statutes. *Id.* at 8. The penalty that would apply to an adult would range from \$5.00 to \$50.00, or less than two months imprisonment. *Id.* at 8-9. The Juvenile Code did not have provisions requiring notice, right to counsel, and privilege against self-incrimination; these rights are guaranteed to all persons under the Constitution. *Id.* at 10.

61. *See id.* at 59. The Court stated that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." *Id.* at 13.

62. 393 U.S. 503 (1969).

63. *Id.* at 506. The Court opined that "[i]t can hardly be argued that . . . students . . . shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.*

64. *Id.* at 504 (noting that the petitioners filed their complaint under the Civil Rights Act).

65. *Id.* at 514 (noting that "[t]hey caused discussion outside of the classrooms, but no interference with work and no disorder. In these circumstances, our Constitution does not permit officials of the state to deny their form of expression.").



the need of the school to maintain discipline and safety within the school, and ultimately held that the students' right to free speech outweighed any governmental interest.<sup>66</sup>

Additionally, the Court addressed students' Fourteenth Amendment protection in *Goss v. Lopez*.<sup>67</sup> In *Goss*, students staged a demonstration in the school auditorium during a class, with their behavior ranging from disruptive to violent.<sup>68</sup> Consequently, the school suspended the students for up to ten days.<sup>69</sup> Because the students were not afforded a hearing prior to the suspension, the Court found that there was a due process violation.<sup>70</sup> Thus, the Court held that the State had the authority to enforce discipline by creating regulations, but that in executing these regulations, the schools must afford due process rights to the student.<sup>71</sup>

It is clear that the Constitution applies to children *and* to adults.<sup>72</sup> However, because schools need to enforce rules and discipline, children's constitutional rights are limited within the schools.<sup>73</sup> Accordingly, the Fourth Amendment rights of students are limited within schools because of the schools' responsibility to maintain a safe environment.<sup>74</sup> As a result, Fourth Amendment rights of minors are not as strong as the rights of adults when there is a government interest at stake, such as the protection of children in a school's custody.<sup>75</sup> When children set foot onto school grounds, their constitutional rights become limited. These rights, however, do not disappear entirely.

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66. *Id.*

67. 419 U.S. 565 (1975).

68. *Id.* at 569-70. One of the students, Tyrone Washington, was demonstrating in the school auditorium and refused to leave. *Id.* A police officer attempted to remove Tyrone, and another student, Randolph Sutton, attacked the police officer. *Id.* at 570. Other students were suspended for similar misconduct, including a disturbance in the lunchroom resulting in damage to school property. *Id.*

69. *Id.* at 568.

70. *Id.* at 579. The Court concluded that a student should be given "some kind of notice and afforded some kind of hearing." *Id.* (emphasis added).

71. *Id.* at 574. The Court noted that they did "not believe that school authorities must be totally free from notice and hearing requirements if their schools are to operate with acceptable efficiency." *Id.* at 581.

72. See *supra* note 54 and accompanying text.

73. See Barnes, *supra* note 27, at 631.

74. See VAN DYKE, *supra* note 29, § 1.6, at 1-13.

75. See *id.*

### III. SCHOOL SEARCHES: FOURTH AMENDMENT RIGHT OF CHILDREN IN SCHOOL SETTINGS

#### A. New Jersey v. T.L.O. – A Landmark Decision

*New Jersey v. T.L.O.*<sup>76</sup> was the first Supreme Court case to address school students' Fourth Amendment rights.<sup>77</sup> The Court in *T.L.O.* held that the Fourth Amendment protects students against searches and seizures by school officials.<sup>78</sup> According to the Court, a determination of reasonableness is made by balancing the interests of the child's expectation of privacy with the schools' interest in maintaining a safe, educational environment.<sup>79</sup> This poses a situation with competing interests: the child has the right to bring items to school that are private,<sup>80</sup> but school officials must be able to maintain discipline and order in the school.<sup>81</sup> Additionally, to maintain discipline and order within the schools, school regulations must be flexible, immediate, and effective.<sup>82</sup>

Because of these competing interests, the Court opined that the restrictions on searches by school officials needed to be relaxed for the school setting.<sup>83</sup> Thus, the Court held that school officials need not adhere to the probable cause or warrant requirement of the Fourth Amendment when conducting a search.<sup>84</sup> Instead, the Court instituted a two-prong test to determine whether a search was reasonable: (1) "whether the . . . action was justified at its inception,"<sup>85</sup> and (2)

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76. 469 U.S. 325 (1985).

77. See Berman, *supra* note 38, at 1077.

78. *T.L.O.*, 469 U.S. at 341-42, 347-48; see also Berman, *supra* note 38, at 1090 n.68. Prior to *T.L.O.*, the standard governing searches of students was the *in loco parentis* (in place of the parent) doctrine. *Id.* This doctrine rested on the notion that school officials acted in the place of the parent while the child was at school, thereby not restricting the school officials to the constraints of the Fourth Amendment. *Id.* The Court rejected this concept and held that school officials are government agents for the purpose of the Fourth Amendment. *Id.*

79. *T.L.O.*, 469 U.S. at 339.

80. *Id.* (noting that students may bring to school items other than school supplies, such as keys, items for personal hygiene, letters, diaries, photographs, and other personal items).

81. *Id.*

82. *Id.* at 339-40. The Court recognized that "[e]vents calling for discipline are frequent occurrences and sometimes require immediate, effective action." *Id.* at 339 (quoting *Goss v. Lopez*, 419 U.S. 565, 580 (1975)).

83. *Id.* at 340 (noting that "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship").

84. *Id.* at 340-41. Justice White argued that to require a warrant would "interfere with the maintenance of the swift and informal disciplinary procedures needed" to preserve school order. *Id.* at 340.

85. *Id.* at 341 (alteration in original) (quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968)).

whether the search was reasonably permissible in its scope.<sup>86</sup> The search will be “justified at its inception” if officials have *reasonable suspicion* that evidence of a crime will be found in a particular place.<sup>87</sup> A search is permissible in scope when the method taken to effectuate the search is not more intrusive than needed, taking into account the seriousness of the infraction and the age and sex of the student.<sup>88</sup>

Because the question of locker searches was not before the Court in *T.L.O.*, it did not make a determination as to whether this standard was applicable to school lockers.<sup>89</sup> However, nearly every post-*T.L.O.* school search case has followed the rationale set forth by *T.L.O.*<sup>90</sup>

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86. *Id.* at 341-42.

87. *Id.* at 342.

88. *Id.* Compare *People v. Dukes*, 580 N.Y.S.2d 850, 852-53 (1992) (holding that a search by means of a metal detector is reasonable because it is not intrusive) with *Doe v. Renfrow*, 631 F.2d 91, 92-93 (7th Cir. 1980) (holding that a dog sniff of a thirteen-year-old girl, followed by a nude search was unreasonable) and *Bellnier v. Lund*, 438 F. Supp. 47, 47 (N.D.N.Y. 1977) (holding that a strip search of a fifth grade class in a search for \$3.00 was more intrusive than necessary).

89. See *T.L.O.*, 469 U.S. at 337 n.5. The Court also did not decide whether the exclusionary rule was the appropriate remedy for an illegal search, or whether police searches are also afforded the reasonable suspicion standard. *Id.* at 337 n.5, 341 n.7. The premise of the exclusionary rule is that all evidence obtained from searches and seizures that violate the Constitution is inadmissible, and thus “excluded” from being admitted as evidence. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

90. *Berman*, *supra* note 38, at 1099 n.119; see, e.g., *Vernonia Sch. Dist.* 47J v. *Acton*, 515 U.S. 646 (1995) (following *T.L.O.* in upholding drug urinalysis of high school sports teams); *DesRoches v. Caprio*, 156 F.3d 571 (4th Cir. 1998) (following *T.L.O.* in determining that the search of a student’s backpack was reasonable); *Thompson v. Carthage Sch. Dist.*, 87 F.3d 979 (8th Cir. 1996) (following *T.L.O.* in upholding a search of students by a metal detector); *Cornfield v. Consol. High Sch. Dist.*, 991 F.2d 1316 (7th Cir. 1993) (following *T.L.O.* analysis in upholding a strip search of a student as reasonable); *Williams v. Ellington*, 936 F.2d 881 (6th Cir. 1991) (following *T.L.O.* analysis in upholding school administrators strip search of a student); *Cason v. Cook*, 810 F.2d 188 (8th Cir. 1987) (upholding search of a student by following *T.L.O.*’s reasonableness standard); *Wynn v. Bd. of Educ.*, 508 So. 2d 1170 (Ala. 1987) (following *T.L.O.* standard in upholding the search of a fifth grade student as not being excessively intrusive); *State v. Serna*, 860 P.2d 1320 (Ariz. 1993) (applying *T.L.O.* in upholding a search); *In re William G.*, 709 P.2d 1287 (Cal. 1985) (following *T.L.O.* in holding that the search conducted by the vice principal was unreasonable); *In re P.E.A.*, 754 P.2d 382 (Colo. 1988) (following *T.L.O.* in holding that the search of a student’s car was reasonable); *In re Doe*, 887 P.2d 645 (Haw. 1994) (following *T.L.O.* in upholding the reasonableness of the search of a student’s purse); *People v. Pruitt*, 662 N.E.2d 540 (Ill. App. Ct. 1996) (following *T.L.O.* in upholding the reasonableness of the seizure of a gun from a student); *S.A. v. State*, 654 N.E.2d 791 (Ind. Ct. App. 1995) (following *T.L.O.* in upholding the search of a student’s bookbag as reasonable); *In re L.A.*, 21 P.3d 952 (Kan. 2001) (applying *T.L.O.* in upholding the search of a student’s backpack and ballcap); *State v. Barrett*, 683 So. 2d 331 (La. Ct. App. 1996) (following *T.L.O.* in determining that a search was unreasonable); *Commonwealth v. Damian D.*, 752 N.E.2d 679 (Mass. 2001)

Therefore, because the Court did not consider the issue of locker searches, states have addressed the issue in statutes or court decisions.<sup>91</sup>

### B. School Locker Searches

Whether a school locker search falls within the parameters of the Fourth Amendment is determined by whether state courts find that students have a reasonable expectation of privacy in their lockers.<sup>92</sup> Some jurisdictions have held that students possess a privacy interest in their lockers,<sup>93</sup> while others have held that students do not.<sup>94</sup> Finally,

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(using *T.L.O.* analysis in determining that the search of a student was unreasonable); *In re Patrick Y.*, 358 Md. 50, 746 A.2d 405 (2000) (using *T.L.O.* in its analysis); *S.C. v. State*, 583 So. 2d 188 (Miss. 1991) (applying the *T.L.O.* standard to a locker search); *State v. Drake*, 662 A.2d 265 (N.H. 1995) (applying *T.L.O.* to uphold the search of a student); *State v. Moore*, 603 A.2d 513 (N.J. Super. Ct. App. Div. 1992) (using *T.L.O.* to uphold the reasonableness of the search of a student's book bag); *State v. Michael G.*, 748 P.2d 17 (N.M. Ct. App. 1987) (using *T.L.O.* to uphold a locker search as reasonable); *In re Gregory M.*, 627 N.E.2d 500 (N.Y. 1993) (upholding the search of a student's bag as reasonable); *In re Murray*, 525 S.E.2d 496 (N.C. Ct. App. 2000) (using *T.L.O.* to uphold the search of a student as reasonable); *In re Adam*, 697 N.E.2d 1100 (Ohio Ct. App. 1997) (using *T.L.O.* to uphold the search of a student's locker as reasonable); *State ex rel. Juvenile Dept. of Lincoln County v. Finch*, 925 P.2d 913 (Or. Ct. App. 1996) (holding that the search of a student's jacket was unreasonable based on *T.L.O.* analysis); *Commonwealth v. Cass*, 709 A.2d 350 (Pa. 1998) (using *T.L.O.* analysis to determine the reasonableness of a locker search); *Shoemaker v. State*, 971 S.W.2d 178 (Tex. App. 1998) (using *T.L.O.* to determine the reasonableness of the search of a student's locker); *State v. B.A.S.*, 13 P.3d 244 (Wash. Ct. App. 2000) (using *T.L.O.* analysis in determining that the search of a student was unreasonable); *State v. Joseph T.*, 336 S.E.2d 728 (W. Va. 1985) (applying *T.L.O.* to locker searches); *In re Angelia D.B.*, 564 N.W.2d 682 (Wis. 1997) (holding that the *T.L.O.* reasonableness test applied).

91. See VAN DYKE, *supra* note 29, at § 10.1, at 10-1 to 10-2. For example, Mississippi courts decided that students do have a privacy expectation in their lockers. *South Carolina v. State*, 583 So. 2d 188, 191-92 (Miss. 1991). Additionally, New Mexico, Washington, and West Virginia have also determined that students possess a privacy interest in their lockers. See *Michael G.*, 748 P.2d at 19; *State v. Brooks*, 718 P.2d 837, 840 (Wash. Ct. App. 1986); *Joseph T.*, 336 S.E.2d at 736.
92. For a discussion of different jurisdictions' treatment of locker searches, see *infra* Part III.B.1-2.
93. See *infra* Part III.B.2.
94. See *infra* Part III.B.1. See generally *People v. Overton*, 249 N.E.2d 366, 369 (N.Y. 1969) (indicating that students have no expectation of privacy in a locker because school officials retain control over the locker); *Shoemaker*, 971 S.W.2d at 182 (holding that a student did not have a legitimate expectation of privacy in her locker based upon the school policy, lockers being school property, and the possession of a master key by the principal); *In re Isiah B.*, 500 N.W.2d 637, 641 (Wis. 1993) (holding that the student did not have a reasonable expectation of privacy in his locker because of the school policy).

some jurisdictions base a student's expectation of privacy on the policies of the student's school.<sup>95</sup>

### 1. Jurisdictions Finding No Expectation of Privacy in School Lockers

There are few cases that have held that a student has no expectation of privacy in his or her locker.<sup>96</sup> Generally, there are three theories that courts have given to uphold this view.<sup>97</sup>

First, courts have reasoned that because school officials have a master key, even if a student has a subjective expectation of privacy within their locker, it is diminished by the awareness that a school official could open his or her locker at anytime.<sup>98</sup> However, even if students are aware of a master key, it may not mean that they expect it will be used without reason.<sup>99</sup>

Second, courts have reasoned that students do not have an expectation of privacy in their lockers because lockers are viewed as school property.<sup>100</sup> Because the lockers are on the property of the school

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95. See *Zamora v. Pomeroy*, 639 F.2d 662, 671 (10th Cir. 1981) (holding that students had no expectation of privacy within their lockers because of the school policy of retaining control over the lockers); *Commonwealth v. Snyder*, 597 N.E.2d 1363, 1366 (Mass. 1992) (holding that the school policy, which outlined that students' lockers would not be searched unreasonably, gave students a reasonable expectation of privacy in their lockers); *South Carolina v. State*, 583 So. 2d at 191-92 (holding that the Mississippi Constitution gave students a legitimate expectation of privacy within their lockers); *Isiah B.*, 500 N.W.2d at 641 (holding that the school policy stipulated that students did not have a reasonable expectation of privacy in their lockers).
96. See generally *State v. Stein*, 456 P.2d 1, 3 (Kan. 1969) (holding that the right to inspect a student's locker is vested in the school's administrator); *Patrick Y.*, 358 Md. 50, 67, 746 A.2d 405, 414 (2000) (holding that a state law establishing that students have no expectation of privacy supercede contrary local school policy); *Overton*, 249 N.E.2d at 368 (holding that students have no expectation of privacy in a locker because school officials retain control over it); *Isiah B.*, 500 N.W.2d at 649 (holding that students have no reasonable expectation of privacy when the school has a policy of retaining control and ownership of the lockers).
97. See Todd Holliday, Comment, *Virginia Public Schools – Student Rights*, 22 U. RICH. L. REV. 241, 270-71 (1988).
98. *Id.* at 271; see also *Cass*, 709 A.2d at 357 (noting that even though students do have an expectation of privacy in their lockers, it is minimal because the school officials possess a master key and their locker combinations must be kept on file within the school); *Overton*, 249 N.E.2d at 367 (holding that because the school possessed a master key, they were empowered to search the locker).
99. See, e.g., *State ex rel T.L.O.*, 463 A.2d 934, 943 (N.J. 1983), *rev'd*, *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (noting that a student has the right to believe that a master key will only be used at his "request or convenience").
100. Holliday, *supra* note 97, at 271; see also *Shoemaker*, 971 S.W.2d at 182 (holding that a student possessed no expectation of privacy because the locker was school property). See generally *State v. Barrett*, 683 So. 2d 331, 340 (La. Ct. App. 1996) (indicating that the defendant had no reasonable expectation of privacy because the lockers were school property).

and, consequently, are under the authority of the school officials, it has been argued that school officials can consent to their search.<sup>101</sup> This argument fails in light of the holding in *Katz v. United States*,<sup>102</sup> where the Supreme Court determined that the Fourth Amendment “protects people, not places.”<sup>103</sup> Because the *locker* is not what is protected, the notion that students have no expectation of privacy over their belongings inside a locker because it is school property is not reasonable. Accordingly, because the Court in *Katz* rejected the property-based approach to searches, the fact that a locker is school property should not take away the student’s expectation of privacy.<sup>104</sup>

A third reason given by courts to support the notion that students do not have an expectation of privacy in their lockers is the location of the lockers.<sup>105</sup> Because “[l]ockers are generally located in public areas such as hallways where their contents are exposed to the view of passersby”<sup>106</sup> the students’ expectation of privacy is considered to be diminished.<sup>107</sup> In other words, these courts argue that if the locker is open with its “contents exposed,” any contraband in plain view could be seized because of the “plain view” exception to the warrant requirement of the Fourth Amendment.<sup>108</sup> However, this is a defective argument, and a weak attempt to use the “plain view” exception to the warrant requirement, because the locker is usually closed and locked, not left open. Thus, simply because the door to the locker is occasionally opened does not mean that the student does not have, or expect, a right to privacy in the contents of their locker.<sup>109</sup>

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101. See *Black v. Commonwealth*, 288 S.E.2d 449, 452 (Va. 1982) (“[T]he consent to search given by one with common authority over property is valid as against the absent, non-consenting person with whom the authority is shared.”).

102. 389 U.S. 347 (1967).

103. *Id.* at 351.

104. See *id.*; see also *Berman*, *supra* note 38, at 1104 n.141 (noting that “[g]iven the Court’s rejection of a property-based approach to searches in *Katz* . . . school ownership of the locker and possession of a master key should not eviscerate the student’s reasonable expectation of privacy”).

105. See *Holliday*, *supra* note 97, at 271.

106. Richard Delgado, *College Searches and Seizures: Students, Privacy, and the Fourth Amendment*, 26 HASTINGS L.J. 57, 70 (1974).

107. *Holliday*, *supra* note 97, at 271.

108. *Id.* Under the “plain view doctrine,” if police are in an area that they are lawfully permitted to be, and they view an object, if its incriminating character is apparent, they may seize the item without a warrant. *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993); see also *supra* note 41 and accompanying text.

109. See *Holliday*, *supra* note 97, at 271.

## 2. Jurisdictions Holding That Students Possess an Expectation of Privacy in School Lockers

Many jurisdictions have held that students possess a privacy interest within their lockers.<sup>110</sup> Some courts have based that privacy expectation on the assignment of lockers for students' exclusive use.<sup>111</sup> This exclusive use leads students to expect that they are the only ones who utilize the locker, and that private belongings may be stored within the locker.<sup>112</sup> These jurisdictions have also based the student's privacy interest on the existence of a lock on the outside of the locker.<sup>113</sup> A lock indicates restricted entry to the locker.<sup>114</sup>

### IV. MARYLAND CASES

#### A. Student Searches: Diminishing the Right to Privacy

##### 1. *In re Dominic W.*

The first case in Maryland to address searches of students by school officials was *In re Dominic W.*<sup>115</sup> In this case, a locker was broken into, and a student informed the assistant principal that he had seen the defendant and two other students "hanging around" the lockers at approximately the same time the theft occurred.<sup>116</sup> Based upon this

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110. Most of these cases have extended the standard set forth in *T.L.O.* to locker searches. *See generally* *South Carolina v. State*, 583 So. 2d 188, 191-92 (Miss. 1991) (applying the *T.L.O.* standard to hold that students have an expectation of privacy in their lockers); *State v. Michael G.*, 748 P.2d 17, 19 (N.M. Ct. App. 1987) (holding that the *T.L.O.* standard of "reasonably suspicious grounds" applies to searches of students' lockers); *In re Adam*, 697 N.E.2d 1100, 1107 (Ohio Ct. App. 1997) (noting that a student's expectation of privacy is not lost by placing his belongings in a school locker); *In re Dumas*, 515 A.2d 984, 985 (Pa. 1986) (holding that students have a reasonable expectation of privacy in their locker because they bring many personal items to school and store them in their lockers); *State v. Joseph T.*, 336 S.E.2d 728, 736-37 (W. Va. 1985) (applying the *T.L.O.* standard to the locker search in question and holding that a warrantless search of a student's locker should be permitted only upon "reasonable suspicion" that the search will reveal evidence that the student violated the rules of the school or the law).

111. Berman, *supra* note 38, at 1104 n.141.

112. *Id.*

113. *Id.*

114. *See, e.g., Dawson v. State*, 868 S.W.2d 363, 370 (Tex. App. 1993) (holding that because the manager did not have a key to the lock on the employee's locker, and because no other person had access to the locker, the employee retained an expectation of privacy in her locker, even though it was property of the employer). *But see State v. Roseboro*, No. CR5-81771, 1990 WL 277237, at \*1, \*18 (Conn. Super. Ct. Oct. 4, 1990) (noting that employees had an expectation of privacy in their lockers whether or not there were locks on them because an "expectation of privacy does not require the maximum security required to prevent break-ins or thefts").

115. 48 Md. App. 236, 426 A.2d 432 (1981).

116. *Id.* at 237-38, 426 A.2d at 433 (noting that a watch was missing from the locker).

information, the assistant principal interviewed the other two students<sup>117</sup> and then questioned the defendant.<sup>118</sup> The assistant principal told the defendant to empty his pockets.<sup>119</sup> Once the defendant did this, the assistant principal felt and reached into the defendant's pocket and pulled out a watch.<sup>120</sup> The watch was the one stolen from the locker.<sup>121</sup>

At an adjudicatory hearing, Dominic W. was found to be a delinquent child and was placed on probation.<sup>122</sup> On appeal, Dominic W. contended that the assistant principal did not have probable cause to search his pockets, and, therefore, the watch should not have been admitted into evidence.<sup>123</sup>

The court held that section 7-307 of the Annotated Code of Maryland, Education Article,<sup>124</sup> which set forth probable cause as the degree of suspicion needed to effectuate a search within the confines of the Fourth Amendment, had been violated.<sup>125</sup> Because the assistant principal did not have probable cause to believe that Dominic W. had broken into the locker, the evidence gained from Dominick W. was inadmissible under the exclusionary rule.<sup>126</sup>

In 1982, the Maryland General Assembly amended section 7-307(a)<sup>127</sup> to permit searches of students based upon a "reasonable belief" that the student possessed an item of a criminal nature.<sup>128</sup> Upon amending this statute, the Attorney General of Maryland recognized that it is constitutional to search students with a standard less than

117. *Id.* at 238, 426 A.2d at 433. The other two students were questioned and released after denying involvement. *Id.*

118. *Id.* The assistant vice principal took the defendant to an empty classroom and told the defendant that he was suspected of stealing from the locker. *Id.*

119. *Id.*

120. *In re Dominic W.*, 486 Md. App. 236, 238, 426 A.2d 432, 433 (1981).

121. *Id.*

122. *Id.* at 236, 426 A.2d at 433.

123. *Id.* at 238, 426 A.2d at 434.

124. MD. CODE ANN., EDUC. § 7-307 (1978) (amended 1982). This section provides in pertinent part:

(a) *Authority to search student.* – (1) A principal, assistant principal, or school security guard of a public school may make a reasonable search of a student on the school premises if he has probable cause to believe that the student has in his possession an item, the possession of which is a criminal offense under the laws of this State.

*Id.*; see also *supra* note 112 and accompanying text.

125. *Dominic W.*, 48 Md. App. at 239, 426 A.2d at 434.

126. *Id.* The court of special appeals held that even though Maryland does not have an exclusionary rule, the exclusionary rule is imposed on Maryland through the Fourteenth Amendment. *Id.*; see also *Mapp v. Ohio*, 367 U.S. 643 (1961); *supra* note 89 and accompanying text.

127. See *supra* note 124 and accompanying text. This statute was re-codified as section 7-308 of the Education Article.

128. *In re Patrick Y.*, 358 Md. 50, 65, 746 A.2d 405, 413 (2000) (noting that this change was the result of the holding in *In re Dominic W.*).



probable cause.<sup>129</sup> The attorney general, in his opinion, stated that the majority of jurisdictions have found that the Fourth Amendment applies in the school setting, but that a standard less rigid than probable cause could be employed.<sup>130</sup> Additionally, the State Board of Education amended its by-laws in 1990 to permit searches based upon a reasonable belief standard.<sup>131</sup>

## 2. *In re Devon T.*

The Court of Special Appeals of Maryland, facing similar facts as *Dominic W.*,<sup>132</sup> but armed with an amended statute, upheld a student search as reasonable under the Fourth Amendment in *In re Devon T.*<sup>133</sup> The court noted that the security guard had “[a]rticulable suspicion” to suspect that Devon T. may have been selling drugs.<sup>134</sup> This time, the court based its decision on the reasonableness requirement of *New Jersey v. T.L.O.*<sup>135</sup> Because the search was conducted by a school official and not a police officer,<sup>136</sup> and the school had a duty to protect students, the court in *Devon T.* held that there only needed to be reasonable suspicion present before conducting the search.<sup>137</sup> Additionally, the amended statute permitted searches based upon reasonable suspicion alone.<sup>138</sup>

## B. *Locker Searches in Maryland*

The standard in Maryland for locker searches has remained unchanged for twenty-eight years.<sup>139</sup> Since 1973, Maryland has not required any determination of probable cause or reasonable suspicion in order for school officials to search a locker.<sup>140</sup> Maryland’s Educa-

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129. 67 Op. Att’y Gen. 147, 150 (1982).

130. *Id.* at 149.

131. *See Patrick Y.*, 358 Md. at 65, 746 A.2d at 413-14.

132. 48 Md. App. 236, 426 A.2d 432 (1981).

133. 85 Md. App. 674, 584 A.2d 1287 (1991). A school security guard searched the pockets of Devon T. based on a tip from his grandmother and a student informant that Devon T. was selling drugs. *Id.* at 701, 584 A.2d at 1300.

134. *Id.* at 701, 584 A.2d at 1300. The court stated: “Security guard William Jackson took the complaint from the concerned grandmother that . . . a group of [ ] students from the school were hiding out in her house during the school day and were selling drugs out of the house.” *Id.* at 701-02, 584 A.2d at 1300. The security guard was also given information from a reliable student. *Id.*

135. 469 U.S. 325 (1985). For a further description of this case, see *supra* Part III.A.

136. *Devon T.*, 85 Md. App. at 701, 584 A.2d at 1300.

137. *Id.* “Reasonable suspicion” is a lower standard than “articulable suspicion.” *Id.*

138. *See supra* note 124 (noting that this statute eventually became section 7-308 of the Education Article).

139. *In re Patrick Y.*, 358 Md. 50, 65, 746 A.2d 405, 413 (2000) (noting that only stylistic changes were made).

140. *See id.*

tion Article section 7-308 requires the school's to announce or publish notice of the school's right to search lockers.<sup>141</sup> Likewise, in 1997, the State Board of Education added a provision that authorized school officials to search lockers with no suspicion of wrongdoing.<sup>142</sup>

1. *In re Patrick Y.*

The only case that has addressed the issue of locker searches in Maryland is *In re Patrick Y.*<sup>143</sup> In *Patrick Y.*, the Court of Appeals of Maryland held that neither probable cause nor articulable suspicion is required before searching a student's locker.<sup>144</sup> In fact, after *Patrick Y.*, students' lockers can be searched at any time, for any reason, without the student's knowledge.

a. *Facts*

Patrick Y. was an eighth grade student at Mark Twain School, a public middle and senior high school in Montgomery County, Maryland.<sup>145</sup> On May 23, 1997, an informant told the school security officer that "there were drugs and or weapons in the middle school area of the school."<sup>146</sup> Upon being informed, the principal authorized a search of all lockers in the middle school area.<sup>147</sup> The security officer conducted the search.<sup>148</sup> The facts are not clear as to how many lockers were searched, how the individuals conducted the search, or how the security guard gained access to the lockers.<sup>149</sup> The search did not exceed the scope of the middle school area, and the school gained access to the lockers without the assistance, permission, or notification of the students.<sup>150</sup>

Upon searching Patrick Y.'s locker, the security guard opened his book bag,<sup>151</sup> and found a knife, a pager, and a package of rolling papers.<sup>152</sup> When Patrick Y. was confronted with the items found in the

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141. MD. CODE ANN., EDUC. § 7-308(b)(2) (1999). The statute provides that "[t]he right of the school official to search the locker shall be announced or published previously in the school." *Id.*

142. *Patrick Y.*, 358 Md. at 63, 746 A.2d at 412-13 (citing MD. CODE ANN., EDUC. § 7-308); see also *supra* note 11 and accompanying text.

143. 124 Md. App. 604, 723 A.2d 523 (1999) [hereinafter *Patrick I*], *aff'd*, 358 Md. 50, 746 A.2d 405 (2000) [hereinafter *Patrick II*].

144. *Patrick II*, 358 Md. at 63, 746 A.2d at 413.

145. *Id.* at 52, 746 A.2d at 406. Approximately 245 students were identified by the school as having emotional, learning, social and behavioral difficulties. *Id.*

146. *Id.* at 53, 746 A.2d at 407 (quoting an unknown informant).

147. *Id.*

148. *Id.*

149. *Patrick II*, 358 Md. 50, 53, 746 A.2d 405, 407 (2000).

150. *Id.*

151. *Id.* at 53, 746 A.2d at 407. The court noted that because the issue of the bookbag search was never challenged by the petitioner, it was not addressed by the court. *Id.* at 54, 746 A.2d at 407.

152. *Id.*

book bag, he admitted that they belonged to him.<sup>153</sup> The police charged Patrick Y. with being a delinquent child.<sup>154</sup>

*b. Trial Court*

At the adjudicatory hearing, Patrick Y. moved to suppress the items found in the search.<sup>155</sup> Patrick Y. argued that the school policy statement gave him an expectation of privacy in his locker.<sup>156</sup> Furthermore, Patrick Y. claimed that the search was unreasonable because it was not based on probable cause as set forth in the school policy.<sup>157</sup> The District Court of Montgomery County, sitting as the juvenile court, found Patrick Y. guilty of being a delinquent child.<sup>158</sup>

*c. Court of Special Appeals of Maryland – A Focus on the Search*

The first appeal was based upon the denial of the motion to suppress.<sup>159</sup> The Court of Special Appeals of Maryland reviewed the motion and upheld the decision of the trial court, basing its decision on the reasonableness of the search.<sup>160</sup> The court held that the search was reasonable, following the Supreme Court decisions of *New Jersey v. T.L.O.*<sup>161</sup> and *Vernonia School District v. Acton*,<sup>162</sup> by balancing the stu-

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153. *Id.* The court noted that at the time he was confronted with the items, Patrick Y. was being restrained because he had threatened to leave the school without permission. *Id.* Additionally, as noted in the court of special appeals' decision, Patrick Y.'s pager was confiscated when the school officials confronted him and he was subsequently charged with possession of a pager, which was a violation of the school policy. *Patrick I*, 124 Md. App. 604, 607 n.2, 723 A.2d 523, 525 n.2. (1999).

154. *Patrick I*, 124 Md. App. at 606, 723 A.2d at 524.

155. *Id.* at 608, 723 A.2d at 525.

156. *Id.* The policy provided that the principal or other designated official "may conduct a search of a student or of the student's locker if there is probable cause to believe that the student has in his/her possession an item" of contraband. *Id.* For further discussion of the effect of the school policy, see *infra* Part V.B.

157. *Patrick I*, 124 Md. App. at 608, 723 A.2d at 525.

158. *Id.* at 606, 723 A.2d at 524. The court noted that if Patrick Y. had been an adult, he would have been guilty of possession of both a deadly weapon and a pager on school property. *Id.*

159. *Id.* at 606, 723 A.2d at 524.

160. *Id.* at 616, 723 A.2d at 529.

161. 469 U.S. 325, 341 (1985). The Court held that schools may search students if the search is reasonable rather than if there is probable cause. *Id.*

162. 515 U.S. 646, 664-65 (1995). *Acton* involved a school policy that required all students who wished to play sports to be subjected to random drug urinalysis. *Id.* at 649-50. The Court in *Acton*, upholding the reasonableness of the "search" for drugs in the urinalysis, held that, absent a clear policy, whether a search is reasonable is based on a balancing of the privacy interests of the individual against a compelling government interest. *Id.* at 652-53. A government interest is compelling when the interest is "important enough to justify the particular search at hand, in light of other factors that show the search to be relatively intrusive upon a genuine expectation of privacy." *Id.* at 661.

dent's privacy interest with the school's need to keep discipline and order.<sup>163</sup> The court recognized that although the school policy may have been violated, the school officials were not limited by this policy when faced with a need to maintain safety.<sup>164</sup> The court also recognized that "courts that have considered whether students have a legitimate expectation of privacy in their lockers have concluded that they do."<sup>165</sup> Thus, the court of special appeals recognized that Patrick Y. possessed an expectation of privacy within his locker, but because the school had reasonable suspicion to believe that there may be drugs in the locker, the court upheld the search because it was reasonable.<sup>166</sup>

*d. Court of Appeals of Maryland – A New Precedent is Set*

After the court of special appeals denied Patrick Y.'s motion to suppress the evidence,<sup>167</sup> he petitioned the court of appeals for certiorari.<sup>168</sup> Patrick Y. raised the issue of whether the search of his locker violated his Fourth Amendment rights.<sup>169</sup> The Court of Appeals of Maryland held that because the school policy conflicted with state law,<sup>170</sup> it was "invalid and nugatory"<sup>171</sup> and that it could not be the basis of a student's expectation of privacy within his locker.<sup>172</sup> Additionally, because Maryland law allowed school officials to search lockers without any reasonable suspicion of wrongdoing,<sup>173</sup> the court held that Patrick Y. did not possess a reasonable expectation of privacy

163. *Patrick I*, 124 Md. App. at 613, 723 A.2d at 528 (1999).

164. *Id.* at 615-16, 723 A.2d at 529. "The statement, read as a whole, explains the consequences of students' actions. It does not purport to be a complete statement of disciplinary policy." *Id.* at 615-16, 723 A.2d at 529.

165. *Id.* at 613, 723 A.2d at 528. The court stated: "We agree that students have an expectation of privacy in their lockers. We have concluded, nonetheless, that under the circumstances of the present case, the school administration's need to protect the safety and well-being of the other students outweighed appellant's privacy interests." *Id.* at 616, 723 A.2d at 529.

166. *Id.* at 616, 723 A.2d at 529.

167. *Patrick I*, 124 Md. App. at 606, 723 A.2d at 524.

168. *Patrick II*, 358 Md. at 54, 746 A.2d at 405.

169. *Id.*

170. *Id.* at 66, 746 A.2d at 414. The school policy required probable cause before school officials could conduct a locker search, whereas the state law did not require the presence of any suspicion before conducting a search. *Id.* at 66, 746 A.2d at 414.

171. *Id.*

172. *Id.*; see also MD. CODE ANN., EDUC. § 7-308(b) (1999). Additionally, the court noted that due to the petitioner's failure to raise the issue of whether the search was illegal because it violated the school policy, the court did not consider whether the petitioner was entitled to relief on that basis alone. *Patrick II*, 358 Md. at 54, 746 A.2d at 407-08.

173. MD. CODE ANN., EDUC. § 7-308(b)(1) (1999) The statute provides that "[a] principal, assistant principal or school security guard of a public school may make a search of the physical plant of the school and its appurtenances including the lockers of students." *Id.*

within his locker.<sup>174</sup> Thus, the court did not consider whether the search was reasonable.<sup>175</sup>

*e. Judge Bell's dissent*

In the dissenting opinion, Chief Judge Bell first argued that the school policy gave students an expectation of privacy in their lockers.<sup>176</sup> According to Judge Bell, because the students had an expectation of privacy, the search of the lockers by the security guard constituted a search within the reach of the Fourth Amendment.<sup>177</sup> Consequently, the reasonableness of the search should have been considered.<sup>178</sup>

Second, the dissent noted that the majority relied on one part of the Maryland statute, but not the second part.<sup>179</sup> Although section 7-308(b)(1) granted school officials the authority to search students' lockers,<sup>180</sup> part two of subsection b stated that "the right of the school official to search the locker shall be announced or published previously in the school."<sup>181</sup> The majority only addressed this section of the statute in a footnote, in response to the dissenting opinion, and opined that the purpose of this subsection was to ensure that students would be given actual notice of the policy so that they could not claim a legitimate expectation of privacy.<sup>182</sup>

The dissent argued that an alternative interpretation of the statute provided school officials with the authority to search lockers, but that the individual schools have the discretion to decide the standard of the search by publishing or announcing the policy within their schools.<sup>183</sup> The dissent also acknowledged that to interpret the statute as the majority did would not make sense, because if subsection b, part one gave the schools exclusive authority to search lockers, then there would be no reason for a requirement of prior notice.<sup>184</sup> Like-

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174. *Patrick II*, 358 Md. at 67, 746 A.2d at 414.

175. *Id.* at 67, 746 A.2d 414-15.

176. *Id.* at 73-74, 746 A.2d at 418 (Bell, C.J., dissenting). After discussing cases in several jurisdictions, the dissent concluded that "[t]he school policy is thus the standard against which to judge" whether the student has an expectation of privacy within his locker. *Id.* at 75, 746 A.2d at 419.

177. *Id.* at 74, 746 A.2d at 418.

178. *See id.* (noting that "reasonableness of the circumstances" is the standard in most cases involving student searches).

179. *Id.* at 76-77, 746 A.2d at 419-20.

180. MD. CODE ANN., EDUC. § 7-308(b)(1)(1999).

181. *Id.* § 7-308(b)(2).

182. *Patrick II*, 358 Md. at 67 n.2, 746 A.2d at 415 n.2.

183. *Id.* at 77, 746 A.2d at 420 (Bell, C.J., dissenting).

184. *Id.* at 76, 746 A.2d at 419-20. The dissent stated:

I believe that a fair reading of that section as a whole is that the school officials are given the right to search the lockers, but the extent of that right, the standard to govern the exercise of that right, is left to the determination of the individual schools, which

wise, "as the majority opinion makes clear, failure to give the notice [did] not affect the validity of the search."<sup>185</sup>

The third point made by the dissent was that in reaching its decision, the majority did not accept the decision of the court of special appeals,<sup>186</sup> nor did it entirely reject the petitioner's argument.<sup>187</sup> Instead, the majority formulated a different holding. The majority held that because the school policy was invalid, it did not give the students an expectation of privacy in their lockers; the search was legal because the controlling Maryland statute<sup>188</sup> did not require a standard of reasonableness before a search was conducted.<sup>189</sup> The dissent commented that the majority may have violated Maryland Rule 8-131(a) because the argument that the majority raised was never relied upon by the state and never ruled upon.<sup>190</sup> Additionally, the dissent noted that the petitioner was never given the opportunity to respond to the theory set forth by the majority.<sup>191</sup>

The dissent makes strong and valid arguments. First, the majority does not even consider the notion that the students may have relied on the school policy regarding searches, and that this policy would have given them an expectation of privacy.<sup>192</sup> Second, the majority gave greater weight to part one of section 7-308(b)<sup>193</sup> than the rest of the section and deemed irrelevant the fact that no notice was given<sup>194</sup> prior to the search of Patrick Y.'s locker.<sup>195</sup> Additionally, the majority argued that the lockers were property of the school and subject to a

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determination is required to "be announced or published previously in the school."

*Id.* at 77, 746 A.2d at 420.

185. *Id.* at 76, 746 A.2d at 420. The dissent further noted a rule of statutory interpretation, that a statute must not be interpreted rendering any portion of it meaningless. *Id.*

186. *Id.* at 70, 746 A.2d at 416; see *Patrick I*, 124 Md. App. 604, 613-14, 723 A.2d 523, 528 (holding that although the student had a privacy interest in his locker, his privacy interest was outweighed by the need of the school to maintain order, thus making the search reasonable).

187. See *Patrick II*, 358 Md. at 70, 746 A.2d at 416.

188. MD. CODE ANN., EDUC. § 7-308(b) (1999).

189. See *Patrick II*, 358 Md. at 66-67, 746 A.2d at 414.

190. *Id.* at 70 n.5, 746 A.2d at 416 n.5 (Bell, C.J., dissenting); see also Md. R. 8-131(a).

191. *Id.* at 71, 746 A.2d at 417. Because neither of the parties had briefed the issue and petitioner was afforded no opportunity to respond, Judge Bell noted that the court should only have decided the issue raised on certiorari. *Id.* at 71, 746 A.2d at 417.

192. See *id.* at 69-70, 746 A.2d at 416.

193. See *id.* at 67 n.5, 746 A.2d at 415.

194. The notice was actually given by the school policy, which was directly opposite of the state law. *Id.*

195. See *Patrick II*, 358 Md. at 66-67, 746 A.2d at 414.

search at any time.<sup>196</sup> All of these factors support the dissent's position "that the school had no right to search" the locker.<sup>197</sup>

*f. Impact on Maryland Public School Students*

Finally, of most significance is how this decision has impacted public school students in Maryland. Because this is a case of first impression in Maryland,<sup>198</sup> the majority has set the standard for future school locker searches, giving school officials unlimited authority to search a student's locker.<sup>199</sup> The standard of reasonable suspicion set forth in *T.L.O.* should apply. As a result of the standard set by *Patrick Y.*, Maryland courts will not even be able to consider whether the search was reasonable.<sup>200</sup> Even though the Maryland General Assembly included the "notice" provision in section 7-308 of the Education Article, courts are likely to ignore this requirement in the same fashion that the court of appeals did. Although schools have a duty to protect students and enforce discipline, they should not be given such a broad grant of authority.

## V. MARYLAND STUDENTS SHOULD NOT BE SUBJECTED TO STANDARDLESS SEARCHES

### A. In re Adam: *Similar to, but Better than* In re Patrick Y.<sup>201</sup>

*In re Adam*<sup>202</sup> involved facts similar to *Patrick Y.* The student's locker was searched because of the principal's reasonable suspicion that the student was smoking marijuana.<sup>203</sup> The principal based his authority to search the locker on an Ohio statute granting school administrators the authority to search a student upon reasonable suspicion of wrongdoing.<sup>204</sup> The Ohio law had an additional provision granting school officials broad authority to search lockers at anytime, without any suspicion of wrongdoing, but only if the school conspicuously posted a

196. *Id.* at 63, 746 A.2d at 412-13 (noting that "[n]o probable cause is required; nor is any reasonable suspicion required").

197. *Id.* at 79, 746 A.2d at 421 (Bell, C.J., dissenting).

198. To date there have been no other cases discussing student locker searches. See *supra* Part IV.A for a discussion of the standard in Maryland for searches of a student.

199. Again, as the majority stated in *Patrick II*, "[n]o probable cause is required; nor is any reasonable suspicion required." *Patrick II*, 358 Md. at 63, 746 A.2d at 413.

200. See *Patrick II*, 358 Md. at 67, 746 A.2d at 414-15 (noting that because they had determined that *Patrick Y.* had no reasonable expectation of privacy, a determination of the reasonableness of the search was unnecessary).

201. See *supra* Part IV.B.1.a.

202. 697 N.E.2d 1100 (Ohio Ct. App. 1997).

203. *Id.* at 1102. The principal was acting on information given to him by an instructor in the program in which the student was enrolled. *Id.* The inspector reported to the instructor that he had caught the student smoking cigarettes, and he thought that he smelled marijuana. *Id.*

204. *Id.*

notice of that policy.<sup>205</sup> Although the trial court found that the search was a reasonable search, it based its finding on the broad authority given to the school administration to search anytime, for any reason, which was subsequently declared unconstitutional by the Court of Appeals of Ohio.<sup>206</sup>

The Court of Appeals of Ohio noted that other jurisdictions had held that students possess a privacy expectation in their lockers.<sup>207</sup> Additionally, the court opined that a student's privacy expectations are not lost by placing her belongings in a locker,<sup>208</sup> and a sign on the school premises could not take away that expectation of privacy.<sup>209</sup> Finally, the court argued that to take away a juvenile's right to privacy in her personal things "minimizes the value of our Constitutional freedoms in the minds of our youth."<sup>210</sup> Ultimately, the court upheld the search as reasonable, but disagreed with the reasoning that the trial court used to reach its decision.<sup>211</sup>

#### B. School Policy Creates or Diminishes an Expectation of Privacy

In *Patrick Y.*, Judge Wilner, writing the majority opinion, held that the school policy requiring school officials to have probable cause before conducting a search of the students' lockers did not give students an expectation of privacy in their lockers.<sup>212</sup> Patrick Y.'s school, Mark Twain School, published in their "Policies Regarding Student Behavior" the following statement:

Mark Twain subscribes to Montgomery County Public Schools' Search and Seizure policy, which provides that the principal or the administration's designee may conduct a

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205. *Id.* at 1103; OHIO REV. CODE ANN. § 3313.20(B)(1)(b) (2001). This statute gave school officials the authority to:

Search any pupil's locker and the contents of any pupil's locker at any time if the board of education posts in a conspicuous place in each school building that has lockers available for use by pupils a notice that the lockers are the property of the board of education and that the lockers and the contents of all the lockers are subject to random search at any time without regard to whether there is a reasonable suspicion that any locker or its contents contains evidence of a violation of a criminal statute or a school rule.

*Id.*

206. *In re Adam*, 697 N.E.2d at 1107. In *T.L.O.*, the court "expressly disavowed any 'litmus paper test' . . . implicating the Fourth Amendment. However, that is exactly what the Ohio legislature [did] in establishing a rule . . . without regard to the reasonableness standard set forth by the United States Supreme Court." *Id.* at 1108.

207. *Id.* at 1106 (citing Berman, *supra* note 38, at 1104 n.140).

208. *Id.* at 1107 (citing *Commonwealth v. Cass*, 666 A.2d 313, 317 (Pa. Super. Ct. 1995)).

209. *Id.*

210. *Id.* at 1108.

211. *Id.*

212. *Patrick II*, 358 Md. at 66-67, 746 A.2d at 414.



search of a student or of the student's locker if there is *probable cause* to believe that the student has in his/her possession an item, possession of which constitutes a criminal offense under the laws of the State of Maryland.<sup>213</sup>

However, the majority held that this policy was invalid<sup>214</sup> because it differed from the standard set forth in the Maryland Code<sup>215</sup> and in the by-laws of the State Board of Education.<sup>216</sup>

The majority failed to consider that Patrick Y. may have relied on the school policy, and that his reliance would have created an expectation of privacy.<sup>217</sup> The school required each student and their parent to sign the policy for the school's records.<sup>218</sup> This was the school's method of providing notice to the students that their locker may be searched, pursuant to Maryland law.<sup>219</sup> It is possible that students, relying on the policy, would assume that their lockers were private unless they were suspected of illegal activities.

The effect of the school policy on a student's expectation of privacy has not been addressed by Maryland or by the Supreme Court.<sup>220</sup> However, it has been addressed by several other jurisdictions.<sup>221</sup> The growing trend is for the school policy to set the terms outlining the extent of the students' expectation of privacy in their lockers.<sup>222</sup>

For instance, in *Commonwealth v. Snyder*,<sup>223</sup> Snyder's locker was searched after a student reported to a faculty member that Snyder had tried to sell marijuana to the student.<sup>224</sup> The student told the faculty

213. *Id.* at 52-53, 746 A.2d at 406-07 (emphasis added).

214. *Id.* at 66-67, 746 A.2d at 414.

215. *Id.*

216. *Id.*

217. *See id.* at 74, 746 A.2d at 418 (Bell, C.J., dissenting).

218. *Id.* at 73-74, 746 A.2d at 418.

219. *See* MD. CODE ANN., EDUC. § 7-308(b)(2) (1999).

220. *See supra* notes 79-83, 220 and accompanying text.

221. *See* *Zamora v. Pomeroy*, 639 F.2d 662 (10th Cir. 1981) (holding that students had no expectation of privacy within their lockers because the school had a policy of retaining control over the lockers); *Commonwealth v. Snyder*, 597 N.E.2d 1363 (Mass. 1992) (holding that the school policy, stating that students' lockers would not be searched unreasonably, gave students a reasonable expectation of privacy in their lockers); *In re Isiah B.*, 500 N.W.2d 637 (Wis. 1993) (holding that the school policy stipulated that students did not have a reasonable expectation of privacy in their lockers).

222. *See* *Commonwealth v. Carey*, 554 N.E.2d 1199 (Mass. 1990). "Most courts agree . . . that it is important to consider the effect of the school policy making the lockers subject to search by administrators." *Id.* at 1202. *But see* *State v. Joseph T.*, 336 S.E.2d 728 (W. Va. 1985). In *Joseph T.*, a school policy was in effect at the time of the alleged illegal search that stipulated that a search would only be done if "absolutely necessary" and that the officials would have the student present during the search. *Id.* at 737 n.10. Although the state did not follow these procedures, the search was upheld because it was reasonable. *Id.*

223. 597 N.E.2d 1363 (Mass. 1992).

224. *Id.* at 1364.

member that Snyder had shown him a video cassette case filled with three bags of marijuana, and that Snyder had subsequently put the video cassette case into his book bag.<sup>225</sup>

The faculty member reported this to the principal and vice principal.<sup>226</sup> After consulting with each other, the principal and vice principal decided to wait until Snyder was in class before searching his book bag.<sup>227</sup> By using the combination to the locker, the principal and vice principal gained access to, and searched Snyder's locker.<sup>228</sup> In the locker, they found the book bag, and upon a search of the book bag, found the video cassette case full of marijuana.<sup>229</sup> As a result of the search, the principal and vice principal located Snyder, questioned him, and reported the incident to the police.<sup>230</sup> Snyder was subsequently charged and convicted of possession with intent to distribute in a school.<sup>231</sup>

On appeal, the Supreme Judicial Court of Massachusetts stated that "[r]ecent decisions elsewhere have recognized that, barring some *express understanding* to the contrary, students have a reasonable and protected expectation of privacy in their school lockers."<sup>232</sup> The school in this case had a policy "that each student had the right 'not to have his/her locker subjected to unreasonable search.'"<sup>233</sup> The court held that this assurance from the school gave Snyder an expectation of privacy in his locker.<sup>234</sup> Therefore, he had standing to claim that the search violated his Fourth Amendment right; however, the court ultimately held that the school principal had probable cause to search the locker, rendering the search reasonable.<sup>235</sup>

In *Zamora v. Pomeroy*,<sup>236</sup> the Albuquerque Police Department sent "'sniffer'" dogs to search school lockers as part of a special investigation.<sup>237</sup> The dogs, upon sniffing Zamora's locker, indicated that there were drugs inside.<sup>238</sup> Without a warrant, police opened the locker and found marijuana.<sup>239</sup> Subsequently, Zamora was transferred to another school.<sup>240</sup>

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225. *Id.*

226. *Id.*

227. *Id.* at 1365.

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.* at 1366 (emphasis added).

233. *Id.* (quoting the school administration's policy regarding locker searches).

234. *Id.*

235. *Id.* at 1366-67.

236. 639 F.2d 662 (10th Cir. 1981).

237. *Id.* at 663.

238. *Id.* at 664.

239. *Id.*

240. *Id.* at 664-65. Zamora argued that his transfer to another school constituted an expulsion. *Id.* The school to which Zamora was transferred had a lower academic reputation than did the school he currently attended. *Id.*

Zamora filed suit against the high school officials who conducted the search, claiming that police had violated his civil rights.<sup>241</sup> Summary judgment was granted in favor of the defendant.<sup>242</sup>

On appeal, the Tenth Circuit acknowledged a school policy articulated in the student handbook, in which the schools gave notice of their right to inspect lockers at any time.<sup>243</sup> Because the school had reserved the right to inspect lockers, the court concluded that the search was legal due to the probability that there was contraband inside the locker.<sup>244</sup>

Likewise, the Court of Appeals of Texas in *Shoemaker v. State*<sup>245</sup> held that the policy published in the school handbook put students on notice that their lockers could be searched at any time without their presence, if reasonable cause existed.<sup>246</sup> Therefore, the court concluded that Shoemaker did not have a legitimate expectation of privacy in her school locker.<sup>247</sup> The court, adhering to the two-part test set forth in *New Jersey v. T.L.O.*,<sup>248</sup> determined that the initial search of Shoemaker's locker was both "justified at its inception" and "reasonably related in scope to the circumstances justifying the interference in the first place."<sup>249</sup> Although the court did not need to examine the reasonableness of the search because it had determined that Shoemaker did not possess a privacy interest, the court still concluded that the search was reasonable.

Another case that demonstrated the significance placed upon a school policy was *In re Isiah B.*<sup>250</sup> In that case, the Milwaukee Public School System announced a policy that the lockers belonged to the school, and that the school had control over the lockers.<sup>251</sup> The Supreme Court of Wisconsin held that this policy, and notice of this policy to students, afforded no reasonable expectation of privacy to

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241. *Id.* at 663.

242. *Id.* at 667.

243. *Id.* at 665.

244. *Id.* at 670.

245. 971 S.W.2d 178 (Tex. App. 1998). Shoemaker was suspected of stealing credit cards from the assistant principal's purse. *Id.* at 180. The assistant principal used a master key to open and search Shoemaker's locker and found the credit cards in her locker. *Id.*

246. *Id.* at 182. The policy stipulated that the locker remained under the control of the school. *Id.* Additionally, the assistant principal had a key capable of opening all of the lockers. *Id.*

247. *Id.* at 182.

248. 469 U.S. 325 (1985).

249. *Shoemaker*, 971 S.W.2d at 341 (quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968)).

250. 500 N.W.2d 637 (Wis. 1993). After several incidents of gunfire and gun sightings at school and at school functions, the principal ordered the school security to randomly search students' lockers. *Id.* at 638. When the security official opened Isiah's locker, he found a coat with a gun and cocaine in the pocket. *Id.* at 639.

251. *Id.*

students in their lockers.<sup>252</sup> The court further stated that without such a locker policy, students might have a lowered expectation of privacy in their lockers.<sup>253</sup> Because Isiah B. did not have a reasonable expectation of privacy in his locker, there was no Fourth Amendment violation.<sup>254</sup>

While there exists no case directly on point that explicitly proves the argument, the thesis of this Comment may be proven through negative implication. Focusing on numerous cases that take away a student's expectation of privacy based on a school policy,<sup>255</sup> by reverse analogy, a school policy should be able to *give* a student a greater expectation of privacy.<sup>256</sup> Additionally, the fact that the policy in *Patrick Y.* required the signature of both the student and parent<sup>257</sup> further demonstrates that the policy dictated the means by which school searches would be effectuated.

Some courts have held that even if the government had a policy explicitly permitting continuous searches, people would still have a reasonable expectation of privacy.<sup>258</sup> The knowledge that one *could* be the target of a search does not take away that person's expectation of privacy.<sup>259</sup>

C. *The Court of Appeals of Maryland's Interpretation of Section 7-308(b) of the Education Article is Inconsistent with Traditional Rules of Statutory Construction*

Another problem with the court's reasoning in *In re Patrick Y.*<sup>260</sup> is that it only addresses subsection (1) of the Maryland Code, Education Article section 7-308.<sup>261</sup> Subsection (1) gives school officials authority

252. *Id.* at 641.

253. *Id.*

254. *Id.* Thus, the gun and cocaine were admissible, and the court upheld Isiah's conviction. *Id.*

255. *See supra* Part V.B and accompanying text.

256. *See generally Snyder*, 597 N.E.2d at 1366 (stating that the "school administration explicitly acknowledged in the students' rights and responsibility code that each student had the right '[n]ot to have his/her locker subjected to unreasonable search'").

257. *Patrick II*, 358 Md. at 52, 746 A.2d at 406.

258. *See Jones v. Latexo Indep. Sch. Dist.*, 499 F. Supp. 223, 234 (E.D. Tex. 1980) (noting that "if the Government announced that all telephone lines would henceforth be tapped, it is apparent that, nevertheless, the public would not lose its expectation of privacy in using the telephone"); *see also United States v. Davis*, 482 F.2d 893, 905 (9th Cir. 1973) (stating that "[t]he government could not avoid the restrictions of the Fourth Amendment by notifying the public that all telephone lines would be tapped or that all homes would be searched").

259. *See generally Jeffers v. Heavrin*, 701 F. Supp. 1316, 1321 (W.D. Ky. 1988), *rev'd*, 932 F.2d 1160 (6th Cir. 1991).

260. 358 Md. 50, 746 A.2d 405 (2000).

261. MD. CODE ANN., EDUC. § 7-308(b). The section states that:

to search students' lockers.<sup>262</sup> Subsection (b)(2) stipulates that the authority of the school officials to search the locker must be published or announced in the school.<sup>263</sup> The majority in *Patrick Y.* only addressed this section in a footnote.<sup>264</sup> If the school policy was held to be invalid, this requirement in the statute was not met and the evidence could not have been admitted because *Patrick Y.* would not have been given proper notice through publication or announcement pursuant to the provisions of this section.<sup>265</sup> Additionally, to ignore this provision of the statute is to give the school officials unlimited discretion to search students' lockers. The legislature did not enact this provision for it to be disregarded. As Chief Judge Bell argued in his dissent: "Invoking the right *post hoc* is not only unfair under the circumstances, but it violates what is unambiguously the language of the statute and thus the intent of the Legislature."<sup>266</sup>

It is well settled in Maryland that all parts of a statute should be read and considered together.<sup>267</sup> All parts of a statute should be given effect so that the objective of the legislature may be met.<sup>268</sup> Under this view, each part of section 7-308 has a specific purpose in order to accomplish the legislature's goals.<sup>269</sup>

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- (1) A principal, assistant principal, or school security guard of a public school may make a search of the physical plant of the school and its appurtenances including the lockers of students.
  - (2) The right of the school official to search the locker shall be announced or published previously in the school.

*Id.*

262. *Id.* § 7-308(b)(1).

263. *Id.* § 7-308(b)(2).

264. *Patrick II*, 358 Md. at 68 n.2, 746 A.2d at 415 n.2. In this footnote, the majority construed subsection (b)(2) as giving notice of the policy to "eliminate any basis for an expectation of privacy." *Id.*

265. *Id.* at 79, 746 A.2d at 421 (Bell, C.J., dissenting) (noting that, technically, notice was never actually given because the notice in the school policy was actually the opposite of the state policy).

266. *Id.*

267. *Id.* at 77, 746 A.2d at 420 (quoting *Bd. of County Comm'rs v. Bell Atlantic-Maryland, Inc.*, 346 Md. 160, 178, 695 A.2d 171, 180 (1997)). The Court of Appeals of Maryland has stated that "[w]hen interpreting any statute, [the court] must look to the entire statutory scheme, and not [to] any one provision in isolation, to effect the statute's general policies and purposes." *Bell Atlantic*, 346 Md. at 178, 695 A.2d at 180 (citing *Morris v. Osmose Wood Preserving*, 340 Md. 519, 539, 667 A.2d 624, 634 (1995); *City of Annapolis v. State*, 30 Md. 112, 117 (1869)); *see also* *Maryland Div. of Labor & Indus. v. Triangle Gen. Contractors, Inc.*, 366 Md. 407, 425-26, 784 A.2d 534, 545 (noting that "it is a natural presumption that the legislature does not intend to use words in vain or to leave a part of its enactment without sense or meaning but intends that every part of it shall be operative" (quoting *Welshe v. Kuntz*, 196 Md. 86, 98, 75 A.2d 343, 348 (1950))).

268. *Patrick II*, 358 Md. at 77-78, 746 A.2d at 420. The court stated that "[a]ll parts of a statute are to be read together to determine intent, and reconciled and harmonized to the extent possible." *Id.* (quoting *Wheeler v. State*, 281 Md. 593, 596, 380 A.2d 1052, 1055 (1977)).

269. *Id.*

The dissent interprets part two of section 7-308(b) as allowing schools to determine, on a school-by-school basis, the applicable standard for locker searches.<sup>270</sup> However, the majority opined that section 7-308 was established to provide a uniform policy for searches.<sup>271</sup> To hold otherwise, according to the majority, would create confusion.<sup>272</sup> Yet, it causes more confusion to have a student sign a school search policy and then to declare the policy invalid. It also is more confusing to insist that students be aware of state law as opposed to the school policy given to them in writing to sign. By disregarding an important provision of the statute, the majority strayed from rules of statutory construction.<sup>273</sup> From the plain language of section 7-308(b)(2), the Maryland General Assembly intended that notice be given before a search was effectuated.<sup>274</sup> With no standard governing school officials' searches of lockers, and no procedural safeguards, Maryland has subjected students to unregulated locker searches.

The court in *In re Patrick Y.* held that the county policy was contrary to that of the state policy, and thus, was invalid.<sup>275</sup> However, section 4-401 of the Education Article vested control of any educational matters affecting the county in the control of the County Board of Education.<sup>276</sup> *Patrick Y.* held that even though the counties do have this authority, each county's authority is subject to the authority of the State Board of Education and the Maryland General Assembly.<sup>277</sup> The missing link in the majority's reasoning is how students would know which law applied to them. If subsection b, part 2 of section 7-308<sup>278</sup> is so insignificant that the majority of the court of appeals does not require it, and a school policy will not take precedence over it, then students will never know that the school officials can search their lockers for no reason. If the student is given a school policy and is required to sign it, the student will most likely assume that his locker is subject to the constraints of that policy.

#### D. Court of Special Appeals of Maryland's Decision is a Better Decision

The decision reached by the Court of Special Appeals of Maryland<sup>279</sup> would have been better precedent for Maryland public school students. The court of special appeals at least recognized that stu-

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270. *Id.* at 78, 746 A.2d at 421.

271. *Id.* at 68 n.2, 746 A.2d at 415 n.2.

272. *Id.*

273. See *supra* Part V.C.1.

274. See MD. CODE ANN., EDUC. § 7-308(b)(2).

275. *Patrick II*, 358 Md. at 66, 746 A.2d at 414.

276. See MD. CODE ANN., EDUC. § 4-101(a).

277. *Patrick II*, 358 Md. at 66, 746 A.2d at 414.

278. MD. CODE ANN., EDUC. § 7-308(b).

279. See *Patrick I*, 124 Md. App. 604, 723 A.2d 525 (1999), *aff'd*, 358 Md. 50, 746 A.2d 405 (2000). See also *supra* notes 159-66 and accompanying text for a discussion of the court of special appeals' decision in *Patrick I*.

dents have a legitimate expectation of privacy within their lockers.<sup>280</sup> But, the court also recognized that when there are legitimate, compelling governmental interests that outweigh the privacy interests of the individual, the search will be upheld as reasonable.<sup>281</sup> Thus, the court followed recent Supreme Court decisions regarding student searches<sup>282</sup> and kept in line with Maryland law.<sup>283</sup>

The court of appeals, however, never considered the reasonableness of the search. By setting no boundaries by which school officials may search, the court of appeals has diminished the rights of public school students in Maryland, increased the authority of school officials, and taken away any recourse the student may have to assert her Fourth Amendment rights. Thus, a principal in Maryland could search one student's locker every day, having no suspicion and giving no explanation, and the student would have no recourse if she wanted to stop the searches.

## VI. CONCLUSION

Although this Comment does not propose to establish probable cause as the standard for searching lockers, there is a need for a reasonable suspicion standard. Without any standard, school administrators can execute random, suspicionless searches.<sup>284</sup> These are the types of searches that the Framers of the Constitution intended to prevent. Consequently, allowing these types of searches will create a prison-like environment in the schools that is not conducive to learning.<sup>285</sup>

There is no doubt that schools have a responsibility to maintain discipline, but this responsibility should not place the schools outside of the reach of the Constitution.<sup>286</sup>

If there were an actual emergency in the school, a standardless search would be constitutionally permissible.<sup>287</sup> However, without exigent circumstances, a standardless search is intrusive.<sup>288</sup> Instead, school officials should only search when there is reasonable suspicion that a student may have items that are criminal in nature in her

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280. *Patrick I*, 124 Md. App. at 613-14, 723 A.2d at 528.

281. *Id.*

282. *See Vernonia Sch. Dist. v. Acton*, 515 U.S. 646 (1995) (holding that whether a search meets the reasonableness standard is judged by balancing the privacy interests of the student against the governmental interests); *see also New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (holding that the Fourth Amendment applies to searches conducted by public school officials).

283. MD.CODE ANN., EDUC. § 7-308(b).

284. *See supra* note 199 and accompanying text.

285. *See supra* note 6 and accompanying text.

286. *See supra* notes 72-75 and accompanying text.

287. *See supra* note 71 and accompanying text.

288. *See supra* Part V.B.

locker. This method complies more with the Supreme Court's decision in *New Jersey v. T.L.O.*<sup>289</sup>

Finally, Maryland is in the minority among other states regarding locker searches.<sup>290</sup> There are few states that deny students all privacy rights in their lockers.<sup>291</sup> The Court of Appeals of Maryland should take this into consideration because its views are inconsistent with the majority of other jurisdictions.

After *Patrick Y.*, Maryland has stripped children of their already limited constitutional rights. This is probably the result of fear, based on the increase in school violence and drug use.<sup>292</sup> While this Comment acknowledges the need for flexible discipline, the integrity of students must also be preserved. It is essential to have procedural safeguards to protect children against unnecessary searches. For "the situation is not so dire that students in schools may claim no legitimate expectation of privacy."<sup>293</sup>

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289. 469 U.S. 325 (1985).

290. *See supra* Part III.

291. *See supra* Part III.B.2.

292. *See supra* Part I.

293. *New Jersey v. T.L.O.*, 469 U.S. 325, 338 (1985).