School Safety and the Law

Andrew Swann

Arizona Attorney General's Office

- Twenty-one years experience in law enforcement
- Eighteen years experience in public policy
- Member of the Legislative School Safety Oversight Committee
- Special Policy Advisor for Law Enforcement

Topics

- FERPA
- Mandatory Reporting
- Search and Seizure in the school setting
- Student interviews

Objectives

<u>You Will Be Able To</u>

- Name two instances where FERPA covered information may be released without consent
- List three instances required to be reported by school personnel
- Demonstrate an understanding of reasonable suspicion and its application in the school setting

FERPA

Family **E**ducational **R**ights and **P**rivacy **A**ct

- Federal law that protects the privacy of student education records
- Information *directly* related to student maintained by education agency
- Directory information may be released
- Law enforcement records, even at school, are not education records

Mandatory Reporting

<u>Arizona Law Requires School Officials to Contact Law Enforcement In Some Cases</u>

- Serious Criminal/Physical Threats (school boards)
- Deadly Weapon Possession (all school personnel)
- Possession of Illegal Drugs (all school personnel by way of an administrator)
- Child Abuse/Neglect (nearly anyone)

Mandatory Reporting

<u>Schools Must Report to ADE</u>

- Reports of Immoral or Unprofessional Conduct
- Firearms on Campus

  Gun Free Schools Act
- Incidents Involving Law Enforcement

  Schools Annual Report Card

Search and Seizure

Legal Standards of Proof

<u>Reasonable Suspicion</u>

A *reasonable presumption* based on facts and circumstances that a crime is being, was, or is about to be committed.

More than an inchoate or unparticularized suspicion or hunch.

(Hmmm, could be…)

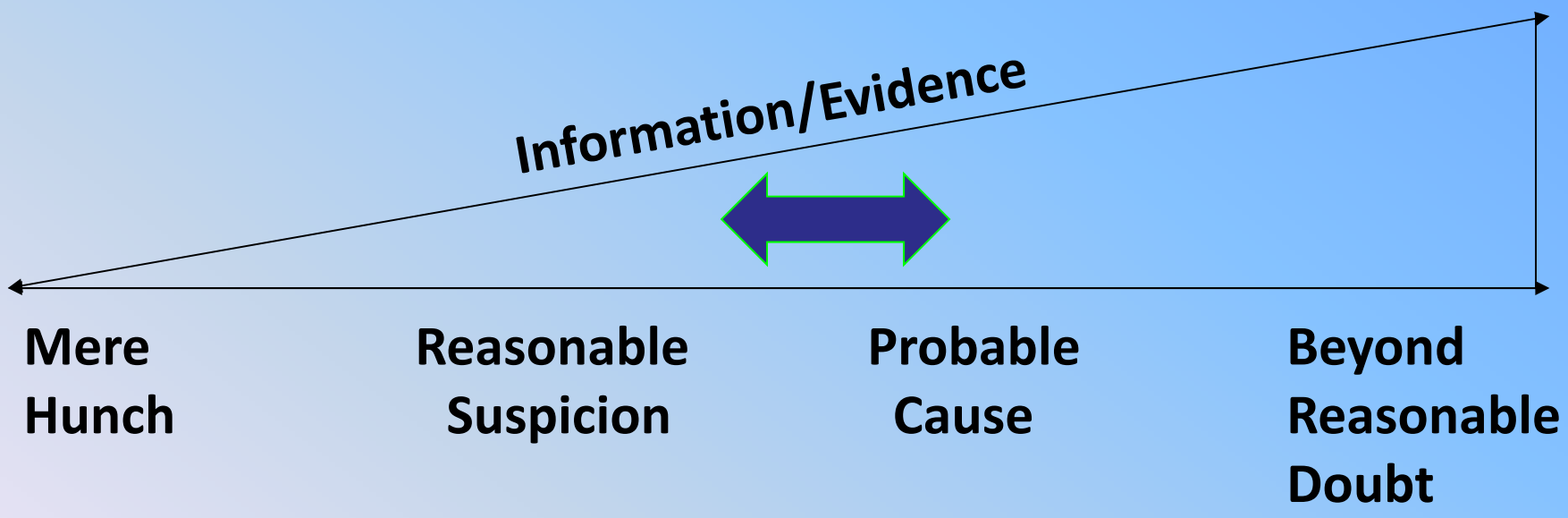
Legal Standards of Proof

<u>Probable Cause</u>

A *logical belief supported by articulable facts* that a crime is being, was, or is about to be committed.

(Oh yeah, probably…)

Legal Standards of Proof



New Jersey v. TLO (1985)

<u>Landmark Case Regarding On-Campus Searches</u>

- March 7, 1980 at Piscataway High School in Middlesex County, N.J.
- TLO was a 14-year-old high school freshman
- Smoking was allowed in designated areas on campus but not in restrooms

New Jersey v. TLO (1985)

Facts

- Teacher found two girls smoking in the restroom
- One girl admitted, TLO denied it
- Took TLO to the principal's office
- Asst. principal searched purse, sees rolling papers & marijuana…looks into compartments and wallet…
- Finds incriminating cards and letters, a wad of money, a pipe & baggies

New Jersey v. TLO (1985)

Facts

- Mother and police called
- Mother took TLO to police station
- TLO admits to selling 18-20 marijuana cigarettes
- School suspension and criminal, delinquency charges filed

New Jersey v. TLO (1985)

<u>Arguments</u>

- Asst. principal's search was a violation of the Fourth Amendment
- TLO's confession was tainted by the illegal search
- Thus evidence and confession should be suppressed

New Jersey v. TLO (1985)

Analysis

- SCOTUS has previously ruled that school authorities are state actors for purposes of freedom of expression and due process

- Why then, should they be deemed to be exercising parental rather than public authority when conducting searches of their students?

New Jersey v. TLO (1985)

Analysis

- “The concept of parental delegation" as a source of school authority is not entirely "consonant with compulsory education laws”
- Today's public school officials do not merely exercise authority voluntarily conferred on them by individual parents
- Rather, they act in furtherance of publicly mandated educational and disciplinary policies

New Jersey v. TLO (1985)

Analysis

- For searches and other disciplinary functions pursuant to such policies, school officials represent the State, not the parents
- They cannot claim the parents' immunity from the strictures of the Fourth Amendment
- Therefore, the Fourth Amendment applies to searches by school authorities

New Jersey v. TLO (1985)

Analysis

- The Fourth Amendment requires searches to be reasonable
- Reasonableness depends on the circumstances
- The court has recognized the legality of searches and seizures based on suspicions that, although "reasonable," do not rise to the level of probable cause

New Jersey v. TLO (1985)

Analysis

- The legality of a search of a student should depend simply on the reasonableness of the search
- Two tests for reasonableness:
  1. Was it justified at its inception?
  2. Was it reasonably related to the justification?

New Jersey v. TLO (1985)

U.S. Supreme Court Ruling 1

- The Fourth Amendment applies to searches by school authorities
- School officials aren't exempt by virtue of the special nature of their authority over schoolchildren
- School officials act as representatives of the State, not merely as surrogates for the parents of students

New Jersey v. TLO (1985)

U.S. Supreme Court Ruling 2

- Schoolchildren have legitimate expectations of privacy
- There is no reason to conclude that they have waived all rights to privacy by being on school grounds
- Balance must be struck between right to privacy and ensuring a quality learning environment

New Jersey v. TLO (1985)

U.S. Supreme Court Ruling 2

- School officials don’t need probable cause to believe that the subject of the search has violated or is violating the law
- Search of a student depends simply on the reasonableness, under all the circumstances, of the search

New Jersey v. TLO (1985)

U.S. Supreme Court Ruling 2

- Normally, search of a student by a school official will be justified where there are reasonable grounds to suspect the search will turn up evidence that the student has violated or is violating the law or the rules of the school
- Such a search is permissible when reasonably related to the objectives of the search, and not excessively intrusive in light of the student's age and sex and the nature of the infraction

Summary of TLO

- Students have legitimate right to privacy in school
- School officials are not required to obtain warrant
- School officials must satisfy “reasonableness” standard

Illinois v. Dilworth (1996)

<u>Illinois Supreme Court case</u>

- SRO searched a student's locker for drugs based on information provided by two teachers
- SRO searched based on Reasonable Suspicion
- The search was negative, but based on the suspects actions, the officer searched a flashlight on the suspect's person
- Officer recovered cocaine from the flashlight

Illinois v. Dilworth (1996)

- Illinois Supreme court upheld the search
- Ruled Dilworth had diminished privacy in school
- Search was “minimally intrusive”
- State had an interest in keeping drugs out of school
- Information supplied to SRO, and his observations
- SRO was a member of the school staff
- TLO’s reasonable suspicion standard should apply to the SRO

SRO’s and Reasonable Suspicion

Consult with your legal advisor if you believe the standard of reasonable suspicion applies to you.

Interviews

<u>When is Miranda required?</u>

- Law Enforcement Only
- Custodial interview and direct questions about a crime
- Must consider a child's age (JDB v. North Carolina)
- May apply to school faculty
- Follow department policy on juvenile interviews

Harassment/Bullying

<u>ARS § 15-341.37, Schools Must</u>

"Prescribe and enforce policies and procedures to prohibit pupils from harassing, intimidating and bullying other pupils on school grounds, on school property, on school buses, at school bus stops, at school sponsored events and activities and through the use of electronic technology or electronic communication on school computers, networks, forums and mailing lists…"

Harassment/Bullying

<u>The Office for Civil Rights Enforces Federal Civil Rights Laws</u>

- Discrimination on the basis of race, color, and national, *Title VI, Civil Rights Act of 1964*
- Sex discrimination, *Title IX, Education Amendments of 1972*
- Discrimination on the basis of disability, *Section 504 of the Rehabilitation Act of 1973*

Failure to act on or protect from harassment is investigated by OCR

Harassment/Bullying

<u>The Office for Civil Rights Enforces Federal Civil Rights Laws</u>

- Age discrimination, *The Age Discrimination Act of 1975*
- *Boy Scouts of America Equal Access Act* (*Section 9525 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001*)

Failure to act on or protect from harassment is investigated by OCR

Harassment/Bullying

<u>The Office for Civil Rights Enforces Federal Civil Rights Laws</u>

OCR also has responsibilities under *Title II of the Americans with Disabilities Act of 1990*

Visit www.ed.gov for more information regarding OCR

Failure to act on or protect from harassment is investigated by OCR

Harassment/Bullying

In the event of harassment, schools should take steps reasonably calculated to

- End harassment
- Eliminate any hostile environment
- Prevent harassment from recurring
- Remedy the effects of harassment
- Prevent retaliation against the target or complainant

Harassment/Bullying

Considerations

- What does district policy say?
- Is policy enforced consistently?
- What actions are being taken?
- Are those actions working?

Education and the Law

QUESTIONS???

Andrew Swann
Arizona Attorney General's Office

602-542-8472

Andy.Swann@azag.gov