



# CLIENT NEWS BRIEF

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## SCHOOL OFFICIAL MAY SEARCH STUDENT BASED UPON INFORMATION RECEIVED FROM LAW ENFORCEMENT PROVIDED OFFICIAL INDEPENDENTLY DETERMINES SEARCH IS JUSTIFIED

In 1985, the United States Supreme Court held that student searches were justified and lawful under the Fourth Amendment of the United States Constitution if "reasonable," even if a search warrant was not obtained and the "probable cause" required for a police search did not exist. (New Jersey v. T.L.O. (1985) 469 U.S. 315 ("T.L.O."), 341.) In 2003, the California Court of Appeal held that "the search of a student by a police officer assigned as a school resource officer, conducted on school grounds, was subject to the reasonable suspicion standard under T.L.O." (In re William V. (2003) 111 Cal.App.4th 1464 ("William V."), 1469-72.) However, both the U.S. Supreme Court in T.L.O. and the California appellate court in William V. declined to determine what standard applies when school officials conduct a search in conjunction with or at the request of law enforcement.

Recently, in the case In re K.S. (2010) 183 Cal.App.4th 72 ("K.S."), the California Court of Appeal addressed part of this unanswered question and held that "when a school official independently decides to search a student and then conducts that search, the T.L.O. standard applies, even if the police provided the information justifying the search and are present when it occurs." As discussed below, the holding in K.S. is very narrow and should not be read broadly by school districts.

In K.S., a confidential informant told a police detective that a student at Livermore High School possessed Ecstasy pills, and that they were hidden in a slit in his pants. The detective believed that the tip was credible because the informant's information had been credible in the past. After receiving the tip, the detective contacted the school resource officer ("SRO") assigned to the school district. The detective advised the SRO of the tip and asked him to follow up on it. The SRO contacted the vice-principal of Livermore High School and summarized what the detective had told him. The vice-principal believed that the tip was reliable because the information was provided by the SRO.

After confirming that the student was at school that day, and currently present and dressed for physical education ("P.E.") class, the vice-principal decided to search the student's locker to ensure the safety of the school's students. The vice-principal, accompanied by the detective and a police detective sergeant, went to the student's P.E. locker where the student's street clothes were located. The vice-principal said that she had the detectives accompany her because she would not have felt comfortable if she had found something and had to keep it on her person. She did not ask either of the detectives to conduct the search.

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The vice-principal searched the student's P.E. locker and found jeans with a slit, as described by the informant. Inside the slit was a plastic bag that contained several pills. The vice-principal suspected that the pills were Ecstasy, which was later confirmed by the detective. She took the pants to the school office, and then detained the student. A juvenile court proceeding was subsequently filed against the student, alleging that he possessed Ecstasy. The student argued in the juvenile proceedings that the search was illegal because it was not based upon a warrant, and even if the lower reasonable suspicion standard did apply, the police officer's knowledge could not be imputed to the vice-principal for the purpose of satisfying the reasonable suspicion standard.

In holding that the reasonable suspicion standard of T.L.O. applied to the search of the student's clothes, the court stressed that the vice-principal, a school official, independently decided to conduct the search, and did conduct the search. Specifically, the court in K.S. reasoned that the reasonable suspicion standard should apply because the detective and SRO did not advise, instruct, or direct the vice-principal to conduct the search. Rather, they provided the vice-principal with the information, which she independently evaluated and utilized. Importantly, before acting on the informant's tip and conducting the search, the vice-principal gathered additional information supporting her decision to conduct the search. Although police detectives were present while the search was performed, the court found that the vice-principal acted independently, and had requested the detectives' presence in order to help ensure the safety and security of the school and students.

The holding in K.S. is narrow. However, it clarifies that the reasonable suspicion standard will apply to school officials who search a student when (1) the school official bases the decision to conduct the search on information that they receive from law enforcement; and (2) provided that the school official acts independently in deciding to search and in conducting the search of the student. Law enforcement officials may be present at the time of the search to ensure the safety and security of the school.

If you have any questions or concerns regarding the K.S. decision, or other student search issues, please contact one of our [seven offices](#) located statewide or consult our [website](#).

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