S T A T E O F T E N N E S S E E
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Opinion No. 07-168

Confiscation of cellular telephones at Clarksville Montgomery County schools.

QUESTION

Can public school personnel legally confiscate cell phones from students when the phones are actually owned by a parent/guardian?

OPINION

Yes. Confiscation of a cellular telephone (cell phone) at school, even one actually belonging to a parent, is permitted as long as the due process rights of students are not violated.

ANALYSIS

Pursuant to the Student and Employee Safe Environment Act of 1996, local education agencies are "responsible for formulating a code of acceptable behavior and discipline to apply to the students . . .." *See* Tenn. Code Ann. §§ 49-6-4011 *et seq*. To that end, the Clarksville Montgomery County School System (CMCSS) has a policy in place regarding possession and use of cell phones on school property. According to the policy, cell phones "[m]ust be 'Off' and put away in locker upon arrival to school and shall not be used until school dismissal." *See* CMCSS - Student Conduct, Rights, Responsibilities, Rules, Due Process Procedures (Policy Manual), p. 12.[1] The Policy Manual outlines the disciplinary actions taken for violation of the policy. *See* Policy Manual, p. 12. The disciplinary action taken is cumulative so that repeat or persistent violations of the policy result in enhanced disciplinary action. The policy authorizes school authorities to seize any unauthorized or contraband materials. *See* Policy Manual, p. 25. In the Policy Manual, the term "unauthorized" means any item that has been described as unauthorized in the school rules. *See* Policy Manual, p. 25. Contraband materials are described as materials that are prohibited by school policy. *See* Policy Manual, p. 25. A cell phone, not turned off and stored in the student's locker during school hours, would qualify as both an unauthorized item and contraband material.

In determining whether due process requirements are applicable in a given context, an initial inquiry must be made into the nature of the interest at stake. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 571, 92 S.Ct. 2701, 2705-2706, 33 L.Ed.2d 548 (1972) (quoting *Morrissey*

[1]The CMCSS Policy Manual can be found on the Internet at http://www.cmcss.net/PSInfo/CodeofConduct/conduct.pdf.

v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484). An inquiry must be made to determine whether the interest is within the Fourteenth Amendment's protection of liberty and property. *See id*. at 571. While Tennessee public school students are entitled to a free public education, *see* Tenn. Code Ann. § 49-6-3001, they are not entitled to bring a cell phone to school. There is no constitutional or statutory right to carry a cell phone on school grounds during school hours absent school board approval.

The United States District Court for the Middle District of Tennessee has held that the retention of a minor's cell phone, when the cell phone actually belonged to a parent, is constitutional. See *Lane v. Farley*, No. 3:05-0762, 2006 WL 572331 (M.D. Tenn. Mar. 6, 2006). In *Laney*, an eighth grade middle school student had her cell phone confiscated when it began ringing during a class. The school had a conduct policy that prohibited cell phones on school property during school hours. Violation of the policy resulted in the imposition of in-school suspension for one day and confiscation of the cell phone for thirty days, after which it would be returned only to the student's parents. The next school day, the student's father went to the school seeking return of the cell phone, which was refused until the expiration of thirty days. The parent brought suit alleging, among other things, violations of due process rights under 42 U.S.C. § 1983 related to the thirty day confiscation of the cell phone and the imposition of in-school suspension. Defendants filed a motion to dismiss for failure to state a claim upon which relief can be granted. The district court granted the motion with respect to the retention of the cell phone for thirty days.[2] The student in *Laney* was an eighth grade minor, who lacked capacity to contract with a cell phone service provider. Additionally, the student's father in *Laney* alleged that the cell phone actually belonged to him and that the school could not retain it. The district court rejected that argument.

The CMCSS has in place a similar policy against possessing a cell phone during school hours. The CMCSS Policy Manual contains procedures to ensure the due process rights of the students who are alleged to have violated school policies. *See* CMCSS Policy Manual, p. 4. The Policy Manual states, "No disciplinary measure of any nature shall be imposed against a student until the student has been advised of the nature of the student's misconduct, questioned about it and allowed to give an explanation." *See* Policy Manual, p. 4. The fact that the cell phone belongs to a parent rather than the student is of no significant legal consequence. Publication of the Policy Manual ensures that parents are on notice of the school policy. Parents may fully protect their property interest in the cell phones used by their children simply by forbidding the children from bringing them to school. But once having given the cell phone to the student and allowing the child to take it to school, a parent is in no position to later object to the confiscation of the cell phone

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[2]The district court judge accepted the Report and Recommendation of the Magistrate Judge's finding that there is no constitutional violation in the retention of the student's father's cell phone. *See Laney v. Farley*, No. 3:05-0762, 2006 WL 572331 (M.D. Tenn. Mar. 6, 2006). The student was also given in-school suspension for one day for violating the school cell phone policy. The District Court denied the defendant's motion to dismiss in connection with the imposition of in-school suspension, and granted the motion to dismiss in connection with the retention of the cell phone for thirty days. Defendants appealed the in-school suspension issue to the Sixth Circuit Court of Appeals. *See Laney v. Farley*, --- F.3d ----, 2007 WL 2416177 (6th Cir. Aug. 28, 2007). The Sixth Circuit reversed the district court's denial of defendant's motion to dismiss on the in-school suspension issue and remanded the case to the district court for proceedings consistent with its opinion. *Laney*, 2007 WL 2416177 at *6.

when he or she had advance notice of the school's cell phone policy. Accordingly, we conclude that confiscation policies such as the one adopted by CMCSS are constitutionally defensible.

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