STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

February 24, 2014

Opinion No. 14-21

Searches and Arrests on School Property

QUESTIONS

1. Do public school students have any expectation of privacy in their assigned lockers on school property?

2. Must a principal or duly authorized School Resource Officer (SRO) have reasonable suspicion before ordering a search of a student's locker?

3. May a principal or superintendent delegate the authority to a school employee to order a search of students or students' property on school grounds? If not, what are the legal consequences in the event illegal drugs, weapons, or contraband are discovered pursuant to a search ordered by a school employee other than the principal?

4. Must a principal who has reasonable suspicion that a student is or has violated Tenn. Code Ann. § 39-17-1307 or § 39-17-1309 by possessing or carrying weapons on school grounds, buildings, or structures report his or her reasonable suspicion to the appropriate law-enforcement officer?

5. May a principal or school official retain possession and custody of a weapon, illegal drug, or contraband discovered on school property pending resolution of the school's administrative or disciplinary proceedings?

6. If a law-enforcement officer wishes to interrogate a student at school concerning a crime committed outside school hours and unrelated to school activities, must the principal allow such an interrogation to occur on school property?

7. If a principal agrees to allow a law-enforcement officer to interrogate a student at school about an unrelated crime committed outside school hours, must the principal first notify the child's parent, guardian, or custodian, or may the principal defer to the officer's instruction not to make such notifications?

8. If a principal requests law-enforcement officers to come to the school to investigate and interrogate a student suspected of a crime "involving" the school, must the principal first notify the child's parent, guardian, or custodian?

9. If a school system employs its own armed security guards, are those guards exempt from the provisions of Tennessee's Private Protective Services Licensing and Regulatory Act, Tenn. Code Ann. §§ 62-35-101 to -142?

10. Are armed security guards employed by a school system required to have insurance and, if so, in what amount?

11. When a security guard makes an arrest for a public offense and delivers the arrestee to a law-enforcement officer as required by Tenn. Code Ann. § 40-7-113(a), may the officer decline to take the arrestee before a magistrate if the officer has reason to believe that the arrest violated the individual's constitutional or statutory rights?

OPINIONS

1. Yes. However, students have a very low expectation of privacy in their assigned lockers.

2. Yes.

3. No, the principal's authority may not be delegated. The admissibility of any contraband seized during such a search could be challenged on Fourth Amendment grounds.

4. Yes.

5. No. The principal or school official must immediately turn over such contraband to law-enforcement personnel.

6. No. However, a school principal must permit the interrogation if the officer is acting under exigent circumstances or has probable cause to detain and question the student.

7. and 8. No. A school principal has no legal duty to notify a child's parent, guardian, or custodian before a child is interrogated by a law-enforcement officer.

9. No.

10. Yes. Armed security guards employed by a school system must maintain insurance coverage of $300,000 for bodily or personal injury and $100,000 for property damage.

11. Yes.

ANALYSIS

1. In *New Jersey v. T.L.O.,* 469 U.S. 325 (1985), the United States Supreme Court declined to address whether public school students have a legitimate expectation of privacy in their lockers. 469 U.S. at 336 n.5 ("We do not address the question, not presented by this case, whether a schoolchild has a legitimate expectation of privacy in lockers, desks, or other school property provided for the storage of school supplies."). There is no consensus among lower federal courts and state courts regarding this issue. *See* Jason P. Nance, *Random, Suspicionless Searches of Students' Belongings: A Legal, Empirical, and Normative Analysis,* 84 U. Colo. L. Rev. 367, 411 n.255 (2013) (discussing cases). Nevertheless, Tennessee's General Assembly has adopted the "School Security Act of 1981" ("Act") "to secure a safe environment" for students and has declared its intent to "extend further, rather than limit, the authority of principals and teachers to secure order and provide protection of students within each school." Tenn. Code Ann. § 49-6-4203(a), (b). The General Assembly specifically found that "removal [of dangerous weapons, drug paraphernalia, and drugs] can only be accomplished by searches of areas of the school buildings or grounds where those materials may be stored." Tenn. Code Ann. § 49-6-4203(e)(1). The Act requires that notices be posted in the school building and parking lots advising that lockers, storage areas, containers, packages, and vehicles are subject to search for weapons, drugs, or drug paraphernalia. Tenn. Code Ann. § 49-6-4204(c), (d). Given the Act's broad authorization to search lockers "[w]hen individual circumstances dictate" and the Act's requirement that notices be posted in the school that lockers are subject to search, it is reasonable to conclude that students have a very low expectation of privacy in their assigned school lockers.

2. Under the Act, a search of "vehicles parked on school property by students or visitors, containers, packages, lockers or other enclosures used for storage by students or visitors, and other areas accessible to students or visitors" may be ordered by the school principal, and the search may be carried out in the presence of the principal or other members of the principal's staff. Tenn. Code Ann. § 49-6-4204(a). The United States Supreme Court held in *T.L.O.* that teachers and school officials do not need a warrant or probable cause before conducting such searches, but "the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search." 469 U.S. at 341. The Act also holds the principal to a standard of "reasonable suspicion" before conducting or authorizing a search. Tenn. Code Ann. § 49-6-4204(b). The Tennessee Supreme Court has held that searches conducted by a School Resource Officer must be based on reasonable suspicion. *See R.D.S. v. State*, 245 S.W.3d 356, 369 (Tenn. 2008).[1] Therefore, a principal or SRO must have at least reasonable suspicion before ordering a search of a student's locker.

[1] A "school resource officer" (SRO) is a law-enforcement officer who has been assigned to a school in accordance with a memorandum of understanding between the chief of the appropriate law-

3. While a search of students or students' property may be conducted by other school staff or officials, the search must be authorized by the principal, and that authority may not be delegated to a school employee. Tenn. Code Ann. § 49-6-4204(a); *see R.D.S.*, 245 S.W.3d at 369 n.6. The Act does not provide for the suppression of items seized during an unauthorized search. However, the admissibility of any contraband seized during such a search could be challenged on Fourth Amendment grounds in any subsequent prosecution against the student. Although the Supreme Court left open the question whether the exclusionary rule applies to school searches, *T.L.O.,* 469 U.S. at 333 n.3, some courts have applied the rule to school searches. *See, e.g., D.I.R. v. State,* 683 N.E.2d 251, 253 (Ind. Ct. App. 1997) (reversing defendant's delinquency adjudication because the evidence was seized during unreasonable search in school).

4. The Act requires that a principal who has reasonable suspicion that a student is in possession of or is carrying a dangerous weapon on school grounds or within any school building must report that reasonable suspicion to "the appropriate law enforcement officer." Tenn. Code Ann. § 49-6-4209(a). Other school personnel have a duty to report such reasonable suspicion to the principal or, in the absence of the principal, to the principal's designee. Tenn. Code Ann. § 49-6-4209(b).

5. Any dangerous weapon or drug found in the course of any search by a principal or other school official must be turned over to the appropriate law-enforcement officer. Tenn. Code Ann. § 49-6-4210. Since possession of scheduled drugs and certain dangerous weapons by anyone is a criminal offense, such items should be turned over immediately upon discovery. *See* Tenn. Code Ann. § 39-17-418 (prohibiting possession of controlled substances); Tenn. Code Ann. § 39-17-1309 (prohibiting carrying weapons on school property). Principals and other school officials have no authority to retain contraband items pending resolution of the school's administrative or disciplinary proceedings.

6. The primary responsibilities of police officers are "the prevention and detection of crime, and the apprehension of offenders." Tenn. Code Ann. § 38-8-101(a)(1). In carrying out these duties, officers may question citizens—including school students—who are suspects, witnesses, or victims. Citizens questioned by the police have no obligation to respond to such inquiries. *See State v. Daniel*, 12 S.W.3d 420, 425 (Tenn. 2000).

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enforcement agency and the local education agency. Tenn. Code Ann. § 49-6-4202(6). The SRO program "places law enforcement officers in schools to perform traditional law enforcement duties in addition to teaching law enforcement-related classes and counseling students 'based on the expertise of a law enforcement officer.'" *R.D.S.,* 245 S.W.3d at 367 (quoting *J.W. ex rel. Watts v. Maury County*, No. M2001–02768–COA–R3–CV, 2003 WL 1018138, at *2 (Tenn. Ct. App. Mar. 11, 2003)).

A school principal's duties include "[s]upervis[ing] the operation and management of the personnel and facilities of the school." Tenn. Code Ann. § 49-2-303(b)(1). The principal also acts in loco parentis for the students and is responsible for securing order within the school and protecting students from harm while in his or her custody. Tenn. Code Ann. § 49-6-4203(b).

Within this framework, local education agencies may develop policies for responding to requests from law-enforcement agencies to interrogate students about crimes committed outside school hours and unrelated to school activities. In the exercise of the duty to supervise the operation of the school, a principal has discretion in deciding whether to allow the interrogation on school property, unless immediate police access to the student is required by law, court order, warrant, or an exigent circumstance justifying dispensation with the requirement to obtain a warrant.

7. and 8. Although a school principal acts in loco parentis for the students, no statute, rule, or court opinion imposes a duty on the principal to contact the parent, guardian, or custodian of a student who is interrogated by law-enforcement officers on school property.

9. The Private Protective Services Licensing and Regulatory Act, Tenn. Code Ann. §§ 62-35-101 to -142, governs the regulation and licensing of private security officers or guards. Section 62-35-103 provides the only exemptions from the application of the act. Unless the security officer or guard employed by the school meets any of these exemptions, he or she is subject to the provisions of the act. This Office has opined that private security officers assigned by a contract security company to provide services for a local, state, or federal government are not exempt from the licensing requirements of Title 62, Chapter 35. *See* Tenn. Att'y Gen. Op. 03-022 (Feb. 25, 2003).

10. Tenn. Code Ann. § 62-35-114 mandates that "[a]ll licensees and employers of private security guards/officers shall retain a certificate of insurance evidencing general liability coverage." The minimum amount of the insurance coverage is $300,000 for bodily or personal injury and $100,000 for property damage. *Id.*

11. Licensed security officers may make an arrest as private citizens as authorized under Tennessee law. Tenn. Code Ann. § 40-7-101. Furthermore, the licensing act specifically authorizes security guards to, *inter alia*, enforce state and local laws on private property. Tenn. Code Ann. § 62-35-102(16)(C). Under Tenn. Code Ann. § 40-7-113(a), a "private person who has arrested another for a public offense shall, without unnecessary delay, take the arrested person before a magistrate or deliver the arrested person to an officer."

Tenn. Code Ann. § 40-7-113(b) provides:

> An officer may take before a magistrate, without a warrant, any person who, being engaged in the commission of a public offense, is arrested by a bystander and delivered to the officer, and anyone arrested by a private person as provided in §§ 40-7-109 – 40-7-112, and delivered to the officer.

This Office has opined that this statute permits a law-enforcement officer to refuse to take a person arrested by a private person or security officer before a magistrate:

> A law enforcement official has the option to refuse to take a person arrested by a private person/security officer before a magistrate. . . . Because the statute [Tenn. Code Ann. § 40-7-113(b)] reads that an officer "*may* take before a magistrate," rather than "*shall* take before a magistrate," it renders the decision to take the arrested person before a magistrate discretionary on the part of the officer.

Tenn. Att'y Gen. Op. 03-018, at 6 (Feb. 19, 2003).

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