POLICE IN THE SCHOOLS

Relevant Cases

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OCM BOCES McEvoy Campus

Search and Seizure

New Jersey v. T.L.O., 469 U.S. 325 (1985). This Supreme Court case set forth the constitutional requirements for searches of students by school officials. At the outset, the Court held that the prohibition against unreasonable searches and seizures contained in the Fourth Amendment to the United States Constitution applied to searches of public school students by school officials. It then joined the majority of courts that had examined the issue to conclude that a school official may search a student based upon a "reasonable suspicion" that the search "will turn up evidence that the student has violated or is violating either the law or the rules of the school." In addition, the Court stated that a search will be permissible in scope "when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." The "reasonable suspicion" standard is a less stringent standard than the "probable cause" standard applicable to police searches.

Vassallo v. Lando, 591 F.Supp.2d 172 (E.D.N.Y. 2008). In this case, a fire was reported in a schools boy's bathroom. A student was identified leaving the area of the fire by a teacher and, when questioned by the principal, denied any involvement. The principal then informed the student that he was suspected of starting the fire and that he intended to search his personal belongings and the outer garments for evidence. The student refused to consent to the search. The principal then asked a police officer to conduct the search by force. The student reluctantly gave his backpack to the principal whereupon the search revealed rolling papers and marijuana

seeds. The discovery of the seeds led the principal to suspect that the student was in possession of marijuana. The principal then ordered the student to remove his shoes, socks and sweatshirt. The officer assisted the search by lifting up the student's tee shirt to expose his waistband where a bulge was noticed. The student eventually withdrew a bag that contained other smaller bags of marijuana.

The Court held that when school officials and law enforcement are operating in conjunction together the issue becomes: who initiated the search? If school officials initiated the search, the traditional "reasonable suspicion" standard applies. However, if the law enforcement officials initiate the search, the "probable cause" standard applies. In this case, the court found the principal to have initiated the search.

The court then applied the T.L.O. two prong test: first, whether the action was justified at its inception; second, whether the search actually conducted was reasonably related to the circumstances which justified the interference in the first place.

The court found reasonable suspicion to support a search of the student's belongings, including his backpack, for evidence of involvement in the fire such as matches or accelerants. After the initial search of the backpack produced marijuana seeds, the search of the student's person including having him remove his shoes, socks, sweatshirt and roll up his pant leg looking for evidence of drugs was reasonable as well.

Matter of Gregory M., 82 N.Y.2d 588 (1993). In this New York Court of Appeals case, a school security officer heard an "unusual" metallic thud when a high school student dropped his book bag on a metal shelf in accordance with a school policy requiring that students' leave their bags with a school security officer until they obtained a valid student identification card. The security officer then ran his fingers over the outer surface of the bottom of the bag and felt the outline of a gun. The security officer then summoned the dean, who also discerned the shape of a gun upon feeling the outline of the bag. The bag was brought to the dean's office and opened by the head of school security, revealing a small handgun.

The Court noted the balancing process under TLO and concluded that a less strict standard of "reasonable suspicion" applied as these types of searches, involving the investigatory touching of the outside of a school bag, were far less intrusive. After balancing the minimal expectation of privacy of the outer touching of his school bag to the school's interest in preventing weapons from being introduced into their school, the Court held the school's interest prevailed. The "unusual" metallic thud was sufficient justification for the investigative touching of the outside of the bag. Once the touching revealed a gun like object, the school authorities had reasonable suspicion to further search the bag's contents.

People v. Manley, 809 NYS2d 319 (4th Dep't 2006). In this case, the New York's Fourth Department affirmed a trial court's decision denying student defendant's motion seeking suppression of a gun seized by school officials during a pat-down search and an incriminating statement made to school officials. The officials had sufficient grounds to conduct the pat-down search and the student consented to the search. The court also found a lack of police participation in the school officials questioning of the defendant that resulted in the subsequent statement that

he possessed a gun because he was having "problems" with someone from school. Therefore, the trial court properly refused to suppress the statement despite the fact that Miranda warnings had not been administered.

Matter of Haseen N., 251 AD2d 505 (2nd Dep't 1998). The principal of a school ordered certain school staff to "pat-down" the outer clothing of students as they arrived at school, with the aim of preventing a recurrence of egg throwing melees that have occurred on three previous Halloweens. As a counselor "patted down" a thirteen year old student, he felt a hard object in the boys "midsection". Unzipping the student's jacket, the counselor saw what looked like "the butt of a gun" in the boy's waistband. The counselor escorted the student to an SRO and told him to "check" the boy. The SRO opened the student's jacket and saw a .22 caliber pistol in his belt.

The Court held the quick pat-down of the student's outer clothing by non-police school personnel to be justified at its inception and reasonable in scope as it was the least intrusive, most practical means of locating concealed eggs, and represented a reasonable balance between the competing interests of the students privacy and the school administrator's in maintaining order.

The school counselor's observation of the butt of a gun in the student's waistband and communication of his apprehensions to the SRO created sufficient "reasonable suspicion" to hold open the top of the student's jacket and recover the gun.

People v. Butler, 725 NYS2d 534 (Sup. Ct. Kings County 2001). The Dean of a school had reasonable grounds for suspecting that a student was actually a student at another high school when he evaded security scanners at the main entrance of a school in order to bring in a weapon with the intention of perpetrating gang affiliated violence. Upon questioning, the student did not know the name of a single teacher or guidance counselor at the high school; did not have an identification card, which was required in order to enter the school at the main entrances; and he was seen wearing a red bandana which was indicia of gang affiliation. Therefore, the search conducted by the SRO was based upon reasonable suspicion and was held to be proper.

People v. D., 34 N.Y.2d 483 (1974). The New York Court of Appeals found a lack of reasonable suspicion where a student suspected of dealing drugs was observed twice within one hour entering the restroom with a fellow student and exiting within five to ten seconds, and was also seen with another student suspected of dealing drugs. The school district claimed to base its suspicion on a confidential source of undisclosed reliability. The court concluded that the student's conduct was too equivocal, and the nature of the information provided by the informant too vague, to justify a search. In commenting on the general standard to be used for student searches, the court stated the following:

> Among the factors to be considered in determining the sufficiency of cause to search a student are the child's age, history and record in the school, the prevalence and seriousness of the problem in the school to which the search was directed, and, of course, the exigency to make the search without delay.

People v. Singletary, 37 N.Y.2d 310, (1975). The Court of Appeals upheld the validity of a search of a student by the dean responsible for security in a New York City high school. The dean had received a tip from a student that another student was selling narcotics on school premises. The district was able to show that the student informer had successfully identified drug offenders on five previous occasions. The Court distinguished the case from People v. D., saying that in this case "the dean acted upon the basis of concrete articulable facts supplied by an informant whose reliability had been proven by the accuracy of his previous communications."

People v. Overton, 24 N.Y.2d 522, 301 N.Y.S.2d 479 (1969). The New York Court of Appeals upheld the validity of the search of a student's locker by police based on the consent of a school official. In Overton, a school vice principal agreed to open a student's locker when police showed him a search warrant and told him that they suspected that the locker contained marijuana. The warrant was later declared to be invalid. On remand from the United States Supreme Court, the Court of Appeals dealt with the issue of whether the vice principal's consent had been coerced. The vice principal had testified at trial that he would have inspected the locker regardless of who had informed him that it contained marijuana. Based on this testimony, the court concluded that the vice principal had acted properly. In its decision, the Court placed great emphasis on the fact that the student's locker was not within his exclusive control, and that the combination was kept on file in a central office. In addition, the vice principal and the school custodian possessed a master key to all lockers in the school. Finally, school regulations governed the use of lockers so that each student had exclusive possession of the locker only *vis-a-vis* other students. The school issued regulations stating what could and could not be kept in the lockers, and school officials could presumably spot check to insure compliance. All these factors convinced the court that the search in question was permissible and not in violation of the student's constitutional rights.

Matter of Hector R., 265 A.D.2d 160 (1st Dep't 1999). The Appellate Division upheld the adjudication of a student as a juvenile delinquent under the Family Court Act after a school official had searched the student's bag and found a weapon. The Court found that since the school official was not acting as an agent of the police, the search was governed by the general standard of reasonableness applicable to school searches under the Gregory M. case. The Court went on to state that "[B]alancing [the defendant's] legitimate expectations of privacy and the school's need to protect its students against violence, we conclude that the school official had a reasonable suspicion that [defendant] had a gun in his possession and was justified in searching the bag."

Matter of Kevin P., 186 A.D.2d 199 (2nd Dep't 1992). The Appellate Division upheld a school security officer's frisk of a student. The officer observed the student entering the school in an area designated as "off limits." The officer did not recognize the individual as a student and asked him to produce his student I.D. card. When the student was unable to produce the card, the officer took the student by his elbow in order to guide him to the security office. While he was guiding the student, his hand made contact with an object in the student's waistband which the officer believed to be a gun. The student was searched, the gun removed, and the student was arrested. Under these circumstances, the Court concluded that the officer had a right to frisk the student and the gun was admissible against the student in the criminal proceeding.

Rhodes v. Guarricino, 54 F.Supp.2d 186 (S.D.N.Y. 1999). On a voluntary school trip to Disney World, chaperones noticed a strong smell of marijuana emanating from the hallway in front of the students' rooms. The chaperones, with the assistance of hotel staff, searched all of the student rooms and only those areas in plain view. The search ultimately revealed alcohol and marijuana. The Court held that school searches are permissible both on campus and off campus during school activities and events administered by school employees. Additionally, the Court held that the search must merely be reasonable under the given circumstances, and probable cause need not exist for the search to be constitutional.

Shade v. City of Farmington, 309 F3d. 1054 (8th Cir. 2002). In this case, police were called by school officials after a teacher saw a student with a knife on a school bus. The Federal court ruled that the less stringent "reasonableness" standard rather than the standard of "probable cause" applied to a search of students conducted off school grounds by school officials in conjunction with the police.

Strip Searches

Safford Unified School District v. Redding, 2009 WL 1789472, June 25, 2009. In this United States Supreme Court case, a student at the school told school officials that Savana Ridding and a friend were distributing prescription drugs on campus and turned over pills he said he had received from Savana's friend Marissa. Upon confrontation, Savana denied giving pills to students but allowed the official and administrative assistant to search her backpack, which produced no pills. At that point, the school official sent Savana to the school nurse for a strip search. No pills were found. The Court held that there was reasonable suspicion on the part of school officials to justify a search of the student's outer clothing and backpack but with respect to the strip search, the Court ruled that the content of the suspicion failed to justify the intrusiveness of the search. The thirteen year old student's Fourth Amendment right was violated when she was subjected to a search of her bra and underpants by school officials acting on reasonable suspicion that she had brought forbidden prescription and over the counter drugs to school because there were no reasons to suspect the drugs presented any danger or were concealed in her underwear.

Bellnier v. Lund, 438 F.Supp. 47 (N.D.N.Y. 1977). The Court ruled that a strip search of an entire class of fifth grade students for $3.00, which was allegedly stolen, was illegal and violated the students' rights under the Fourth Amendment. In this case, school officials searched the students' coats, ordered the students to empty their pockets and take off their shoes, and were then taken to the restrooms and ordered to strip down to their undergarments so that their clothes could be searched. The school officials then searched the students' desks and books. The money was never located. The Court ruled that the facts did not justify the search because school officials did not have reasonable suspicion that a particular student or students might have the money. Since there were no allegations that the actions taken by the school officials were taken in bad faith and that the law was previously unsettled, the Court granted the school officials immunity.

M.M. v. Anker, 607 F.2d 588 (2nd Cir. 1979). The Court ruled that two teachers conducted an illegal search of a student despite the following facts: (1) the student had a record

of being theft-suspicious; (2) the student was found alone in a classroom during a fire drill; (3) the student had taken posters from the classroom wall; and (4) the student had another student's bag in her possession. The student was ordered to dump the contents of her book bag on a table. A teacher claimed she saw a pipe or holder for smoking marijuana among the student's possessions, which the student allegedly took and tucked into her pants. The student was then strip searched. A jury ruled that the teacher had reasonable suspicion to search the student's book bag and that the subsequent conduct of the student raised a further suspicion, which justified the strip search. The Court disagreed with the jury verdict and ruled that the teachers did not have the requisite reasonable suspicion to search the student's book bag, or for the strip search. According to the Court, "To justify searching a high school child for a possible stolen object, it is indispensable that there be a reliable report that something is missing, and not a report, however reliable, that the student had an opportunity to steal." Since there was no report that anything was stolen, the teachers should not have searched the student's book bag. The Second Circuit upheld the lower court's determination, and added that "when a teacher conducts a highly intrusive invasion, such as a strip search, in this case, it is reasonable to require that probable cause be present."

Dog Sniffing by Police

Appeal of F.W., Decision No. 15,897 (March 25, 2009). In this New York Commissioner of Education decision, a school principal arranged for a search of school grounds for narcotics and marijuana to be conducted by a county deputy Sheriff K-9 officer. The officer's dog alerted the officer to a car registered to student I.W., F.W.'s son. The principal then asked I.W. to be brought to the school parking lot. When the officer asked if he could search the car, the student agreed. The search uncovered a small quantity of marijuana. The student was then suspended for five days from school.

The actual owner of the car was not the student but in fact the student's father, F.W. The father challenged the search because permission was not obtained from him to search the car. Because the son drove the car to school and produced the keys to unlock the car when requested, the son explicitly consented to the search. The Commissioner found the search to be proper because the school district obtained permission from the individual with control over the vehicle at the time it was parked on school grounds.

At the hearing, the officer who conducted the search testified as to how his dog alerted him to the vehicle and the events resulting in the seizure and testing of the marijuana recovered. The officer testified that the search was conducted in the presence of the student, the high school principal and the elementary school principal. The officer testified he administered a test kit in the principal's office and that the substance tested positive for marijuana. Several exhibits were introduced which included an e-mail message scheduling the search between the principal and the officer, photographs of the marijuana taken from the car, and the officer's police report from that day. The school district also introduced, as an exhibit, their student handbook which indicated possessing marijuana on school property was prohibited. The Commissioner concluded that all of the evidence supported a finding of guilt and did not disturb the suspension.

<u>Doran v. Contoocook Valley School District</u>, 616 F.Supp.2d 184 (D.N.H. 2009). The U.S. District Court ruled that the use of dogs by police to conduct a drug sweep of a high school, which encompassed such personal items as student backpacks and purses, did not constitute a search implicating student's Fourth Amendment rights. The court also ruled that holding students on the football field during the sweep did not amount to a seizure under the Fourth Amendment. The drug sweep was conducted by local and state police who had been increasingly concerned about drug problems in the school. Shortly before police arrived, high school officials told the students to assemble on the football field but to leave their personal belongings in the building. During the sweep, the dogs were alerted to several bags, which the police turned over to school officials. No illegal substances were found.

The Court held that canine sniffs of school lockers, cars and baggage are not searches within the meaning of the Fourth Amendment. The Court emphasized that the sweep did not involve sniffing anyone's person but merely their personal belongings.

<u>B.C. v. Plumas Unified School District</u>, 192 F.3rd 1260 (9th Cir. 1999). The United States Court of Appeals for the Ninth Circuit ruled that the random and suspicionless search of a student through the use of drug detecting dogs was unreasonable under the circumstances. In this case, on May 21, 1996, the principal and vice principal told students to exit their classrooms. As they exited, the students passed a deputy sheriff and a drug sniffing dog stationed outside the classroom door. The dog alerted to a particular student. The students were told to wait outside the classroom while the dog sniffed backpacks, jackets and other belongings which the students left in the room. When the students were allowed to return to their classroom, they again walked past the deputy and the dog, and the dog again alerted to the same student. That student was then taken away and searched by school officials. No drugs were found that day on the student or at the high school.

In the subsequent federal litigation, the United States Court of Appeals for the Ninth Circuit found that in the absence of a demonstrated drug problem or crisis at the high school involved, the school district's interest in deterring drug use was not placed in jeopardy by a requirement that there be individualized suspicion before such a search could be conducted. While the Ninth Circuit agreed with the lower court that the search conducted was not permissible under current constitutional standards, it ruled that the individual school district attendants were not liable for damages because the law was not clearly established at the time the search was conducted.

<u>Interviews and Interrogations</u>

<u>Vassallo v. Lando</u>, 591 F.Supp.2d 172, (E.D.N.Y. 2008). As a general rule, school officials have the authority to question students related to investigation of student misconduct for purposes of school discipline. Decisions that school officials make on a day to day basis to ensure the safety and welfare of the students under their care are necessarily discretionary ones; therefore they must have the leeway to single out certain students for questioning when a disciplinary situation arises.

<u>Appeal of Lago</u>, 38 Educ. Dep't Rep. 723 (1999). In this case, the Petitioners objected to the use of a written admission of guilt made by their daughter, allegedly obtained through

duress, where they had not been present when she made the statement. The Commissioner ruled that there is no requirement that a parent be present when a student is questioned by school personnel, and further found no specific proof of duress or intimidation by any school official. *See also, Appeal of M.F. and J.F.*, 43 Educ. Dep't Rep. 174 (2003).

Opinion of Counsel, 1 Educ. Dep't Rep. 800 (1959). Police officials have limited authority to interview or search students in schools, at school functions or to use school facilities in connection with police work. Police officials may enter school property or a school related function to question or search a student or to conduct a formal investigation involving students only:

1. With a search or arrest warrant;

2. If they have probable cause to believe a crime has been committed on school property or at a school function; or

3. At the invitation of school officials.

Before police officials are permitted to question or search any student, the building principal or his or her designee should notify the student's parents/legal guardians to give them the opportunity to be present during the police questioning or search. If the student's parents/legal guardians cannot be contacted prior to the police questioning or search, the questioning or search should not proceed.

Appeal of a Student with a Disability, 48 Ed Dep't Rep.____, 15,803 (2008). The mere presence of a police officer or a school resource officer (SRO) during the questioning of a student by school officials does not convert the school interview to a police investigation. To hold otherwise would potentially discourage school administrators from seeking the assistants and expertise of the police and the school's effort to address criminal and potentially dangerous situations that may be rapidly unfolding on school property. *Vassalo v. Lando,* 591 F.Supp.2d 172, (E.D.N.Y. 2008).

If the school official has an SRO present as a third party witness during the questioning and search of a student, the interview should not be considered a police investigation. When an SRO is present for student questioning, the school official should be clear that the investigation is being conducted by the school as part of a routine school discipline procedure, not a formal police investigation or interrogation. The school official should be the individual questioning the student. There should be no indication that the school official is acting under the direction of the officer or seeking to elicit evidence of criminality on behalf of the police. The questioning should be focused on posing questions related to the district's investigation related to possible school discipline.

Wofford v. Evans, 390 F.3d 318 (4th Cir. 2004). A student was interviewed by the police in the assistant principal's office. The student was suspected of possessing and discarding a gun at school. The student denied the allegations and was never actually charged.

The student claimed the questioning without an attorney was a violation of her rights under the Sixth Amendment. The student also claimed the school's disciplinary procedures were a violation of her due process rights under the Fourteenth Amendment.

The Court held that when a student is detained and interviewed by school administrators or police as part of a disciplinary investigation, "the disciplinary process is a task best left to local school systems." The claims were dismissed.

Use of Force

Gray v. Bostic, 458 F.3d 1295 (11th Cir. 2006). The United States Court of Appeals for the Eleventh Circuit examined a case where a nine-year old was handcuffed in school. The student, LaQuarius Gray, was participating in physical education when one of the coaches thought that she was not doing jumping-jacks with the other students. When the coach spoke to Gray, she responded with a threat toward the coach. This threat was overheard by a second coach as well as the school's SRO, Officer Bostic, who was also present. Coach Horton, who had overheard the threat, indicated that she would take care of the situation, but Officer Bostic insisted that he would take care of it. He took Gray into the hallway and handcuffed her. He reportedly told her: "[T]his is how it feels when you break the law," and "[T]his is how it feels to be in jail." Deputy Bostic responded to Gray's lawsuit that he handcuffed her "to impress upon her the serious nature of committing crimes that can lead to arrest, detention or incarceration and to help persuade her to rid herself of her disrespectful attitude". Deputy Bostic's discovery responses also stated that he "did not feel the need to apologize to LaQuarius Gray for telling her that she committed a misdemeanor in my presence and showing her what would happen if a less generous officer than I were to arrest her for her actions." Both coaches reported that they were never fearful that Gray, a nine-year old would carry out the threat.

In analyzing the case, the court applied the T.L.O. two prong test: Whether the Deputy had a reasonable basis for calling Gray over to him and asking her questions? The Court held that because her actions were consistent with that of a misdemeanor, harassment, that the investigatory stop satisfied the reasonable suspicion standard applied to school settings.

However, with respect to the second prong: Whether the Deputy's handcuffing of Gray was reasonably related to the scope of the circumstances which justified the interference in the first place? The Court held that at the time Deputy Bostic handcuffed Gray, there was no sign of a potential threat to anyone's safety. The incident was over, and Gray had promptly complied with her teachers' instructions. There was no evidence that Gray was engaging in any further disruptive behavior. Therefore, the Deputy's handcuffing was not reasonably related to the scope of the circumstances that justified the initial investigatory stop. Rather, the handcuffing was excessively intrusive given Gray's young age and the fact that it was not done to protect anyone's safety. Therefore, the handcuffing of Gray violated Gray's Fourth Amendment rights.

STUDENT RECORDS

School officials may disclose education records to SRO's if they have been designated as "school officials" with legitimate educational interests in the school's record policies. 34 CFR 99.31(a)(1).

An educational agency or institution may disclose personally identifiable information from the education records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. In making a determination, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the safety or health of the student or other individuals. If the school determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to appropriate parties whose knowledge of the information is necessary to protect the health and safety of the student or other individuals. 34 CFR 99.36.

The educational agency or institution must record the articulable and significant threat that formed the basis for the disclosure and the parties to whom the information was disclosed. 34 CFR 99.32 (a)(5). If there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in deciding to release the information.

Schools are not precluded from disclosing to teachers and school officials and other schools who have been determined to have legitimate educational interests in the behavior of the student information contained in education records about disciplinary action taken against a student for conduct that posed a significant risk to the safety our well being of that student, other students, or other members of the school community. 34 CFR 99.36(b)(3).

SCHOOLS AND SUBPOENAS

A school is not required to obtain parental consent before complying with any lawfully issued a subpoena. 20 USC 1232g(b)(1)(J).

The issuing authority of a subpoena may order "for good cause shown" that the agency or institution upon which the subpoena has been served forbear from disclosing to "any person the existence or contents of the subpoena or any information furnished in response to the subpoena." 20 USC 1232g(b)(1)(J)(ii). Generally, a school should honor an agencies directive not to disclose service of the subpoena only when such directive appears on the face of the subpoena.

FERPA and LAW ENFORCEMENT UNITS

Schools may wish to consider creating a "law enforcement unit". Members of the unit may be as small as any one individual. 34 CFR 99.8(a)(1)(ii). A school may designate either school employees or non-district personnel such as SRO's or non-commissioned security guards as its "law enforcement unit". 34 CFR 99.8(a)(1).

A "law enforcement unit" is the part of a school, the division or component, the mission of which is related to maintenance of a safe and orderly school environment by monitoring and enforcement of laws against individual students for conduct within the school community. 20 USC 1232g(a)(4)(B)(ii).

A "law enforcement unit", as defined in FERPA, means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or noncommissioned security guards, that is officially authorized or designated by that agency or institution to:

(i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State or Federal law, or refer to appropriate authorities a matter of enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or

(ii) Maintain the physical security and safety of the agency or institution.

When school districts and local police authorities have entered into contractual relationships for their "law enforcement unit", documentation of the contractual arrangement should be made. Otherwise schools are generally prohibited from disclosing information from education records to such an agency. *Office of Juvenile Justice and Delinquency Prevention, Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Program (June, 1997).*

If a record is characterized as a "law enforcement unit record", then it is not an education record under FERPA. 20 USC 1232g(a)(4)(B)(ii); 34 CFR 99.3. As such, the record may be disclosed to third parties, such as local police, without parental consent.

For a record to be considered a "law enforcement record", three conditions must be met:

1. The record must be created by the law enforcement unit.

2. The record must be created for a law enforcement purpose.

3. The record must be maintained by the law enforcement unit.