



## Random Searches Using Canines

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### Introduction

As the use of canines for drug detection increases, vendors are exploring public school districts as potential markets for their services. School district administrators striving to create “drug free” environments are finding such services enticing. However, the use of drug detection canines in public schools is problematic in the best of circumstances, and illegal in most other circumstances.

The purpose of this bulletin is to provide background and guidance to district administrators who may be contemplating the implementation of a random drug search program using dogs.

### Legal Review

The use of dogs to conduct drug searches in schools is not new – neither are the lawsuits associated with such searches. The controversy surrounding the subject prompted the California Attorney General’s (AG) Office to issue an opinion on the matter in November 2000.

The question the AG was asked to address is as follows:

May school administrators at a public high school implement a policy requiring on an unannounced, random, and neutral basis that (1) pupils be directed to vacate their classrooms and leave behind their personal belongings, including backpacks, purses, jackets, and outer garments, for sniffing by canines trained in the detection of drugs, (2) the pupils would proceed to a location not within the immediate

vicinity of the canines and would remain away from the canines at all times, and (3) if a canine’s behavior indicated the presence of drugs, the pupil’s personal belongings would be searched by the school administrators without the pupil’s consent.

**The AG concluded that school administrators may not implement such a policy.**

This issue has not escaped the notice of the American Civil Liberties Union, (ACLU). Not only did the ACLU file an analysis regarding the AG opinion, it has been judiciously opposing random drug searches using dogs. The ACLU has prevailed in several lawsuits against school districts on this issue and continues to be a powerful opponent.

The issue in question isn’t so much the use of dogs as it is the legality surrounding random searches.

The AG opinion points out the balance between a student’s rights and the interests of school administrators. This dilemma has been addressed in several cases, including the United States Supreme Court.

In *New Jersey v. T.L.O.*, the court concluded that while public school officials are generally subject to Fourth Amendment constraints, they are not required to obtain a warrant or possess probable cause as a prerequisite to a search or seizure of a pupil’s belongings, **provided that** their actions are based on reasonable suspicion of proscribed activity, and the actions taken are reasonable in light of the needs and interests of the school administration.

It is well established that the substantial interest of school administrators in preventing drugs on campus has been recognized. However, it has also been established that absent a “drug crisis” or serious drug problem, the implementation of a program that eliminates individualized reasonable suspicion (as in random searches) is illegal. The U. S. Supreme Court found that the drug problem must be real, “simply invoking the importance of deterrence is insufficient.” (Veronica School District v. Acton)

The issue of reasonable suspicion was addressed at length in the analysis provided by the ACLU. They conclude that a “seizure” under the Fourth Amendment occurs when students are separated from their belongings so that a dog sniff of such belongings can occur. Such seizures are unconstitutional when conducted on a random and suspicionless basis because this type of privacy intrusion will be deemed permissible under the Fourth Amendment **only** if it is based on individualized reasonable suspicion.

The ACLU also notes California Supreme Court precedent, that establishes searches or seizures of student belongings “must be based on a reasonable suspicion that the student or students to be searched have engaged, or are engaging, in a proscribed activity that is, a violation of a school rule or regulation, or a criminal statute.”

Reasonable suspicion depends on objective and articulable facts which, when considered rationally and objectively would lead one to believe an individual is violating or has violated a rule or regulation. This position supports the finding by the U.S. Supreme Court in the above mentioned case when it found “Reasonableness under all of the circumstances is the test for legality of a search.” Thus, reasonable suspicion is established to be an important element in “legal” searches.

Reasonable suspicion will generally be found to exist only when there is individualized suspicion, that is, a reasonable basis for suspecting wrongdoing on the part of the particular student to be subjected to the search or seizure.

This information is clear and compelling. District administrators may be presented with contrary information from vendors seeking to sell a service, however such information should be weighed carefully. The courts and legal system have made their position on this matter fairly clear. Until such time as the body of law on this topic changes, district administrators who implement random, suspicionless searches do so at the potential peril of the district.

## Follow Up

Please contact the district’s legal council for a thorough review of any proposed drug search programs. The legal analysis and opinion should be in writing. The legal input obtained by SISC advised that any district wishing to use drug dogs on a random, unannounced, and suspicionless basis should consider the following:

- There must be a detailed board policy allowing the search
- There must be a finding by the board of a drug crisis or significant drug problem (there must be data justifying this finding)
- Parents must be given notice at the beginning of the year that the district may employ drug dogs on a random, unannounced basis and without reasonable suspicion
- There must be no students in the area being searched
- The dog must never be allowed to sniff students or persons
- The dogs should be kept away from students’ coats and backpacks

The SISC II Memorandum of Coverage (MOC) excludes liability for intentional acts and illegal actions. Therefore, SISC II will not cover the liability for drug searches that have been conducted illegally. In addition, the SISC II MOC does not cover injunctive relief actions or other such administrative-type actions. This means that if the ACLU files an action against the district, in most instances, SISC II will not extend coverage.