



April 14, 2011

Christie Filios, Principal
Saint Lawrence Academy
2000 Lawrence Court
Santa Clara, CA 95051
Fax: (408) 296-3794

Dear Principal Filios:

We write in regard to the suspension and behavioral probation imposed on [REDACTED], a student at Saint Lawrence Academy, after the school conducted a search of his personal email account on another student's cell phone. The Academy violated [REDACTED]'s right to be free from unreasonable searches when it searched [REDACTED]'s email account after a *different* student was suspected of violating school rules regarding electronic devices. Because the search violated the California Constitution and even the Saint Lawrence Academy Student Handbook, all discipline imposed on [REDACTED] as a result of the search should be reversed. We request that you immediately expunge the suspension from his records and lift his probation.

I. Factual Background

It is our understanding that in this case, a student, who brought an iPod into the classroom, was suspected of violating a school rule against having cell phones and electronic devices in class. The teacher therefore confiscated the iPod and gave it to the Dean of Students. Even though the Dean had no reasonable suspicion that the student was in violation of any other school rule that would warrant more than temporary confiscation of the iPod, the Dean searched the device's contents. Prior to class, [REDACTED] had used the student's iPod, which has internet capability, to access his personal email account, and his email account remained open and accessible at the time the phone was confiscated. The Dean proceeded to review [REDACTED]'s personal email and photos, even though she had no basis to believe [REDACTED] had engaged in any wrongdoing. [REDACTED]'s pictures were subsequently printed and forwarded to staff email accounts while the Dean was logged into [REDACTED]'s email account. The information found in [REDACTED]'s email was shared with the police and used by the school to discipline [REDACTED] who was ultimately suspended for two days and placed on a two-year behavioral probation. *

NANCY PEMBERTON, CHAIRPERSON | SUSAN MIZNER, JAHAN SAGAFI, FARAH BRELVI, ALLEN ASCH, VICE CHAIRPERSONS | DICK GROSBOLL, SECRETARY/TREASURER
ABDI SOLTANI, EXECUTIVE DIRECTOR | KELLI EVANS, ASSOCIATE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | SHAYNA GELENDER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR
LAURA SAPONARA, COMMUNICATIONS DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR | MARGARET C. CROSBY, ELIZABETH GILL, LINDA LYE, JULIA HARUMI MASS, MICHAEL RISHER, JORY STEELE, STAFF ATTORNEYS
ALLEN HOPPER, NATASHA MINSKER, NICOLE A. OZER, DIANA TATE VERMEIRE, POLICY DIRECTORS | STEPHEN V. BOMSE, GENERAL COUNSEL

II. Legal Analysis

The school's search of the iPod violated ██████'s right to privacy because it was neither initially justified nor reasonable in scope. The discipline subsequently imposed is therefore invalid and should be reversed.

A. The California Constitution Protects Students' Right to Privacy.

The standard of searches applied to students at school was decided by the United States Supreme Court in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). For a search to be lawful, it must satisfy two conditions. First, the school must have reasonable cause to believe that a student has violated or is violating a school rule or a law and a reasonable suspicion that a search will turn up evidence of this violation. *Id.* at 342. Second, the scope of the search must be reasonably related to its initial objectives and not excessively intrusive in light of the age and gender of the student and the nature of the violation. *Id.* at 342.

Similarly, the California Supreme Court adopted the *T.L.O.* standard in holding that students have the right to be free from unreasonable searches under both the federal and state constitutions.¹ *In re William G.*, 40 Cal. 3d. 550, 563 (1985). As the Court explained, "[t]he privacy of a student, the very young or the teenager must be respected... Respect for privacy is the rule – a search is the exception." *Id.* at 563-64. In that case, an assistant principal searched a high school student after noticing that he was carrying a small black calculator case with an odd bulge. *Id.* at 555. The search revealed marijuana and drug paraphernalia. *Id.* The California Supreme Court concluded that the search violated the student's rights because it was not based on facts, but on a hunch. *Id.* at 566. Searches of students, the Court held, must be based on reasonable suspicion, absent evidence of exigent circumstances requiring an immediate nonconsensual search. *Id.* Before searching a student, school officials must have "objective and articulable facts" that support the assertion that the search will provide evidence that the student is violating the particular rule he or she is suspected of violating. *Id.*

At least one court has applied these general standards to searches of cell phones. In *Klump v. Nazareth Area School District*, a student violated school rules that prohibited the display or use of a cell phone during school hours. *Klump v. Nazareth Area School Dist.*, 425 F.Supp.2d 622 (E.D. Pa. 2006). The school confiscated the student's phone, read his text messages, and subsequently called other students listed in the phone directory to determine

¹ Although *T.L.O.* and *William G.* both involved public schools, the legal standards therein apply to private schools. This is so because the privacy protections in the California Constitution apply to private as well as governmental entities. *Hill v. National Collegiate Athletic Assn.*, 7 Cal.4th 1 (1994); Cal. Const. art. I, §1.

whether they, too, were violating the school's cell phone policy. *Id.* at 627. The court held that the student's right to freedom from unreasonable search and seizure was not violated when his cell phone was confiscated after he violated school rules. However, his rights were violated when the school searched his phone for evidence of drug activity without justification. *Id.* at 641. Additionally, the court determined that a school cannot search one student's cell phone in order to find evidence of *other students'* misconduct. *Id.* at 640.

B. The search of [REDACTED]'s email was unreasonable and overly intrusive.

The search of [REDACTED]'s personal email account on the phone of *another* student suspected of violating a school rule was unjustified. The search violated the standard articulated by the United States Supreme Court and adopted by the California Supreme Court as well as the policy in Saint Lawrence's Student Handbook.

a. The search of [REDACTED]'s email was inconsistent with the *T.L.O.* standard.

As stated in *New Jersey v. T.L.O.*, for a school search to be lawful, the school must have reasonable cause to believe that a search will turn up evidence that the student has violated a school rule or a law and the scope of the search must be reasonably related to its initial objectives and not excessively intrusive in light of the nature of the violation. *T.L.O.* at 341.

The search of [REDACTED]'s email was not based on reasonable suspicion. As a threshold matter, the Dean did not have an initial justification to read the contents of the student who owned the iPod. School rules provide that "cell phones are not to be seen or heard in the classroom; they should be left in the students' lockers during the school day" and that electronic devices are not allowed in the classroom. Student Handbook, 33 and 35. Once the teachers saw the iPod during class, no further evidence was necessary to establish a rule violation and there was no need to search the *contents* of the device. The fact that a student is violating one school rule, namely having an electronic device in class, does not provide reasonable suspicion for a search to determine whether the student may also be violating another rule. *Klump* at 641.

But even if the Dean had an initial justification in searching the phone for evidence that *the phone's owner* had violated a school rule, she had no basis for expanding the scope of her search to look through [REDACTED]'s personal email, downloading pictures attached to those emails, and subsequently forwarding and printing those emails and pictures. In other words, the scope of her search, which extended to [REDACTED]'s personal email, exceeded any initial justification for the search, a belief that the other student had violated school cell phone or electronic device use rules. As articulated in *Klump*, under the *T.L.O.* standard a school cannot search one student's cell phone in order to find evidence of other students' misconduct. *Klump* at 640.

Not only was the search unreasonable in relation to its initial objectives, but it was also highly intrusive in light of the alleged violation. According to United States Supreme Court, the search must be “reasonably related in scope to the circumstances which justified the interference in the first place.” *T.L.O.* at 341. In *Safford*, a 13-year-old student suspected of possessing prescription painkillers in violation of school rules was strip searched at school. *Safford Unified School Dist. #1 v. Redding*, 129 S. Ct. 2633 (2009). The Court found the search invalid because the “content of suspicion failed to match the degree of intrusion.” *Id.* at 2642. A search that is overly intrusive, such as a strip search, requires specific suspicions which justify the search. *Id.* at 2643. As such, an overly intrusive search may render the search itself invalid.

In this particular instance, the search of ██████’s personal email communications was highly intrusive and unjustified in light of the underlying violation, which was the possession of an electronic device in the classroom. This violation is easily proven without necessitating a search of the iPod. As such, the search itself is rendered invalid, because there were no specific suspicions which justified the search of ██████’s email.

b. The search of ██████’s email was inconsistent with Saint Lawrence’s own policy.

The search of ██████’s email violated not only his right to privacy under the California Constitution but even Saint Lawrence’s own policies as set forth in the student handbook. The policy notes, “[a] student found to be using his/her cell phone will have the phone confiscated... If confiscated, the school reserves the right to check who the student is calling or text messaging.” Student Handbook, 36. However, in this instance, the school went beyond its own policy by searching a device which is not a cell phone and reading information pertaining to a *different* student and the *contents* of that other student’s communications, not simply the identity of the student’s correspondents.²

C. Saint Lawrence Academy’s policy regarding cell phones is overly intrusive and invalid on its face.

² Although the school’s policy states that the school reserves the right to modify or depart from the guidelines when necessary and that it expressly reserves the right to investigate and discipline any student conduct that the school believes to be contrary to the mission and philosophy of the school, this disclaimer does not give the school unlimited license to engage in roving, expansive searches. In *Sheehan v. San Francisco 49ers, Ltd.*, 45 Cal.4th 992, 1001 (2009), the California Supreme Court held that a person can be deemed to consent only to intrusions that are reasonable under the circumstances. *Id.* As outlined above, the search of ██████’s personal email account on another student’s iPod was not reasonable under the circumstances and thus ██████ cannot have been deemed to consent to the unreasonable intrusion of his privacy.

In addition to the illegality of this particular search as applied to ██████████ we believe that the rules in the Saint Lawrence Academy's Student Handbook regarding cell phones searches are overly intrusive and unlawful on their face.

As it pertains to cell phones, the Student Handbook states that, "cell phones are not to be seen or heard in the classroom; they should be left in the students' lockers during the school day." Student Handbook, 33. It further states, "[e]lectronic devices are not allowed in the classroom." *Id.* at 35. The Student Handbook then notes, "[a] student found to be using his/her cell phone will have the phone confiscated... If confiscated, the school reserves the right to check who the student is calling or text messaging." *Id.* at 36.

We recognize that the school has broad authority to ensure the safety of its students and that to effectuate its educational mission, a school may prohibit the use of phones in the classroom. However, the policy outlined by the school purports to allow broad searches of student cell phones that are entirely unreasonable in scope. The school's rule is violated as soon as a student brings a cell phone into the classroom. Thus, once a teacher sees a student with a phone in the classroom there is no justification for the school to check who the student is calling or text messaging or to search the contents of the phone. The student's personal communication and information stored on the phone are unrelated to the rule violation, which is simply bringing the phone into the classroom.

Additionally, searches of communications stored in cell phones can open a floodgate of students' private information. Cell phones not only keep records of call logs, text messages and voicemail, but also store videos, photo albums, e-mail, records of web pages visited, and provide access to social networking sites and calendars. Searching a cell phone, therefore, can not only reveal virtually everyone a person knows and with whom they communicate and how often, but also what they discuss. Since many student's cell phones are paid for and owned by their parents and occasionally shared with them or siblings, the invasions of privacy that may result from unrestrained cell phone searches are even more considerable. Not only does a search threaten to reveal the private information of that particular student, but that of the entire family.

III. Conclusion

As a result of the violations outlined above, Saint Lawrence Academy has violated ██████████'s right of privacy, guaranteed by the California Constitution, and gone beyond the search standard generally applied to students.

We urge you therefore to reconsider the discipline imposed against ██████████ as a result of information that was obtained in violation of his right to privacy and the Saint Lawrence Academy policy as outlined in the Student Handbook. We ask that the discipline imposed against ██████████ be expunged from his school records and that the two-year probation imposed

on him be lifted. We also ask that [REDACTED] be allowed to make up any school work he missed during his suspension.

Additionally, we request that you revise the Saint Lawrence Student Handbook to clearly provide that school officials may not search students' cell phones and electronic devices, including email messages on cell phones and iPods, unless those officials (1) have a reasonable suspicion, based on objective and articulable facts, that the search will provide evidence that the student was violating either the law or a school rule; and (2) limit the scope of the search to the infraction of which *the student whose cell phone or electronic device is being searched* stands accused and is not extended to determine whether that student might conceivably have violated another school rule or whether other students have violated a school rule.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions. We look forward to your prompt response.

Sincerely,



Noga Firstenberg

Student Rights Fellow / Attorney

* We subsequently learned that the probation period was two semesters, not two years.