Canine Sniff Searches In Schools

Q: Is a school district permitted to use dogs to sniff search lockers and vehicles of students for drugs? If so, what are the legal implications?

A:

I. The T.L.O. Standard

In 1985 the United States Supreme Court issued its first and only decision on principles of search and seizure in a public school in the case of New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733 (1985). There the Court held that the Fourth Amendment protections against unreasonable search and seizure do apply to searches by school officials. The Court announced a two-part analysis:

1. Was the search justified at its inception?
2. Was the search as conducted reasonably related in scope to the circumstances which justified the search?

If both of these questions can be answered affirmatively, the search will conform to the Fourth Amendment.

In TLO, a teacher discovered TLO and a classmate smoking in a lavatory, and the teacher brought them to the office. While her friend admitted violating the no smoking rule, TLO did not, and the Vice Principal demanded to see TLO's purse. When he opened it, he found cigarettes and cigarette rolling papers, which in his experience were associated with the possession of marijuana. He conducted a more thorough search of the purse, and found a small amount of marijuana, a number of plastic bags, forty dollars in one dollar bills, an
index card indicating students who owed TLO money, and two letters which implicated TLO in selling marijuana.

In the subsequent criminal prosecution against TLO, the student moved to suppress the evidence seized on the basis that it was tainted by an illegal search. The appellate division denied the motion, but the New Jersey Supreme Court reversed and ordered suppression of the evidence, ruling that the search violated TLO’s Fourth Amendment rights.

The U.S. Supreme Court reversed. The Court specifically held that school officials are subject to the Fourth Amendment in the searching of students. Importantly, it further held that a standard of "reasonable cause" was appropriate, rather than the more stringent "probable cause" standard applicable to law enforcement officials in the criminal context.

The first prong of the test developed by the court is whether a search is justified at its inception, i.e., are there reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. The second prong of the test is whether the search, as actually conducted, is reasonably related in scope to the circumstances which justified the search in the first place. In TLO the Court noted that the search will be permissible in scope when it is 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. In applying this test to the facts, it held that the search of TLO’s purse was reasonable and, as such, did not violate the Fourth Amendment.

Although the Supreme Court in TLO declined to specifically rule on whether individualized suspicion is an essential element of its reasonableness standard, the Court’s related comments and subsequent case law has established that School Districts will carry a heavy burden to justify any search which is not supported by individualized
suspicion. Individualized suspicion means that the District officials have a reason to believe that this particular student has committed an infraction of school rules.

II. Random Searches of Lockers and Students is Generally Illegal

A. Analysis under the U.S. Constitution

The use of sniff dogs to detect drug use can run afoul of the general rule requiring individualized suspicion. In Horton v. Goose Creek Ind. School District, 690 F.2d 470 (5th Cir. 1983), the School District, in response to a growing drug and alcohol abuse problem among its students, contracted with a security firm that provided dogs which were trained to identify drugs and alcohol through their sense of smell. The School District conducted assemblies to acquaint their students with the dogs and inform students of the program. On a random and unannounced basis, the dogs were taken to the various schools in the district where they would sniff student's lockers and automobiles. They would also go into the classrooms to sniff the students themselves. When one of the dogs would alert the handler of the presence of an elicit substance on a student's person, a school official would discretely ask the student to leave the class and go to the Administrator's office where he or she would be subjected to an interrogation and to a search of pockets, purse and outer garments. Several students who were subjected to the sniffing of the canine drug detectors sued the School District alleging a violation of the Fourth Amendment.

The Court of Appeals stated that the sniffing of student lockers in public hallways and automobiles parked on public parking lots does not constitute a search and therefore is permissible under the Fourth Amendment. However, the Court stated that the use of dogs to sniff students, themselves, presented an entirely different problem. The Court stated that the dog's sniffing technique in this case, i.e., sniffing around each student, putting its nose on the student and scratching and manifesting other signs of excitement in the case of an alert was intrusive. The Fifth Circuit held that the dog's
sniffing of students to detect drugs in this manner constitutes a search under the Fourth Amendment. The Court consequently stated:

"The intrusion on dignity and personal security that goes with the type of canine inspection of the student's person involved in this case cannot be justified by the need to prevent abuse of drugs and alcohol when there is no individualized suspicion, we hold it unconstitutional." While this case was decided before TLO, the analysis is consistent with the Supreme Court ruling and still provides helpful guidance.

B. Analysis under the Pennsylvania Constitution

Contrary to the federal court’s interpretation of the U.S. Constitution, the Pennsylvania Supreme Court has ruled that canine sniffs, whether individualized or random, constitute a “search” under Article I, Section 8 of the Pennsylvania Constitution. Commonwealth of Pennsylvania v. Johnston, 515 Pa. 454 (1987). Accordingly, students enjoy limited protection against the use of drug-sniffing dogs unless the Cass standards set forth below exist.

III. The Cass Standard

The Pennsylvania Supreme Court has decided the issue of the level of protection public school students are entitled to during a random dog sniff of lockers under the Fourth Amendment to the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution. In Commonwealth v. Cass, the Supreme Court reversed the Superior Court’s decision to suppress evidence of drugs obtained following a dog sniff of lockers at a public high school, for purposes of criminal prosecution. The Court held that the need for a safe and secure school outweighed the students’ limited expectations of privacy in the school environment. The Court upheld the School District’s decision to search the lockers following a blanket dog sniff.
Even in the absence of initial individualized suspicion of wrongdoing, a post
dog sniff search will be upheld under the Fourth Amendment to the United States
Constitution and similar provisions of the Pennsylvania Constitution where there is a
reasonable suspicion to believe that a violation has occurred and that the search was
necessary to maintain school discipline. The Court focused upon three factors to
determine whether the decision to conduct a dog sniff of lockers was reasonable. A
review of the facts the Court considered in whether the actions of the District meet the test
is instructive and can be used as a guide when considering such a tactic.

The first factor is the nature of the privacy interest upon which the search at
issue intrudes. In the Cass case, the students were forewarned about the possibility of a
search in their student code of conduct, which was distributed to each student and
discussed in homeroom. Further, each student was assigned a locker, however, that
locker remained the property of the school district. Although students were permitted to
put locks on the locker, the district maintained a list of all student combinations. The
school frequently entered student lockers for the purpose of making repairs. Given the
circumstances, the Court held that although students have a privacy interest in their
locker, the expectation of privacy is minimal.

The second factor is the character of the intrusion. The School District
conducted a general search of over 2,000 lockers. They enlisted the aid of law
enforcement agents who specialize in such searches. They used dogs to sniff for drugs,
which case law makes clear is not, in and of itself, a search under the Fourth Amendment.
The use of dogs limited the scope and the intrusion of the search. That is, only the
lockers upon which the dogs alerted and those adjacent thereto were actually opened and
the objects therein searched. The Court determined that these guidelines which were
established and followed effectively addressed the possibility of an abuse of discretion in
the search, thereby limiting the intrusion of the privacy rights at stake.
The third factor to be considered is the nature and immediacy of the government concern and the efficacy of the means utilized to address that concern. The principal of the school testified that the search was undertaken due to concerns which had arisen over the preceding month indicating that drugs were being sold within the school. Information had been received from students and observations made from teachers on suspicious activities made by students passing small packages, an increased use of the student assistance programs, calls from parents, increased use of beepers, students in possession of large amounts of money and increased use of pay phones by students. The principal had also observed students exhibiting physical signs of drug use. The Court concluded that the principal had cause to be concerned and that deterring drug use in public schools is a compelling concern. The Pennsylvania Supreme Court further concluded that the nature and immediacy of the interest justified the means (i.e., drug-sniffing dogs) utilized for meeting the concerns. There was substantial evidence of school-wide drug use and reason to believe that drugs may be in the school among students' possession. It was therefore reasonable to use drug-sniffing dogs, which provide a minimum intrusion upon the students, to advance the compelling interests of the school.

The lesson of Cass is that random searches of lockers should not be undertaken unless factors similar to those in Cass exist. Moreover, the use of canines to randomly sniff lockers creates the requisite individualized suspicion to individually search a particular locker. It should also be noted that any contraband found in a student’s locker or vehicle following a random dog-sniff and individualized search, could be used for school disciplinary purposes. The same contraband, however, may still be excluded from criminal prosecution if the dog-sniff did not meet the Cass factors.

V. Conclusion
• Under no circumstances should dogs be allowed to sniff any student.

• Drug sniffing dogs may be used for random sweeps of all areas where student lockers are located and parking lots used for student automobiles so long as the Cass factors exist.

• Actual physical searches of lockers on a random basis will not be permitted unless the Cass factors exist.

• For purposes of criminal prosecution, an individualized search of a locker following a random dog-sniff, may not be admissible in court unless the Cass factors exist.

• Contraband obtained following an individual search of a locker targeted by random dog sniffing would be admissible in a school disciplinary proceeding (even if not admissible in Court).