PULLMAN & COMLEY

The Law & Student Cell Phones

A Best Practices Webinar for School Administrators

Zachary D. Schurin, Esq.

February 27, 2024

The Digital Age…

- ***97%*** of Americans own a cell phone. ***90%*** own a smartphone.
  - Pew Research Center -- Demographics of Mobile Device Ownership and Adoption in the United States | Pew Research Center
- The average American spends ***5 hours and 24 minutes per-day on their mobile device*** and checks their phone an average o***f 96 times per day.***
  - Zippia -- https://www.zippia.com/advice/smartphone-usage-statistics.

The Digital Age…

PULLMAN & COMLEY

- ***97%*** of students between the ages of eleven and seventeen use phones during the school day with a median in-school use time of 43 minutes per-day.
  - Common Sense Media --https://www.commonsensemedia.org/sites/default/files/research/report/2023-cs-smartphone-research-report_final-for-web.pdf
- ***46%*** of teens between the ages of 13-17 reported experiencing cyberbullying.
  - Pew Research Center – https://www.pewresearch.org/internet/2022/12/15/teens-and-cyberbullying-2022/
- ***15%*** of teens reporting sending a “sext” and ***27%*** of teens reported receiving a sext.
  - Madigan S, Ly A, Rash CL, Van Ouytsel J, Temple JR. Prevalence of Multiple Forms of Sexting Behavior Among Youth: A Systematic Review and Meta-analysis. JAMA Pediatr. 2018;172(4):327–335. doi:10.1001/jamapediatrics.2017.5314

What We'll Cover Today

PULLMAN & COMLEY

- School Regulation of Student Cell Phones
- Off-Campus Speech and Student Discipline
- Student Cell Phone Search and Seizure
- Sexting
- Search and Seizure Tips for Administrators

School Regulation of Student Cell Phones

An Emerging Trend?

- Governor Lamont made news earlier this month by proposing that schools ban student use of cell phones during the school day.
- As of 2020, 77% of public schools nationally prohibited non-academic use of smartphones during school hours.
  - National Center for Education Statistics; available at: https://nces.ed.gov/programs/digest/d21/tables/dt21_233.50.asp
- Torrington and Manchester have enacted policies requiring students to lock phones in Yondr pouches during the school day.

School Regulation of Student Cell Phones

PULLMAN & COMLEY

- Can Connecticut public schools ban student use/possession of cell phones during the school day?

YES!

- Boards of education have the *general authority to enact policies and make rules for the management of schools* and the *express authority to restrict student possession and use of cell phones.*

- Students do not have a ***legal right*** to use or possess cell phones at school.
  - Possible exception where IEP or Section 504 plan specifically incorporates cell phone use.

School Regulation of Student Cell Phones

PULLMAN & COMLEY

- Conn. Gen. Stat. § 10-220(a):
  - *"Each local or regional board of education shall maintain good public elementary and secondary schools . . . [and] . . . shall provide an appropriate learning environment for all its students . . ."*

- Conn. Gen. Stat. § 10-221(b):
  - *"Boards of education shall prescribe rules for the management, studies, classification and discipline of the public schools . . ."*

School Regulation of Student Cell Phones

PULLMAN & COMLEY

- Conn. Gen. Stat. § 10-233j(b):

*"A local or regional board of education **may restrict the student possession or use of cellular mobile telephones in the schools under its jurisdiction.** In determining whether to restrict such possession or use, the local or regional board of education shall consider the special needs of parents and students."*

Student Cell Phone Policies

PULLMAN & COMLEY

- Schools have ***the legal authority*** to enact and enforce policies that:
  - Prohibit illegal and/or harassing/cyberbullying activity;
  - Prohibit accessing district networks for non-instructional purposes;
  - Prohibit the use of phones during instructional time;
  - Require students to disable phones/use Yondr pouches;
  - Authorize school officials to confiscate phones;
  - Require students to check phones at central office;
  - Impose disciplinary consequences for policy violations;
  - Prohibit students from bringing phones to school at all.

Legal Challenges to Student Cell Phone Policies

PULLMAN & COMLEY

- Price v. New York City Bd. of Educ., 51 A.D.3d 277 (2008):
  - New York City Public Schools' ban on student cell phones was a ***lawful educational policy decision*** and ***did not infringe on of parents' fundamental rights regarding the care, custody and control of their children*** since it was specific to the school setting.

- Koch v. Adams, 210 Ark. 131 (2010):
  - Arkansas school district ***did not engage in unconstitutional taking of property without due process of law*** when teacher took student's cell phone for improper use during class and district held cell phone ***for two weeks pursuant to district policy*** since student had no legal right to have cell phone while attending school and on school property.

The Obligation to Respond to Cell Phone Behavior

PULLMAN & COMLEY

- Increasingly school officials ***have the obligation*** to respond to student online/cell phone conduct.

- Different laws and enforcement agencies can come into play depending on the exact circumstances at issue. For example:

  - Bullying/School Climate, Conn. Gen. Stat. §10-222d, *et seq.*
  - Title IX of the Education Amendments Act of 1972 ("Title IX");
  - Title VI of the Civil Rights Act of 1964 ("Title VI").

- Student discipline may follow depending on investigation findings into these issues.

School Climate/Bullying

PULLMAN & COMLEY

- ***"Bullying"*** means an act that is direct or indirect and severe, persistent or pervasive, which:

  1. Causes physical or emotional harm to an individual,
  2. Places an individual in reasonable fear of physical or emotional harm, or
  3. Infringes on the rights or opportunities of ***an individual at school***.

- ***"Bullying" shall include***, but need not be limited to, a written, oral or ***electronic communication*** or physical act or gesture based on any actual or perceived differentiating characteristic . . .

  – NOTE: Expanded definitions of "bullying" and "challenging behaviors" effective no later than 2025-26 per Public Act 23-167

Title IX and Other Considerations

- Inappropriate material of a sexual nature on students' electronic devices can constitute evidence of gender harassment or a hostile educational environment. In such cases, the district is obligated to conduct a thorough investigation under Title IX.

- Similarly, if such material implicates race or national origin, the district would be required to investigate pursuant to Title VI.

Off-Campus Speech and Student Discipline

Student First Amendment Rights

PULLMAN & COMLEY

- What about the First Amendment rights of students?
  - ***Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.*** Tinker v. Des Moines Public Schools, 393 U.S. 503, 506 (1969).
  - On the other hand, the Court noted in Bethel v. Fraser, 478 U.S. 675, 682 (1986) that ***"the constitutional rights of students at public school are not automatically, coextensive with the rights of adults."***
  - ***Rather, the rights of students are applied "in light of the special characteristics of the school environment."*** Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 266 (1988).

Student First Amendment Rights

PULLMAN & COMLEY

- School districts may restrict the "free speech" rights of students in a more intrusive manner than in society as a whole.
  - Schools may prohibit the use of **vulgar, lewd, indecent, or plainly offensive speech**. Bethel v. Fraser, supra. (Also, illegal drug related speech –Morse v. Frederick, 551 U.S. 393 (2007)).
  - Schools may also restrict school-sponsored speech when the limitation is **reasonably related to legitimate educational concerns**. Hazelwood School Dist. v. Kuhlmeier, supra. For example, school sanctioned publications and activities.
  - Otherwise, school districts may prohibit student speech only if it causes a **substantial and material disruption** of the school's operation. Tinker v. Des Moines School Dist., supra

Mahanoy Area Sch. Dist. v. B. L., 141 S. Ct. 2038 (June 23, 2021)

PULLMAN & COMLEY

- In 2021 the U.S. Supreme Court decided a case addressing the tension between student off-campus use of social media and the right of school officials to regulate disruptive conduct.

Mahanoy Area Sch. Dist. v. B. L., 141 S. Ct. 2038 (June 23, 2021)

PULLMAN & COMLEY

- At the end of her freshman year, B. L. tried out for school varsity cheerleading team. She did not make the varsity team, but was offered a spot on the junior varsity team.

Mahanoy Area Sch. Dist. v. B. L., 141 S. Ct. 2038 (June 23, 2021)

PULLMAN & COMLEY

- Over the weekend, B. L. used her smartphone to post two photos on Snapchat.
  - First image showed B. L. and a friend with middle fingers raised; it bore the caption: ***"F*** school f*** softball f*** cheer f*** everything."***
  - Second image was blank but for a caption that read: ***"Love how me and [another student] get told we need a year of jv before we make varsity but tha[t] doesn't matter to anyone else?"*** The caption contained an upside-down smiley-face emoji.

Mahanoy Area Sch. Dist. v. B. L., 141 S. Ct. 2038 (June 23, 2021)

PULLMAN & COMLEY

- After discussions with the principal, the coaches decided that because the posts used profanity in connection with a school extracurricular activity, they violated team and school rules.

- The coaches suspended B. L. from the junior varsity cheerleading team for the upcoming year.

- The school's athletic director, principal, superintendent, and school board all affirmed B. L.'s suspension from the team.

Mahanoy Area Sch. Dist. v. B. L., 141 S. Ct. 2038 (June 23, 2021)

PULLMAN & COMLEY

- The Court held 8-1 that the school district's suspension of B. L. from the J.V. cheerleading team violated her First Amendment rights.

  – *"Given the many different kinds of off-campus speech, the different potential school-related and circumstance-specific justifications, and the differing extent to which those justifications may call for First Amendment leeway, we can, as a general matter, say little more than this:* ***Taken together, [for off-campus speech]] … the leeway the First Amendment grants to schools in light of their special characteristics is diminished.***

  – ***"We leave for future cases to decide where, when, and how these features mean the speaker's off-campus location will make the critical difference. But they do decide this case."***

Mahanoy Area Sch. Dist. v. B. L., 141 S. Ct. 2038 (June 23, 2021)

PULLMAN & COMLEY

- While finding that B. L.'s Fist Amendment rights were violated ***the Court acknowledged that the district had significant interests in regulating some off-campus conduct*** such as:
  - Serious or severe bullying or harassment targeting particular individuals;
  - Threats aimed at teachers or other students;
  - The failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and
  - Breaches of school security devices, including material maintained within school computers.
- **The Court did not find that B. L.'s comments were "obscene"** so as to lose First Amendment protection.

Mahanoy Area Sch. Dist. v. B. L., 141 S. Ct. 2038 (June 23, 2021)

PULLMAN & COMLEY

- The Court found no evidence in the record of a ***"substantial disruption" of a school activity*** or threatened harm to the rights of others that might justify action.

  – The record showed that discussion of the matter took 5 to 10 minutes of an Algebra class "for just a couple of days" and some members of the cheerleading team were "upset" about the content of B. L.'s Snapchats.

  – When one of B. L.'s coaches was asked directly if she had "any reason to think that this particular incident would disrupt class or school activities other than the fact that kids kept asking ... about it," she responded simply, "No".

Discipling Students for Off-Campus Conduct

PULLMAN & COMLEY

"For . . . school officials to justify prohibition of a particular expression of opinion, [they] must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."

Tinker v. Des Moines, 393 U.S. 503, 509 (1969)

Discipling Students for Off-Campus Conduct

PULLMAN & COMLEY

- Connecticut law permits (and at times requires) schools to discipline students for off-campus conduct that violates a publicized policy and is "***seriously disruptive of the educational process***."
- Per statute, factors indicating that conduct is ***"seriously disruptive of the educational process"*** include, but are not limited to:
  1. Whether the incident occurred in close proximity to school;
  2. Whether other students were involved or whether there was any gang involvement;
  3. Whether the conduct involved violence, threats of violence or the unlawful use of a weapon;
  4. Whether the conduct involved the use of alcohol.

Student Cell Phone Search and Seizure

The Starting Point…

PULLMAN & COMLEY

- Students do not "shed their constitutional rights . . . at the school house gate." Tinker v. Des Moines, 393 U.S. 503, 506 (1969).

- The Fourth Amendment of the U.S. Constitution provides:

  "The right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizes, shall not be violated. . ."

The Fourth Amendment

PULLMAN & COMLEY

- The Fourth Amendment protects people against ***unreasonable*** "searches" and "seizures" by "state actors."
- A "***search***" is an intrusion into an area in which the person has a reasonable expectation of privacy.
- A "***seizure***" is either a physical restriction on a person or interference with a person's ability to use their property.
- A "***state actor***" is a government official -- including school administrators!!
  - NOTE: Fourth Amendment protections do not apply to private schools since private school officials are not state actors.

Limits of the Fourth Amendment

PULLMAN & COMLEY

- The Fourth Amendment only applies to spaces where there is a ***reasonable expectation of privacy***. Items in plain view or abandoned in public areas are not subject to Fourth Amendment protections.
- Freely given ***consent*** removes Fourth Amendment concerns.
  - Consent cannot be coerced and the person giving consent must be capable of giving consent.
- ***Exigent circumstances*** require a different standard of reasonableness for a search or seizure. Law enforcement officers and school officials have greater leeway to act when faced with an emergency.

Search and Seizure Outside of the School Setting

- Typically, law enforcement searches require “probable cause.”
- The probable cause standard requires:
  - “Information sufficient to warrant a prudent person's belief that the wanted individual had committed a crime (for an arrest warrant) or that evidence of a crime or contraband would be found in a search (for a search warrant)."

New Jersey v. T.L.O.

PULLMAN & COMLEY

- Prior to 1985 it was unclear if or how the Fourth Amendment's protections against unreasonable search and seizure applied in the public-school setting.
- In New Jersey v. T.L.O., 469 U.S. 325 (1985), the U.S. Supreme Court determined that the Fourth Amendment does protect students in the school setting, but not in accordance with the probable cause standard.

New Jersey v. T.L.O.

PULLMAN & COMLEY

- T.L.O. was a fourteen-year-old freshman girl who attended a New Jersey high school.
- A teacher found T.L.O. and another girl smoking in the bathroom which was in violation of school rules.
- The girls were taken to the assistant principal's office for questioning.
- The first student admitted to smoking.
- T.L.O. denied smoking and the AP then demanded to see her purse.
- The AP searched her purse and found cigarettes as well as rolling papers.

New Jersey v. T.L.O.

PULLMAN & COMLEY

- Based on his awareness that rolling papers were associated with marijuana use, and based on his belief that a deeper search of the purse might yield evidence of drug use, the AP then conducted a thorough search of the purse.
- He then found marijuana, a marijuana pipe, empty plastic bags, a substantial amount of money in one-dollar bills, an index card with a list of students who apparently owed T.L.O. money and two letters implicating T.L.O. in drug-dealing.

New Jersey v. T.L.O.

PULLMAN & COMLEY

- The AP turned the evidence over to the police and notified T.L.O.'s mother.
- T.L.O. confessed and was criminally prosecuted in juvenile court.
- T.L.O. argued in juvenile court that the AP's search violated her Fourth Amendment rights and that the evidence found in her purse and her subsequent confession should be suppressed.

New Jersey v. T.L.O.

PULLMAN & COMLEY

- The U.S. Supreme Court found that the AP's search of T.L.O. ***did not violate*** the Fourth Amendment.

- However, the Court decided for the first time that the Fourth Amendment's prohibition on unreasonable searches and seizures applies to public school officials – but under a different standard than the probable cause standard.

New Jersey v. T.L.O.

PULLMAN & COMLEY

- According to the U.S. Supreme Court, reasonableness of a search in the school-context is based upon a two-prong test:

  1. Is the search ***justified at its inception***?

  2. Is the search ***reasonably related in scope*** to circumstances that justified the interference in the first place?

Applying the *T.L.O.* "Reasonable Suspicion" Standard

PULLMAN & COMLEY

- The two-part *T.L.O.* search test is known as the ***"reasonable suspicion"*** test.
- The Supreme Court in *T.L.O.* (and later cases) went to great lengths to emphasize the legitimate need of school officials to maintain a safe and orderly school environment.
- ***Courts try to balance the school's interest in maintaining safety and order versus age-appropriate student interests in maintaining privacy.***
- As a result, the reasonable suspicion standard is a lower standard than the probable cause standard applied to adults in the general community.

Justified at Inception

PULLMAN & COMLEY

- A search is "**justified at its inception**" when there are 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 or is in imminent danger.
- Factors that courts have found to justify a search at inception:
  - Tips from reliable sources;
  - Direct observations of suspicious activity;
  - Prior history of the same misconduct.
- Factors that courts have found **do not** justify a search at inception without other supporting facts:
  - A "hunch";
  - Student's status as a trouble-maker;
  - Student's mere association with another student.

Reasonable in Scope

PULLMAN & COMLEY

- A search is "reasonable in scope" when the search 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." T.L.O., at 346.

- The search must be ***proportional***.

- In 2009, the U.S. Supreme Court found that the strip-search of a thirteen-year-old student believed to be in possession of over-the-counter pain medication was not reasonable in scope given the intrusiveness of the strip-search. Safford Unified School Dist. No. 1 v. Redding, 557 U.S. 364, 371 (2009).

Reasonable in Scope

PULLMAN & COMLEY

- Searches that courts have found were **reasonable** in scope:
  - Search of locker upon reliable tip that student had gun and after search failing to find gun on student's person.
  - Search of pockets for cigarettes where student admitted to smoking.

- Searches that courts have found were **unreasonable** in scope:
  - Search of locker for drugs where teacher saw cigarette in student's hand.
  - Search of student's pockets after he was found in bleacher area where students sometimes used drugs without any other evidence.
  - Search of small side-pocket in purse during search for knife.

Cell Phone Searches

- Searches of student cell phones by school officials are governed by the same two-step *T.L.O.* reasonable suspicion standard:

1. Is the search justified at inception?
2. Is the search reasonable in scope?

Cell Phone Searches

- In 2014, the United States Supreme Court decided in Riley v. California, 573 U.S. 373 (2014) that police must first obtain a warrant to search the contents of a cell phone absent exigent circumstances.
- The Court emphasized that, because of the different kinds of data that can be stored on a cellphone, searching a cellphone could provide police with even more information about an individual's life than they could get from searching his or her home.

Cell Phone Searches

"Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans the privacies of life. The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought."

- *Riley v. California*, 573 U.S. 373, 403 (2014)

Cell Phone Search Case Studies – Case # 1

PULLMAN & COMLEY

- Rumors circulate that E.D.J., a twelfth-grade student, was gossiping about a M., a classmate.
- M. allegedly confronts and threatens E.D.J. after school.
- E.D.J. reports the threat to school officials.
- Assistant Principal and Principal interview student witnesses about the issue.
- Student witnesses report that E.D.J. was making fun of M. via text for not making the volleyball team.

Cell Phone Search Case Studies – Case # 1

PULLMAN & COMLEY

- Assistant Principal questions E.D.J. about whether she had been sending messages about M.
- E.D.J. denies the allegations.
- Assistant Principal directs E.D.J. to give him her phone and unlock it.
- Assistant Principal looks at text messages and directs E.D.J. to identify text recipients since certain names are just nicknames or emojis.
- Assistant Principal allegedly looks at text conversations between E.D.J. and her family and E.D.J, and her boyfriend.
- Assistant Principal determines E.D.J. did nothing wrong and concludes investigation.
- E.D.J. brings lawsuit alleging illegal search…

Cell Phone Search Case Studies – Case # 1

PULLMAN & COMLEY

- The court in Jackson v. McCurry, 762 Fed. Appx. 919 (11th Cir. 2019) held that the Assistant Principal's cell phone search was not clearly unlawful under the reasonable suspicion standard.

> ***"Nothing in T.L.O. establishes that searching a high-school senior's text messages for evidence of bullying would be 'excessively intrusive in light of the age and sex of the student and the nature of the infraction.' And although [Assistant Principal] allegedly expanded the search and reviewed messages between E.D.J. and persons other than A and B, including E.D.J.'s ex-boyfriend and family members, it is undisputed that E.D.J. labeled many of the contacts in her phone using emojis and nicknames. . . As a result, it is arguable that a reasonable school official could conclude that expanding the search to encompass those text messages would be 'reasonably related to the objectives of the search.'"***

Cell Phone Search Case Studies – Case # 2

PULLMAN & COMLEY

- Teacher overhears students discussing a picture of another student – W.J. -- wearing a trench coat with a gun and the caption – “Don’t come to school tomorrow” (the “Gun Meme”).
- Teacher reports conversation to Principal.
- Principal questions students who report they had not seen Gun Meme but heard about it.
- Principal questions W.J. who denies having any knowledge and consents to a search of his phone.
- W.J. tells Principal he had posted a picture of himself in a trench coat from the school play on Snapchat, but it had no gun caption.

Cell Phone Search Case Studies – Case # 2

PULLMAN & COMLEY

- Based on his interview of W.J., Principal believes two other students saved trench coat screenshot picture of W.J. from Snapchat and used it to create the Gun Meme.
- Principal interviews numerous students some of whom report that J.S. has been bullying W.J.
- Principal searches “camera roll” of J.S.’ phone and not Snapchat.
- Principal does not search texts, emails, or search history.
- Principal does not find Gun Meme, but finds meme pictures making fun of students including a number of memes making fun of W.J. by superimposing W.J.’s face on other pictures.
- The Gun Meme is never found but J.S. is given two-day in-school suspension for bullying W.J.
- J.S.’ family sues for alleged Fourth Amendment violation.

Cell Phone Search Case Studies – Case # 2

PULLMAN & COMLEY

- The court in Simpson, Next Friend of J.S. v. Tri-Valley Cmty. Unit Sch. Dist. No. 3, 470 F. Supp. 3d 863, 866 (C.D. Ill. 2020) found the Principal's search satisfied the reasonable suspicion standard.
  - Initial search of J.S.' phone ***was justified at its inception*** since Principal had reasonable suspicion of threat to safety and/or violation of school rules.
  - Search of camera roll, rather than Snapchat, ***was reasonable in scope*** because Principal reasonably believed that is where he would find Gun Meme and other memes directed at W.J.

Cell Phone Search Case Studies – Case # 3

PULLMAN & COMLEY

- Out-of-district high school student had extensive disciplinary history.
- He communicated with school officials on numerous occasions regarding his anger issues, off-campus use of drugs and depression.
- Student is caught texting in class in violation of cell phone policy.
- Assistant Principal searches through his text messages allegedly to see if there was an issue she could help him with.
- School district decided to terminate out-of-district placement.
- Student's family sued on multiple grounds including alleged violation of Fourth Amendment.

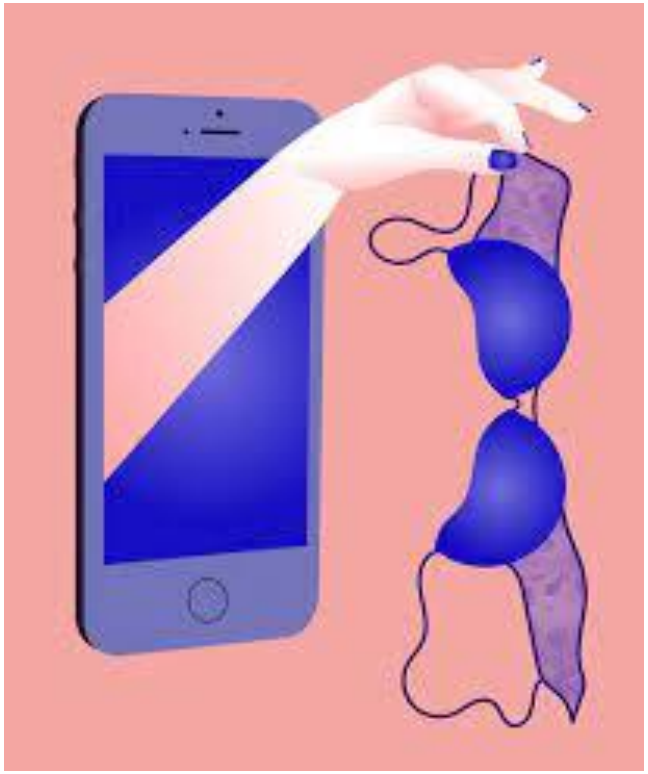
Cell Phone Search Case Studies – Case # 3

PULLMAN & COMLEY

- The court in G.C. v. Owensboro Pub. Sch., 711 F.3d 623 (6th Cir. 2013), ruled that the search was unconstitutional.
  - The search ***was not justified at inception*** because there were not reasonable grounds for believing that a search of the phone would turn up evidence of any improper activity or threat to safety.
  - The mere fact that student had a past history of disciplinary violations and drug and mental health issues was not sufficient to satisfy the T.L.O. reasonable suspicion standard at the inception of the cell phone search.

Sexting

Sexting



- The presence of sexually explicit images on an electronic device, including “sexting,” can be a minefield.
- “Sexting” is the dissemination of nude or sexually explicit photographs of oneself or someone else by using cell phones, internet instant messaging, Facebook or similar technology.

Sexting – Federal Law

PULLMAN & COMLEY

- 18 U.S.C. §2252 prohibits the production, distribution, reception, and possession of a sexually explicit image of a minor, which is defined as an individual under the age of eighteen.
- There is ***NO*** exception for teenage sexting. Thus, **teenage sexting could constitute a federal crime**.

Sexting – Connecticut Law

PULLMAN & COMLEY

- Under General Statutes § 53a-196h, it is a **Class A misdemeanor** for anyone **under eighteen years of age** to knowingly possess any visual depiction of child pornography which was knowingly and voluntarily transmitted by means of an electronic communication device and in which **the subject of such visual depiction is a person under sixteen years of age**.
- It is also a **Class A misdemeanor** for **someone who is under sixteen years** of age to knowingly and voluntarily transmit by means of an electronic communication device a visual depiction of child pornography **in which such person is the subject of such visual depiction to another person who is under eighteen years of age**.
- Punishable by up to one year in prison, a fine of up to $2,000, or both.

Handling Sexually Explicit Images of Minors

PULLMAN & COMLEY

- Keep in mind that sexually explicit images of minors have the potential to be to you what Green Kryptonite is to Superman.

Handling Sexually Explicit Images of Minors

PULLMAN & COMLEY

- Assess the evidence: Are the images sexually explicit and do they appear to involve minors? Do the images show potential sexual exploitation.
- This assessment need not be exhaustive. **In fact, do not engage in prolonged or repeated viewing!**
- If there is evidence of criminal misconduct on the devices, contact the School Resource Officer or otherwise involve the police.

Handling Sexually Explicit Images of Minors

PULLMAN & COMLEY

- Determine reporting obligations: Is it a matter that needs to be reported to DCF?
  1. It can be evidence of parental negligence and lack of supervision.
  2. It can be evidence of sexual exploitation and abuse.
  3. It can be evidence of **sexual harassment**.
- May constitute bullying.
- May constitute “harassment” and implicate Title VI and Title IX.
- May constitute a violation of a school rule and basis for discipline (suspension, expulsion).

Handling Sexually Explicit Images of Minors

PULLMAN & COMLEY

- **NEVER MAKE COPIES OR TRANSMIT SEXUALLY EXPLICIT IMAGES OF MINORS/STUDENTS.**
- Do **NOT** take screen shots of the images.
- Do **NOT** download them to the school server or transfer them to your own device.
- Do **NOT** destroy the images.
- Do **NOT** spend an inordinate amount of time studying them.

Handling Sexually Explicit Images of Minors

PULLMAN & COMLEY

- Seeking to preserve evidence for a subsequent student expulsion hearing is **NOT** a justification for making a copy of or printing the sexually explicit images.
- In fact, sharing such images with Board members at a hearing could be deemed the **distribution of child pornography** and expose the Administrator and the Board members to criminal liability.
- At such a hearing, the Administrator's testimony regarding the images is sufficient.
  - Consider making written record describing what you observed and how you observed it.

Search and Seizure Tips for Administrators

Before the Search

PULLMAN & COMLEY

- Board policies and student handbooks should clearly indicate that students should not have an expectation of privacy in lockers, desks and district-provided devices or accounts (Chromebooks, etc.).
  - Ensure annual notice to students/parents.
- Have clear understanding of respective roles of administrators versus SROs in the search and seizure process. Will SRO be responsible for:
  - Searches when there is suspicion of weapons or drugs?
  - Seizure of drugs, weapons and other contraband?
  - Strip-searches?
- Be familiar with the reasonable suspicion standard. A search needs to be based on something more than a "hunch."

During the Search

PULLMAN & COMLEY

- Have at least two administrators present for all student searches.
- ***Ask for consent to search***. Consent must be knowing and non-coerced.
  - Stating that refusal to consent to search will result in automatic discipline may be viewed as coercion.
  - Young children, certain SPED/504 students and students believed to be under the influence of drugs or alcohol may not be capable of giving knowing consent.
  - School privileges (i.e. ability to drive/park at school) can be revoked for failing to consent.
- ***If consent is not given or cannot be freely given, determine if there is still reasonable suspicion for the search.*** Consider obtaining parental consent.

After the Search

PULLMAN & COMLEY

- Document your efforts -- *who, what, where, why, when and how*…
  - Identify the basis for reasonable suspicion;
  - Was consent given?
- Consult with central office administration on disciplinary response as necessary.
- Ensure “seized” items are properly turned over to law enforcement or returned to parent/student at conclusion of investigation.
- Remember mandatory reporting obligations to DCF.

Questions?????

Contact Information

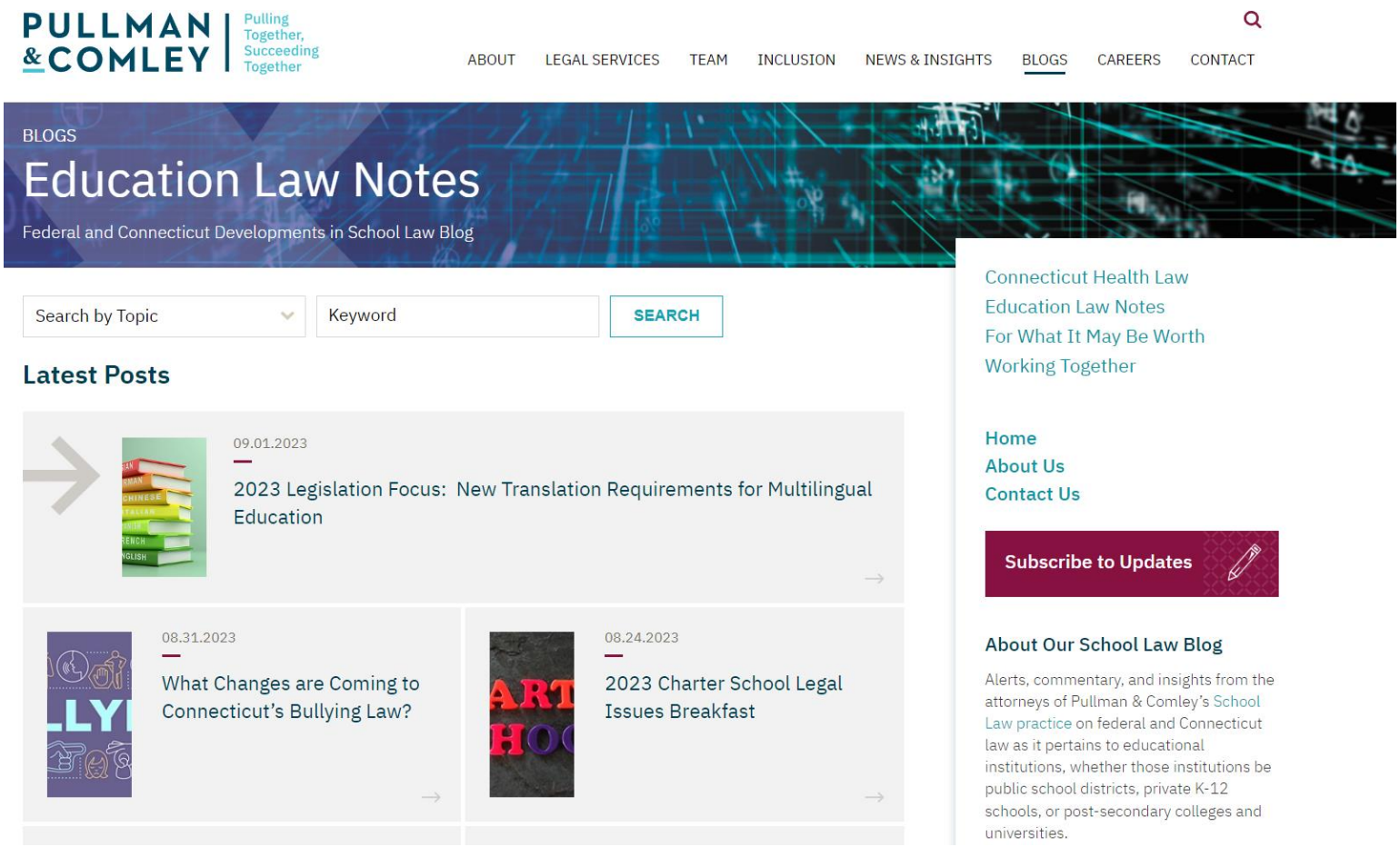
Zachary D. Schurin
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103-3702
Tel: 860.424.4389
Fax: 860.424.4370
Email: zschurin@pullcom.com

Pullman & Comley LLC's School Law Training Workshops

- Diversity and Inclusion in Employment Training
- Sexual Harassment Prevention and Anti-Discrimination Training in Employment
- Title IX Sexual Harassment Prevention Training
- Leave Issues: ADA, FMLA, Workers' Compensation, Paid Sick Leave
- The ADA/Connecticut Fair Employment Practices Act Interactive Process
- Employee Discipline and Teacher Non-Renewal and Termination
- "Dos and Don'ts" of Hiring, Including Background Checks, Public Act 16-67 and "Fair Chance" Legislation
- Social Media and the Workplace
- Workplace Investigations
- FERPA and Other Student Privacy Issues
- Special Education and Section 504
- Student Misconduct Investigations
- Anti-Bullying
- DCF Mandated Reporter Training
- Freedom of Information Act
- School Board Member Role and Responsibilities

Education Law Notes Blog

https://www.pullcom.com/education-law-notes



PULLMAN &COMLEY

These slides are intended for educational and informational purposes only. Readers are advised to seek appropriate professional consultation before acting on any matters in this update. These slides may be considered attorney advertising. Prior results do not guarantee a similar outcome.