# LEGAL MAILBAG – NOVEMBER 12, 2026



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*The "Legal Mailbag Question of the Week" is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors.*
*Please submit your questions to: legalmailbag@casciac.org.*

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Dear Legal Mailbag,

Decreasing chronic absenteeism and tardiness is one of my personal goals this year. It's so important to me that I've asked each teacher in my building to identify specific action plans to address this issue All action steps will be included in our annual Improvement Plan. The plan will be posted on our website so everyone knows the expectations.

Since we have a rotating schedule, our attendance committee had a really great idea to ensure students get to class on time before the morning bell rings. The teachers instituted a policy that students must turn over their cell phone if they are ever late, regardless of the excuse. The teachers feel that this will motivate kids to get to school on time. I have to say, I agree.

That said, an AP Government teacher, who also happens to be the president of the local ACLU chapter, has objected to this plan. He told me that we might be violating the 4th Amendment. He said some bologna like, "you can't confiscate a student's personal property without due process." Is he crazy? What ever happened to "In loco parentis?" We need to get these brats to school on time and off those dang phones! Am I going to end up before the Second Circuit?

Signed,
*Courting a Claim*

Dear Courting:

What an interesting idea! It is too bad that Legal Mailbag has serious reservations about this plan. To be sure, grabbing cell phones from students who are late would likely be effective in getting them to class on time. However, a cattle prod would work too! The question is not whether the measure would be effective, but rather whether it would be legal.

You correctly refer to the *in loco parentis* doctrine, *i.e.*, teachers and administrators stand in the place of parents when students are in school under their care and supervision. That doctrine gives teachers and administrators authority to direct student conduct in school (*e.g.,* "sit down," "be quiet," "open your textbooks"). But teachers and administrators are also agents of the government, and as such they are constrained by the Bill of Rights, including the Fourth Amendment Right to be free from unreasonable searches and seizure.

The Fourth Amendment provides in relevant part:

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

As much as Legal Mailbag would like to bless this plan, Legal Mailbag is concerned that taking a student's cell phone simply because the student is late would be considered an unreasonable seizure. A key element in the analysis is the fact that there is no connection between the concern (tardiness) and the student's cell phone. The *in loco parentis* doctrine permits school officials to seize cell phones from students when such action is necessary to enforce a school rule governing cell phone use. Here, however, seizing a student's cell phone would not be related to its use, but rather it would be intended to operate as a penalty. Given that fact, Legal Mailbag is concerned that a court on review would hold that the seizure of the cell phone in that situation would be "unreasonable."

Not wanting to pile on, Legal Mailbag does have an additional concern – that one may claim that such action would be *ultra vires*, *i.e.*, outside the limits of authority of school officials. One could characterize such action (seizing the cell phone of a tardy student) as a disciplinary action and then further argue that such disciplinary action is unauthorized. The statutes authorize the following disciplinary actions involving students: removal, in-school suspension, out-of-school suspension, and expulsion. Seizing a student's cell phone as a disciplinary action could result in such a claim. Legal Mailbag hopes that you do not end up at the Second Circuit to find out.

In closing, Legal Mailbag emphasizes that these concerns are limited to the specifics of the particular plan you describe and that the *in loco parentis* remains a vital principle in the school setting. In one case, for example, a parent claimed that school officials engaged in an illegal "seizure" in violation of the Fourth Amendment when they detained her child in the office for

questioning. The court rejected that claim, ruling that the school district's actions were permissible. In so doing, the court offered the following wise observation:

> School officials must have the leeway to maintain order on school premises and secure a safe environment in which learning can flourish. Over-constitutionalizing disciplinary procedures can undermine educators' ability to best attain these goals. Imposing a rigid duty of parental notification or a per se rule against detentions of a specified duration would eviscerate the ability of administrators to meet the remedial exigencies of the moment. The Constitution does not require such a result.

*Wofford v. Evans*, 390 F.3d 318 (4th Cir. 2004).

Please take heart from these words, and best wishes in coming up with a different plan.