
The Eleventh Circuit Court of Appeals: Some Student Cell Phone Searches do not Violate Clearly Established Law

By Amy L. Wesaw / Apr 08, 2019

The Eleventh Circuit Court of Appeals recently confirmed school officials' governmental immunity in a Fourth Amendment challenge to a search of one high school student's cell phone. In *Jackson v. McCurry*, No. 18-10231 (11th Cir. Mar. 12, 2019) a high school senior was accused of bullying another student in violation of the school's rules against "bullying and rude or disrespectful behavior towards other students." School officials conducted an investigation and received corroborating testimony from two other peers who claimed the accused sent text messages disparaging the victim. Subsequently, the Assistant Principal searched the accused's text messages over her objection. This search exceeded the scope of the investigation. According to the Assistant Principal, the search expanded to unrelated contacts because of the obscure contact title saved to the phone and the reality that she "could label her contacts in any manner she chose." Ultimately, the search produced no evidence and the accused was cleared of misconduct. The accused's parents filed a Civil Rights Complaint (42 U.S.C. § 1983) against school officials, including the Assistant Principal's search.

The Eleventh Circuit determined the Assistant Principal had qualified immunity because he was acting within his "discretionary capacity" when conducting the search. In order to overcome a case dismissal based on that immunity, the parents had to prove both (i) the Assistant Principal violated the accused's constitutional rights and (ii) the constitutional rights were clearly established at the time of the search.

The Court found that no obvious Constitutional violation occurred. A search of students' property is appropriate based on a reasonableness standard which requires "justification at its inception" and refined to a scope related to the justification. Further, the search was not "excessively intrusive in light of [her] age and sex. . . and the nature of the infraction."

In this case, the search was reasonable because: the alleged conduct was against school policy; students corroborated that the conduct included text messages; and, the search was limited to her text messages. Moreover, the text messages were searched in order to collect potential evidence confirming the allegation. Lastly, the Court declined to extend a search warrant requirement to cell phone searches conducted in school environments.

This decision offers important framework for schools conducting investigations that include cell phone searches or other forms of electronic personal effects. However, school officials should be mindful of legislation which can affect these searches. In Michigan for instance, school districts cannot penalize a student for his or her "failure to grant access to, allow observation of, or disclose information that allows access to or observation of the student's. . . personal internet account", such as the failure to provide an electronic device's access passcode. MCL 37.274.

The Court's primary analysis of two precedential U.S. Supreme Court cases provides persuasive authority for federal circuits. If you have any questions about the *McCurry* decision, please contact your Clark Hill attorney.