

STUDENT RIGHTS AND RESPONSIBILITIES
INTERROGATIONS AND SEARCHES

FLC
(LEGAL)

Students have a right to be free from unreasonable searches and seizures while on college district premises. *U.S. Const. Amend. IV; Tex. Const. Art. I, Section 9; New Jersey v. T.L.O., 469 U.S. 325 (1985)*

Generally

Searches
Conducted by
College District
Officials

When a search is conducted by a college district employee, a reasonable suspicion standard is applied to the search. Reasonable cause exists if the student is suspected of violating a rule, and it is believed that the search will uncover evidence of the suspected violation. The reasonableness of any search involves a determination of whether the search was justified at its inception, and whether, as conducted, the search was reasonably related in scope to the circumstances that justified the interference in the first place. *Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995); New Jersey v. T.L.O., 469 U.S. 325 (1985); Porter v. Ascension Parish Sch. Bd., 393 F.3d 608 (5th Cir. 2004)*

Searches
Conducted by Law
Enforcement

Generally, when law enforcement officials conduct a search, they must have probable cause to believe that the subject of the search has violated or is violating the law. However, in some circumstances, courts may apply a different standard to a college district search in which a law enforcement official is involved. *New Jersey v. T.L.O., 469 U.S. 325 (1985)*

Student Consent

An individual may waive his rights under the Fourth Amendment by consenting to a search. *Grubbs v. State, 177 S.W.3d 313 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd)*

**Searches of Dorm
Rooms**

A student who occupies a college dormitory room has the same expectation of privacy as any adult has in the privacy of that person's home and therefore enjoys the protection of the Fourth Amendment. An institution of higher education, including a college district, retains broad supervisory powers, which permit it to adopt a regulation that applies to college district housing, provided that regulation is reasonably construed and is limited in its application to further the institution's function as an educational institution. The regulation cannot be construed or applied so as to give consent to a search for evidence for the primary purpose of a criminal prosecution. *Piazzola v. Watkins, 442 F.2d 284 (5th Cir. 1971), Grubbs v. State, 177 S.W.3d 313 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd)*

**Searches of Tele-
communications /
Electronic Devices**

Stored
Communications
Act

A person is prohibited from obtaining, altering, or preventing authorized access to a wire or electronic communication while it is in electronic storage by:

1. Intentionally accessing without authorization a facility through which an electronic communication service is provided; or

STUDENT RIGHTS AND RESPONSIBILITIES
INTERROGATIONS AND SEARCHES

FLC
(LEGAL)

2. Intentionally exceeding an authorization to access that facility.

Exceptions

This section does not apply with respect to conduct authorized:

1. By the person or entity providing a wire or electronic communications service;
2. By a user of that service with respect to a communication of or intended for that user; or
3. By sections 18 U.S.C. 2703, 2704, or 2518.

18 U.S.C. 2701(a), (c)

“Electronic Communication”

“Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects interstate or foreign commerce. *18 U.S.C. 2510(12)*

“Electronic Storage”

“Electronic storage” means:

1. Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
2. Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

18 U.S.C. 2510(17)

Messages that have been sent to a person, but not yet opened, are in temporary, intermediate storage and are considered to be in electronic storage. See *Steve Jackson Games, Inc. v. United States Secret Service*, 36 F.3d 457 (5th Cir. 1994)

By Law
Enforcement

A peace officer may not search a person's cellular telephone or other wireless communications device, pursuant to a lawful arrest of the person without obtaining a warrant under Code of Criminal Procedure 18.0215.

Notwithstanding any other law, a peace officer may search a cellular telephone or other wireless communications device without a warrant if:

1. The owner or possessor of the telephone or device consents to the search;
2. The telephone or device is reported stolen by the owner or possessor; or
3. The officer reasonably believes that:

STUDENT RIGHTS AND RESPONSIBILITIES
INTERROGATIONS AND SEARCHES

FLC
(LEGAL)

- a. The telephone or device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense; or
- b. There exists an immediate life-threatening situation, as defined by Code of Criminal Procedure 18A.201.

Code Crim. Proc. 18.0215(a), (d)