

## SCHOOL HOUSE GATES: PLEASE REMOVE YOUR RIGHTS

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### I. INTRODUCTION

Violence in schools and among youths is an issue of great concern. School shootings have rocked the headlines of newspapers and are featured as the breaking story on television news programs at an alarming rate.<sup>1</sup> Accordingly, Congress has responded with legislation such as the “Gun-Free School Act.”<sup>2</sup> Schools also responded by initiating policies such as “Zero-Tolerance,” intended to deter violence from occurring on school grounds.<sup>3</sup> Courts too have followed suit by giving schools increasing power in exchange for students’ rights.<sup>4</sup> Oregon is no stranger to both these issues—

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1. See, e.g., Daniel Beekman & Jack Broom, *Marysville Shooting Victims Remain in Intensive Care*, SEATTLE TIMES, Oct. 25, 2014, [http://seattletimes.com/html/localnews/2024873645\\_marysvillemainxml.html](http://seattletimes.com/html/localnews/2024873645_marysvillemainxml.html).

2. Nirvi Shah & Michele McNeil, *Discipline Policies Squeezed as Views on What Works*, 16 EDUC. WK. no. 16, 2013, at 4.

3. *Id.*

4. See, e.g., *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (holding that the Fourth

violence in schools and the strategies taken to combat it.

The town of Springfield, Oregon made national news on May 21, 1998 when fifteen-year-old Kipland Kinkle shot and killed both of his parents, and then proceeded to school where he again opened fire.<sup>5</sup> Kinkle walked into the cafeteria and began firing, killing one student and wounding twenty-three others before being subdued by fellow classmates.<sup>6</sup> Oregon more recently made



While public school officials' actions are actions of the state, the courts have continually held that it is different from actions by police officers.<sup>20</sup> Courts reason that this is so because school officials' actions' outcomes do not necessarily implicate criminal proceedings.<sup>21</sup> Courts also reason that schools have special interests in maintaining order and discipline so as to effectuate the educational process.<sup>22</sup> Furthermore, schools have the power and duty to "inculcate the habits and manners of civility."<sup>23</sup> These interests often result in courts shrinking students' constitutional rights while in school.<sup>24</sup> At odds with this idea, however, are the compulsory laws that require children to attend school. While the courts recognize this tension, the United States Supreme Court reconciles it by stating that:

Traditionally at common law, and still today unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, *i.e.*, the right to come and go at will. They are subject, even as to their physical freedom to the control of their parents or guardians.<sup>25</sup>

Thus, minors do not enjoy all fundamental rights as adults, and therefore, they have a lower expectation of privacy and self-

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school setting constitutes a special need making the "warrant and probable-cause requirement impractical").

20. *See, e.g.a*



associated with the use of marijuana, the school official searched her purse more thoroughly and discovered marijuana, a pipe, and a list of students who owed her money, among other items that implicated her in dealing drugs.<sup>32</sup> The assistant vice principal then notified the police, turned over the evidence of drug dealing to them, and informed the student's mother.<sup>33</sup>

In holding that the Fourth Amendment protections extend to students, so as to be free from unreasonable search and seizure by school officials, the court noted the special role of schools—that “[t]eachers and school administrators . . . act *in loco parentis* in their dealings with students[.]”<sup>34</sup> The Court, however, rejected this idea and stated that public school officials are not exercising “authority voluntarily conferred on them by individual parents; rather, they act in furtherance of publicly mandated educational and disciplinary policies,” for example, by virtue of compulsory laws.<sup>35</sup> However, noting the legitimate interests of the school in maintaining an environment in which learning can take place, the Court held schools need only meet a reasonableness standard, whereas police require probable cause.<sup>36</sup> That is, at the inception of the search there must be “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.”<sup>37</sup> Therefore, the Court found the search of the student's purse to be reasonable, shrinking the constitutional protection of students once at school.<sup>38</sup>

In another Supreme Court decision, the random drug testing of students participating in extracurricular activities was found to be constitutional under the Fourth Amendment.<sup>39</sup> Like the decision in *T.L.O.*, the Supreme Court further circumscribed students' right to privacy and protections against search and seizure in

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at the “pit attempting to sell marijuana.” The school official also knew students often used drugs at the “pit.” Reasoning these facts were specific and articulable, that those facts “would lead a reasonable person to suspect that [the student] was in possession of illegal drugs,” and that the student’s attempt to sell the drugs earlier that morning “created an immediate risk of harm to [the student] and to other students at the school,” the court held it was reasonable for the school official to reach into the student’s inner jacket pocket and remove a bag.<sup>57</sup> Therefore, the precautions taken by the school officials were reasonable, not overly intrusive, and did not violate the Oregon Constitution’s protection from unreasonable search and seizure.<sup>58</sup>

More recently the court has expanded this exception. In *State v. A.J.C.*, a student had called and threatened V, another student at his school.<sup>59</sup> The student told V he was going to bring a gun and shoot her and other students.<sup>60</sup> The next morning, when V ar694 iat hud.1(60)Tjl( th)11.24(o)11.2(t)7.93(t

found bullets and, in a separate compartment, a handgun.<sup>68</sup>

At trial, the student moved to suppress the evidence found during the warrantless search of his backpack as it violated his rights under article I, section nine of the Oregon Constitution.<sup>69</sup> The State argued that the search fell within the “school-safety exception” and was therefore reasonable.<sup>70</sup> The student argued that the school-safety exception should not apply because the imminent risk of harm no

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to reduce school violence is by changing this type of environment.<sup>83</sup>  
This requires creating a supportive climate fostering respect among  
peers as well as adults.<sup>84</sup>

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aggression against school property, peers, and authorities.”<sup>94</sup> The public knows about this type of school-wide policy as “zero-tolerance” or by its euphemism—to “get-tough” on crime.

## VII. SCHOOL POLICIES

Schools began to embrace a policy of zero tolerance after the







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removed “mandatory expulsion requirements from the state’s school discipline statute[,]” returning discretionary control to school administrators and doing away with “zero tolerance.”<sup>132</sup> Although police are still present in Oregon schools, this is a step in the right direction. Conversely, however, Oregon courts have reinforced this very type of get-tough policy in schools through judicially created school exceptions to students’ constitutional rights.<sup>133</sup>

#### IX. IT DOESN’T ADD UP

The most damaging assumption made by the Supreme Court in *New Jersey v. T.L.O.* was that students do not need all the protections guaranteed by the United States Constitution because school actions do not necessarily implicate criminal repercussions. This proposition is wholly inaccurate. As we have seen, more and more police are being stationed at and in schools. More students are being referred to the juvenile justice system for minor infractions, infractions that previously would have been dealt with internally or with a phone call to the parents. This increase is despite the overall decrease in juvenile criminal activity. The Oregon decision in *State v. A.J.C.* is sure to continue this trend, as well as increase student hostility. This is especially likely considering the amount of searches not resulting in the discovery of contraband, but it is nonetheless lawful under in eces2Td[.7(oN )]onlte

places (home being the other) where students learn to respect rules and basic codes of civility. We want students to trust adults and respect rules, but when they do not feel respected themselves, they will likely act out against them.

Finally, keeping kids in school is good policy. Students who are present in school perform better and are more likely to become productive members of society once they graduate. The legal assumption of students' lowered expectation of privacy, coupled with the increase presence of police in schools has resulted in a flood of students funneling through the school-to-prison pipeline. This pipeline is pulling kids out of school and placing them in the juvenile justice system. This results in lowering students' achievement, lowering graduation rates, and reducing employment opportunities in the future. Furthermore, it increases the likelihood of reoffending. Despite its goals, it has the opposite effect on school safety.

#### X. BETTER POLICY

So what do we do? The first step is to stop the fear mongering created by the media. Despite lower levels of school violence, media coverage has increased, resulting in public outcry for action and harsh responses instead of thoughtful and effective approaches. The second step is for school officials to not be so quick to involve law enforcement. Schools need to develop policies that foster inclusion instead of exclusion and focus on building relationships with students so as to get at the root of the problem instead of surface level reactionary solutions. Third, courts should look past the not so accurate assumptions made by previous holdings and consider the intimate relationship between law enforcement and schools moving forward. The lowered expectation of privacy should reflect the courts reasons and be applied when there are no automatic legal ramifications or, in situations where there are legal ramifications, students should have the same protections as they have when outside of school. Finally, in light of stare decisis, the legislature should further policies that reflect what we know works in child development and the rights and responsibilities of citizenship. In short, schools, legislators, and courts need to determine what our priority is when dealing with deviant school behavior. Our priority should be to teach kids how to interact with the greater world, not to imprison them.