

**SEARCH AND SEIZURE AND OTHER
DISCIPLINARY ISSUES**

NEW JERSEY SCHOOL BOARDS ASSOCIATION
SPRING LAW FORUM
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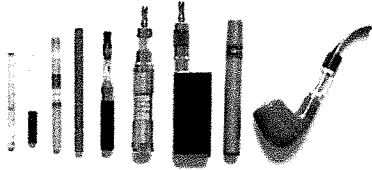
**THE OBJECTIVES OF TODAY'S
PRESENTATION**

- To understand the concern about student use of e-cigarettes.
- To understand what are the recommended guidelines for searching and/or confiscating students' cell phones and smoking paraphernalia .
- To demonstrate the need for clear policies on how district staff will handle suspected violations.

**5 TOP EXTRAORDINARY FACTS
ABOUT E-CIGARETTES**

▪ [HTTPS://WWW.YOUTUBE.COM/WATCH?V=LZPQWROCRKQ](https://www.youtube.com/watch?v=LZPQWROCRKQ)

WHAT ARE E-CIGARETTES?



E-CIGARETTES ARE:

- A.K.A. VAPES, VAPORIZERS, VAPE PENS, HOOKAH PENS, ELECTRONIC CIGARETTES AND E-PIPES, COLLECTIVELY "ELECTRONIC NICOTINE DELIVERY SYSTEMS"
- NON-COMBUSTIBLE TOBACCO PRODUCTS
- USE E-LIQUID THAT MAY CONTAIN NICOTINE, FLAVORINGS, PROPYLENE GLYCOL, VEGETABLE GLYCERIN, ETC. THE LIQUID IS HEATED BY BATTERY INTO AN AEROSOL THAT THE USER INHALES.
- MANY DEVICES DO NOT RESEMBLE CIGARETTES

STATISTICS

- **More than 2M** middle and high schoolers reported being current users in 2016
- **11%** of high schoolers and **4.3%** of middle schoolers were users in 2016.
- **From 2011-2015**, E-cigarettes rose in popularity from **1.5% to 16%** among high schoolers and **0.6% to 5%** among middle schoolers.

FOURTH AMENDMENT OF US CONSTITUTION

•“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizure, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the persons or the things to be seized.”

SEARCHES ARE PERMITTED

- Lockers – as long as students are informed in writing at the beginning of each school year. *N.J.S.A. 18A:36-19.2*
- Random drug testing of high school athletes and students with school parking permits – *N.J.S.A. 18A:40A-22*
- Any student suspected of being under the influence of a drug. *N.J.S.A. 18A:35-4.8; 18A:40-4.1*

N.J.S.A. 18A:40A-12:

- “Whenever it shall appear to any teaching staff member, a school nurse or other educational personnel of any public school in this State that a pupil may be **under the influence of substances** as defined pursuant to 18A:40-9, . . . other than anabolic steroids, that teaching staff member, school nurse, or other educational personnel shall report the matter as soon as possible to the school nurse or medical inspector, or student assistance coordinator AND the principal/designee.”

QUESTION: HOW WILL STAFF KNOW?

- Under *N.J.S.A. 18A:40A-9*, “substance” includes any chemical or chemical compound “which releases vapors or fumes causing a condition of **intoxication, inebriation, excitement, stupefaction or dulling of the brain** or nervous system including, but not limited to glue containing a solvent having the property of releasing toxic vapors or fumes. . . .”
- But what if the student does not exhibit this behavior?

RELEVANT LAWS:

- *N.J.S.A. 2A:170-51.1-6* MAKES IT ILLEGAL TO SELL/DISTRIBUTE ELECTRONIC SMOKING DEVICES TO ANYONE UNDER 19, AND SELLING FLAVORED CIGARETTES
- *N.J.S.A. 2C:33-13.1* MAKES SELLING CIGARETTE OR ELECTRONIC SMOKING DEVICE TO PERSONS UNDER 19 A PETTY DISORDERLY PERSONS OFFENCE SUBJECT TO \$250 FINE

SO, POSSESSION OF EDS IS ILLEGAL FOR STUDENTS, . . .

And the device can be confiscated, but is a search warranted if the student is NOT exhibiting suspicious behavior?



STANDARDS FOR VALID SEARCH:

- Must be based upon reasonable individualized suspicion
- Reasonable =
 - Search must be justified at its inception
 - Reasonably related in scope to the circumstances that justified the interference in the first place.

THEREFORE . . .

- If Districts can search a student's purse for cigarettes and paraphernalia based on reasonable suspicion, they should also be able to search for e-cigarettes as long as they have sufficient reasonable grounds to conduct the search and the search is limited to areas that might contain the illegal products.

STANDARD (CONT'D)

- Methods adopted are not excessively intrusive in light of the student's age, sex and nature of the infraction.
 - School children have legitimate expectation of privacy while at school but that must be balanced against the needs of school authorities to maintain an educational environment.
- N.J. V. T.L.O., 469 U.S. 325 (1985)

CELL PHONES

CAN A CELL PHONE BE CONFISCATED AND READ BY SCHOOL OFFICIALS?

SAME ANALYSIS APPLIES TO CELL PHONES – REASONABLE SUSPICION STANDARD



CONCLUSION

- The use of ANY EDS on school grounds is prohibited by law. Thus, school personnel may confiscate and follow code of conduct; may call police.
- If student is exhibiting suspicious behavior (i.e. possibly under the influence of controlled dangerous substance), school personnel may conduct search.
- Sending student for medical evaluation solely based upon possession of EDS without it appearing the student is under the influence/reasonable suspicion that EDS contains or may have contained a controlled substance may expose the district to a challenge.

CONCLUSION (CONT'D)

SCHOOL STAFF NEED TRAINING TO HELP THEM IDENTIFY CONTROLLED DANGEROUS SUBSTANCES IN EDS.

CELL PHONES MAY BE CONFISCATED AND SEARCHED PROVIDED THERE IS REASONABLE SUSPICION.