

**ADDRESSING STUDENT CELL PHONE
SEARCHES CONDUCTED BY SCHOOL
OFFICIALS IN NORTH CAROLINA:
WILSON COUNTY SCHOOLS POLICY 4342***

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INTRODUCTION

At the start of every school year, students are reminded of the importance of adhering to school rules. For many students who have sat through these sessions year after year, this edification process may be shrugged off and even feel more ritualistic than regulatory. If the most puritanical of them have not violated a rule against horseplay, profane language, or some other petty act,¹ they almost certainly know a classmate who has. Perhaps they had to make an embarrassing phone call to a parent to explain that they would need to be picked up late from detention or were required to spend an afternoon in in-school suspension, or maybe the fortunate among them got away with violating the rule. Students are familiar with the common consequences of violating a school rule and they may adjust their behavior and conduct accordingly.

However, the disciplinary process may not be so readily imagined and open-and-shut in every case. In some situations, school authorities may determine that it is in the interest of safety and general welfare to search certain personal effects of a student believed to be in violation of a school rule.² If such a search of a student's person, automobile, or cell phone leads to the discovery of illegal materials, what began as a search on suspicion of jocular hallway horseplay before first period may lead to criminal charges.³ For many others, such a cell phone search would yield no illegal materials but may very well result in extreme embarrassment and a profoundly uncomfortable invasion of their personal privacy.

North Carolina law allows for school officials to search students and their belongings on grounds of reasonable suspicion of a violation of a school rule, while law enforcement officers are limited to acting on probable cause of criminal conduct.⁴ When a search of a student cell

1. *Policy Code: 4300D Consequences for Violation*, WILSON CNTY. SCHS. (2023), https://boardpolicyonline.com/bl/?b=wilson_new#&&hs=623199 (listing “minor infractions” that constitute prohibited conduct that may be punished by school officials).

2. *Policy Code: 4342 Student Searches*, WILSON CNTY. SCHS. (2021), https://boardpolicyonline.com/bl/?b=wilson_new#&&hs=436412.

3. *Id.* (explaining that illegal materials “shall be turned over immediately to proper legal authorities for ultimate disposition.”).

4. *See New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (holding that the legality of a search of a student should not depend on the standard requirement that searches be based on

phone for violation of a school rule may result in an extreme unrelated invasion of privacy or embroil students or their families in unrelated legal trouble, it is important to critically consider the reasonableness standard and possible avenues for redress by students, parents, school boards, and North Carolina courts. This recent development proceeds by analyzing education law generally in North Carolina, a decision by the Wilson County Board of Education to allow searches of student cell phones, and then the intersection of education law and Fourth Amendment law to understand whether cell phone searches are legal in North Carolina. It will close by evaluating possible avenues to prevent invasions of privacy and potential unjust negative externalities of such searches.

I. THE NORTH CAROLINA CONSTITUTION AND EDUCATION LAW

It is important to consider education law in North Carolina generally, before considering schools and students in the context of searches and seizures, to understand the state's duty to provide an education and how policies such as the one at issue here may infringe upon that duty. The North Carolina Constitution establishes in Article I, Section 15 that “[t]he people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right,”⁵ and in Article IX, Section 1 that “the means of education shall forever be encouraged.”⁶ Specifically, the state constitution calls for the General Assembly to provide a “system of free public schools . . . wherein equal opportunities shall be provided to all students.”⁷

probable cause of violation of the law but on reasonableness under all the circumstances of the search); *In re Murray*, 136 N.C. App. 648, 652–53, 525 S.E.2d 496, 499–500 (2000) (holding that common-sense conclusions rather than probable cause is the type of information that school officials as “practical people”—including government officials—are entitled to rely” on in the context of in-school student searches in North Carolina).

5. N.C. CONST. art. I, § 15.

6. *Id.* art. IX, § 1.

7. *Id.* art. IX, § 2.

A. The Right to Sound Basic Education

In North Carolina, the people's right to an education features a requisite standard.⁸ In its widely discussed *Leandro v. State*⁹ decision, the North Carolina Supreme Court held that "the right to education provided in the state constitution is a right to a sound basic education."¹⁰ The Court went on to explain that an education which fails to prepare students to participate and compete in society is one that is inadequate.¹¹ A "sound basic education" at least provides a student:

(1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.¹²

B. The State's Burden: How Can Citizens Enforce the Right to Sound Basic Education?

Where a county, as a subdivision of the state, hinders a student's opportunity to receive a sound basic education, the state has the burden

8. See *Leandro v. State*, 346 N.C. 336, 347, 488 S.E.2d 249, 254 (1997) (holding that the state constitution guarantees every child the right to receive a sound basic education).

9. See *Leandro v. State*, 346 N.C. 336, 488 S.E.2d 249 (1997)

10. *Id.* at 345, 488 S.E.2d at 254.

11. *Id.*

12. *Id.* at 347, 488 S.E.2d at 255.

to take corrective action.¹³ A plaintiff may bring a claim under the North Carolina Constitution where the opportunity of a student or group of students to receive a sound basic education is hindered and there is no other available remedy under state law.¹⁴ A number of North Carolina plaintiffs have brought actions, believing the right of a student has been so hindered.¹⁵

There are three necessary elements for a cause of action under the North Carolina Constitution: (1) a violation of an individual's constitutional rights by a state actor; (2) a colorable claim; and (3) no other adequate state remedy.¹⁶ The Supreme Court of North Carolina has held that an allegation against a county school board of failure to protect the constitutional guarantee to a sound basic education satisfies the first element.¹⁷ The third element is met where state law does not provide the type of remedy sought by the plaintiff.¹⁸ Finally, addressing the second element, in holding that a plaintiff has a colorable claim where a school fails to prevent children from being repeatedly harassed and bullied,¹⁹ the Supreme Court of North Carolina has noted that the "right to a sound basic education rings hollow if the structural right exists but in a setting that is so intimidating and threatening to students that they lack a meaningful opportunity to learn."²⁰ While this construction may appear to read favorably for prospective plaintiffs who might hope to construe its meaning broadly, the Supreme Court of North Carolina has tended not to find a hindrance of a student's right to a sound basic education. Rather, courts have required that improprieties

13. *Silver v. Halifax Cnty. Bd. of Comm'rs*, 371 N.C. 855, 868, 821 S.E.2d 755, 764 (2018).

14. *See Deminski ex rel. C.E.D. v. State Bd. of Educ.*, 377 N.C. 406, 412–13, 858 S.E.2d 788, 792–93 (2021).

15. *See infra* notes 15–20 and accompanying text.

16. *Deminski*, 377 N.C. at 413, 858 S.E.2d at 793.

17. *See id.* at 414, 858 S.E.2d at 794 (“[P]laintiff alleged that defendant, the Pitt County Board of Education, failed to protect plaintiff-students’ constitutionally guaranteed right to education . . . Pitt County Board of Education, as a government entity, is a government actor.”).

18. *Craig ex rel. Craig v. New Hanover Cnty. Bd. of Educ.*, 363 N.C. 334, 338, 678 S.E.2d 351, 354 (2009) (quoting *Corum v. Univ. of N.C. ex rel. Bd. of Governors*, 330 N.C. 761, 782, 413 S.E.2d 276, 289 (1992)).

19. *Deminski*, 377 N.C. at 411–12, 858 S.E.2d at 792.

20. *Id.* at 414, 858 S.E.2d at 794.

and misconduct on the behalf of the school be of the very nature that directly interferes with the requirements set out in *Leandro*.²¹

While the Supreme Court of North Carolina has held that denial of a sound basic education constitutes denial of a fundamental right,²² case law suggests that the likelihood of success on a claim that a county has hindered a child's opportunity to receive a sound basic education is slim.²³ Nonetheless, the duty of the state to provide a sound basic education and take action against hindrances to students' right to an education is one that is firmly established in North Carolina. Acknowledgement of this student right should inform the thinking of school boards, lawmakers, and the judiciary in determining how to treat searches of student cell phones by school officials in the Tar Heel State.

II. WILSON COUNTY SCHOOLS AND POLICY 4342

This recent development's inquiry into the legality of student cell phone searches in North Carolina was sparked by parent and community responses to a Wilson County Board of Education policy.²⁴ This section provides background on Wilson County Schools and the policy at the center of discussion.

A. *Overview of Wilson County Schools*

Wilson County Schools serve the students and community of Wilson County, North Carolina, including the City of Wilson and several towns and unincorporated communities. Wilson County has a population of just under 80,000 and is located to the east of Raleigh in North Carolina's inner coastal plain region.²⁵ The district consists of 25

21. *Fothergil v. Jones Cnty. Bd. of Educ.*, 841 F. Supp. 2d 915, 918 (E.D.N.C. 2012) (quoting *Leandro v. State*, 346 N.C. 336, 347, 488 S.E.2d 249, 255 (1997)).

22. *Davis v. Blanchard*, 175 F. Supp. 3d 581, 591 (M.D.N.C. 2016) (quoting *Leandro*, 346 N.C. at 357, 488 S.E.2d at 261 (1997)).

23. See *supra* note 21 and accompanying text.

24. See Keenan Willard, Wilson Co. Schools Proposal Would OK Searches of Students' Cell Phones for Texts, Pictures, WRAL NEWS (Aug. 25, 2021, 5:52 PM), <https://www.wral.com/proposal-from-wilson-county-schools-would-allow-searches-of-students-cell-phones-including-texts-and-pictures/19842713/>.

25. *Wilson County, NC*, CENSUS REPORTER, <https://censusreporter.org/profiles/05000US37195-wilson-county-nc/> (last visited Dec. 20, 2022).

schools, including three high schools and two early colleges.²⁶ In 2022, the district had a total enrollment of 10,165 students.²⁷ Wilson County Schools are racially diverse: 44.89% of students are Black, 27.84% are white, 22.73% are Hispanic, and 4.54% of students identify with other racial groups.²⁸ Additionally, nearly 73% of students qualify for either free or reduced-priced meals.²⁹

B. Policy 4342, Discussion by the Wilson County Board of Education, and Reaction from the Community

Policy 4342 allows school officials to search a student's wireless communication device on suspicion of violation of a law or school rule.³⁰ The policy was first read and discussed publicly in concert with several other proposed policies by the Board of Education at its regularly scheduled meeting on August 16, 2021.³¹ At this preliminary stage, one board member raised concerns about the student cell phone portion of the policy.³² Board Member Rhyan Breen expressed a number of concerns about the policy, highlighting that he felt the policy could be tailored to be less intrusive and that he could not anticipate a situation in which this policy would be necessary.³³ Counsel to the Board informed Breen that specific language he took issue with was recommended by the School Board Association and reviewed and highly recommended by the Board's legal counsel. Counsel also noted that sometimes measures beyond the least intrusive means are necessary for a school to enforce its policies.³⁴

26. About Wilson County Schools, WILSON CNTY. SCHS., <https://www.wilsonschooolsnc.net/Page/127> (last visited Dec. 20, 2022).

27. *Id.*

28. *Id.*

29. *Id.*

30. See Policy Code: 4342 Student Searches, WILSON CNTY. SCHS. (2021), https://boardpolicyonline.com/bl/?b=wilson_new#&&hs=436412.

31. WILSON CNTY. SCHS., MINUTES OF THE WILSON COUNTY SCHOOLS BOARD OF EDUCATION MEETING AUGUST 16, 2021, at 8 (2021), <https://www.wilsonschooolsnc.net/cms/lib/NC50010787/Centricity/Domain/97/August%2016%20WC%20BOE%20Minutes.pdf>.

32. *Id.*

33. WCS TV, WCS BOE 8 _ 16 _ 2021, YOUTUBE, at 1:13 (Aug. 17, 2021), <https://www.youtube.com/watch?v=qpR1N6m6aoo>.

34. *Id.* at 1:18.

In the aftermath of the August board meeting, parents in the community called the proposed rule a breach of privacy.³⁵ Speaking with WRAL News, Breen expressed that though the policy seemed to be constitutional, it would be nearly impossible to search a student's cell phone for a suspected violation without seeing pictures and text messages not reasonably related to the subject of the search.³⁶ Breen further expressed concerns, matched by parents in the community, that because student's cell phones feature information from the rest of their family, the invasion of privacy extends beyond the student.³⁷

The Board again discussed Policy 4342 at its November 8, 2021, meeting. There, the Board considered amending the language of the policy to limit searches such that they may only occur in the event of imminent harm and may only be conducted by school administrators or with parental consent.³⁸ The Board was reminded by the Board Secretary that the policy was not a new one,³⁹ in that it was set to replace a similar policy then in effect,⁴⁰ and that there had been no issues with searches under that policy.⁴¹ It was also noted that cell phones are a part of the lives of students and that principals need to be able to act to maintain safety.⁴² On December 13, 2021, the Wilson County Schools Board of Education voted five to two to approve Policy 4342.⁴³

35. Willard, *supra* note 24.

36. *Id.*

37. *Id.*

38. WILSON CNTY. SCHS., MINUTES OF THE WILSON COUNTY SCHOOLS BOARD OF EDUCATION MEETING NOVEMBER 8, 2021, at 9 (2021), <https://www.wilsonschooolsnc.net/cms/lib/NC50010787/Centricity/Domain/97/November%20Regular%20Board%20Meeting.pdf>.

39. *Id.*

40. WILSON CNTY. SCHS., MINUTES OF THE WILSON COUNTY SCHOOLS BOARD OF EDUCATION MEETING AUGUST 16, 2021, at 8 (2021), <https://www.wilsonschooolsnc.net/cms/lib/NC50010787/Centricity/Domain/97/August%2016%20WC%20BOE%20Minutes.pdf>.

41. WILSON CNTY. SCHS., MINUTES OF THE WILSON COUNTY SCHOOLS BOARD OF EDUCATION MEETING NOVEMBER 8, 2021, at 9 (2021), <https://www.wilsonschooolsnc.net/cms/lib/NC50010787/Centricity/Domain/97/November%20Regular%20Board%20Meeting.pdf>.

42. *Id.*

43. WILSON CNTY. SCHS., MINUTES OF THE WILSON COUNTY SCHOOLS BOARD OF EDUCATION MEETING DECEMBER 13, 2021, 7–8 (2021), <https://www.wilsonschooolsnc.net/cms/lib/NC50010787/Centricity/Domain/97/Official%20Board%20Minutes%20-%20December%2013.pdf>.

The preamble to Policy 4342 as adopted by Wilson County Schools clearly articulates that one of the primary purposes of the policy is promoting student safety.⁴⁴ The section of the policy that governs searches of student cell phones states:

A student's wireless communication device and its contents, including, but not limited to, text messages and digital photos, may be searched whenever a school official has reason to believe the search will provide evidence that the student has violated or is violating a law, Board policy, the Code of Student Conduct, or a school rule. The scope of such searches must be reasonably related to the objectives of the search and not excessively intrusive in light of the nature of the suspected infraction.⁴⁵

It does not seem that the concerns of Breen or the parents in the Wilson County Schools community were addressed between the first read of the policy and its adoption. The occasion of searches was not clearly limited to those representing imminent harm.⁴⁶ Additionally, the Policy does not mandate that searches be conducted by the least intrusive means.⁴⁷ Merely mandating that searches be “reasonably related to the objectives of the search”⁴⁸ does little to allay concerns about the practical reality that it would be nearly impossible for a school official to search a cell phone for pictures and text messages without massively invading areas of student privacy outside of the objective of the search. That invasion of privacy extends to others, including friends and parents, who may have texted or shared images with the subject of the search and unwittingly been subject to inspection by school officials

44. See Policy Code: 4342 Consequences for Violation, Wilson Cnty. Schs. (2023), https://boardpolicyonline.com/bl/?b=wilson_new#&&hs=436412 (“To maintain order and discipline in the schools and to protect the safety and welfare of students and school personnel, school authorities may search a student, student lockers or student automobiles under the circumstances outlined below and may seize any illegal, unauthorized, or contraband materials discovered in the search.”).

45. *Id.*

46. *See id.*

47. *See id.*

48. *Id.*

and law enforcement. It should be noted that Wilson County Schools and the Wilson County Board of Education are not alone in passing such a policy and are not the first in North Carolina to have done so.⁴⁹ However, the media attention that Policy 4342 received called attention to the issue of student cell phone searches in the state of North Carolina and, accordingly, provides an apt vehicle for analyzing the law on that topic in the state.

III. POLICY 4342—NORTH CAROLINA LAW, FEDERAL LAW, AND POSSIBLE IMPLICATIONS

With an understanding of the right to a sound basic education protected in the North Carolina Constitution and of Wilson County Schools' Policy 4342, this section assesses the policy's compatibility with state and federal law before exploring potential negative externalities the policy may impose on the students and community served by Wilson County Schools.

A. *State and Federal Law*

The Fourth Amendment guarantees citizens the right “to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . . and particularly describing the place to be searched, and the persons or things to be seized.”⁵⁰ Involving a search and seizure by a state actor, Policy 4342 is subject to the protections of the Fourth Amendment as interpreted by the Supreme Court.⁵¹ Weighing the privacy interests of students along with the need of teachers and administrators to maintain order, the Supreme Court held that the probable cause standard may be relaxed in school settings.⁵²

49. Keenan Willard, *Wilson School Board Votes to Allow Schools to Search Students' Cell Phones*, WRAL NEWS (Dec. 15, 2021, 4:54 PM), <https://www.wral.com/wilson-school-board-votes-to-allow-schools-to-search-students-cell-phones/20037197/> (noting that Wake County PSS policy allows for searches of student phones as well as laptops and other digital devices).

50. U.S. CONST. amend. IV.

51. *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (holding that the Fourth Amendment's prohibitions on unreasonable searches and seizures applies to searches conducted by public school officers).

52. *Id.*

Rather than the probable cause standard, the Court held that the legality of a school search should depend on its reasonableness under all of the circumstances.⁵³ Reasonableness is determined by a two-step inquiry, first by assessing whether the search was justified at its inception, and second by determining whether the search that was actually conducted was reasonably related in scope to the circumstances which justified it.⁵⁴

In *New Jersey v. T.L.O.*,⁵⁵ the Supreme Court upheld a New Jersey high school vice principal's search of a 14-year-old student's purse that turned up marijuana after she had been caught smoking cigarettes.⁵⁶ In doing so, the Court rejected the New Jersey Supreme Court's view that rummaging through the students purse was outside the scope of the search, since all it would prove was mere possession of cigarettes, which itself is not a violation.⁵⁷

North Carolina courts have reviewed searches of students in light of the Supreme Court's decision in *T.L.O.* and applied its two-step reasonableness inquiry.⁵⁸ Additionally, North Carolina courts have held that there is "no variance between North Carolina's law of search and seizure and the requirements of the Fourth Amendment."⁵⁹ However, there are specific Fourth Amendment doctrines where North Carolina's legislature and judiciary have established more robust protections of individual privacy. While the Supreme Court has held that the Fourth Amendment protections do not contemplate a reasonable expectation of privacy in an individual's bank records or the numbers dialed on their telephone,⁶⁰ the General Assembly requires law enforcement officers to go through a standardized legal process to access such materials.⁶¹ Additionally, North Carolina law goes beyond the protections of the

53. *Id.*

54. *Id.* at 341–42.

55. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

56. *Id.* at 328.

57. *Id.* at 331, 333.

58. See *In re Murray*, 136 N.C. App. 648, 652–53, 525 S.E.2d 496, 499–500 (2000) (applying the two-step reasonableness inquiry and determining that a search of a student's bookbag based on a student tip that the student had something that he should not have which yielded a pellet gun was valid); *In re D.D.*, 146 N.C. App. 309, 320, 554 S.E.2d 346, 353 (2001) (holding that the *T.L.O.* reasonableness standard applied in a search where officers acted in concert with school officials).

59. See *In re Murray*, 136 N.C. App. at 652, 525 S.E.2d at 499.

60. *United States v. Miller*, 425 U.S. 435, 437 (1976); *Smith v. Maryland*, 442 U.S. 735, 745–46 (1979).

61. N.C. Gen. Stat. §§ 15A-261, 53B-3, 53B-4.

Fourth Amendment on the issue of the seizure of contraband or evidence identified in by an officer in plain view during the execution of a search warrant.⁶²

North Carolina courts have yet to specifically address the issue of student cell phone searches. However, on its face, Policy 4342 appears constitutional. It is apparent from its language that Policy 4342 is informed by the Supreme Court's decision in *T.L.O.* and subsequent decisions. For instance, the policy requires that "[t]he scope of such searches must be reasonably related to the objectives of the search and not excessively intrusive in light of the nature of the suspected infraction."⁶³ That language is similar in the language of the second step of the reasonableness inquiry discussed in *T.L.O.* and subsequent Supreme Court decisions pertaining to school searches.⁶⁴ Searches conducted under Policy 4342 find support in the relaxed reasonableness standard adopted in *T.L.O.* and, if justified at their outset and reasonably related in scope of the underlying suspected violation as actually conducted, will pass constitutional muster.

While *T.L.O.* and North Carolina's adoption of its standards specifically govern student searches in schools, it is worth acknowledging that the North Carolina Constitution is not so permissive of searches generally. Specifically, the Supreme Court of North Carolina has held that statutes authorizing searches and seizures ought to be construed against the state.⁶⁵ Nonetheless, policies such as Wilson County Schools's Policy 4342 are likely to pass constitutional muster under *T.L.O.* and North Carolina case law, because North Carolina lawmakers and courts have yet to establish more stringent privacy protections for students.

62. *State v. Grice*, 367 N.C. 753, 756–57, 767 S.E.2d 312, 316 (2015) (“[A] warrantless seizure of an item may be justified as reasonable under the plain view doctrine, so long as three elements are met The North Carolina General Assembly has additionally required that the discovery of evidence in plain view be inadvertent.”).

63. Policy Code: 4342 Student Searches, WILSON CNTY. SCHS. (2021), https://boardpolicyonline.com/bl/?b=wilson_new#&&hs=436412.

64. *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 370 (2009) (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 342 (1985)); *see T.L.O.* 469 U.S. at 341 (quoting *Terry v. Ohio*, 932 U.S. 1, 20 (1968)) (“[O]ne must determine whether the search as actually conducted ‘was reasonably related in scope to the circumstances which justified the interference in the first place.’”).

65. *Brooks v. Taylor Tobacco Enters.*, 298 N.C. 759, 761–62, 767 S.E.2d 312, 319 (1979).

B. *Cause For Concern: What Could Go Awry?*

Although Policy 4342 and other similar student cell phone search policies may find support in the Supreme Court's interpretation of the role of the Fourth Amendment in schools, a court occasioned with deciding the reasonableness of such a search should nonetheless consider the variety and severity of possible negative externalities of a student cell phone search. It is worth exploring some examples of such negative externalities. The North Carolina Court of Appeals has held that a student tip that another student is misbehaving, along with a lie by the suspect student, satisfies the first step of a *T.L.O.* reasonableness inquiry.⁶⁶ Assume in each of the following situations that a school official in a Wilson County Schools high school is conducting the cell phone search in response to a student tip and suspect student's lie.

In one situation, a school official has been tipped that a student has shared quiz answers with their peers by taking a picture of the answers on the teacher's desk and sharing them via text message, in violation of a school rule against academic dishonesty.⁶⁷ Under Policy 4342, in the search of the student's cell phone for evidence that the student has violated a school rule against academic dishonesty, the searching school official may view that student's stored messages and images.⁶⁸ During the search, the school official fails to find any evidence that the student has violated the rule against academic dishonesty but does view private messages and images of deeply personal or otherwise sensitive, lawful content shared by student to a friend or family member, or from a friend or family member to the student. Knowing that a school official has seen this content may have a profound negative impact on the morale or general wellbeing of the

66. *See In re Murray*, 136 N.C. App. 648, 651–52, 525 S.E.2d 496, 499 (2000) (indicating reasonable grounds under a T.L.O inquiry is satisfied when a student provides a tip that another student has something in their bookbag that they should not have at school and the latter lies about there being something in their bookbag).

67. Policy Code: 4342 Student Searches, WILSON CNTY. SCHS. 1, 13 (2021), https://boardpolicyonline.com/bl/?b=wilson_new#&&hs=436412.

68. *See id.* (“A student's wireless communication device and its contents, including, but not limited to text messages and digital photos may be searched whenever a school official has reason to believe the search will provide evidence that the student has violated or is violating a law, Board policy, the Code of Student Conduct, or a school rule.”).

student.⁶⁹ Further, sensitive student information is likely to find its way into the hands of school officials conducting a search of a student's personal device.

In another situation, a mural has been defaced and a school official has been tipped to the identity of the culprit and told that the culprit snapped a picture of himself in the commission of that violation of the school rule against vandalism. Likewise, in this incident, the school official may search that student's cell phone for evidence of violation of the rule.⁷⁰ During the search the school official fails to find any evidence of vandalism but does come across a picture of a bag containing marijuana sitting on the floorboard of the student's car. A subsequent search of the student's car reveals the presence of the bag containing marijuana. In compliance with Policy 4342(F), the findings of the search are then turned over to law enforcement.⁷¹ This student, innocent of the act which prompted the search, may find themselves in serious legal trouble because of evidence obtained through a mechanism that circumvented the probable cause standard that typically binds law enforcement.

Policy 4342 justifies the searches in both of these situations. Far from a conclusive or representative sample of potential negative implications of searches under Policy 4342, the two examples demonstrate the various negative impacts student cell phone searches may have and why courts should consider such implications in a reasonableness inquiry on the legality of student cell phone searches.

IV. CONSIDERING POSSIBLE REMEDIES

A. *Constitutional Claim*

The Fourth Amendment is not the only applicable constitutional provision, however. Where a student's right to a sound basic education

69. Craig Martin, *Mailing Lists, Mailboxes, and the Invasion of Privacy: Finding a Contractual Solution to a Transnational Problem*, 35 HOUS. L. REV. 801, 818 (1998) ("Individuals may suffer from presumptions that others develop by virtue of [such] unauthorized scrutiny . . .").

70. See Policy Code: 4342 Student Searches, WILSON CNTY. SCHS. 1, 13 (2021), https://boardpolicyonline.com/bl/?b=wilson_new#&&hs=436412.

71. See *id.* ("If a properly conducted search yields illegal materials, such findings shall be turned over immediately to the proper legal authorities for ultimate disposition.").

is hindered, a plaintiff may be entitled to bring a claim against the school system or board of education under the North Carolina Constitution.⁷² While the likelihood of success on such a claim may be slim,⁷³ it is worth considering whether the elements are met to allege a cause of action where a plaintiff contends that the student cell phone search policies hinder a student's right to a sound basic education.

To successfully bring a claim under the North Carolina Constitution, a plaintiff must claim (1) a violation of their individual rights by a state actor, (2) that is colorable, and (3) that there is no other adequate state remedy for the violation that claim.⁷⁴ In the case of Policy 4342, enacted by a public board of education, the first element is plainly met.⁷⁵ The second element may be met here, as a claim may be colorable where a school "setting . . . is so intimidating and threatening to students that they lack a meaningful opportunity to learn,"⁷⁶ Finally, the third element should also be met, assuming no other adequate remedy for the allegation exists under state law.⁷⁷ While a prospective plaintiff may be able to allege a cause of action, previous decisions by North Carolina courts as to what hinders the right to a sound basic education suggest that they would not ultimately be successful.⁷⁸

B. *Redress by Boards of Education*

Perhaps the most appropriate and feasible remedy to the potential problems created by Policy 4342 and other similar policies authorizing searches of student cell phones is action by the very bodies that put them into place. To avoid the negative externalities that such policies may impose on their students and communities, school boards should strongly limit their scope or simply repeal them. Those boards

72. *See supra* Section I.B.

73. *See id.*

74. *Deminski ex rel. C.E.D. v. State Bd. of Educ.*, 377 N.C. 406, 413, 858 S.E.2d 788, 793 (2021).

75. *See id.* (explaining that the first element necessary to allege a cause of action under the North Carolina Constitution is a violation of an individual's constitutional rights by a state actor).

76. *Id.* at 414, 858 S.E.2d at 794.

77. *See id.* at 413–14, 858 S.E.2d at 794 (explaining that the third element necessary to allege a cause of action under the North Carolina Constitution is that there is no other adequate remedy under state law).

78. *See supra* notes 22–23 and accompanying text.

that wish to maintain the cell phone search policies might limit their application to situations representing imminent harm and then require that they be done by the least intrusive means. While this would not entirely do away with the invasion of privacy and other unintended consequences of such searches, it would almost certainly limit the searches' prevalence and frequency while still allowing school officials to act where harm to the school or students is imminent.

CONCLUSION

The consequences of a student cell phone search for a violation of a school rule may go well beyond in-school suspension or after-school detention with students potentially finding themselves in the courtroom. Accordingly, to protect the privacy of students and their families and avoid unrelated legal issues that may derail a student's educational journey, it is important to carefully consider the policies that enable school officials to carry out such searches.

While the topic of student cell phone searches has not been explored in detail by North Carolina courts, it appears that such searches are lawful under the Supreme Court's interpretation of the role of the Fourth Amendment in schools. As a challenge to the policy via a claim under the North Carolina Constitution does not seem likely to succeed, the best avenue for redressing concerns appears to be reconsideration by the school boards that implement such policies and subsequent decision to repeal or strongly limit policies authorizing searches of student cell phones.