

## MASSACHUSETTS LEGISLATION UPDATE

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### **PRIVATE SCHOOL LEGAL DEVELOPMENT MASSACHUSETTS HIGH COURT RULES THAT PRIVATE SCHOOLS ARE NOT BOUND BY THE REASONABLE SUSPICION STANDARD FOR STUDENT SEARCHES**

The Massachusetts Supreme Judicial Court decided in a unanimous opinion issued on January 31, 2007 that the United States Constitution and the Massachusetts Declaration of Rights do not apply to searches of students conducted by private school officials. The decision was announced in the case *Commonwealth v. Considine*. The court refused to apply the reasonable suspicion standard to a search by a private school official.

*Considine* involved a search conducted by officials of a private high school during a school sponsored ski trip. School officials searched a student hotel room and discovered drugs, drug paraphernalia, and alcohol. When the students were ordered to empty out their pockets, school officials found marijuana, and one student admitted to possession of cocaine. The students were charged with possession of drugs and alcohol. During criminal trial proceedings, the students filed a motion to suppress the evidence on the grounds that the search violated their constitutional rights to be free from unreasonable searches and seizures. The lower court suppressed the evidence, finding that the search did not meet the reasonable suspicion standard applicable to searches by public school officials, as set forth in the United States Supreme Court decision *New Jersey v. T.L.O.* On appeal, the Supreme Judicial Court ruled that reasonable suspicion standard required by the Fourth Amendment did not apply to searches conducted by private school officials. The court also ruled that the search was not unlawful under Massachusetts law.

The *Considine* decision appears to empower private school officials to conduct student searches in their sound discretion, absent any prior notice or suspicion. However, private schools are advised to develop express policies on student searches. The majority opinion in *Considine* referred to portions of the school handbook which granted school officials the right to inspect student lockers, prohibited tobacco, drugs, or alcohol during school events, and stated that all school rules applied to field trips. The handbook provisions may have been a factor in the Court's ultimate decision. The concurring decision in *Considine*, although not controlling, also cautioned private schools to develop policies that meet the reasonable suspicion standard. Private schools are urged to confer with school counsel to implement appropriate policies and procedures on student searches.

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