

X. INFORMATION/DISCUSSION ITEMS

C. K-9 Drug Detection Unit

**BACKGROUND:**

The Livermore Police Department has officers and trained dogs to detect drugs. The purpose of using a K-9 Drug Detection Unit is to serve as a deterrent to bringing drugs on to school campuses. The Livermore Police Department can conduct periodic K-9 visitations to school sites as requested by school administrators. The K-9's would **not** be used to sniff or alert on students or adults. Depending on the parameters established by the School Board, the K-9 Unit may legally go into parking lots, locker rooms, hallways, and general areas of campus. They may also be brought into classrooms if students have been exited, and may alert on belongings left in the classroom. State and Federal courts have upheld the use of dogs on school sites for drug detection and have ruled as follows:

- 1) A canine sniff of property is not a search under the Fourth Amendment.
- 2) The handler should treat this sniff as an allied agency request for a K-9. That is, the handler's only involvement in the investigation is to provide the locating tool.
- 3) School officials only need reasonable suspicion to search a student or their property. An alert from a trained and certified narcotics detector dog gives the school official reasonable suspicion to conduct a warrantless search of the student and / or their property.
- 4) School officials do not need a search warrant to conduct the search of the student and / or their property. No reasonable suspicion is needed prior to the canine sniff.

**STATUS:**

The K-9 Drug Detection Unit has been used during the 2007-08 school year on one LVJUSD high school campus, and on both high school sites in previous years. Board Policy and Administrative Regulations 5145.1 outlines search and seizure procedures including use of drug-detection dogs on our campuses. The policy states "dogs may sniff the air around lockers, desks, or vehicles on district property or at district-sponsored events as long as they are not allowed to sniff within the close proximity of any students". If a program is established to periodically use a K-9 Drug Detection Unit at our schools, high schools and middle schools, it is highly recommended to conduct an assembly at each school where K-9 teams will be used in order to introduce and educate the students and staff about the program and a demonstration of how the K-9 Unit operates. Additionally, families should be informed in writing and school websites regarding the use of the K-9 Drug Detection Unit on our school campuses.

**FISCAL IMPACT:**

No general fund impact if conducted by the Livermore Police Department.

**2007-08 BOARD GOALS:**

Improve Educational Performance  
Meet Student Needs  
Provide Leadership  
Maintain Fiscal Solvency  
Enhance Community Relations

**RECOMMENDATION:**

The Board of Education ask clarifying questions and determine action on use of K-9 Drug Detection Unit

## **K-9 Drug Detection Unit, Livermore Police Department**

### **Legal Summary:**

A canine sniff of property is not a search under the Fourth Amendment.

The handler should treat this sniff as an allied agency request for a K-9. That is, the handler's only involvement in the investigation is to provide the locating tool.

School officials only need reasonable suspicion to search a student or their property. An alert from a trained and certified narcotics detector dog gives the school official reasonable suspicion to conduct a warrantless search of the student and / or their property.

School officials do not need a search warrant to conduct the search of the student and / or their property. No reasonable suspicion is needed prior to the canine sniff.

Courts are divided about the reasonableness of canine student searches; however two out of three Federal Courts state that a canine sniff of a person is a search. As two courts state a sniff of a student is a search and the fact an agency is normally liable for any accidental / unintentional K-9 bite, I recommend that K-9's **not** be allowed to conduct student sniffs.

### **Suggested flow chart of school searches of property:**

- School official requests K-9 sniff of property
- Law enforcement provides the K-9 locating tool and conducts K-9 sniff
- Positive alert from K-9
- Establishes probable cause for the officer **and** reasonable suspicion for the school official
- School official conducts a warrantless search of both property and student
- The student suspect is dealt with administratively (suspension / expulsion)
- Law enforcement seizes the contraband and if there is criminal prosecution, law enforcement arrests student

### **Case Law regarding use of K-9 Drug Detection Units on school sites:**

#### **A) New Jersey v T.L.O. (469 U.S. 325 (1985) U. S. Supreme Court**

Even though this is not a canine case, the United States Supreme Court held that:

1. School searches fall under the Fourth Amendment's reasonableness standard.
2. School officials do not need a warrant to search a student or their property.
3. School officials do not need probable cause to search; the legality of a search of a student should depend simply on the reasonableness, under all the circumstances of the search (reasonable suspicion).

**B) Doe v Renfrow** (631 F. 2d 91 (1980) Seventh Circuit

1. Detention of student for 1-1/2 hours was not an unreasonable seizure.
2. Entry by school officials and uniformed police officers into each classroom with the intent to locate drugs, was not a search.
3. Walking up aisles and sniffing by a narcotics detector dog did not violate students' right.
4. Upon a canine alert, there was no violation of student's rights by ordering her to empty pockets onto her desk.
5. Nude search of student based solely upon a canine alert after she emptied her pockets was unreasonable.

**C) Zamora v Pomeroy** (639 F. 2d 662 (1981) Tenth Circuit

1. A warrantless search of school lockers conducted by trained police dogs was reasonable under the Fourth Amendment, even when no reasonable suspicion existed.
2. Where school had assumed joint control of student's locker and where school authorities conducted warrantless search of lockers after trained police dogs indicated the presence of drugs, there was no search under the Fourth Amendment.

**D) Horton v Goose Creek Independent School District** (690 F. 2d 470 (1982) Fifth Circuit

1. Police dogs' sniffing of student lockers in public hallways and automobiles parked on public parking lots did not constitute a search.
2. Dogs' sniffing of students' persons could not be justified without reasonable cause.
3. Canine searches of students' persons could not be justified without reasonable cause.
4. The standard of reasonable cause for school officials is less stringent than that applicable to law enforcement, but requires more than good faith.
5. If, as a result of canine sniff searches of students' cars and lockers, school had reasonable cause to suspect presence of contraband, no warrant is required to search.
6. Minimal harassment arising from the mere presence of dogs on campus was not unreasonable.

**E) Hearn v Board of Public Education** (191 F. 3d 1329 (1999) Eleventh Circuit

A search of a teacher's automobile resulting from a random parking lot sweep by officers, where a narcotics dog alerted to the teacher's automobile gave probable cause to enter and search the interior.

This alert also gave reasonable suspicion of possible drug use by teacher, so that termination of teacher for refusing to take a drug test after discovery of marijuana in her vehicle, was reasonable.

**F) B.C. v Plumas Unified School District** (192 F. 3d 1260 (1999) Ninth Circuit

1. The close proximity sniffing of the person is offensive whether the sniffer be canine or human. Because the dog sniff infringed on a person's reasonable expectation of privacy, we hold that it constitutes a search.
2. A random and suspicionless dog sniff search of a person is unreasonable.

## LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT

B.P. 5145.1

### Search And Seizure

As necessary to protect the health, safety and welfare of students and staff, school officials may search students, their property and/or district property under their control, and may seize illegal, unsafe and prohibited items. The Governing Board requires that discretion, good judgment and common sense be exercised in all cases of search and seizure.

### Individual Searches

School officials may search individual students, their property and district property under their control, when there is a reasonable suspicion that the search will uncover evidence that the student is violating the law, Board policy, administrative regulation, or other rules of the district or the school.

Employees shall not conduct strip searches or body cavity searches of any student.  
(Education Code 49050)

Searches of individual students shall be conducted in the presence of at least two district employees. When there is a possibility that a search might require some form of physical contact with a student, the gender of the school official conducting the search shall be the same gender as the student.

The principal or designee shall notify the parent/guardian of a student subjected to an individualized search as soon as possible after the search.

### Student Lockers/Desks

The principal or designee may conduct a general inspection of school properties that are within the control of students, such as lockers and desks, on a regular, announced basis, with students standing by their assigned lockers or desks. Any items contained in a locker or desk shall be considered to be the property of the student to whom the locker or desk was assigned.

Because lockers and desks are under the joint control of the student and the district, school officials shall have the right and ability to open and inspect any school locker or desk without student permission or prior notice when they have reasonable suspicion that the search will uncover evidence of illegal possessions or activities or when odors, smoke, and/or other threats to health, welfare or safety emanate from the locker or desk.

### Use of Metal Detectors

The Board believes that the presence of weapons in the schools threatens the district's ability to provide the safe and orderly learning environment to which district students and staff are entitled. The Board also believes that metal detector searches offer a reasonable means to keep weapons out of the schools and mitigate the fears of students and staff.

The Superintendent or designee shall establish procedures that ensure that metal detector searches are conducted in a consistent manner that minimizes or eliminates arbitrary and capricious enforcement by school officials.

#### Use of Drug-Detection Dogs

In an effort to keep the schools free of drugs, the district may use specially trained non-aggressive dogs to sniff out and alert staff to the presence of substances prohibited by law or Board policy. The dogs may sniff the air around lockers, desks, or vehicles on district property or at district-sponsored events as long as they are not allowed to sniff within the close proximity of any students.

#### Legal References

##### EDUCATION CODE

5160 Authority of governing boards  
5160.1 Broad authority of school districts  
5294-35294.9 School safety plans  
9050-49051 Searches by school employees  
9330-49334 Injurious objects

##### PENAL CODE

26.9 Firearms  
26.10 Dirks; daggers, knives or razor; bringing into or possession of upon or within public school ground; exception

##### COURT DECISIONS

B.C. v. Plumas, (9th Cir. 1999) 192 F.3d 1260  
O'Connor v. Ortega, (1987) 107 S.Ct. 1492  
New Jersey v. T.L.O., (1985) 469 U.S. 325  
Horton v. Goose Creek Independent School District, (5th Cir. 1982) 690 F.2d 470  
Zamora v. Pomeroy, (10th Cir. 1981) 639 F.2d 662

##### ATTORNEY GENERAL OPINIONS

83 Ops.Cal.Atty.Gen. 257 (2000)  
75 Ops.Cal.Atty.Gen. 155 (1992)

#### Management Resources:

WEB SITES: California Attorney General's Office: <http://caag.state.ca.us>

CDE, Safe Schools and Violence Prevention Office: <http://www.cde.ca.gov/spbranch/safety>

Approved 3/5/02

## LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT

A.R. 5145.1

### SEARCH AND SEIZURE

#### Use of Metal Detectors

The following procedures shall be followed when making metal detector scans:

1. Before walk-through, students shall be asked to empty their pockets of metallic objects.
2. If an initial activation occurs, students shall be asked to remove other metallic objects they may be wearing (e.g., belt and jewelry) and to walk through a second time.
3. If a second activation occurs, a hand-held metal detector shall be used.
4. If the activation is not eliminated or explained, staff shall escort the student to a private area.
5. In the private area, an expanded search shall be conducted by a staff member of the same gender as the student, in the presence of another district employee.
6. The search shall be limited to the detection of weapons.

#### Use of Drug-Detection Dogs

Drug-detection dogs shall not be used in rooms occupied by persons except for demonstration purposes, with the handler present. When used for demonstration purposes, the dog shall be separated from the students and not allowed to sniff any individual.

Only the dog's official handler shall determine what constitutes an alert by the dog. If the dog alerts on a particular item or place, the student having the use of that item or place, or responsibility for it, shall be called to witness the search. If a dog alerts on a locked vehicle, the student who brought the vehicle onto district property shall be asked to unlock it for inspection.

Although the dogs are not allowed to sniff in the proximity of students, there may be an occasion when the dog might inadvertently alert on a student who is "passing by" the police handler. In this situation, it will be up to the police handler to determine the appropriate follow-up action.

#### Notifications

At the beginning of each school year and whenever students enroll, the Superintendent or designee shall inform students and parents/guardians of the District's responsibility to provide a safe and secure educational environment. The notification will include procedures

the District will use in making sure that drugs, weapons and other illegal objects are not brought on campus, to athletic events, or other extracurricular activities such as school dances. For example, if school officials believe that reasonable suspicion or probable cause exists, there would be a possibility that any of the following methods may be applied:

- Random searches of students
- Use of metal detectors
- Use of breathalyzers
- Use of Drug-Detection Dogs

Parents and students will also be notified that if a student approaches a drug-detection dog or accidentally passes by the dog and the dog alerts, this gives the police officer handling the dog probable cause to search the student further.

Signs shall be posted at all schools at which metal detectors are to be used to explain that anyone may be scanned by metal detectors for guns, knives, or other illegal weapons when on campus or attending athletic or extracurricular events.

#### Legal References

##### EDUCATION CODE

35160 Authority of governing boards  
35160.1 Broad authority of school districts  
35294-35294.9 School safety plans  
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##### MANAGEMENT RESOURCES

Web sites: California Attorney General's Office: <http://caag.state.ca.us>  
CDE, Safe Schools and Violence Prevention Office: <http://www.cde.ca.gov/spbranch/safety>

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