QUALITATIVE LEGAL RESEARCH: ISSUES PERTAINING TO STUDENT USE OF PERSONAL HANDHELD TECHNOLOGY

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ABSTRACT

In an effort to support school leaders in policy development, this research is an evaluation of jurisprudence related to student use of personal handheld devices. The qualitative legal analyses of 15 recent court cases representing both federal and state jurisdictions were analyzed to determine patterns and trends within the decisions of the courts. The researcher sought to identify the following: The way the U.S. courts addressed the balance between students’ civil liberties and the interest of school officials in maintaining and operating safe, orderly, efficient, and effective learning environments. The identifiable trends within the legal cases related to student use of personal handheld technology. The legal standards used by lower courts to render decisions on cases related to students’ personal handheld technology use and the authority of school officials to protect both the safety of students and the learning environment. The suggested guidelines to use when developing school policy and procedures based upon analysis of jurisprudence as applied to student use of personal handheld technology cases. The outcome of this research clarifies the rights and limits of both students and educators as well as provides guidelines for the establishment of appropriate school policy.

Keywords: school law, civil liberties, personal handheld technology, school policy
DEDICATION AND ACKNOWLEDGEMENTS

This dissertation is dedicated to my husband Kyle. His constant love, support, and encouragement have been my motivation throughout this long journey. I could not have persevered without him. I am grateful for my amazing family and friends. My sister, Jen, always got my mornings started on the right track. My parents helped out in so many ways while I worked through this process. My mom in particular, encouraged me daily and supported me in every way. I am thankful to my oldest friend, Sue, for keeping me balanced. For Tracey, my sister-in-arms from the beginning, I will be eternally indebted to her for the not-so-gentle push, careful ear, advice, and laughter during this experience. To my beautiful children, Adam, Mallory, and Reid, I love them all deeply, and I hope they always strive for their goals in life. It is worth it!

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CHAPTER ONE: INTRODUCTION

Educational leaders have a responsibility to provide an efficient learning environment for students (Council of Chief State School Officers, 2008). Ensuring the classroom is free from disruptive behaviors is one component of this duty. In an effort to accomplish this task consistently, school officials establish and adhere to detailed district policies and procedures. Most states mandate this of school administrators. For example, the Code of Virginia states the principal is responsible for protecting “the academic instructional time from unnecessary interruptions and disruptions” (Va., 2009, § 22.1-253.13:1). The California State Board of Education necessitates school leaders follow a policy which addresses “specific disruptive behaviors that interfere with the classroom learning environment” (Ca., 2001, § 01-02). With rapid advances in technology, creating appropriate policies to keep pace with the ever changing landscape has become increasingly complex for school systems. Difficulty arises as educators attempt to strike a balance between student access to technology and protection of the students, their rights, and the overall learning environment (Cassidy, 2001). The absence of a legal standard to be applied in cases of student misuse of personal handheld technology contributes to the dilemma. In an effort to support school leaders in policy development, this research evaluated jurisprudence related to student use of personal handheld devices. The intent of this analysis was to define the rights of both students and educators as well as to provide guidelines for the establishment of appropriate school policy.

The study used a qualitative legal research approach. The study was an exploration of the existing legal issues and expectations surrounding student use of personal handheld technology in schools. This chapter provides a brief history behind the disruptive nature of student use of
personal handheld technology. The legal expectations of school officials are delineated, and the problem is defined. The purpose, focus, and significance of the study are outlined.

**Background**

The introduction of personal handheld technology has brought with it new challenges for school leaders. Parents and students depend upon personal handheld technology to communicate daily activities or emergencies. According to a national survey, “four out of five teens carry a wireless device… 80% say their cell phone provides a sense of security while on the go, confirming that the cell phone has become their mobile safety net” (Harris Interactive, 2008, Impact on Teen Life section, para. 2). However, these communication devices can negatively affect the school environment. As the student use of personal handheld technology is growing, so is the concern in schools today:

Most teachers can share stories of students listening to songs, passing notes, or cheating through text messaging, phones ringing or vibrating during class lectures, rogue videos being taken, pictures of tests being snapped then forwarded to other students, and many other activities that would either have taken place using more traditional methods or never have happened at all before the advent of personal handheld technology.

(Kiedrowski, Smale, & Gounko, 2009, p. 42)

Due to the capabilities of personal handheld technology, administrators now face new forms of classroom disruptions: cheating, invasions of privacy, sexting, and cyberbullying.

Educational leaders struggle to establish effective policies and procedures to keep pace with the new equipment. In developing a student personal handheld technology policy, school leaders must have a clear understanding of students’ rights and how these rights are applied in the school setting (Liberty University Online School of Education, 2012). The rights of students
are established through interpretation of the U.S. Constitution Bill of Rights by federal courts: “students in public schools, as ‘persons’ under the First and Fourteenth Amendments, do have fundamental rights” (Alexander & Alexander, 2005, p. 365).

Administrators must also have a sound grasp of their responsibility to safeguard the atmosphere of learning required in a school setting. Through such pivotal cases as Tinker v. Des Moines Independent Community School (1969) and Bethel School District No. 403 v. Fraser (1986), the Supreme Court has aided school leaders by establishing a two-prong check to help both the courts and the schools decide upon which side of the matter to err. Wolking (2008) wrote, “The first part of the framework looks at the content of the speech or expression, and the second part looks at its effect (or foreseeable effect)” (p. 1512). Through judicial decisions related to the boundary-less nature of electronic communication, courts have modified the framework “to incorporate an analysis of the nexus between off-campus student speech and associated on-campus disruption” (Wolking, 2008, p. 1509).

In an attempt to offer guidance and insight to school leaders, this study first scrutinized judicial precedence surrounding students’ rights, parents’ rights, and the responsibilities of school officials through the literature review. Specifically, the research focused on jurisprudence surrounding due process, right to privacy, freedom of expression, and search and seizure, as they relate to K-12 public schools. This study also examined recent and pending lower court legal action regarding student use of personal handheld communication technology. For clarity, cellular phones, camera phones, video phones, text phones, iPods, tablets, Droids, Nanos, Blackberries, iPhones, and other private electronic communication tools are referred to with the broad term of personal handheld technology. Finally, policy recommendations that are in line with the legal findings were developed for use by school officials.
Situation to Self

My interest in this topic of the effect of student personal handheld technology use and the role of school officials in minimizing any negative disruption is grounded in my background as a secondary school teacher and administrator. As a current secondary school assistant principal, I frequently cope with student use of personal handheld technology. In the past few years, I have noticed a growth in cheating, cyberbullying, and other disturbances resulting from student use of personal handheld technology. Handling these incidences and protecting the learning environment from such disruptions have increasingly consumed my time. Yet it is my duty to not only safeguard the classroom atmosphere from such disturbances, but also to encourage students to responsibly use such devices when educationally appropriate. This research provided the information needed to create the foundation of a solid policy which respects the sanctity of the classroom and the rights of all those individuals involved.

Problem Statement

School officials need to protect themselves and their schools from liability, while still enhancing the learning environment and supporting students’ rights. The problem is many school officials do not know definitively how to apply legal precedent when they believe students require discipline for misuse of personal handheld technology (James, 2009; O’Donovan, 2010). Without a legal standard or framework, school leaders will continue to experience frustration and face potential legal disputes over the responsibility of providing for a secure school and still respecting the rights of students.

In a response to a House of Delegate member’s inquiry in November 2010, the Attorney General of Virginia issued a statement affirming “searches of students' personal handheld technology and laptops by school officials are permitted when based on reasonable suspicion that
the particular student is violating the law or the rules of the school” (Cuccinelli, 2010, p. 4). Thus, school leaders must develop specific written policy and procedures related to personal handheld technology to be allowed to search such devices. Darden penned in the American School Board Journal,

Good policymaking produces a district that is focused in an educational sense and risk-free (at least as much as possible in this litigious environment) by legal standards. Bad policies, by contrast, can spark chaos, blur the board’s vision, and allow lawsuits to succeed even when a school district is in the right. (2008, p. 54)

As evidenced by cases such as *Klump v. Nazareth Area School District* (2006), local school administrators are infringing on students' civil liberties and, in some instances, facing legal action when attempting to protect the learning environment. In this particular case, the court determined school officials exceeded their limitations when they sent text messages and made calls to others listed in the contact list of a confiscated cell phone while pretending to be the student owner (*Klump v. Nazareth Area School District*, 2006). Cases such as this prove educators have difficulty distinguishing between their administrative parameters and the rights of the students.

In developing sound and compliant policy, school administrators need a clear understanding of current and past case law pertaining to students’ rights and the schools’ latitude to maintain the educational setting. Educators who have an awareness of this jurisprudence can become empowered to appropriately handle the growing disruption resulting from student misuse of personal handheld technology in schools. The legal research conducted in this study serves to provide school leadership with a legally sound framework to be utilized in their policy development. Although some of the legal information utilized in this study is currently isolated
to individual district or circuit courts, the precedents referenced in the decisions of these courts encompass the overall U. S. constitutional application of law and may be applied nationally.

**Purpose Statement**

The purpose of this qualitative research project is to investigate and describe some of the challenges connected with the school regulation of personal handheld technology. Throughout the study, there was an exploration of the significant legal issues related to such governance within K-12 public education in the United States. The significance of this systematic investigation is for the outcome to inform and offer guidance to school officials on research-based practices which will permit them to appropriately support both the learning environment as well as the rights of students.

The method utilized in this study is qualitative legal research. Similar to content analysis, the process of legal research involves analyzing documents. Legal research specifically entails a meticulous search and analysis of case law, statutes, and regulations (Kunz, Schmedemann, Bateson, Downs, & Catterall, 2008). Legal research involves assessing historical and contemporary precedence to indicate what future decisions could look like. The first step in this process was to locate cases with similar legal questions. Once the cases were identified, the researcher then scrutinized or briefed each case. Along with the basic information of each case, such as the facts of the case and the court’s decision, the cases were also analyzed to determine if there was an action which constituted a school violation, as well as the legal standards applied by the court. This data were then grouped by jurisdiction, chronological order, type of defendants, age of students, existence or non-existence of school policy addressing student use of personal handheld technology, and claims made by both the plaintiffs and defendants. The assessment of
the isolated information determined existing patterns that guided the development of a legal framework for educators.

The information gathered through this research adds to and updates the existing literature on school law. Specifically, it focused on jurisprudence surrounding due process, right to privacy, freedom of expression, and search and seizure, as they relate to student use of personal handheld technology in K-12 public schools. The intent was to provide practical information and suggestions for school administrators to utilize in their policy development. Schools with clearly defined policies and procedures protect both the learning environment and students’ rights.

**Research Questions**

The intention of this qualitative study was to offer a practical guideline for school officials regarding the development of a student personal handheld technology policy based upon court and legal precedence. The following questions directed this study:

1. How have the U.S. courts addressed the balance between students’ civil liberties and the interest of school officials in maintaining and operating safe, orderly, efficient, and effective learning environments?

Beginning with the 1969 Supreme Court case of *Tinker v. Des Moines*, the Court and subsequent lower courts have placed restrictions on schools in support of student rights. Justice Abe Fortas spoke for the majority opinion of the Court by stating, “In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views” (*Tinker v. Des Moines*, 1969). This study located and discovered the cases which considered constitutional guarantees of both students and staff in public school settings.
2. What trends can be identified in the legal cases related to student use of personal handheld technology?

Cheating, sexting, and cyberbullying are documented issues school officials deal with regularly. These concerns are amplified in K-12 public education as a result of student misuse of personal handheld technology. Unfortunately, these problems have become commonplace. States such as Virginia specifically address the use of cheating with personal handheld technology in their standardized assessment examiner’s manuals. Within the guides provided to test examiners and proctors is the directive to “ensure that students have no access to cell phones or other electronic devices during testing” (VA Department of Education Division of Student Assessment and School Improvement, 2012, p. 9).

3. What legal standards have been used by lower courts to render decisions on cases related to students’ personal handheld technology use and the authority of school officials to protect both the safety of students and the learning environment?

Educators function under the principle of in loco parentis which essentially means “in place of the parent” (LaMorte, 2002, p. 449). In the past, this concept was taken literally: “The [educator] enjoyed many of the same rights and privileges afforded to parents in matters of safety, discipline, and the general well-being of school children” (Harris, 1985, p. 164). Recent court decisions have shown a shift in the application of this doctrine which places greater scrutiny on school officials. This research clearly outlines the rules, frameworks, and tests applicable to public schools, as set forth by the courts and legislatures through their decision making.

4. Based upon analysis of jurisprudence as applied to student use of personal handheld technology cases, what guidelines should be used in developing school policy and
procedures?

The creation of sound school policy is imperative to the protection of the educational environment: “In this task, educators, administrators, and staff [have to become] increasingly conscious of legal issues connected to students' rights, juvenile legal status, and the handling of student crime” (Phelps, 2006, Codes of Conduct section). This study offers suggestions and practical guidelines for school officials to reflect upon regarding the potential use and management of personal handheld technology in schools.

Significance of the Study

Secondary school educators frequently cope with student use of hand held devices. In the past few years, there has been evidence of cheating, cyberbullying, and other disturbances resulting from student use of personal handheld technology. With the aim of providing order and protection for students, school officials need to understand the rights of students. They must find the limit to how intrusive school administrators can be when student safety and protection of the learning environment is involved. School leaders also have to be aware of how restrictive and reactive school policy can be, as well as be cognizant of what standards are applied in current court decisions.

The disruptive nature of personal handheld technology in schools is well documented. In July 2008, 10 students attending Trabuco Hills High School in Orange County, California admitted to cheating on Advanced Placement exams by using personal handheld technology to text answers to one another. As a result of the ensuing investigation, the Educational Testing Service (ETS) invalidated the scores of all 385 students who sat for the exams:

An attorney representing ETS conceded it was impossible to know whether students took advantage of the poor proctoring at the high school to cheat, but said it would be unfair to
other AP test takers throughout the nation to allow their scores to stand. (Mehta, 2008, “Group Explains Voiding of Tests”, para. 4)

Personal handheld technology devices are also associated with an increase in cyberbullying and the new phenomenon of sexting.

Legal research such as that employed in this study serves to update school administrators to existing legal concerns and practices. Lessons learned from past and present litigation were summarized and developed into a guide. The standard that was generated through this study is significant to school officials and policymakers as they move forward in their practice and daily management of schools and students.

**Definition of Terms**

The following terms are defined for clarity in this study.

*Cellular Phone.* The device known as the cellular phone is “a wireless telephone . . . all new cellular systems are digital, which has enabled the cell phone to turn into a handheld personal computer” (Cellular Phone, 2013).

*Civil Liberties.* Also known as civil rights: “freedoms given to the people by the First Amendment to the Constitution, by common law, or legislation, allowing the individual to be free to speak, think, assemble, organize, worship, or petition without government (or even private) interference or restraints” (Civil Liberties, 2012).

*Cyberbullying.* According to the National Crime Prevention Council (2006), cyberbullying occurs when an individual uses “the Internet, cell phones, or other devices to send or post text or images intended to hurt or embarrass another person” (Cyberbullying section, para. 2).
**Due Process.** The Fifth and Fourteenth Amendments in the Bill of Rights state no one shall be "deprived of life, liberty or property without due process of law" (U.S. Constitution). In the educational setting, due process is a “fair, timely, and impartial procedure for resolving disputes that arise between parents and school districts regarding the education of students” (Due Process, 2012).

**Freedom of Expression.** According to the American Civil Liberties Union (2005), the “Freedom of speech, of the press, of association, of assembly and petition -- this set of guarantees, protected by the First Amendment [to the U.S. Constitution], comprises what we refer to as freedom of expression” (Freedom section, para. 1).

**Learning Environment.** Miller and Cunningham (2003) wrote the learning environment “encompasses a broad range of educational concepts, including the physical setting, the psychological environment created through social contexts, and numerous instructional components related to teacher characteristics and behaviors” (Classroom Environment section, para. 1).

**Personal Handheld Technology.** Weiss (2002) defined personal handheld technology as being “extremely portable, self-contained information management and communication devices….allow[s] the addition of applications or support[s] Internet connectivity” (p. 3).

**Privacy.** Black (2011) wrote privacy is “the desire of an individual to be free of intrusion” (p. 61).

**School policy.** Shiota (2012) defined school policy as that which sets “the various goals” and assigns the “proper authorities that make school governance and management possible” (Function section).
Search and seizure. A concise definition is “the body of law that covers the issues of examining a person's property with the intention of finding evidence not in plain view (search) and taking possession of that property against the will of its owner or possessor (seizure)” (Search and Seizure, 2012). Unreasonable search and seizure is protected by the Fourth Amendment to the U.S. Constitution.

Sexting. Boucek (2009) described sexting as “forwarding nude or seminude photographs of other students in schools via cell phone or other electronic media” (p.10).

Text Message. Text message communication is defined as “a short message sent electronically usually from one cell phone to another” (Text Message, 2012).

Delimitations and Limitations

Delimitations. This research concentrated on the legal cases and regulations related to student handheld technology use in United States public schools. The focus was on personal possession of technology and not school issued equipment. Issues concerning staff use or staff misuse of personal handheld technology were not part of this study.

Limitations. This research was conducted from the perspective of a current doctoral student and building level administrator in a secondary school setting. The researcher is not a lawyer nor trained in any way to serve in the legal profession; therefore, any analysis, or recommendation provided through this study should not be construed as legal advice. A licensed attorney should be consulted for specific guidance.

This study was not exhaustive of the entire U.S. court system. The parameters of this research did not incorporate cases that were settled outside of court or simply not published. Also, given the scope of the U.S. legal system, the current research could not reflect all of the violations that occur within K-12 schools.
Research Plan

This research was qualitative and employed a legal research design. Similar to content analysis which determines the presence of certain concepts in text data (Hsieh & Shannon, 2005), the purpose of the legal research design is to discover legal patterns, meaning, and insight instead of verifying certainty or calculating results (Kunz et al., 2008). The bulk of this research utilized primary sources in the form of court transcripts and court documents. Secondary writings regarding primary source events and documents were also used to enhance or corroborate interpretations.

The populations of interest in this study are the school officials involved in litigation regarding personal handheld technology and the judges in the U.S. courts who ruled on the cases. The cases utilized were isolated to the lower courts as no Supreme Court case related to this topic has yet been heard (Supreme Court of the United States, 2012).

The study focused on decisions rendered by both federal and state courts. An analysis of court transcripts, interpretations, and other legal documents was conducted. Pertinent legal precedence was determined based upon this review. This study was limited to legal decisions related to K-12 public education in the United States of America.

Summary

This chapter describes public education as lacking a legal standard to be applied in cases of student use of personal handheld technology. The problem is without a legal model; school leaders will continue to experience frustration and possible legal disputes over the responsibility of providing a safe school and still valuing the rights of students. The purpose of this qualitative legal research was to conduct a systematic investigation and describe some of the challenges associated with the school regulation of personal handheld technology. Arcaro (2012) wrote,
“Importantly, the educator and school administration must be in a position to recognize the emergence of these legal issues early on so that efforts can be made to address problems as early as possible” (para. 2). The next chapter contains documentation of the current gap in educational literature regarding the legal regulation of personal handheld technology by school officials as well as literature which outlines applicable legal precedents.
CHAPTER TWO: LITERATURE REVIEW

The integration and the management of new technology such as personal handheld devices in schools have become increasingly complex. The challenge for school leaders is to achieve a compromise between student access to technology, protection of their rights, and the overall educational atmosphere (Cassidy, 2001). The absence of a legal standard to be applied in cases related to student use of personal handheld technology contributes to the dilemma. Given that American schools operate under a legal system interpreted through the lens of the U.S. Constitution, a review of existing literature exposes several key areas of study (LaMorte, 2002). Documentation shows the plausible disruption to the educational setting by students using personal handheld technology and school staffs’ inability to adequately monitor that usage.

The purpose of this qualitative research project was to investigate some of the challenges connected with the school regulation of personal handheld technology. Throughout the study, there was an exploration of the significant legal issues related to such governance within K-12 public education in the United States. The goal of this systematic investigation is to inform and offer guidance to school officials on research-based practices, which will permit them to support both the learning environment as well as the rights of students appropriately.

Chapter Two contains documentation of the gap existing in educational literature regarding the legal regulation of personal handheld technology by school officials. An examination of court records, which provides evidence as to students’ rights to free speech and due process is included. This review also reveals information supporting the expectations and legal limitations of school systems and parents’ rights with their children. Finally, recent court litigation regarding student use of personal handheld technology and schools’ attempt to regulate, seize, and search personal handheld technology is recorded.
Heaverin (2006) conducted a study on the legal issues involving students and Internet use. Included in the topics for further research was the suggestion to study “litigation and policy addressing handheld devices: cell phones, camera phones, video cameras…. Students can violate privacy policies and laws. . . . How are schools coping with this intrusive technology?” (p. 99).

In conducting a dissertation keyword search on the legal regulation of handheld devices in schools through the ProQuest database, no study can be identified addressing this issue. Although cyberbullying, school law, and student Internet use have been topics of multiple dissertations, a gap exists which addresses the legal issues surrounding student use of handheld technology in the school setting.

While no research can be identified through a keyword search on the legal regulation of handheld devices in schools, the ProQuest Dissertations and Theses database identifies other resources which support this study. Several studies were found using the keywords: bullying and school law, pointing to the need for this research. Schustereit (2010) conducted research on technology and school law training for educators. In the recommendations of Schustereit’s work, several areas of continued concern are identified. Among them is further training on liability for negligence and student due process rights for educators (Schustereit, 2010).

Neimeyer (2008) investigated anti-bullying laws in the U.S. and their ability to address cyberbullying. Although this study is four years old, it indicated “few state anti-bullying laws [were] adequate in providing school officials the necessary authority to address acts of cyberbullying that occur off-campus” (Neimeyer, 2008, p. 113). The researcher recommended building level administrators familiarize themselves with the monitoring and searching of student personal handheld devices (Neimeyer, 2008). To elaborate on this idea, Schimmel and Militello
(2009) conducted a national survey of over 1,300 educators and found school principals and teachers both felt they needed more information and training on student due process and discipline, search and seizure, discrimination and harassment, and liability.

A keyword search in ProQuest Dissertations and Theses using the terms cell phone, school, and legal resulted in 73 hits. Among these, several studies support continued exploration on the topic of the legal issues that result from student use of Internet-capable devices. Gibbs (2008) performed research on off-campus student speech cases. Gibbs’ (2008) analysis recognized “continuing growth of Internet usage is likely to propel continuous litigation of off-campus speech issues . . . the greatest struggle courts and school administrators face is defining behaviors that satisfy the legal standards” (p. 239).

Roskamp’s (2009) research on cyberbullying recommended school leaders train in the uses of new technology. Findings from the study suggested school administrators regularly update school policy and maintain familiarity with their legal limitations as provided by case law (Roskamp, 2009). Wiseman (2011) also investigated cyberbullying in schools. In this study, the author determined with the innovations in technology, including the capacity of smart phones, school officials must have a complete understanding of both the technology and the law in order to effectively face potential problems (Wiseman, 2011).

Multiple studies surrounding student use of the Internet and the legal limitations schools have in regulating student access as well as protecting the school environment exist. Additional studies have been conducted on cyberbullying and its negative impact on students. Still more research has been completed relating to the limits on student speech both on and off-campus. However, a gap exists in the research addressing the legal issues surrounding student use of personal handheld technology related to the school setting.
Theoretical Framework

Allowing for members of a group to reflect on and respond to current practices and procedures is essential to the growth of an organization (Hedberg, 2009). In schools administrators and teachers must assess multiple pieces of the system to determine what will best meet the needs of the students and to be more flexible to change. Among the many components reviewed are current teaching practices, classroom management procedures, extra-curricular programs, and student conduct code policies. This type of evaluation, in which school officials are able to reflect on whether the rules themselves should be changed, is known as double-loop learning (Argyris, 2002). According to Argyris (2002), “learning may be defined as the detection and correction of error . . . . Double-loop learning occurs when errors are corrected by changing the governing values and then the actions” (p. 206).

Single-loop learning is making decisions within the existing structure of an organization, and no effort is made to evaluate the governing variables (Argyris, 2002). In double-loop learning, people work to understand why a specific solution may work better than others to solve a problem or achieve a goal. Fiol and Lyles (1985) referred to this as higher-level learning. In their evaluation, higher level learning “aims at adjusting overall rules and norms rather than specific activities or behaviors” (Fiol & Lyles, 1985, p. 808). The preferred effect of this type of learning often is not any specific behavioral outcome, but instead the creation of frames of reference (Shrivastava & Mitroff, 1982).

The qualitative study was designed following the conceptual theory of double-loop learning. The goal of this systematic investigation is to inform and offer guidance to school officials on research-based practices, which will permit them to support both the learning environment as well as the rights of students appropriately. Namely, the research is seeking to
develop a frame of reference for school administrators that will aid in the development of rules affecting the entire organization.

As education, laws, and the world, in general, have become more complex and fast-paced, leaders must have the ability to continuously adapt and change (Bass & Riggio, 2005). Transformational leadership is focused on change (Marzano, Waters, & McNulty, 2005). To facilitate double-loop learning in school settings, leaders must be transformational in their approaches. These leaders engage their staffs through the creation of common purposes (Bass, 2008). Authentic transformational leaders have a social responsibility and respect the authority, customs, rules, and traditions of society (Bass & Riggio, 2005). They encourage others to analyze situations and look for inventive solutions to old problems (Bass, 2008). This transformational leadership can result in a meaningful level of learning which can effect a total change of actions and practices (Hallinger, 2003).

Review of the Literature

**Documentation of school disruption.** Public schools are busy places, filled with students who have unique personalities, varying learning styles, and diverse backgrounds. As a result, school systems have long struggled to meet the needs of individual students and still maintain a safe and cohesive educational setting. Increased student use of personal handheld technology has created even greater challenges to what was already a complex classroom environment. According to a recent survey, “75% of 12-17 year-olds now own cell phones, up from 45% in 2004” (Lenhart, 2010, para.1). School officials must recognize the potential disruptions caused by student use of personal handheld technology in order to address the issue through policy.
**Cheating.** Ample literature exists detailing the distraction and negative impact personal handheld technology can have on the learning environment. St. Gerard (2006) asserted, “kids are now taking pictures of their math test for later classes . . . as technology continues to advance, more issues with cell phones and other electronic devices will surely arise” (p. 44).

Student use of personal handheld technology to cheat in schools can take several forms. Students could do the following:

- Text friends about answers during quizzes or tests
- Take pictures of quiz or test questions with a cell phone to send to a friend
- Search the Internet for answers during quizzes or tests
- Store notes or information on a cell phone to look at during a quiz or test.

(Common Sense Media, 2009, p. 2)

A survey commissioned by Common Sense Media (2009) found “more than a third of teens with cell phones (35%) admit to cheating at least once with them. And two-thirds of all teens (65%) say others in their school cheat with them” (p. 2). Organizations such as College Board, which administers Advanced Placement (AP) and Scholastic Aptitude Tests (SAT) have long recognized the cheating potential of personal handheld technology and other electronic devices. In their list of “what not to bring” to an exam, they include “portable listening or recording devices -- even with headphones -- or photographic equipment . . . beepers, personal handheld technology, MP3 players, or personal digital assistants (PDAs)” (College Board, 2011).

In addition, the College Board has responded to recent cheating using cell phones to transmit messages across time zones by requiring “that every AP exam (for each subject area) is completed by students at the exact same time, regardless of one's time zone” (Chen, 2009, Combating New Methods of Cheating section, para. 1).
Several instances of students using personal handheld technology to cheat in schools have been documented in the press. In 2009 in Virginia Beach, Virginia, dozens of students were caught at a local high school using the text messaging feature of their cellular phones to cheat on a test. Roth (2009) wrote, “In the end, a third of the members of the senior class were punished by an honor court of their peers. And half a dozen saw their memberships in the National Honor Society revoked” (para. 3). Similarly, in 2008 in Chapel Hill, North Carolina, four students were suspended and given zeros for cheating on an exam (Dickson, 2008). The students, who were in possession of a stolen master key, entered the school and “took pictures of exam answers on a camera phone and emailed them to other students” (Dickson, 2008, para. 2).

**Sexting.** The modern phenomenon of sexting is another significant area of concern for school officials. Sexting has the potential to disrupt the school environment, negatively emotionally impact the students involved, and result in legal charges for parties implicated. Sexting has been defined in court as “the practice of sending or posting sexually suggestive text messages and images, including nude or semi-nude photographs, via cellular telephones or over the Internet” (*Miller v. Skumanick*, 2009). Teenage students are increasingly deciding to generate and circulate sexually candid images of themselves. Smith (2008) noted “minors who distribute pornographic images of themselves [may] place . . . themselves at risk of being victimized by pedophiles or sexual predators and create potential problems for themselves amongst their peers” (p. 544). Thus, it is the responsibility of parents and schools to educate and deter students from taking such risks.

In 2009, the Pew Internet and American Life Project published the results of a survey indicating 4 percent of personal handheld technology owning teenagers have sent sexually suggestive text messages; 15 percent claim to have received such images (Lenhart, 2009, para.
1). School officials often become involved upon the discovery of such images. Szymialis (2010) recognized, “school administrators may be required to report the images to authorities under possession of child pornography statutes . . . once the image is confiscated, the issue becomes who to punish” (p. 315).

Examples of student sexting incidents can be found across the country. Recently in two Central Texas high schools, students have been implicated in the distribution of sexually explicit messages. In March 2011, an upset student sent nude images of his ex-girlfriend to members of the school’s football team (Cargile, 2011). Again in May 2011, 15 students received consequences for transmitting “a sexually explicit text message that was supposed to be between a 15-year-old girl and her boyfriend” (Cargile, 2011). In Michigan, “two Saline Middle School students [were] accused of recently sending inappropriate photographs to one another via cell phone” (Aisner, 2010). The media accounts of such occurrences are numerous. Ultimately, school officials must be prepared to address issues of sexting in a manner that is both respectful of students’ rights and protective of students’ interests.

**Cyberbullying.** Cyberbullying is another serious issue occurring within schools which needs be addressed. According to recent data, 34 of 50 states have created legislation to address incidence of cyberbullying (National Conference of State Legislatures [NCSL], 2011). The vast majority of these laws outline penalties for cyberbullying on school property, school busses, and official school functions (NCSL, 2011). Some of the legislatures “have also extended sanctions to include cyberbullying activities that originate off-campus, believing that activities off-campus can have a chilling and disruptive effect on children's learning environment” (NCSL, 2011, para. 4).
In a recent study by a congressionally backed organization, the topic of Internet safety and cyberbullying in schools was examined (Reidel, 2008). The data gathered points to the disturbing trends among teenagers in schools:

1. Twenty-five percent of high school students and 21 percent of students in grades 5 to 8 say they know someone who has been cyberbullied.
2. Thirty-two percent of high school students and 17 percent of middle schoolers admit to having said mean or hurtful things to another person online.
3. Fifty-two percent of high school students say they themselves have been cyberbullied, while the same percentage says they have cyberbullied others. (Reidel, 2008, p. 1)

This increase in bullying impacts schools when the hurt, fear, and anger manifest themselves during the school day. Administrators face an escalation of disruptions leading to disciplinary incidents.

Research has demonstrated such bullying can have a psychological impact on students. In an article regarding cyberbullying, Goddard (2008) noted, “psychologists at Rowan University in New Jersey report that being bullied is associated with negative consequences to mental health, particularly anxiety and depression” (p. 7). As a result of all this information, many schools have begun drafting specific policies addressing this new realm for student intimidation. These policies generally address acceptable computer use in the schools yet typically ignore personal handheld technology use.

One infamous incident demonstrating the devastating impact of cyberbullying occurred in Missouri in 2007 (Cavanaugh, 2008). The unfortunate story began when a 13-year-old female student was befriended on MySpace, a social networking website, by what she thought was a cute boy. The two exchanged messages until the relationship was ended with claims by the
alleged boy that the young lady was mean to her friends. Some content of their private communications was shared with other students, and the female student became the target of a viral online attack. Sadly, the young lady committed suicide as a result of the attacks (Cavanaugh, 2008, para. 8). Later, it was discovered the instigator of the online communication was not a young male student, but the mother of a former friend.

In Manassas, Virginia a 16-year-old female student was recently accused of misusing Facebook, a social networking website. She was blamed for creating a Facebook page and “posting pictures of nine other students at the school with lewd captions beneath each” (Gordon, 2011). On top of the legal confiscation of the student’s computer and misdemeanor charges potentially resulting in a $2500.00 fine and up to one year jail, the school considered expulsion for the offense (Gordon, 2011).

These cases are not uncommon in today’s schools. Parents, counselors, teachers, and school administrators must all work toward eliminating cyberbullying and protecting students from the harmful consequences. In response to such cyberbullying cases, districts, such as Roanoke County Public Schools (RCPS) in Virginia, have developed policies vaguely addressing this issue. Policy 6.26 of the RCPS Policy Manual defined bullying by describing “negative actions [as] any word, look, sign, misuse of technology that hurt a person’s body, feelings, and or property . . . . The RCPS division prohibits bullying of any person at school or any school sponsored activity” (Roanoke County Public Schools, 2005, para. 2).

Camera phones, video phones, and other personal handheld technology present a unique set of issues for school administrators. In addition to the worries regarding their use for academic cheating, such devices have been associated with privacy violations (Kiedrowski, Smale, & Gounko, 2009). Inappropriate pictures or videos are taken by students on campus in
classrooms, bathrooms, or locker rooms and forwarded to others. The video features of personal handheld devices are “sometimes used to denigrate teachers in public forums such as YouTube.com. A quick search of ‘Angry Teacher’ on YouTube.com will reveal hundreds of camera phone videos of teachers in unflattering and humiliating classroom situations” (Kiedrowski et al., 2009, p. 49).

Multiple incidents of student misconduct using the camera capabilities of personal handheld technology have been documented. In January 2011, a Texas high school student was arrested and accused of taking indecent pictures of female classmates in school restrooms (KHOU, 2011). In yet another instance, the media reported a police investigation of a 14-year-old male student in Oregon who allegedly videoed members of the school’s girls’ basketball team in states of undress in the locker room (Jung, 2011).

Cyberbullying is also the topic of much research in education. Gibbs (2008) noted in conducting research on off-campus cases, the Internet is a key method of global communication. As such, it is expected student engagement in online dialog and networking will increase (Gibbs, 2008). This idea is expanded by Gibbs (2008) who stated, “cyberspace is often used to perpetuate hate speech” (p. 239). It is the anonymity of the medium that encourages behavior which is not as readily exhibited in face-to-face exchanges.

Roskamp (2009) and Wiseman (2011) both explored the cyberbullying policies being used in public schools. Wiseman (2011) penned, “while researchers are beginning to see that the school climate and mental health of students can be seriously compromised, there is significant need for research to further identify strategies for schools to . . . respond to digital forms of harassment” (p. 57). Roskamp’s (2009) research gathered data through a survey of Illinois principals, whereas Wiseman (2011) utilized a mixed-methods design with a survey and
interviews of Nevada principals. Roskamp’s (2009) research found the most frequent forms of cyberbullying were “name calling, and spreading rumors” (p.1). Most importantly, this investigation identified the devices used most frequently in “cyberbullying incidents were cell phone text messaging, cell phone voice messages, and . . . postings at social networking sites” (Roskamp, 2009, p. 1).

School administrators should be cognizant that cyberbullying can either encourage or result in significant disruptions to the school environment. Russo, Osborne, and Arndt (2012) declared,

As students engage in the misuse of technology via cyberbullying and sexting, with such devastating effects as the teen suicides . . . school boards and administrators must take proactive steps to work with parents to devise policies aimed at eradicating this harmful practice. (p. 7)

School systems have a responsibility for the security of students and, therefore, must develop policy to address these issues.

Court precedent. American constitutional law is grounded in the history of the United States itself. Locke’s (1690) progressive publication set forth the notion that an individual as part of society “seeks out and is willing to join in society with others who are already united, or have a mind to unite for the mutual preservation of their lives, liberties and estates, which I call by the general name- property” (Of the Ends of Political Society and Government section, para. 123). This concept of civil liberty as supported by government swelled through the colonies during the years leading up to the American Revolutionary War.

Following the spread of this thought, Paine published the idea that government serves a singular purpose to provide protection for its citizens. In Paine’s (1776) argument against the
Americas maintaining an attachment to England, he wrote “security [is] the true design and end of government” (Of the Origin and Design of Government in General section, para 2). Perhaps most importantly, the Preamble to the Constitution of the United States declares among the listed purposes of the document, and thus the government itself, is the goal to “secure the blessings of liberty to ourselves and our posterity” (U.S. Constitution, 1791). Accordingly, protection of civil liberties is a cornerstone of the Constitution of the United States.

All citizens operate under the civil liberties guaranteed by the U.S. Constitution and interpreted by the Supreme Court and lesser courts. Today’s educational infrastructure is bound by these court decisions. Alexander and Alexander (2005) wrote, “The combination of constitutions, statutes, and court (or case) law forms the primary legal foundation on which the public schools are based” (p. 2). Given the U.S. judicial system operates under stare decisis, also known as precedent, prior court decisions must be fully explored to predict future outcomes (LaMorte, 2002).

Students have constitutional rights within the public school setting; conversely’ schools also have the responsibility to maintain a safe and secure environment for all students. Yell and Rozalski (2008) noted “the U.S. Supreme Court has played a significant role in developing rules that govern how students may be disciplined in public schools” (p. 8). Thus, when developing school policies related to personal handheld technology, an understanding of students’ rights must exist.

**Student due process.** One characteristic of all good schools—apart from location, grade levels served, or demographics—is a reasonably orderly environment (Marzano, 2003). To accomplish this goal of an orderly school, school leaders must have in place a system of procedures and policies (Stader, 2007). The Due Process clause set forth in the Fourteenth
Amendment of the U.S. Constitution guarantees persons not be deprived of “life, liberty, or property, without the due process of law” (U.S. Constitution, Fourteenth Amendment, 1868). Stader (2007) penned, “due process is a legal principle that considers the manner of fair and adequate procedures for making decisions” (p. 96).

The Supreme Court ensured students have the right to due process (Goss v. Lopez, 1975). The case involved nine students in Ohio who alleged they were suspended for up to ten days without a hearing. With Justice White delivering the majority opinion in the Goss v. Lopez (1975) decision, the Court guaranteed accused students are provided an informal hearing with school administrators prior to school suspensions. This due process right is not usually applied to in-school or after school detentions.

Public educators must also be cognizant of substantive due process. Substantive due process judges whether the rights of a student can be violated despite the fairness of the process (Stader, 2007). Several tests are applied to make this determination: “Does the rule or policy provide adequate notice of what conduct is prohibited? Does the rule or policy serve a legitimate educational purpose?” (Stader, 2007, p. 100). In following these guidelines, school officials must carefully craft policies. Policies cannot be vague and must offer clear guidance to administrators (Stader, 2007).

Gibbs (2008) identified in her research that behavioral issues are no longer confined to the school campus. In general, courts support school officials in the enforcement of rules during school functions and on the school campus. If the student’s behavior actually occurs while off-campus, the courts require a link to be demonstrated between the behavior and a disruption to the school environment (Alexander & Alexander, 2005). According to Conn & Brady (2008), “court decisions in various jurisdictions have provided inconsistent guidance to school districts
regarding the legal issues surrounding Internet-based student speech and expression” (p. 4). This inconsistency is especially evident when the nexus between the off-campus behavior and the school disruption does not exist (Stader, 2007).

**Search and seizure.** The Fourth Amendment of the Bill of Rights provides for people to be secure in their “persons, houses, papers, and effects, against unreasonable search and seizures” (U.S. Constitution, 1791). The conflict between the protection of this right and the maintenance of a civil society has been the subject of litigation many times. The first such case was heard by the U.S. Supreme Court in 1886 (*Boyd v. United States*). It took almost one hundred years for the Court to define the parameters of administrative searches in schools.

The landmark case of *New Jersey v. T. L. O.* (1985) was decisive in shaping schools’ search and seizure policies. The case began when two female students were found smoking in a school bathroom. Upon questioning by the assistant principal, one of the students denied smoking. The administrator then asked for her purse and during a search found tobacco, marijuana, drug paraphernalia, and evidence indicating the student may be dealing drugs (*New Jersey v. T. L. O.*, 1985). The student claimed the search of her purse was in violation of her Fourth Amendment protection against unreasonable search and seizure (U.S. Constitution, 1791).

In the majority decision, the Court develops a two-part test for school officials to determine whether a student search is valid. This test was established when the Court stated,

The special needs of the school environment require assessment of such searches against a standard less exacting than probable cause . . . [school officials need only] a reasonable suspicion that the search will uncover evidence of an infraction of school disciplinary rules or a violation of the law. (*New Jersey v. T. L. O.*, 1985)

The first part of the test requires the school officials to have a reasonable suspicion. The second
part mandates the search must be because of an expected violation of school policy or the law.

Frandsen’s (2010) research into school search and seizure law produced guidelines for school administrators. According to this analysis of court cases, searches of inanimate objects were considered minimally intrusive (Frandsen, 2010). Courts have specifically cited cases where searches of purses, desks, book bags, cars, and lockers as being necessary to “secure the situation with minimal trauma to those involved” (Frandsen, 2010, p. 86).

**Students’ free speech.** Students’ rights have been supported by the courts in multiple cases. The landmark 1969 case of *Tinker v. Des Moines Independent Community School* established the protection of student speech in schools which is not disruptive to the school environment. Set during the Vietnam War era, the case centered on teenagers wearing black armbands in protest of the war. In an attempt to avoid controversy, school officials suspended the students until they agreed to cease wearing the armbands (*Tinker v. Des Moines*, 1969). Upon hearing the case, the Supreme Court stated, “it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” (*Tinker v. Des Moines*, 1969).

The key test stemming from the *Tinker* case is the foreseeable effect of the student speech. Justice Fortas, delivering the opinion of the Court, upheld the students’ rights to express themselves “cannot be prohibited unless it materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school” (*Tinker v. Des Moines*, 1969). *Tinker* still serves as the foundational case in student free speech.

In a departure from the *Tinker* standard, the Supreme Court in *Bethel School District No. 403 v. Fraser* (1986) decided in favor of a school district’s limiting student speech. This pivotal case involved a student who presented a speech during school hours in which he referred to
another student “in terms of an elaborate, graphic, and explicit sexual metaphor” (Bethel v. Fraser, 1986). Two teachers had reviewed the speech prior to its delivery and advised the student it was inappropriate. The school responded by suspending the student for three days and removing his opportunity to speak at the commencement ceremony (Bethel v. Fraser, 1986).

The parents sued claiming both First and Fourteenth Amendment violations (U.S. Constitution, 1868). With its decision the, Court “held that a public high school student could not claim a First Amendment right to voice lewd, obscene, profane, and vulgar language” (Kiedrowski et al., 2009, p. 51). Chief Justice Warren Burger wrote in the opinion of the Court, “The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against society’s countervailing interest in teaching students the boundaries of socially appropriate behavior” (Bethel v. Fraser, 1986).

Thus the Supreme Court through the two fundamental cases of Tinker v. Des Moines Independent Community School (1969), and Bethel School District No. 403 v. Fraser (1986) essentially established a two-part assessment to help courts and school systems determine appropriate responses. The first part of the evaluative test looks at the substance of the speech or expression, and the second piece looks at the consequence of the speech. This test is applied to most of the student free speech cases heard by courts in the past thirty years.

In Hazelwood School District v. Kuhlmeier (1988), the Supreme Court modified the Tinker standard limiting schools to regulating speech which “substantially interfere[s]” with the school environment (Tinker v. Des Moines, 1969). In Hazelwood, students brought suit against the school and district for allegedly violating their First Amendment rights of free speech when two articles were deleted by the principal from publication of the school paper (Hazelwood School District v. Kuhlmeier, 1988; U.S. Constitution, 1791). In the majority opinion, Justice
White articulated that schools may adhere to higher standards than those in the world of journalism (*Hazelwood School District v. Kuhlmeier*, 1988). Consequently, schools are entitled to refuse to distribute student work that does not meet their established standards (*Hazelwood School District v. Kuhlmeier*, 1988). In addition, the test established by *Tinker* determining when a school may discipline student expression does not have to be the standard for deciding whether to publish student speech (*Hazelwood School District v. Kuhlmeier*, 1988). This refinement permitted schools greater latitude in the control of student speech and expression.

In *Saxe v. State College Area School District* (2001) two students contested the area school district’s anti-harassment policy. They claimed the new policy violated their First Amendment rights of free speech (U.S. Constitution, 1791). The students asserted the policy unlawfully banned them from expressing their personal religious views that homosexuality was a sin. The U.S. Court of Appeals for the Third Circuit in its decision did not support the school as the speech in question did not “rise to a material or substantial disruption of the operation of the school” (*Saxe v. State College Area School District*, 2001). The decision essentially defined the general rule, as students may engage in activities at school conveying their ideological viewpoints unless such activities interfere with the operation of the school or with the rights of others.

Most recently, the Court further restricted *Tinker* with the *Morse v. Frederick* (2007) decision. This case surrounds an instance in which students unfurled a banner touting “Bong Hits 4 Jesus” at a school-sanctioned event. The principal, interpreting the banner as supportive of illegal drug use, ordered students to take it down. One student did not comply and was suspended (*Morse v. Frederick*, 2007). The student filed suit claiming the incident violated his First Amendment right to free speech (U.S. Constitution, 1791). Citing *Hazelwood*, the Court
declared “deterring drug use by schoolchildren is an ‘important--indeed, perhaps compelling’ interest’ of the schools and the public (Morse v. Frederick, 2007). As such, “the governmental interest in stopping student drug abuse allow schools to restrict student expression that they reasonably regard as promoting such abuse” (Morse v. Frederick, 2007).

A lesser known case, Porter v. Ascension Parish School Board (2004) described the challenges of student speech originating off school campus but which was later brought on-campus. In this case, a teenage student created a drawing depicting his high school being violently attacked. Two years after the completion of the sketch, the student’s younger brother inadvertently took the drawing to his middle school, and alarm ensued. The student artist was brought in, searched, and suspended. He was then given the opportunity to either attend an alternative school or go before the school board for expulsion (Porter v. Ascension Parish School Board, 2004). The lawsuit brought forth by the student’s mother claimed violations of the student’s First, Fourth, and Eight Amendment rights (U.S. Constitution, 1791). In its opinion, the U.S. Court of Appeals, Fifth Circuit, clearly addressed the issue of off-campus speech and the legal precedent established thus far.

Many courts have applied the Tinker standard in evaluating off-campus student speech later brought on-campus by persons other than the speaker. These cases have dealt with such issues as underground student newspapers distributed off-campus, student-run websites created on off-campus computers, and various writings brought on-campus by students other than their original author. Although reaching differing conclusions as to the legality of restrictions placed upon the speech in question, these cases consistently approach off-campus speech brought on-campus as subject to regulation under Tinker’s “material and substantial” disruption test (Porter
v. Ascension Parish School Board, 2004). This guideline can be used by school systems in determining the extent of response supported in incidents related to off-campus speech.

In reviewing all of these cases, it is important to note the courts have consistently focused on the possible effect on students: either their direct safety or the instructional operation of the school. Willard (2011) recognized “thus far, no court has upheld the discipline of a student where the only disruption or interference has been directed at a school staff member” (p. 95).

**Rights of parents.** It is imperative for school officials to have wisdom related not only to cases involving students versus the school system, but also in cases related to the rights of parents or guardians. The right of parents in the United States to rear and make decisions regarding their children is fundamental. Historically, multiple court decisions have endorsed this concept. In *Troxel v. Granville* (2000), Justice O'Connor expressed the Court’s general view of parents’ rights when she wrote, "The liberty interest at issue in this case--the interest of parents in the care, custody, and control of their children--is perhaps the oldest of the fundamental liberty interests recognized by this Court” (Opinion II section, para.4).

Additional cases can be found dating back to the first quarter of the twentieth century. In *Meyer v. Nebraska* (1923), the Supreme Court struck down legislation which “attempted materially to interfere . . . with the power of parents to control the education of their own” (Opinion section, para. 13). A few years later, the Court declared in *Pierce v. Society of Sisters* (1925) that a “child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations” (Opinion section, para. 10).
Contrary to the above mentioned cases, the Supreme Court has also recognized limits to parental control. In *Prince v. Massachusetts* (1944), the Supreme Court acknowledged family is not beyond regulation. There is a fundamental interest of the state to protect the general safety and good of children. *Prince v. Massachusetts* (1944) set forth: “the state, as *parens patriae*, may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways” (Opinion section, para. 14). The Court furthered this idea when it penned, “The state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare” (*Prince v. Massachusetts*, 1944, Opinion section, para. 15).

The 11th Circuit Court of Appeals attempted to strike a balance between parental authority and the states’ or schools’ interest in *Arnold v. Board of Education* (1989). In this decision, the court asserted parents do not have the power to demand the public schools create a customized educational program for their children (*Arnold v. Board of Education*, 1989). Essentially, the case stated the traditional rights of parents are balanced with the interest of the state in managing schools (*Arnold v. Board of Education*, 1989).

This concept of equilibrium is broadened in *Gruenke v. Seip* (2000) when the Third Circuit Court of Appeals authored, “Although a student may not enjoy a right of privacy to the same extent as a free adult, there are nevertheless limitations on intrusions by school authorities” (Substantive Due Process section, para.11). The court continued by saying it is not inconceivable that school policies might conflict with the rights of parents to rear their children (*Gruenke v. Seip*, 2000). However, when this occurs, “the primacy of the parents' authority must be recognized and should yield only where the school's action is tied to a compelling interest” (*Gruenke v. Seip*, 2000, Substantive Due Process section, para.12).
As evidenced by the many prior court decisions, there is judicial uncertainty as to where the balance of power lies: with the parents or with the schools. The courts consistently recognize the rights of parents to manage the rearing of their children. Yet, the courts also acknowledge the special needs required of school environments. Given the ambiguity of the courts, school officials must strive to attain and apply legal wisdom in their policy and decision making.

Specific legal decisions related to personal handheld technology. Recently, legal cases surrounding personal handheld technology use in schools have begun to appear in court. One such case is *Requa v. Kent School District No. 415* (2007). In this case, a student sued the school system’s superintendent and the school’s principal for violation of his rights of free speech and due process (U.S. Constitution, 1791). The student claimed he was suspended for forty days for posting a video on YouTube.com filmed with either a small handheld video recorder or cellular phone. The video was critical of a teacher at the high school (*Requa v. Kent*, 2007). In reviewing the case, the court particularly noted the video “featured footage of a student standing behind the teacher making faces, putting two fingers up the back of her head and making pelvic thrusts in her general direction” (*Requa v. Kent*, 2007, Background section, para. 1). The “district court went on to hold that the video lacked any valuable political or critical content and was instead simply ‘vulgar and lewd speech’ that disrupted ‘the maintenance of a civil and respectful atmosphere toward teachers and students alike’” (Papandrea, 2007, para.5).

In its rejection of the defendant’s request, preliminary injunction of the suspension, the federal district court noted the importance of providing a forum for students to voice their opinions. *Requa v. Kent* (2007) provided “a student’s right to criticize his or her teachers is a
right secured by the Constitution” (Conclusion section, para. 1). The court further stressed, “The public also has a deeply vested interest in the creation and maintenance of an educational system where teachers can practice their vitally important craft in an environment free from harassment, lewdness and inappropriate behavior” (Requa v. Kent, 2007, Public Interest section, para. 4). This opinion emphasizes the necessity for schools to formulate policy specifically addressing students taking or recording images for non-educational purposes.

An additional relevant case regarding personal handheld technology was heard in the New York Supreme Court in 2008. In 2007, the New York City Department of Education established a complete ban of cellular phones in schools. The foundation of the lawsuit was “the school board had overreached its statutory authority and acted arbitrarily and capriciously and that parents had been denied their constitutional right to communicate with their children . . . and provide for the care, custody, and control of their children” (Kiedrowski et al., 2009, p. 44). The ruling held the school board was within its rights to ban cellular phones. As recognized in the written opinion of the court, “If adults cannot be fully trusted to practice proper cell phone etiquette, then neither can children” (Price v. NYC Board of Education, 2008, Opinion section, para. 28). The court also acknowledged, “the very nature of cell phones, especially with regard to their text message capability, permits much of that activity to be performed surreptitiously which presents significant challenges” (Price v. NYC Bd. of Ed., 2008, Opinion section, para. 29).

More recently, a case surrounding the issue of sexting in schools was heard in the U.S. District Court of Appeals for the Third District. In Miller v. Skumanick (2009), students were found in possession of nude and semi-nude photographs of students on their cell phones. The images were turned over to the county district attorney, Skumanick. The parents and students
were given an option to face criminal charges or follow a prescribed educational program. The parents of three female students filed suit, alleging freedom of expression and parental authority of child rearing as set forth in the First and Fourteenth Amendments respectively (Zirkel, 2009, p. 76). In this case, the court found in favor of the plaintiffs. This is due largely to the fact that in the particular pictures discovered, one of a female with a towel wrapped under her breasts and two of females in their bras, would probably not qualify as pornography under the state statute (Zirkel, 2009, p. 76).

**Conclusion**

Understanding the rights and obligations of educators, students, and parents is complex. The school, as authorized by states, is responsible for establishing reasonable rules to govern the educational setting. Educators cannot infringe upon the rights of students and parents; however, they have substantial discretion in matters of school safety (Alexander & Alexander, 2005). As in the many cases noted within this study, conflict between the stakeholders in schools can escalate into important litigation that forever defines school law. Arcaro (2012) wrote, “importantly, the educator and school administration must be in a position to recognize the emergence of these legal issues early on so that efforts can be made to address problems as early as possible” (para. 2).

**Summary**

The review of existing literature demonstrates the potential disruptive nature of personal handheld technology. Evidence is provided which documents instances in which personal handheld devices have been utilized to cheat, bully, harass, and participate in inappropriate sexual behaviors. The precedence created by students’ rights cases is also well documented. Specifically, school leaders are accountable for knowledge of students’ right to due process,
limits to search and seizure, and free speech. U.S. courts have also addressed the rights of parents in previous decisions. New to the field of legal scholarship are issues related to personal handheld technology.

Prior research delves into many aspects of school law as well as technology. Specifically, dissertations have been penned on search and seizure parameters, students’ rights to expression and privacy, and Internet regulation in schools. However, a gap exists with regard to legal implications of student personal handheld technology use. This study could contribute to education by providing realistic guidelines for school administrators in developing policy and managing student disciplinary incidents. This is important because many educators are unaware or misinformed about students’ rights, as well as teachers’ and administrators’ rights to regulate and seize personal handheld technology devices in the public school setting.
CHAPTER THREE: METHODOLOGY

School leaders must shield themselves and their schools from legal danger, while still improving the learning atmosphere and sustaining the rights of students. The problem is numerous educators are not aware of how to utilize legal precedent when they deem students need consequences for misuse of personal handheld technology (James, 2009; O’Donovan, 2010). Without a legal framework, school officials will persist in experiencing frustration and likely legal charges over their actions related to the regulation of personal handheld technology.

The purpose of this qualitative legal research project was to investigate some of the challenges connected with the school regulation of personal handheld technology. Throughout the study, there was an exploration of the significant legal issues related to such governance within K-12 public education in the United States. The goal of this systematic investigation is to inform and offer guidance to school officials on research-based practices, thereby permitting them to appropriately support both the learning environment as well as the rights of students.

This chapter outlines the research questions which guided the direction of the study. The legal research method is defined, and an explanation is provided as to why this method is the best choice for the study. Details regarding the population, setting, and role of the researcher are set forth. Additional information describing the procedures utilized, as well as the collection and analysis of the data are also summarized.

**Research Questions**

The intention of this study is to offer a practical guideline for school officials regarding the development of a student personal handheld technology policy which is based upon court and legal precedence. The following questions guided this study:

1. How have the U.S. courts addressed the balance between students’ civil liberties and
the interest of school officials in maintaining and operating safe, orderly, efficient, and effective learning environments?

Beginning with the 1969 Supreme Court case of Tinker v. Des Moines, the Court and subsequent lower courts have placed restrictions on schools in support of student rights. Justice Abe Fortas spoke for the majority opinion of the Court by stating, “In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views” (Tinker v. Des Moines, 1969, Opinion section, para. 20).

This study located and discovered the cases which considered constitutional guarantees of both students and staff in public school settings.

2. What trends can be identified in the legal cases related to student use of personal handheld technology?

Cheating, sexting, and cyberbullying are documented issues school officials deal with regularly. These concerns are amplified in K-12 public education as a result of student misuse of personal handheld technology. Unfortunately, these problems have become commonplace. States, such as Virginia, specifically address the use of cheating with personal handheld technology in their standardized assessment examiners manuals. Within the guides provided to test examiners and proctors is the directive to “ensure that students have no access to cell phones or other electronic devices during testing” (Virginia Department of Education Division of Student Assessment and School Improvement, 2012, p. 9).

3. What legal standards have been used by lower courts to render decisions on cases related to students’ personal handheld technology use and the authority of school officials to protect both the safety of students and the learning environment?
Educators function under the principle of *in loco parentis* which essentially means “in place of the parent” (LaMorte, 2002, p. 449). In the past, this concept was taken literally: “The [educator] enjoyed many of the same rights and privileges afforded to parents in matters of safety, discipline, and the general well-being of school children” (Harris, 1985, p. 164). Recent court decisions have shown a shift in the application of this doctrine which places greater scrutiny on school officials. This research clearly outlined the rules, frameworks, and tests applicable to public schools, as set forth by the courts and legislatures through their decision making.

4. Based upon analysis of jurisprudence as applied to student use of personal handheld technology cases, what guidelines should be used in developing school policy and procedures?

The creation of sound school policy is imperative for the protection of the educational environment. For this endeavor, “educators, administrators, and staff [have to become] increasingly conscious of legal issues connected to students' rights, juvenile legal status, and the handling of student crime” (Phelps, 2006, para. 8). This study offers suggestions and practical guidelines for school officials to reflect upon regarding the potential use and management of personal handheld technology in schools.

**Research Design**

All scientific research seeks to answer a question through the collection of evidence using a predefined set of procedures (Family Health International, 2006). Qualitative research typically seeks information about the principles, opinions, actions, or social frameworks of particular populations with the goal of understanding their patterns (Ary, Jacobs, Razavieh, &
Sorensen, 2006). In essence, it explores the human or intangible side of an issue (Family Health International, 2006).

Qualitative research can be accomplished through a number of different approaches. Knafl and Howard (1984) noted different research goals call for specific research methods and analysis procedures (as cited in Hsieh & Shannon, 2005). Common methods of qualitative research include participant observations, interviews, and case studies. These particular designs all focus on specific people or environments. The subject of this study encompasses too great a geographic area and covers too many events from the past for these specific methods to effectively answer the research questions. As such, the qualitative methods considered for this study were content analysis and legal research.

Content analysis is used to determine the presence of certain concepts in text data (Hsieh & Shannon, 2005). This is accomplished by coding or breaking down text into manageable categories and then analyzing the relationships (Ary et al., 2006). Frequently, content analysis is used to determine emotions or patterns derived from interviews or documents (Hsieh & Shannon, 2005).

There are advantages to content analysis as a research design. This method can provide valuable insight into human thought and language use through the analysis of text: It is unobtrusive, and it can be utilized both quantitatively and qualitatively (Colorado State University [CSU], 2012). Some disadvantages to content analysis are that it can be exceptionally time consuming and has a propensity too often to merely consist of word counts (CSU, 2012). The struggle with content analysis is also well articulated by Elo and Kyngas (2007) when they stated, “content analysis does not proceed in a linear fashion and is more complex and difficult than quantitative analysis because it is less standardized and formulaic” (p. 113).
Legal research involves a meticulous search and analysis of case law, statutes, and regulations (Kunz, Schmedemann, Bateson, Downs, & Catterall, 2008). Similar to content analysis, legal research consists of methodically recording the content of legal opinions for data beyond the topic and decision of the case and the identity of the participants (Hall & Wright, 2008). Legal research searches for “legal, factual, analytic, or linguistic elements of legal decisions that could be gleaned only by a fairly close reading of the opinions, rather than, for instance, information available in a digest or abstract of the decision” (Hall & Wright, 2008, p. 1).

According to Cornell University Law School (1999), the goal of legal research is to discover authority that will assist in finding a resolution to a legal problem. The weight of authority is generally classified as either primary or secondary based upon the degree to which it controls the answer to a legal question (Sloan, 2009). Cornell University Law School (1999) defined primary authorities as “the rules of law that are binding upon the courts, government, and individuals [such as] statutes, regulations, court orders, and court decisions” (para.1). Secondary authorities are typically commentaries on the law that aid in clarifying what the law is or should be (Sloan, 2009).

Legal research is a thorough and systematic approach that serves to decipher and explain the law on a specific subject (Kunz et al., 2008). This method permits the researcher to trace the evolution of legal decisions that impact public schools and utilize these precedents to predict what future decisions could look like. Legal research “aims for scientific understanding of the law itself as found in judicial opinions and other legal texts” (Hall & Wright, 2008, p. 2) and, thus, was the best method to use in answering the stated research questions.
Participants

This legal research was based upon primary authorities and, therefore, utilized no individual participants. The study focused on decisions rendered by both federal and state courts as well any applicable litigation. An analysis of court transcripts and interpretations was conducted. Pertinent legal precedents were determined based upon this review.

Setting/Site

This study focused on legal decisions and litigation in the United States of America. Research was concentrated on the United States Supreme Court, the United States Court of Appeals, and lesser district courts. Given the constitutional nature of the research questions, local court decisions were not utilized. The cases researched were those decided within the past seven years, although some can be traced farther back to determine the foundations of the decision.

Researcher’s Role / Personal Biography

As a secondary school assistant principal, coping with student use of handheld devices such as cellular phones is a frequent occurrence. In the past few years, there has been a marked increase in cheating, cyberbullying, sexting, and disturbances resulting from student use of personal handheld technology in the school setting. A building administrator must be able to respond to situations quickly and legally. As the research was conducted, the writer had to be aware of the bias that existed as a result of handling multiple issues with students using personal handheld technology. In analyzing the cases and documents, the researcher had to step back and think wholly instead of in isolation.

Data Collection

The U.S. functions as a common law system in which case law forms part of the law of
the land (Kunz et al. 2008). This doctrine known as *stare decisis* means decisions are “rigidly adhered to by lower courts when following decisions by higher courts in the same jurisdiction” (Alexander & Alexander, 2005, p. 6). Thus the effects of a legal decision extend beyond that solitary decision and must be thoroughly explored. This research utilized primary sources in the form of court transcripts and court documents. Secondary writings pertaining to primary source events and documents including law reviews were used to enhance or substantiate interpretations.

The first step in the location of pertinent cases was to generate search terms. Research terms are the expressions of the concepts (Kunz et al., 2005). Using a guided approach outlined by Sloan (2009), the parties concerned, places and things involved, likely claims, and relief sought were determined. Once a few terms were identified, word roots and synonyms, as well as broader and narrower terms were considered. Recognizing varying levels of a concept further aided in locating useful research material (Sloan, 2009). Table 1 illustrates the terms that were utilized in the initial search for relevant court cases.
Table 1

Identified Research Terms

<table>
<thead>
<tr>
<th>Category</th>
<th>Terms identified</th>
</tr>
</thead>
<tbody>
<tr>
<td>The parties potentially concerned with the problem</td>
<td>school official, educator, teacher, principal, school administrator, assistant principal, student, school district, school board, board of education</td>
</tr>
<tr>
<td>The places and things involved in the issue</td>
<td>school, public school, classroom, class, cell phone, cellular phone, cell, video phone, camera phone, handheld technology, text phone, tablet, iPad, iPod, iPhone, Droid, Blackberries, Nanos</td>
</tr>
<tr>
<td>The likely claims and arguments that could be raised</td>
<td>right to privacy, search and seizure, freedom of speech, freedom of expression, scope of freedom, parental rights, constitutional rights, civil rights, civil liberties, natural rights, rights, First Amendment, Fourth Amendment, Section 1983, defamation, illegal search, Title IX</td>
</tr>
<tr>
<td>The relief sought by the complaining party</td>
<td>restraining order, reinstatement, preliminary injunction, motion to dismiss, punitive damages, suppression, reversal, summary judgment, qualified immunity</td>
</tr>
</tbody>
</table>

From February 2013 through April 2013, multiple electronic databases were accessed and searched, using the identified terms. The databases initially utilized were FindLaw, Public Library of Law, Google Scholar, Justia, Open Jurist, Fastcase, and LexisNexis Academic. Boolean and natural language word searches were applied. When available, filters were applied to the searches, limiting the results to cases heard between January 2006 and February 2013.

The Fastcase search engine proved to be the most user-friendly and powerful of the databases. Fastcase is a complete and current national database and includes state cases going
back over sixty years (Fastcase, 2009). Fastcase offers both Boolean and natural language searches. Its Boolean search permitted the use of standard search syntaxes of AND, OR, NOT; as well as exact phrases and variations of a stem word. The results were generated by relevance to the search terms. Each result included a brief summary of the case and hyperlinks to the case document.

Using Fastcase, 391 cases were initially located. Each of the cases was then examined to determine actual relevance to the study. Most of the cases were set aside and deemed inapplicable to the study. Common reasons for removing a case from the final research were as follows:

- The case involved a theft of personal property and not an actual misuse of personal handheld technology resulting in the actions of a school official.
- The case involved the misuse of personal handheld technology by staff or other adults, not by students.
- The case involved either the actions of a private K-12 school or a college/university, not a public K-12 school.
- The case involved technology used off campus, not misuse of personal handheld devices on campus.
- The case involved sexual assault of a student, not the misuse of personal handheld technology by a student.

After this lengthy review, 15 cases were left to analyze.
Data Analysis

There are two basic steps to the analysis of legal documents: internal evaluation and external evaluation, also known as updating the law (C. Wren & Wren, 1986). An internal evaluation consists of the researcher reading and re-reading the legal documents to establish relevance to the research questions. If through this process it is determined that a legal authority is pertinent to the stated problem, then the researcher proceeds to the external evaluation or updating of the law (C. Wren & Wren, 1986).

Using the LexisNexis Academic search engine, the 15 remaining cases were Shepardized by checking their citations. This process traces the preceding or ensuing history of a case to determine if the ruling had been limited, modified, overturned, cited, followed, or distinguished by previous or subsequent court decisions. This step served to update and determine the current validity of the legal decision of the court.

Each case was then fully briefed to organize the information into more manageable parts. A comprehensive brief includes the following elements of the case:

1. Title and Citation
2. Facts of the Case
3. Issues
4. Decisions (Holdings)
5. Reasoning (Rationale)
6. Separate Opinions
7. Analysis. (Pyle & Killoran, 1999)

This careful dissection of each judicial opinion aided the researcher in understanding the relevant court cases as well as the legal reasonings behind them. The case law analysis template utilized
in this study can be viewed in Appendix A.

Once the briefs were completed, the researcher began to explore patterns across the categories. Computer-generated graphic organizers aided in the organization and interpretation of the data. The case briefs were grouped by jurisdiction, chronological order, type of defendants, age of students, existence or non-existence of school policy addressing student use of personal handheld technology, and claims made by both the plaintiffs and defendants. These groupings allowed the researcher to determine frequencies, current trends, and patterns in the case law.

Validity Issues

One shortcoming emerged while conducting this research. I am a current building level administrator in a secondary school setting where students utilize personal handheld technology with regularity. I am not a lawyer nor trained in any way to serve in the legal profession; therefore, any analysis, or recommendation provided through this study should not be construed as legal advice. A licensed attorney should be consulted for specific guidance.

The reliability of this research is dependent upon the detailed and consistent briefing and coding of the court cases. It was imperative that the categories were clearly defined in a way that accurately determined the trends within the legal authorities. The data was briefed and categorized in the same way over a period of time to create stability.

The credibility of this study was based in part on finding corroborating data to support the interpretations of case law, legislative decisions, and regulatory policies. The citations for all utilized cases were discovered and assessed. Cross-case comparisons were applied when possible to affirm the consistency of court decisions.

This research concentrates on the legal cases regarding student use of personal handheld
technology in United States public schools. Issues concerning staff use or staff misuse of personal handheld technology during the school day are not part of this study. Legal matters occurring outside of the U.S. were not considered.

**Trustworthiness**

Establishing trustworthiness is an important aspect of research. Lincoln and Guba (1985) wrote that “trustworthiness is simple: how can an inquirer persuade his or her audience that the findings of inquiry are worth paying attention to, worth taking into account” (p. 290). According to Lincoln and Guba (1985), trustworthiness involves establishing credibility, transferability, dependability, and confirmability.

The adoption of the legal research method serves to aid in the credibility of the research. Legal research is valued as a necessary skill and required of the students at many law schools (Cornell University Law School Legal Information Institute, 1999). Efforts were made to gather court documents and information from the United States Supreme Court, U.S. Courts of Appeals, and U.S. District Courts. A conscientious effort was made to gather applicable legal decisions from most, if not all, of the 11 federal circuit courts. This resulted in the triangulation of data from the many areas of the country and varying levels of the judicial system. Ary et al. (2006) noted when “different data sources are in agreement, there is corroboration” (p. 505).

The researcher sought secondary authorities to either substantiate or negate the interpretation of the evidence. Opposing judicial decisions or opinions were also intentionally sought. This contradictory data, known as negative case sampling, aided in the control of bias which is another technique for establishing credibility (Lincoln & Guba, 1985).

Transferability is demonstrating the findings of the research have relevance in other contexts (Lincoln & Guba, 1985). The researcher, however, does not provide transferability. To
be more precise, the researcher offers thick descriptions that allow others to judge whether transferability is possible (Lincoln & Guba, 1985). The explanations provided with the analysis of the data and subsequent development of a legal guideline for school officials will hopefully be transferable to other situations.

Dependability is when the findings of the study are clearly documented and can be repeated (Lincoln & Guba, 1985). Confirmability is the avoidance of bias within the study (Lincoln & Guba, 1985). To attain these goals, an audit trail was kept. The audit trail served to validate the neutrality of the research analysis. To accomplish this, the researcher documented how the study was carried out, including records of why decisions were made and how cases were selected or rejected. Ary et al. (2006) recognized an audit trail as the key tactic for indicating confirmability.

**Ethical Issues**

This study is based upon the legal decisions of the United States courts. Trusting in these legal precedents is imperative to the research. William Blackstone wrote in the mid-eighteenth century that courts should follow legal precedents “‘unless flatly absurd or injust; for though their reason be not obvious at first view, we owe such a deference to former times as not to suppose that they acted wholly without consideration’ ” (as cited in Alexander & Alexander, 2005, p. 8). Henry Campbell Black reasserted in 1912 that “it is the duty of a court of last resort to abide by its own former decisions” (as cited in Alexander & Alexander, 2005, p. 7). This research must be cognizant of the legal past in order to determine the policy to best fit the present and future.
Summary

The lack of a legal standard for school leaders to follow regarding school regulation of personal handheld technology is the focus problem of this study. This chapter describes the legal research methodology intended for this study. Sloan (2009) described the preliminary stages of legal research as identifying the scope and generating search terms. These terms were searched using electronic databases. The identified cases were briefed and analyzed. Issues of validity and trustworthiness are addressed through data triangulation, negative case sampling, and audit trails. The next chapters contain information gathered through the research and the resulting legal guidelines for school administrators.
CHAPTER FOUR: FINDINGS

This chapter is an outline of the cases regarding student use of personal handheld technology in public schools identified using the qualitative legal research methods. The cases examined were those discovered using the Fastcase and Lexis Nexis Academic search engines. The cases are presented by their federal jurisdictions and geographical locations, and in chronological order. A breakdown of each case by plaintiffs’ claims as well as an overall summation of each case is also provided. As mentioned in the first chapter, a significant limitation of this study is the lack of access to unpublished court decisions or to those cases settled out of court. Accordingly, the findings shared in this chapter cannot be interpreted as representative of all legal claims related to this topic.

Personal Handheld Technology Court Cases

The Supreme Court is the highest court in the United States and, therefore, the ultimate authority in the application of laws and the interpretation of the U.S. Constitution. No U.S. Supreme Court ruling exists related to the issue of student use of personal handheld technology (U.S. Courts, 2013). Out of 391 discovered cases, 15 were identified as applicable to this study involving student use of personal handheld technology in public schools. Of the 15 legal actions studied, school administrators were defendants in 10; school districts served as defendants in 11; other school staff such as secretaries, coaches, and teachers were defendants in four, and there were two instances in which school personnel were part of the facts of the case but not defendants. Nine of the cases were heard in the federal court system, and six were heard in state courts.

Federal distribution of cases. In general, the federal court structure consists of 94 district or trial courts with at least one district in each state. The U.S. District Courts feed into 12
regional circuit appellate courts, which hear “appeals from the district courts located within its circuit” (U.S. Courts, 2013, para. 5). Each state has its own local trial courts, leading to their state appeals courts, and finally their highest appeals court, referred to as the state supreme court (U.S. Courts, 2013). The allegations or claim in each case determines whether the case is heard in federal or state court. Any case involving a Constitutional claim or the laws of the U.S. is heard in a federal court (U.S. Courts, 2013). For ease in understanding the cases discussed within this chapter, a court system structural chart is provided in Figure 1.

Figure 1

*The Federal Court Structure*
The cases identified for use in this study are distributed between the federal and state courts. Nine of the 15 cases were heard in federal courts with seven of these being tried in U.S. District Courts and the other two decided in U.S. Courts of Appeals. Of the state court cases, three were determined in state supreme courts, and three were held in courts of appeals. Tables 2 and 3 list the cases alphabetically by their jurisdictions.

Table 2

*Identified Cases Heard in Federal Court*

<table>
<thead>
<tr>
<th>Case</th>
<th>Jurisdictional Court</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Foster v. Raspberry, et al.</em></td>
<td>U.S. District Court for the Middle District of Georgia, Columbus Division</td>
</tr>
<tr>
<td><em>G.C. v. Owensboro Public Schools, et al.</em></td>
<td>U.S. Court of Appeals for the Sixth Circuit</td>
</tr>
<tr>
<td><em>J.W. v. DeSoto County School District, et al.</em></td>
<td>U.S. District Court for the Northern District of Mississippi, Delta Division</td>
</tr>
<tr>
<td><em>Laney v. Farley, et al.</em></td>
<td>U.S. Court of Appeals for the Sixth Circuit</td>
</tr>
<tr>
<td><em>Logan v. Sycamore Community School Board of Education, et al.</em></td>
<td>U.S. District Court for the Southern District of Ohio, Western Division</td>
</tr>
<tr>
<td><em>N.N. v. Tunkhannock Area School District, et al.</em></td>
<td>U.S. District Court for the Middle District of Pennsylvania</td>
</tr>
</tbody>
</table>
Table 3

Identified Cases Heard in State Courts

<table>
<thead>
<tr>
<th>Case</th>
<th>Jurisdictional Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Koch v. Adams, et al.</td>
<td>Supreme Court of Arkansas</td>
</tr>
<tr>
<td>Matter of Elvin G.</td>
<td>Court of Appeals of New York</td>
</tr>
<tr>
<td>Price, et al. v. N.Y.C. Board of Education</td>
<td>Supreme Court of New York, Appellate Division, First Department</td>
</tr>
<tr>
<td>Professional Standards Commission v. Adams</td>
<td>Court of Appeals of Georgia, Second Division</td>
</tr>
<tr>
<td>Walters v. Dobbins, et al.</td>
<td>Supreme Court of Arkansas</td>
</tr>
<tr>
<td>Young v. State of Texas</td>
<td>Court of Appeals of Texas, Fifth District, Dallas</td>
</tr>
</tbody>
</table>

**Geographical distribution of cases.** The cases utilized in this research were spread geographically throughout the United States. Four of the cases were heard in the Mid-Atlantic region. Eight cases were decided in the Southeast. One case each was located in the Midwest, West, and Southwest. Figure 2 shows the distribution of each case across the country alphabetically.
Chronological listing of cases. This study was intentionally isolated to cases tried in courts between the years 2006 and 2013. According to the Pew Research Center, it was in 2006 that the number of Americans owning cell phones jumped from just over 60 percent to almost 80 percent (Smith, 2011). Selecting these dates assured the findings were as encompassing and as current as possible. Table 4 defines the chronological order of the cases utilized in this research.
Table 4

Chronological Order of Cases Reviewed

<table>
<thead>
<tr>
<th>Cases Reviewed for this Study</th>
<th>Date of Decision in Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matter of Elvin G.</td>
<td>May 7, 2009</td>
</tr>
<tr>
<td>Professional Standards Commission v. Adams</td>
<td>October 5, 2010</td>
</tr>
<tr>
<td>Young v. State of Texas</td>
<td>December 14, 2010</td>
</tr>
</tbody>
</table>
Facts of Cases

This part of the chapter contains summaries of each case. The cases are organized in chronological order. Included in each summation are the undisputed facts of the case, the claims of the plaintiffs, and the motions of the defendants. The general outcome of each case is also noted; however, the analysis of the decisions will be discussed in chapter five.

*Klump v. Nazareth Area School District.* The first chronologically identified legal action regarding a student’s personal handheld technology is *Klump v. Nazareth Area School District, et al.* (2006). The facts of this case are summarized by the U.S. District Court for the Eastern District of Pennsylvania in its decision. The plaintiff, a high school student at the time of the incident, had his cell phone confiscated by a teacher because he had it out during school hours, which was a violation of the school’s policy (*Klump v. Nazareth Area School District, et al.*, 2006). Following the confiscation, the teacher and an assistant principal called nine other students listed in the phone’s directory, accessed his text messages and voice mail, and engaged in an instant messaging conversation with the plaintiff’s brother without identifying themselves (*Klump v. Nazareth Area School District, et al.*, 2006). While in possession of the phone, the assistant principal claimed a drug related text message was received, leading to an investigation. The plaintiffs “further alleged that defendants falsely reported to news outlets that the student was suspected of being a drug dealer” (*Klump v. Nazareth Area School District, et al.*, 2006, Overview section, para. 1).

Defendants, which included the teacher, assistant principal, superintendent, and school district, filed motions to dismiss the claims. After the review of the case, the court decided to grant in part and deny in part the motion to dismiss (*Klump v. Nazareth Area School District, et al.*, 2006). Specifically, claims against the district for invasion of privacy, defamation, and
punitive damages were dismissed (Klump v. Nazareth Area School District, et al., 2006). The court determined the plaintiff did have standing to pursue unlawful access to stored communications claims against the teacher and assistant principal (Klump v. Nazareth Area School District, et al., 2006). Per the decision, the superintendent, assistant principal, and teacher were not entitled to dismissal of the invasion of privacy and defamation claims on immunity grounds (Klump v. Nazareth Area School District, et al., 2006). Additionally, the court concluded plaintiffs sufficiently alleged search and seizure violations although they could not seek damages (Klump v. Nazareth Area School District, et al., 2006).

**Requa v. Kent School District.** In Washington in 2007, a case was heard in U.S. District Court regarding a student’s suspension for inappropriate school behavior. The behavior ultimately resulted in students posting a demeaning video of a teacher on the Internet. The plaintiff or student in this case sued the school district, superintendent, and principal for alleged violations of his First Amendment freedom of speech and his Fourth Amendment assurance of due process (Requa v. Kent School District, et al., 2007).

The facts of the case indicate during the plaintiff’s senior year, video footage of a teacher in her classroom was obtained over a minimum of two separate instances using a small personal handheld device without her awareness (Requa v. Kent School District, et al., 2007). The video was demeaning and critical of the teacher. The plaintiff admits to posting a link to the video on his personal webpage but denies having anything to do with the filming, editing, or original posting of the video (Requa v. Kent School District, et al., 2007).

The school’s principal conducted an investigation and identified several students involved in the creation and distribution of the video (Requa v. Kent School District, et al., 2007). Letters outlining the disciplinary action that would occur were sent to the parents of the
students (Requa v. Kent School District, et al., 2007). The plaintiff requested and was granted a hearing where his suspension was upheld (Requa v. Kent School District, et al., 2007). The plaintiff then appealed to the Board of Directors (Requa v. Kent School District, et al., 2007). The Board reviewed all the evidence and determined the school administration acted in accordance with district policy and supported the suspension (Requa v. Kent School District, et al., 2007).

In filing suit, the plaintiff was seeking a mandatory injunction which is a court order requiring the defendant to lift the suspension (Requa v. Kent School District, et al., 2007). While the court agreed that students have the right to criticize their teachers, the court also recognized schools have a concern in preserving the learning environment (Requa v. Kent School District, et al., 2007). The court denied the plaintiff’s motion by determining he was “not likely to prevail in establishing that the classroom conduct of which he is accused is subject to First Amendment protection” (Requa v. Kent School District, et al., 2007, Conclusion section, para. 2).

Laney v. Farley. Also taking place in 2007, the Laney v. Farley (2007) case involved a middle school student who received a one day in-school suspension for having a cell phone that rang during class. According to court records, the student’s cell phone was confiscated for thirty days, and the student served a one day in-school suspension without conferencing with a school administrator (Laney v. Farley, 2007). The parents of the student brought suit against the principal, assistant principal, and school board pursuant to 42 U.S.C. § 1983 (Laney v. Farley, 2007). The plaintiff was seeking recovery for the school’s alleged failure to follow due process (Laney v. Farley, 2007).
Section 1983 of Title 42 of the U.S. Code is part of the Civil Rights Act of 1871 (U.S. Code, 2012). This act is the chief method of enforcing all constitutional rights (Section 1983, 2013). Section 1983 grants:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (U.S. Code, 2012)

Section 1983 does not grant rights; it simply provides an opportunity for people to receive remedy for a constitutional violation.

The court was charged with determining whether the single day in-school suspension violated the student’s Fourteenth Amendment right to due process by depriving her of either a property interest in education or a liberty interest (Laney v. Farley, 2007). After review, the court concluded the student’s in-school suspension did not deny her all educational opportunities and, therefore, did not rob her of a property interest (Laney v. Farley, 2007). The court also decided the in-school suspension did not violate the student’s liberty interest either (Laney v. Farley, 2007).

**Price v. New York City Board of Education.** In the spring of 2008, a sizeable group of parents challenged the school system’s ban on all communication devices (Price v. New York City Board of Education, 2008). The ban included all cell phones unless parents obtained prior permission from the school for their child to carry one for medical reasons (Price v. New York City Board of Education, 2008). The parents argued the ban violated their Fourteenth
Amendment right to provide for “care, custody, and control of their children…. [rendering] parents unable to communication with their children, thus depriving them of that liberty interest” (Price v. New York City Board of Education, 2008, Opinion section, para. 9).

The school system presented evidence of how cell phones threatened order in the schools (Price v. New York City Board of Education, 2008). The district referred to examples in which personal handheld devices were used for critically disruptive and criminal objectives (Price v. New York City Board of Education, 2008). The school board maintained the ban was needed to capitalize on instructional time and that any compromise provisions were “administratively cumbersome, prohibitively expensive and virtually impossible to implement” (Price v. New York City Board of Education, 2008, Opinion section, para. 13).

Although the court recognized the importance of parents’ right to care for their child, they concluded the ban created by the school system did not interfere with that right (Price v. New York City Board of Education, 2008). The court wrote, “Nothing about the cell phone policy forbids or prevents parents and their children from communicating with each other before and after school” (Price v. New York City Board of Education, 2008, Opinion section, para. 44). As such, the school district’s policy was upheld.

**Matter of Elvin G.** This legal decision varies from most of the other cases identified as applicable to this research in that no school official served as a defendant. The defendant, a student, was, along with other students, searched by the dean of the school (Matter of Elvin G., 2009). The dean sought a cell phone or other electronic device that was being used repetitively to disturb a class (Matter of Elvin G., 2009). The student sought suppression of the evidence recovered due to an alleged unlawful search (Matter of Elvin G., 2009).
The Supreme Court of New York originally entered a decision on this charge in 2008 in which it found the dean’s actions were justified because the goal was to re-establish order in the classroom (Matter of Elvin G., 2009). The outcome was appealed in 2009. Upon review, the Court of Appeals of New York reversed the decision and remitted it for further proceedings (Matter of Elvin G., 2009). With one dissenting opinion, the majority determined “the record was insufficiently developed to properly determine whether a search had occurred and, if so, whether it was reasonable as a matter of law under the circumstances” (Matter of Elvin G., 2009, Opinion section, para. 3).

**Foster v. Raspberry.** This lawsuit was filed by the parent of a high school female student who alleged she was strip searched by school officials in their quest to locate a missing iPod (Foster v. Raspberry, 2009). The plaintiff contends her daughter suffered a Fourth Amendment violation and pursued suit under 42 U.S.C. § 1983 (Foster v. Raspberry, 2009). The defendants, a teacher, school resource officer, secretary, coach, principal, superintendent, and school board, argued for summary judgment (Foster v. Raspberry, 2009). Additionally, the individual defendants contend they did not violate the girl’s constitutional rights and even if there was a violation, they would be entitled to qualified immunity (Foster v. Raspberry, 2009).

Summary judgment is a method used in civil cases to avoid a trial (Summary Judgment, 2013). To obtain a summary judgment decision, there must be “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law” (U.S. Courts, 2010, p. 76). To put it plainly, summary judgment is used when there is no factual issue for a judge or jury to resolve (Summary Judgment, 2013).

Qualified immunity protects school and government officials “from being sued for damages unless they violated ‘clearly established’ law of which a reasonable official in his
position would have known” (Qualified Immunity, 2013). The intent is to protect public servants from lawsuits while conducting the duties required of their positions. A municipality cannot be held liable unless the execution of an official policy or the decision of a person in final authority causes harm (Foster v. Raspberry, 2009).

Upon reviewing the facts presented, the court determined there were issues in dispute (Foster v. Raspberry, 2009). The court specifically noted the principal and secretary did not have individualized suspicion to conduct the search, nor was the scope reasonable because there was no immediate danger (Foster v. Raspberry, 2009). Additionally, the court denied the principal’s and secretary’s qualified immunity requests at that stage (Foster v. Raspberry, 2009). Regarding the other school employees and school district, the court granted summary judgment (Foster v. Raspberry, 2009).

Koch v. Adams. The Supreme Court of Arkansas heard arguments regarding a complaint against a teacher and principal over the alleged illegal seizing of a student’s cell phone (Koch v. Adams, 2010). The student’s phone, which was contraband, was confiscated and kept at school for two weeks in accordance with the district’s policies (Koch v. Adams, 2010). The parents of the student filed suit claiming the “unlawful taking of private property without due process of law” (Koch v. Adams, 2010, Opinion section, para. 3). The plaintiff’s sought damages and injunctive relief to prohibit the school from taking any other student’s private property (Koch v. Adams, 2010).

The defendants in this case moved to dismiss the grievances (Koch v. Adams, 2010). Both also claimed immunity from liability (Koch v. Adams, 2010). They cited district policy, the student code of conduct, and the published grievance procedures as documents defining the prohibition of the phone and supporting the sanction (Koch v. Adams, 2010).
The court agreed with the circuit court’s decision to dismiss the complaints (Koch v. Adams, 2010). The court further denied the plaintiff’s move for injunctive relief (Koch v. Adams, 2010). The court concluded the student had failed to develop an argument for the court to consider (Koch v. Adams, 2010).

Walters v. Dobbins. Also heard by the Supreme Court of Arkansas, this litigation stemmed from an incident in which a high school senior was suspended following his actions while addressing classmates at a school function (Walters v. Dobbins, 2010). During his speech, the student “played an audio clip from his cell phone…. That clip was of a female student saying ‘Oh my gosh, I’m horny!’” (Walters v. Dobbins, 2010, Opinion section, para. 2). The student’s cell phone was confiscated; he was suspended and not permitted to attend the graduation ceremony (Walters v. Dobbins, 2010).

The student and his parents filed a complaint against the superintendent, the principal, and the school district (Walters v. Dobbins, 2010). In it, they alleged the student was denied due process and his right to free speech (Walters v. Dobbins, 2010). Both the plaintiffs and the defendants filed for summary judgment (Walters v. Dobbins, 2010). A circuit court denied summary judgment to the plaintiffs and granted summary judgment to the defendants (Walters v. Dobbins, 2010).

The plaintiffs appealed the circuit court’s decision (Walters v. Dobbins, 2010). With one dissenting opinion, the Supreme Court supported the circuit court’s findings (Walters v. Dobbins, 2010). The decision is based upon the inability of the plaintiffs to provide a persuasive line of reasoning to reverse (Walters v. Dobbins, 2010).

Fontenot v. Toups. The Fontenot v. Toups (2010) case stemmed from an incident that occurred when a 13-year-old student used her cell phone to text her mother after school hours.
while staying late to take an exam. When asked to surrender her phone multiple times, the student refused the requests of a teacher and two assistant principals (Fontenot v. Toups, et al., 2010). The situation became hostile when a sheriff’s deputy handcuffed the student and confiscated the cell phone (Fontenot v. Toups, et al., 2010). The student was then charged with disturbing the peace and resisting arrest (Fontenot v. Toups, et al., 2010).

The parents of the young lady sued the school board, the superintendent, and two assistant principals, as well as the sheriff and two sheriff’s deputies. The plaintiffs alleged a violation of the student’s Fourth Amendment protections and filed a §1983 claim (Fontenot v. Toups, et al., 2010). They argued “the seizure of the cell phone was unreasonable as a matter of law because [the student] was using the cell phone in compliance with school policy at the time the teacher requested [the student] to surrender the phone” (Fontenot v. Toups, et al., 2010, The Parties Arguments section, para. 4). The defendants filed a motion to dismiss, claiming qualified immunity (Fontenot v. Toups, et al., 2010).

The U.S. District Court for Eastern District of Louisiana heard the case. After consideration, the court determined the superintendent and the school board could be held liable “for the actions of their subordinates under Section 1983” (Fontenot v. Toups, et al., 2010, Superintendent Lafon and St. Charles Parish School Board section, para. 1). Regarding the claims against the assistant principals, the court determined a dismissal would be hasty and denied their request for dismissal (Fontenot v. Toups, et al., 2010).

By Shepardizing this case, two subsequent appellate histories were discovered. Upon review, the two other decisions related to the charges against the sheriff and his deputies. No further determinations can be identified regarding the claims against the assistant principals.
**Professional Standards Commission v. Adams.** This litigation differs from the majority of other cases identified in that it regards unethical behavior by a principal (*Professional Standards Commission v. Adams*, 2010). The facts, as noted in the case record, illustrate the principal did not fully investigate an incident in which an inappropriate video was filmed and distributed through the school via a student’s cell phone (*Professional Standards Commission v. Adams*, 2010). The principal apparently became aware of the video being circulated by the students yet did not investigate, confiscate the cell phone, contact authorities, nor discipline the students involved in the video’s circulation (*Professional Standards Commission v. Adams*, 2010). Further, the principal was dishonest to her assistant superintendent and to the parents involved regarding her inaction (*Professional Standards Commission v. Adams*, 2010). Her teaching license was revoked (*Professional Standards Commission v. Adams*, 2010). This revocation was supported when the issue was appealed to the Georgia Court of Appeals (*Professional Standards Commission v. Adams*, 2010).

**J.W. v. DeSoto County School District.** Reaching a U.S. District Court in Mississippi, this case dealt with the expulsion of a middle school student (*J.W. v. DeSoto County School District*, 2010). The facts indicate the student used his cell phone in class against school policy and, subsequently, had it confiscated by a teacher (*J.W. v. DeSoto County School District*, 2010). Following the confiscation of the phone, multiple school employees looked through the device, specifically viewing photos in which a student was holding a BB gun and other pictures where alleged gang signs appeared (*J.W. v. DeSoto County School District*, 2010). The student owner of the phone was suspended and at a later hearing, was expelled for being a “threat to school safety” (*J.W. v. DeSoto County School District*, 2010, Order section, para. 5).
Parents of the student filed suit claiming his Fourth Amendment rights were violated when his phone was searched (*J.W. v. DeSoto County School District*, 2010). Additionally, the plaintiffs asserted their child’s Fourteenth Amendment guarantees were also infringed upon when he was expelled from school through the presentation of deceptive information (*J.W. v. DeSoto County School District*, 2010). The defendants who were individual school employees moved to dismiss for summary judgment and qualified immunity (*J.W. v. DeSoto County School District*, 2010). The school district did not seek dismissal (*J.W. v. DeSoto County School District*, 2010).

After review, the court decided the plaintiff failed to prove any defendant was legally responsible for a search and seizure violation (*J.W. v. DeSoto County School District*, 2010). From the perspective of the court “a student’s decision to violate school rules by bringing contraband on campus and using that contraband within view of teachers appropriately results in a diminished privacy expectation in that contraband” (*J.W. v. DeSoto County School District*, 2010, Order section, para. 19). Regarding the plaintiff’s assertion of a Fourteenth Amendment infringement by his expulsion, the court dismissed the claims against the individual defendants yet found the argument against the school district had value (*J.W. v. DeSoto County School District*, 2010). The court did document, however, “serious concerns regarding the school district’s actions in this case…. [and was] inclined to let a jury resolve these issues” (*J.W. v. DeSoto County School District*, 2010, Order section, para. 20).

*Young v. State of Texas.* In this criminal charge against an adult, the defendant filed a motion to suppress information gathered from a student’s cell phone that had been confiscated at school (*Young v. State of Texas*, 2010). The student had been caught texting on a cell phone during math class (*Young v. State of Texas*, 2010). Suspicious of his activity because of prior
concerns, the teacher looked at the phone and read inappropriate sexual messages, at which time
the authorities were contacted (Young v. State of Texas, 2010).

The defendant, the author of the text messages, argued she did not consent for anyone to
see the messages and the phone in question had actually been purchased by her, and thus, was
her property (Young v. State of Texas, 2010). She alleged a violation of her Fourth Amendment
rights (Young v. State of Texas, 2010). The court viewed the evidence and determined the
defendant’s claim was not justifiable (Young v. State of Texas, 2010). The court also agreed the
teacher had adequate cause to search the phone (Young v. State of Texas, 2010).

N. N. v. Tunkhannock Area School District. A high school student filed against her
school principal, the school district, and multiple municipal and school employees for violations
of her First, Fourth, and Fourteenth Amendments rights (N. N. v. Tunkhannock Area School
District, 2011). The student’s cell phone was confiscated by a teacher when the student was
captured using it against school policy (N. N. v. Tunkhannock Area School District, 2011). The
principal, upon receiving the phone, searched its contents and discovered questionable photos (N.
N. v. Tunkhannock Area School District, 2011). He subsequently turned the phone over to the
police and suspended the student (N. N. v. Tunkhannock Area School District, 2011). The
district attorney of the county notified the student he would pursue child pornography charges
against her if she did not complete a “re-education course on sexual violence and victimization”
(N. N. v. Tunkhannock Area School District, 2011, Background section, para. 6). The plaintiff

The school employees and district were voluntarily dismissed from the suit (N. N. v.
Tunkhannock Area School District, 2011). Charges against the district attorney and other county
officials were considered by the court (N. N. v. Tunkhannock Area School District, 2011). After
review, the court denied the defendant’s motion for summary judgment (*N. N. v. Tunkhannock Area School District*, 2011).

**Logan v. Sycamore Community School Board of Education.** The *Logan v. Sycamore Community School Board of Education* (2012) case stemmed from a situation in which students allegedly were sexting nude pictures of a female student which resulted in her harassment by other students and, unfortunately, her suicide. Parents of the decedent filed against the school district for deliberate indifference to her sexual harassment and that her equal protection rights guaranteed by the Fourteenth Amendment were violated (*Logan v. Sycamore Community School Board of Education*, 2012). The defendant filed for summary judgment (*Logan v. Sycamore Community School Board of Education*, 2012).

The plaintiffs’ claim of deliberate indifference to their daughter’s alleged sexual harassment is a Title IX issue (*Logan v. Sycamore Community School Board of Education*, 2012). Title IX, 20 U.S.C. § 1681, provides: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” (U.S. Code, 2012). The court found there were material facts in question regarding the sexual harassment (*Logan v. Sycamore Community School Board of Education*, 2012). Furthermore, the court determined there were also enough facts in dispute concerning the assertion of an equal protection violation that the defendant’s summary judgment motion was also denied for this claim (*Logan v. Sycamore Community School Board of Education*, 2012).

**G.C. v. Owensboro Public Schools.** The student plaintiff in this litigation alleged a due process infringement and a Fourth Amendment search and seizure violation (*G.C. v. Owensboro Public Schools*, 2013). The student in question was a non-resident of the district and had been
placed on probation by the superintendent for previous behavioral incidents (*G.C. v. Owensboro Public Schools*, 2013). The details of the case as outlined in the court record describe a student who disregarded the school’s cell phone policy by texting in class (*G.C. v. Owensboro Public Schools*, 2013). The phone was confiscated and taken to an assistant principal who then opened it and read multiple text messages (*G.C. v. Owensboro Public Schools*, 2013). The student’s privilege to attend out-of-district was rescinded immediately; at a hearing over a month later, the student was again denied attendance at Owensboro High School (*G.C. v. Owensboro Public Schools*, 2013). The defendants, the school principal, two assistant principals, the superintendent, and the school district moved for summary judgment (*G.C. v. Owensboro Public Schools*, 2013).

At the district court level, summary judgment was granted to the defendants for all claims (*G.C. v. Owensboro Public Schools*, 2013). On appeal, the court found both the due process and the Fourth Amendment contentions should have endured (*G.C. v. Owensboro Public Schools*, 2013). With one judge dissenting, the court concluded nothing in the “sequence of events indicated that a search of the phone would reveal evidence of criminal activity, impending contravention of additional school rules, or potential harm to anyone in the school” (*G.C. v. Owensboro Public Schools*, 2013, Overview section, para. 1). Regarding the alleged due process violation, the court decided that revocation of the student’s attendance was, in essence, an expulsion and required a hearing beforehand (*G.C. v. Owensboro Public Schools*, 2013).

**Conclusion**

This chapter summarizes the cases related to personal handheld technology in schools as identified through legal research. The cases are extremely varied. They differ in their geographic locations across the country. The jurisdictions range from federal to state courts and
from district to appellate courts. They differ in the ages of the students involved as well as in the role of school officials. All of the cases, however, stem from either misuse of personal handheld technology or a violation of school policy regarding such devices.

Common themes among the cases are explored and analyzed in the succeeding chapter. The scrutiny serves to answer the research questions which drive this study. Included in this investigation are the legal standards applied in the identified cases and trends within the cases. Guidelines for school officials and suggestions for future research will close out the chapter.
CHAPTER FIVE: DISCUSSION

The deductions offered in this chapter are the result of an analysis of the outcomes of each case collected and the rationale behind those decisions. Each legal decision was studied through the use of case briefs as described in chapter 3 with the defined research questions as an overall guide. A legal framework for school officials is presented at the conclusion of this study on legal issues pertaining to student use of personal handheld technology.

Balance between Schools and Students

Through the use of legal research methodology, cases were discovered in which the constitutional guarantees of both students and staff in public school settings were deliberated by the courts. This focus aided in answering the first research question: How have the U.S. courts addressed the balance between students’ civil liberties and the interest of school officials in maintaining and operating safe, orderly, efficient, and effective learning environments?

Upon inspection, five of the case outcomes leaned in favor of students’ rights. Five others tilted toward supporting the schools, and five did not clearly side with either group. Table 5 outlines this breakdown of legal decisions.
On the surface, it appeared that the courts were evenly divided in their backing of either students’ rights or schools’ responsibilities. However, an in-depth look at the issues that served as the primary claims of each case provided detailed information about how the courts viewed this balance. A deeper analysis is presented in the next sections.

**Trends and Legal Standards**

Briefing the cases made it apparent that some claims were filed repeatedly as related to student use of personal handheld technology. Additionally, a pattern developed indicating courts were apt to rely on specific legal standards when deciding each case. Detecting these tendencies served to help answer both the second and third research questions: What trends can be identified in the legal cases related to student use of personal handheld technology? What legal
standards have been used by lower courts to render decisions on cases related to students’ personal handheld technology use and the authority of school officials to protect both the safety of students and the learning environment?

Jurisdictionally, aside from U.S. Supreme Court cases, the cases heard in the U.S. Circuit Courts of Appeals are the most applicable precedents and hold greater weight across the country. Only two within this study met that qualification, and both were heard in the sixth circuit which covers Kentucky, Michigan, Ohio, and Tennessee (U.S. Courts, 2013). These were G.C. v. Owensboro Public Schools (2013) and Laney v. Farley (2007). When analyzing the outcomes and standards of all the litigations, the decisions in these two cases were considered more vital.

**Constitutional claims.** Upon scrutiny, four constitutional issues made regular appearances in litigation regarding student use of personal handheld technology. These were alleged First Amendment freedom of speech or expression violations, Fourth Amendment unreasonable search and seizure allegations, Fourth Amendment invasion of privacy claims, and Fourteenth Amendment due process violations. Only two of the 15 identified cases did not have constitutional claims as the crux of their contentions. The first was in Logan v. Sycamore Community School Board of Education (2012) in which the plaintiffs argued a Title IX violation. The second occurred in Professional Standards Commission v. Adams (2010) in which the issue in dispute was not a constitutional claim but an ethical personnel matter. Table 6 summarizes the constitutional claims in the other 13 cases.
<table>
<thead>
<tr>
<th>Case</th>
<th>First Amendment - Freedom of Speech or Expression Contentions</th>
<th>Fourth Amendment - Unreasonable Search and Seizure Contentions</th>
<th>Fourth Amendment – Invasion of Privacy Contentions</th>
<th>Fourteenth Amendment - Due Process Contentions</th>
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<td>Matter of Elvin G.</td>
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<td>Young v. State</td>
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The vast majority of plaintiffs pursued these constitutional claims through the application of 42 U.S.C. § 1983. Courts across the country were tasked with considering these issues. The undertaking for the researcher then became to see if there was a pattern in the courts’ decisions regarding each constitutional claim. Figure 3 demonstrates the pattern that emerged in viewing each case decision and cross-referencing it to the constitutional claim.

Figure 3

*Claims in Cases Broken by Student v. School Court Decisions*

The number of times the courts sided with schools in these personal handheld technology cases calculated to 10 out of 21 instances, or 48 percent. The number of times the courts sided with students factored to seven out of 21 times, or 33 percent. There were four instances in which the courts were simply unclear in their decisions regarding the constitutional claim.

An unclear decision is one in which the court determined an outcome that did not support either the school or the student. One instance was in *N.N. v. Tunkhannock Area School District*,
whereupon the claims against the school system and officials were voluntarily dropped by the plaintiffs, while claims against the then district attorney and other municipal officials were pursued (2011). Also, in the *Matter of Elvin G.*, the court remitted the case back to family court to review the evidence and make a determination regarding the search of the student (2009).

**Standards applied to constitutional claims.** With each judgment, the courts looked back to previous case law to discover precedent to aid in determining the appropriate outcomes. In review of the cases in this study, there are some legal standards that were only referenced by one court in a singular instance. These outlier decisions were generally applied in reference to specific state verdicts. Yet, a number of legal benchmarks were repeatedly cited across all of the constitutional claim cases.

In litigation regarding First Amendment freedom of speech or expression contentions, the two precedents cited most frequently were *Bethel School District No. 403 v. Fraser* (1986) and *Tinker v. Des Moines Independent School District* (1969). The *Bethel School District No. 403 v. Fraser* (1986) landmark case is utilized by the courts to determine whether schools have a right to disassociate from speech that is considered vulgar (*Requa v. Kent*, 2007; *Walters v. Dobbins*, 2010). In the *Requa v. Kent* (2007) and *Walters v. Dobbins* (2010) decisions, both the U.S. District Court for the Western District of Washington and the Supreme Court of Arkansas supported the right of schools to disavow speech that is lewd or offensive and that “undermine[s] the school’s basic educational mission” as established by *Bethel School District No. 403 v. Fraser* (1986, Summary section, para. 2). *Tinker v. Des Moines Independent School District* (1969) set forth “students may engage in activities at school that convey their ideological viewpoints unless such activities ‘materially and substantially disrupt the work and discipline of the school’ or interfere with the rights of others” (*Requa v. Kent*, 2007, Plaintiff’s Protected

In the legal actions in which plaintiffs alleged Fourth Amendment search and seizure violations, the legal standard referenced in five of the nine cases was *New Jersey v. T. L.O.* (1985). This U.S. Supreme Court decision established a two-pronged test to determine the reasonableness of a search: first, whether the search was warranted from the beginning, and second, whether it was plausibly connected to the circumstances that prompted inference from the start (*New Jersey v. T. L.O.*, 1985). As applied to the cases analyzed for this study, the courts found in four of the five instances that schools crossed the line with regard to both the inception and the scope of searches of personal handheld devices (*Foster v. Raspberry*, 2009; *G.C. v. Owensboro Public Schools*, 2013; *J.W. v. DeSoto County School District*, 2010; *Klump v. Nazareth Area School District*, 2006). Courts were clear in their interpretation of *New Jersey v. T. L.O.* (1985) in that general knowledge of a student was not enough to prompt a search by school officials; there must be a potentially unlawful or dangerous situation for a search to be justified (*G.C. v. Owensboro Public Schools*, 2013).

The single case reviewed in which the actions of the school officials were found to be in line with the test set forth by *New Jersey v. T. L.O.* (1985) was *J.W. v. DeSoto County School District* (2010). In this instance, the court stated it was “reasonable for a school official to seek to determine to what end the student was improperly using that phone” (*J.W. v. DeSoto County School District*, 2010, p. 7). Interestingly, this decision was later criticized by the U.S. Court of Appeals for the Sixth Circuit through *G.C. v. Owensboro Public Schools* (2013). It was found the broad language used in *J.W. v. DeSoto County School District* (2010), which assumed
searching all contents on a cell was reasonable simply because the device was being used against school policy, did not meet the standard established by *New Jersey v. T. L.O.* (1985) (*G.C. v. Owensboro Public Schools*, 2013).


A detailed analysis of the cases regarding the Fourth Amendment right to privacy did not indicate any pattern among the standards applied. Each case referenced either state or district level decisions and did not appear to rely on a benchmark U.S. Supreme Court holding. Given only three of the 15 cases within the study dealt with privacy concerns, there was a limitation to the number of benchmarks that could be referenced. Another factor that may have impacted the lack of consistency in precedents utilized in these court outcomes was the geographic and
jurisdictional variations among them. Two were heard in U.S. District Courts, and one in a state court. They were spread from Pennsylvania to Mississippi to Texas.

Cited by three out of the six courts charged with resolving due process claims, Goss v. Lopez (1975) was the consistent standard employed. Goss v. Lopez (1975) established students’ right to education is a property interest protected by the Due Process Clause that cannot be removed without notice, and an opportunity for the student to present his or her side. Scrutiny of the cases revealed a student’s property interest in education was not violated by the conveyance of an in-school suspension without a hearing or by the removal of a student’s opportunity to participate in a graduation ceremony (Laney v. Farley, 2007; Walters v. Dobbins, 2010). In support of students, a court found removal of a student from school, even if the student was a non-resident, without a due process hearing was a viable violation of the Fourteenth Amendment as the long term removal was akin to expulsion (G.C. v. Owensboro Public Schools, 2013).

Although the U.S. Court of Appeals for the Sixth Circuit criticized the Fourth Amendment findings of J.W. v. DeSoto County School District (2010), the case did make a statement regarding students and their Fourteenth Amendment rights. In it, the court found merit that a student’s due process was violated when he was expelled for a year due to images found on his confiscated phone (J.W. v. DeSoto County School District, 2010). The court went so far as to declare, “it has serious concerns regarding the wisdom and legality of the school district’s decision to expel . . . based on its subjective impressions of photographs depicting him in his personal life” (J.W. v. DeSoto County School District, 2010, Order section, para. 18). The judges furthered this notion by stating they were inclined to support school personnel when they work to
protect their school environment but not when they attempt to “police the private lives of their students” (*J.W. v. DeSoto County School District*, 2010, Order section, para. 26).

**Defense argument.** In addition to the pattern within the constitutional claims, there is also an identifiable trend among the defense arguments in these personal handheld technology cases. Aside from the inevitable request for summary judgment or motion to dismiss, which were frequent tools utilized by defendants, qualified immunity claims were used in seven out of the 15 law suits. Qualified immunity could only be applied when monetary damages were sought by the plaintiffs. As clarified in the *Foster v. Raspberry* (2009) decision,

In order to establish that a defendant committed a constitutional violation in his supervisory capacity, a plaintiff must show that the defendant instituted a custom or policy that results in deliberate indifference to constitutional rights or directed his subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so. (Headnotes section, para. 11)

In only one case was qualified immunity granted in full to the defendants: *Koch v. Adams* (2010). The court in a separate case, *N.N. v. Tunkhannock Area School District* (2011), denied qualified immunity; however, the claims against all school related defendants were voluntarily dismissed. Qualified immunity was either denied in full or in part in the remaining five cases. Immunity was granted and claims dismissed against the school districts in three of the five decisions. Individual school-related defendants did not fare as well; immunity was denied or remanded to jury decision four of five instances.

As part of the discussions by the courts, it was noted in several instances; school districts are established as political subdivisions of the state and are, thus, entitled to immunity (*Foster v. Raspberry*, 2009). Each state has established a test to determine whether a political subdivision
is protected from liability (Logan v. Sycamore Community School Board of Education, 2012). In most cases, intent of the policy or decision in question was a driving force in determining the immune status of the school district (Klump v. Nazareth Area School District, 2006).

Individual defendants, however, were not granted the same range of immunity as districts (Klump v. Nazareth Area School District, 2006). Essentially “school employees are entitled to official immunity from their actions if those actions are within the scope of their employment, discretionary in nature, and without willfulness, malice or corruption” (Wright v. Ashe, 1996 as cited in Foster v. Raspberry, 2009, Plaintiff’s State Law Claims section, para. 4). When considering qualified immunity, the two-part test applied by courts answers whether there was an alleged constitutional violation and whether that constitutional right was well known at the time of the incident (Fontenot v. Toups, 2010). Within the cases evaluated, the courts found there was enough evidence regarding a constitutional violation in four of the seven legal actions with immunity arguments: Foster v. Raspberry (2009), Fontenot v. Toups (2010), Klump v. Nazareth Area School District (2006), and Logan v. Sycamore Community School Board of Education (2012).

School policy. It is important to note in 12 out of the 15 cases reviewed, the school districts did have a policy in place to address student use of personal handheld technology. These policies were referenced and utilized by the courts in their determinations. Six of the schools prohibited the possession of personal handheld devices on school campus during the school day, four simply did not allow such technologies in the classrooms, and one permitted students to carry such devices but not display or use them. Ten of the 12 litigations were direct results of students violating the existing school policy. Finally, in 50 percent of the cases in which a school policy was in place, the courts sided with the school on matters related to the
confiscation and search of these electronics compared to only 33 percent of the students prevailing.

**Implications for Schools**

Students today have immediate access to information at any time through the use of smartphones and other personal handheld technologies. This power at their fingertips can be used to explore and innovate or to mock, harass, or spread inappropriate media or information. Schools must find a balance with the use and regulation of such devices.

A notable new trend in schools is to open educational opportunities for students through the implementation of bring-your-own-device (BYOD) plans. One intent of these BYOD policies is to reduce budgetary constraints and still provide technological access to students. Other goals “include increasing motivation and engagement in the classroom, supporting differentiated instruction, increasing student access to school-provided online resources, supporting online collaborative work in the classroom, and helping classroom teachers in managing student-owned technologies” (Johnson, 2012, p. 84).

In light of new BYOD policies, many new issues such as firewalls and web-based viruses must now also be considered along with the negative behaviors of cheating, sexting, and cyberbullying. The data discovered through this research is meant to offer guidance to school officials as they reflect upon existing policy and develop new strategies to cope with student use of personal technology. This section serves to answer the fourth guiding question; based upon analysis of jurisprudence as applied to student use of personal handheld technology cases, what guidelines should be used in developing school policy and procedures? Law continues to be developed in this area; however, several key directions were derived from the existing case law. These suggestions relate to the realm of free speech as applied to these technologies, searches of
students’ handheld devices by school officials, providing students who violate school policies regarding use of personal technology with due process and appropriate consequences, and the value of sound school policies.

**Free speech with technology.** The evidence demonstrated courts tended to give an edge toward schools when viewing freedom of speech or expression claims. In the cases reviewed, the standards of *Bethel School District No. 403 v. Fraser* (1986) and *Tinker v. Des Moines Independent School District* (1969) were applied consistently by the courts. Schools have operated under these precedents for more than twenty years, and, therefore, school administrators should be familiar with their interpretations.

For school officials to withstand a First Amendment claim against them, they must continue to be diligent in their categorization of lewd speech and the context in which that speech was used. Caution should be taken, however, because freedom of speech or expression claims may now relate to images, videos, sound clips, blogs, text messages, or any other form of media produced with personal handheld devices (*Requa v. Kent*, 2007). Prior to determining their approach and given the portability of such technologies, school officials must carefully consider where the speech was produced, where it was displayed, the level of interference to the school’s focus, and whether the speech violated the rights of another (*Requa v. Kent*, 2007; *Walter v. Dobbins*, 2010). The schools were supported by the courts when the speech they attempted to regulate met both the offensive and disruptive criteria.

**Searching personal handheld devices.** An occasion could arise in which a student’s cell phone or other device may need to be searched by a school official. It is imperative that school staff be cognizant of the views courts have taken regarding such investigations. Searching a personal handheld device is beginning to be viewed differently by the courts
compared to searching a student’s backpack. Technologies such as smart phones may hold such private information of the owner that simply outweighs any potential immediate threat, whereas a backpack may hold a substance or weapon that could cause harm.

The benchmark established by *New Jersey v. T.L.O* (1985) was frequently consulted by the courts who decided the Fourth Amendment claims. The courts found in favor of students and against school staff and districts in 45 percent of the cases reviewed. According to the courts, the errors made by school officials related to the initiation and scale of the searches conducted (*Foster v. Raspberry*, 2009; *G.C. v. Owensboro Public Schools*, 2013; *J.W. v. DeSoto County School District*, 2010; *Klump v. Nazareth Area School District*, 2006). Prior to conducting any search, school personnel must have an individualized and reasonable suspicion that the search will result in evidence that the student has violated either the law or a school policy (*Foster v. Raspberry*, 2009). Simply confiscating a cell phone or other like device that is being used in violation of a school policy does not open the student to an intrusive search of the device (*G.C. v. Owensboro Public Schools*, 2013).

The details noted in *G.C. v. Owensboro Public Schools* (2013) showed an administrator concerned about a student’s welfare because of the student’s past flirtation with suicide. The assistant principal only looked at four text messages on the student’s confiscated cell phone (*G.C. v. Owensboro Public Schools*, 2013). She did not search through his images, videos, contacts, web history, or any other areas of the cell phone (*G.C. v. Owensboro Public Schools*, 2013). However, the U.S. Court of Appeals for the Sixth Circuit determined this minimal search was a potential Fourth Amendment violation of the student’s rights in that the school official did not have any specific reason to believe the student was breaking either a school rule or the law at
the time she searched the device (G.C. v. Owensboro Public Schools, 2013). The effects of this decision greatly narrowed the ability of school staff to search personal handheld technology.

**Due process and student consequences.** The outcomes of the cases related to due process violations were varied. Fifty percent of the case decisions aligned with schools; 33 percent aligned with students. The main issues debated included in-school suspension versus out-of-school suspension, attendance of graduation and other school ceremonies, removal of a non-resident student from school, and overzealous consequences for students who violate school policies (G.C. v. Owensboro Public Schools, 2013; J.W. v. DeSoto County School District, 2010; Laney v. Farley, 2007; Walters v. Dobbins, 2010).

With these decisions, school administrators have support to place a student in in-school suspension and remove a student’s opportunity to participate in school ceremonies without going through due process (Laney v. Farley, 2007; Walters v. Dobbins, 2010). The justification with both of these instances was that the students’ liberty interest in receiving educational services was not violated (Laney v. Farley, 2007; Walters v. Dobbins, 2010). Alternatively, when removing a non-resident student’s ability to attend school in the district, school officials must provide the student and parents due process hearing as the removal was considered on par with an expulsion (G.C. v. Owensboro Public Schools, 2013). In a situation where a student disobeys the school’s policy regarding personal handheld devices, a court stressed the consequence should be appropriate to the severity of the violation (J.W. v. DeSoto County School District, 2010). In the view of the court, bringing a cell phone on campus is a minor offense and should be treated as such (J.W. v. DeSoto County School District, 2010).

**Sound school policy.** To protect the teachers, administrators, and students in schools, each district should have a detailed policy outlining its approach to student use of personal
handheld technology. Over and over, the courts across the nation referred to such school policies when making determinations, and it was the intent of the policies that aided judges in determining the immune status of the school district (Klump v. Nazareth Area School District, 2006). The scope of the policies, which could range from BYOD to an outright ban, appeared irrelevant. In situations where students and parents were aware of the policies and school staff attended to the written policy, the courts tended to lean in support of schools. Two suggestions for schools would be to include a range of penalties to be applied to students who defy the rule and to formally train school staff on how to approach situations appropriately. This would further guide and protect school leaders from extreme reactions to violators.

**Summary of results.** The cases reviewed through this research were diverse in their geography, their claims, and their outcomes. With the use of the legal research method, it was discovered that several legal standards were referenced consistently throughout the cases. An analysis of the precedents utilized, key factors in each situation, and holdings of the courts resulted in the identification of five important principles. These concepts, if applied by school officials, should help protect the students from constitutional infringements and school personnel from potential litigation. Figure 4 details the legal suggestions generated as a result of this study.
Future Directions

As more and younger students across the country continue to carry cell phones and other such devices, it is very likely that legal cases related to student use of personal handheld technology will continue to appear in courts in the future. A recent Pew Research report, states “78% of teens now have a cell phone, and almost half (47%) of those own smartphones; that translates into 37% of all teens who have smartphones, up from just 23% in 2011” (Madden, Lenhart, Duggan, Cortesi, and Gasser, 2013, para. 2). In the past, courts have been divided in
their outcomes, fluctuating between supporting the school or the student. Although each
situation is different, the notion of these devices as containing informational property is
beginning to appear as the crux of the court decisions. The current authority of G.C. v.
Owensboro Public Schools (2013) may well be challenged or evolve as new issues and concerns
are brought forth.

As a result of this study, future research related to student use of personal handheld
technology could include the following:

- Additional study could be conducted on legal decisions related to searches of personal
  handheld technologies occurring outside of the school setting. The determinations of
courts regarding police searches of such devices can help guide school administrators as
they update policies and procedures. Will courts move towards further protection of the
information stored on such devices?

- A look into BYOD implementation and its effect on the number of law suits surrounding
  student use of personal handheld devices could be examined. Will the introduction of
  more lenient policies increase or decrease the number of alleged constitutional violations
  and resulting cases?

- A comparative analysis of current training programs offered to students on the
  appropriate use of personal handheld technology could be performed. Is there a program
  that works to decrease instances of cyberbullying, sexting, and cheating with these
devices?

Implications for Future Research

Given the growth of technological devices and applications, there is a definite need for
continued research on this topic. As courts continue to address the privacy issue related to
personal handheld technologies, both in schools and out, school officials will be able to update and adapt policies and procedures. Keeping these policies current is invaluable as this study demonstrates the variance in judicial interpretations and resulting litigation that has already occurred.

The new reality for students and educators is the ready access to mountains of information through the use of personal handheld technologies. Schools are trying to adapt to these changes through the implementation of BYOD and other initiatives designed to prepare students for the twenty-first century workplace. Educators should ascertain whether the educational value of such technologies outweighs potential or actual misuse of such tools. Further study into this cost-benefit analysis is warranted. Also, as school officials move forward in these endeavors, it is imperative they educate students regarding the appropriate use of such devices. Research that identifies the best method to accomplish this goal would be a tremendous asset to school leaders and to students.

Conclusion

As discussed in the beginning of this study, student use of personal handheld technology has generated a growing legal concern that has yet to reach its peak. As the capabilities of personal handheld technologies increase and as more school systems begin to flex their policies to allow students to use such devices, it is imperative school leaders be cognizant of existing litigation. The outcomes of the cases utilized in this research were varied, yet they provided important insight into the changing views on school censorship of media, searches of and for handheld technologies, privacy of the contents in these devices, and due process provisions. This research provides a small view into a growing body of litigation related to personal
handheld technology. The recommendations from this study are meant to simply guide educators as they traverse this changing landscape.
References


Arnold v. Board of Education, 880 F.2d 305 (11th Cir. 1989).


Morse v. Frederick, 551 U.S. 393 (2007).


Papandrea, M. R. (2007, May 24). *Court refuses to enjoin school from suspending*


Porter v. Ascension Parish School Board, 393 F.3d 608 (5th Cir. 2004).


Terry v. Ohio, 392 U.S. 1, 8 (1968).


Appendix A

civil liberties

- civil rights
- unalienable rights
- freedoms
- human rights
- constitutional freedoms
- natural rights
- Constitutional rights

- Equality
- Right to privacy
- Freedom of Expression
Appendix B

Case Law Template

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*(Kunz et al., 2008, p. 164)*