

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF YAWK**

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ELIZABETH LEMON, and TRACY  
JORDAN, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

ROCKEFELLER UNITED SCHOOL  
DISTRICT, and JACK DONAGHY,  
in his official capacity as Principal of  
Rockefeller High School,

Defendants.

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CV-07241980

**MEMORANDUM AND ORDER**

November 28, 2007

MULLARKEY, District Judge

The plaintiffs, Elizabeth Lemon and Tracy Jordan, bring this class action on behalf of all students at Rockefeller High School, asserting that the procedures undertaken by the school district violated their Fourth Amendment right to be free of unreasonable searches. There is no dispute as to any material facts. The Court considers the parties' cross-motions for summary judgment and finds that plaintiffs' motion must fail and defendants' motion is **GRANTED**.

The Fourth Amendment to the Constitution guarantees "[t]he right of the people to be secure . . . against unreasonable searches." U.S. CONST. amend. IV. In order to

determine whether a canine sniff violates an individual's fourth amendment rights, a two-fold test is utilized. First, it must be determined whether a search of constitutional dimension actually occurred. If it is found that a search occurred, the second issue is whether or not the search was reasonable. *Jones v. Latexo Indep. Sch. Dist.*, 499 F. Supp. 223, 231 (E.D. Tex. 1980).

"A search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). Not every infringement of an individual's privacy will rise to the level of a constitutionally cognizable violation of the fourth amendment. *Illinois v. Caballes*, 543

U.S. 405, 409 (2005). “The application of the fourth amendment depends on whether the person invoking its protection can claim a justifiable, a reasonable, or a legitimate expectation of privacy that has been invaded by government action.” *Smith v. Maryland*, 442 U.S. 735, 740 (1983).

This is particularly true in the public school context. While it is well recognized that students do not “shed their constitutional rights at the schoolhouse door,” *Tinker v. Des Moines Indep. Comty. Sch. Dist.*, 393 U.S. 503, 736 (1969), those rights do have necessary limits in the unique environment of public schools. Courts must strike a balance between the rights of individual students and “the school administrator’s need to protect all students and the educational process.” *Doe v. Renfrow*, 475 F. Supp. 1012, 1022 (7th Cir. 1979). While students do enjoy some semblance of an expectation of privacy, they nonetheless have a “lesser expectation of privacy than members of the population generally,” *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 657 (1995), largely because a “reasonable right to inspection is necessary to the school’s performance of its duty to provide an educational environment.” *Doe*, 475 F. Supp. at 1022.

This lesser expectation is not implicated by the use of a well-trained, highly reliable narcotics-sniffing dogs to identify the presence of illicit drugs in the school environment. “[S]tudents [do] not have a justifiable expectation of privacy that would preclude a school administrator from sniffing the air around the desks with the aid of a trained drug detecting canine.” *Doe*, 475 F. Supp at 1022. Use of such a dog “does not expose non-contraband items that otherwise would remain hidden from public view” and thus does not threaten any legitimate expectation of privacy students

may have. *U.S. v. Place*, 462 U.S. 696, 707 (1983). It is important to note that “[t]he legitimate expectation that information about a perfectly lawful activity will remain private is categorically distinguishable from [an individual’s] hopes or expectations concerning the nondetection of contraband.” *Caballes*, 543 U.S. at 410.

Students have no legitimate privacy interest in the possession of amphetamines. “Any interest in possessing contraband cannot be deemed legitimate, and thus, governmental conduct that only reveals possession of contraband compromises no legitimate privacy interest.” *Caballes*, 543 U.S. at 408. The use of canines to identify the presence of drugs which “does not expose non-contraband items that otherwise would remain hidden from public view” is not a search for purposes of the fourth amendment because people do not have a legitimate expectation of privacy in contraband items. *Place*, 462 U.S. at 707.

It is not determinative to this analysis that the dogs utilized by the Rockefeller School District alerted on two students who were in possession of prescription amphetamine-related substances. These items were still contraband under the High School’s prescription drug policy and students therefore had no expectation privacy in their improperly stored prescription drugs, regardless of whatever embarrassment may have been caused to students whose medical conditions were exposed.

If students wished to keep that medical information private, they had the option to properly store their prescription drugs. Failure to do so waives any legitimate privacy interest the students may have otherwise had in those items. *See Doe*, 475 F. Supp. at 1022 (“Because of the constant interaction among students, faculty and

school administrators, a public school student cannot be said to enjoy any absolute expectation of privacy while in the classroom setting.”).

Because the use of trained dogs does not implicate any reasonably held privacy interest in this case, there has been no search for purposes of the fourth amendment, and therefore there necessarily could have been no constitutional violation. Because this court holds that no search occurred, we decline to reach the issue of whether the search was reasonable.

For the foregoing reasons, the Plaintiffs’ motion for summary judgment is **DENIED** and the Defendants’ motion for summary judgment is **GRANTED**.

