# SEARCHES, DUE PROCESS, AND RESIDENCE HALLS: AN OVERVIEW OF CONCEPTS AND CONCERNS

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*Fourth and fourteenth amendment requirements and their applicability to university student affairs personnel are discussed, with attention focused on residence life personnel. Specific legal concepts are examined briefly, and procedures for compliance with these requirements are addressed.*

"At the very least, we can all find consolation in the fact that if the world were perfect there would be neither deans nor lawyers" (Parr and Buchanan, 1979, p. 15). If students in residence halls were perfectly well behaved there might be no need for resident assistants, housing directors, or rules and regulations for community living. However, problems do exist, and residents find themselves in situations which violate university regulations and may result in disciplinary action. As students become more sophisticated in seeking methods of redress for grievances, student affairs professionals, "by increasing their legal understanding ... can hopefully avoid actions or the creation of situations that breed legal challenges and complications. Becoming acquainted with the primary legal information sources on higher education will serve as a helpful start" (Beeler, 1976, p. 142).

It is true that most courts abide by the principles of academic freedom and tend not to involve themselves in the administrative and academic affairs of colleges, thereby preserving their traditional autonomy (Ray, 1981). It is also true that students who feel their rights as students, residents or citizens have been violated are more apt and willing to seek the assistance of the courts (Beeler, 1976). Therefore it would benefit student affairs staffs to be familiar with potential areas of concern within the intermingled spheres of the legal system and student life at educational institutions.

In this paper, elementary concepts of the United States Constitution's fourth amendment search and seizure processes as they apply to public and private institutions of higher learning shall be examined. Factors which must be kept in mind when dealing with residents at public institutions and differences in practices among public and private sectors will be addressed. Finally, elements of the fourteenth amendment and due process concerns with possible procedures suggested by various authors for use and adaptation in institutions will be examined. The purpose of this paper is to make student affairs professionals and staffs more familiar with legal concepts and doctrines as applied to postsecondary educational institutions.



**Search and Seizure**

In the past, when the right to search was questioned, most colleges and universities based their actions on the concept of **in loco parentis.** This term translates as "in the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities" (Black, 1979, p. 708). This resulted in institutions doing as they pleased since they were charged with the students' care and well-being. However, **in loco parentis** has undergone dramatic change.

> The idea that college authorities wielded parental power over students relied on educational circumstances that are no longer prevalent.... Today courts admit freely that it (**in loco parentis**) is 'no longer tenable in a university community'. (Ray, 1981, p. 166)

With the uprooting of this concept, it was feared that universities might not be able to exercise any form of control over students. In fact, situations where students are required to live in dormitories, considered by many to be a paternalistic notion, have been found permissible as long as such policies have a rational basis and are in the students' best interests. Flygare (1976) stated that "while some universities may wish to free students of dormitory regulation, there is nothing in the United States Constitution to require all universities to do so" (p. 473).

With **in loco parentis** usually not available as a basis for regulation of students' residential life, many institutions, frequently at the students' initiative, have modified their approaches to be more cognizant of concerns raised in regards to the fourth amendment, which protects people from unreasonable searches and seizures. Residents have been able to rely on the fourth amendment due to an expectation of privacy within their residence hall rooms. For example, one court found that:

> the dormitory room is a student's home away from home and any student may reasonably expect that once the door is closed to the outside, his or her solitude and secrecy will not be disturbed by governmental intrusion without at least written permission if not invitation. (Stevens, 1980, p. 345)

This raised questions as to how far the privacy concerns of residents may be carried. Currently, it may be said that:

> the legal status of search and seizure on campus is constantly evolving. Therefore, if at all possible, college officials should procure a warrant, if time and circumstances permit, prior to any search of a student's room or personal belongings. But emergency situations do occur on campus, and in those instances appropriate officials may conduct necessary searches. (Miller, Schuh and Sistrunk, 1979, p. 15)

How are administrators to determine whether a situation constitutes an emergency? What standards are institutional staff to use in making these determinations?

The legal test of probable cause gives some guidance.

> Probable cause for search and seizure with or without search warrant involves probabilities which are not technical but factual and practical considerations of every day life upon which reasonable and prudent men act, and essence of probable cause is reasonable ground for belief (sic).... (Black, 1979, p. 1081)

This raises the question of what constitutes reasonable grounds; a general rule involves having more evidence for, than against, the existence of a situation (Black, 1979). Among colleges and universities, there have been attempts to reduce the standards which must be met for a warrantless search to be conducted. These efforts have been somewhat successful since courts have rarely discussed the issue of student privacy concerns. "The student's interest in privacy often has been subordinated to the state's interest in educating its citizens" (Stevens, 1980, p. 351).

This issue touches upon the role of postsecondary educational institutions. If their purpose is to teach, and the function of residence halls is to house students, it follows that it is permissible for institutions to establish rules for living within the residence halls. Miller et al. (1979) suggested that as long as residents are in university housing, routine inspections of their rooms are permissible for maintenance, health, and safety reasons. For any other reason, with the exception of emergency situations, a warrant should be obtained before entry into a student's room. The institution's reliance on blanket entry clauses in housing contracts may constitute an attempted waiver of a constitutional right, and such rights may not be waived by contracts.

Trosch, Williams and DeVore (1982) proposed a diagram (see Figure 1) to determine what may be considered a reasonable search in situations without warrants. The diagram contrasts the privacy expectation level of students with the level of suspicion of officials. As the expectation of privacy increases, so too must the level of suspicion.

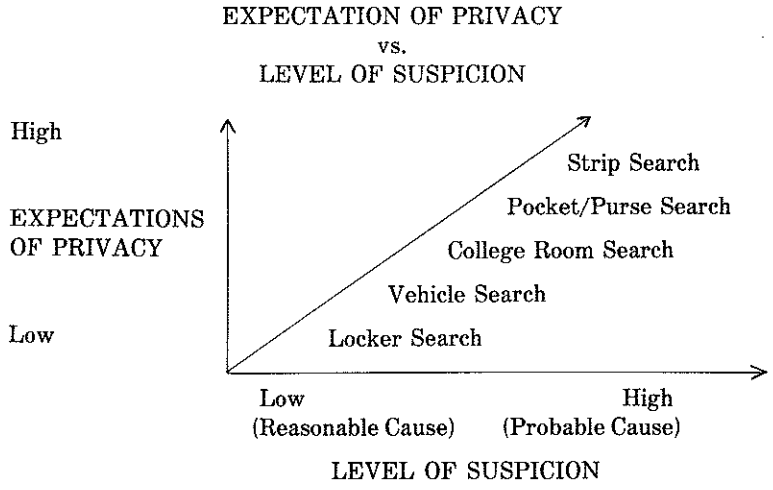


Figure 1



**Note.** From "Public School Searches and the Fourteenth Amendment" by L. A. Trosch, R. G. Williams, and F. W. DeVore III, 1982, **Journal of Law and Education,** 11(1), p. 51. Copyright 1982 by Jefferson Law Book Company. Adapted by permission. ("College Room Search" added.)

Given the use of this diagram it still may be questionable whether the action taken in a given situation was proper, reasonable, or justified under constitutional search and seizure protections.

Solace is available, however, if one keeps in mind that:

> whatever the scope of the right of privacy in general, its enjoyment by students in the school setting will be narrower. For notwithstanding the recognition of a student's constitutional rights, these rights must be balanced against the specific governmental interests that are not present in the society at large—the educational process and the maintenance of order conducive to the educational goal. (Stevens, 1980, p. 344)

It should be noted that the fourth amendment protects citizens from actions by the federal government, while the fourteenth amendment protects citizens from state actions. Since public institutions are creations of the state, these institutions must abide by the guidelines which result from the concern for due process. Before a discussion of due process is developed, the need for private colleges to comply with due process, and their relationship with the government should be mentioned.

While there is a perspective that places private colleges outside the reaches of the fourteenth amendment (see **Grossner v. Columbia,** 1968), another viewpoint holds that private colleges serve a significant public function. Therefore, "there is little doubt that private colleges and universities, no less than company towns, parks and political parties, might be held accountable to fourteenth amendment standards" (Thigpen, 1982, p. 207). Other factors which link private schools and the government are student scholarships and aid, tax exemptions, direct state regulation, state charter provisions, and use of the state's name in the school title (Thigpen, p. 199).

Technically, private schools are immune from the restrictions and expectations set forth by the fourteenth amendment, however government regulation continues to increase.

> Nevertheless, it seems desirable to have a public policy of protecting basic norms of fair and equal treatment in non-public institutions of higher learning.... And in the face of marked, and perhaps justified, reluctance on the part of courts to make fourteenth amendment norms obligatory on non-public institutions, they may offer the most appropriate means to assure that those "in private colleges and universities will be accorded the same safeguards (sic) as their counterparts in 'public' institutions." (Thigpen, 1982, p. 201)

As private colleges receive more state assistance, and as the role of government becomes more evident, adherence to fourteenth amendment norms by private colleges will most likely increase.

In an article dealing with contractual rights for students, Ray suggested that:

> for disciplinary dismissals at private colleges, courts can respond most appropriately and efficiently by implying a contract term requiring all colleges to use fair procedures in reaching such decisions. An implied term guaranteeing fair and reasonable procedural protections would accomplish for private college students what **Dixon** has accomplished for public college students. (1982, p. 175)

**Due Process**

The essence of due process is protection from arbitrary and unreasonable actions; that is, if residence hall staff act to deprive a resident of some right then the "parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must be notified" (Black, 1979, p. 1083). Due process has two aspects: the procedural, in which a person is guaranteed fair procedures and the substantive, in which a person's property is protected from unfair governmental interference or seizure (Black, p. 499).

Public institutions, as previously mentioned, are already bound to the provisions of the fourteenth amendment. The concept of substantive due process deals with the constitutional guarantee that no person shall be arbitrarily deprived of their life, liberty or property (Black, p. 1281). The remainder of this paper shall deal with the procedural aspects of due process and their application to residents at public institutions in matters of discipline.

A major court case in this area, **Dixon v. Alabama** (1961), held that students at public, tax-supported schools were to be given notice, as well as some opportunity for a hearing, before they could be expelled for misconduct. Furthermore, it has been interpreted that students had the right to know who their accusers were and what evidence supported the charges (Golden, 1982). It should be noted that **Dixon** deals with a dismissal from an institution for misconduct, but the implications for applicability to residence halls are many; residents do get suspended or expelled for misconduct, as well as other regulation violations.

An article by E. J. Golden (1982) reported the findings of a study which attempted to determine which procedures and protections were afforded students at public colleges and universities when those students faced disciplinary or academic dismissal. The purpose of the study was to compile the various methods and practices utilized to give notice when a student faced dismissal for either misconduct or academic deficiency. Golden sought answers to five specific concerns: (a) whether the notice was oral or written; (b) whether the notice contained a description of the charges; (c) whether the notice specified the regulation or academic requirement that was allegedly violated or not fulfilled; (d) whether the notice stated the time, date and place of the hearing; and (e) whether the notice assured a specific time in which to prepare a defense to the charges.

In summarizing his study, Golden (1982) noted that the response rate indicated a high level of interest in the question of student dismissal procedures. He further noted that disciplinary procedure guidelines were published more by institutions (93.5%) than were procedures for academic dismissal (51.6%). These findings seem to support the concerns for academic freedom issues which the courts have been espousing, and reflect the concerns for procedural due process when a potential deprivation of a resident's rights is involved. In terms of the opportunity to appeal, "due process of law does not require the right of appeal or review if fairness has been accorded in the original proceedings" (Golden, p. 356).



Richard MacFeeley (1975) offered a model for use in establishing procedural due process for high school expulsion situations. The basic concerns of notice, charge identification and indication, presentation of one's own side, and notification of decision are outlined and may be adapted for use by colleges and universities as their needs are assessed and determined.

**Conclusion**

This paper has explored concerns related to search and seizure procedures as well as procedural safeguards mandated by the concept of due process. Efforts have been made to relate the information provided to situations involving residence halls. However, Ray (1981) suggested that:

> as smaller liberal arts colleges have expanded or diversified or expired, university campuses with large student bodies and elaborate bureaucratic structures have developed.... Just as the doctrine of **in loco parentis** has been rendered obsolete by a changing educational establishment, so too may the existence of the judicial ideal of a fully integrated academic community become a matter of fact rather than a matter of law. As the functions of scholars and administrators have changed, the interests of students have changed as well. The student's right to his education, threatened or terminated by an institutional decision, includes more than an intellectual or moral experience; it may well be, as proponents of the student status-property right theory maintain, an economic interest of large proportions. (p. 179)

While there are many potential avenues and reasons for residents to initiate causes of action and law suits against university or residence hall personnel, "intelligently applied fairness, solid ethical standards and sound, progressive educational philosophies will remain more appropriate foundations for residence halls administration than concern for future ligitation" (Miller et al., 1979, p. 20). Residence hall personnel should not have to live with the fear that any given act or endeavor on their part might result in a violation of a resident's rights. "The law is here to stay in student affairs, and ... the wise student personnel administrator is better off knowing its parameters and learning, as well as he or she can, its teachings" (Kadzielski, 1979, p. 42). While it is not necessary that every student affairs professional be expert in related legal aspects, they should, at least, be familiar with basic legal doctrines and develop some awareness of how their positions might be impacted.

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# ACCOMMODATING HANDICAPPED STUDENTS ON COLLEGE CAMPUSES

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*Due to the increasing numbers of handicapped students attending college, student affairs professionals must be aware of the special needs and concerns of these students. Student affairs professionals must also help faculty, staff and students to develop realistic perceptions of the handicapped. The increased quality of interaction can create a positive environment for all students to live and learn.*

Eleven years ago, the Rehabilitation Act of 1973 made it illegal for institutions benefiting from federal funding to deny admission to qualified handicapped students (Redden, 1979). As a result of this and similar legislation, institutions have been forced to reorganize their present facilities to meet the needs of a growing population of handicapped students. This paper will highlight several areas responsive to fairly inexpensive and relatively easy alterations which may greatly improve the lives of handicapped students.

When asked what type of campus environment would suit them best, handicapped students state that they desire the same access to facilities and experiences as any other student, preferring not to be singled out because they are handicapped (DeGraff, 1979). Student services programs should mainstream handicapped students into existing campus services for several reasons (Sprandel, 1980). Mainstreaming eliminates the cost of establishing a separate set of facilities and staff just for handicapped students. It benefits both the disabled and non-disabled populations by giving them more opportunities to interact with one another. Too often when services are segregated, neither population adjusts to living with the other, and attitudinal barriers remain intact (Fix & Rohrbacher, 1977). Integration of services can aid in reducing barriers and create a sense of mutual awareness. Lastly, mainstreaming encourages all student services personnel to have some knowledge of the needs of the handicapped. However, a handicapped student services office staffed with professionals who specialize in the needs of the disabled can be beneficial. This office can assist other services and departments in accommodating handicapped students.

To facilitate student success and institutional compliance with regulations, a position called "Coordinator for the Handicapped" should be established. One person per campus should be responsible for services to the disabled since this offers the advantage of high visibility to the community and a referral source for students, faculty, and staff (Dailey & Jeffress, 1981). The Coordinator should know the number and types of students' disabilities, take responsibility for developing and providing information about campus services to handicapped persons, produce an accessibility map of the campus for use by disabled students, and plan for program accessibility (Sprandel, 1980).