CHAPTER 3: THE FOURTH AMENDMENT IN THE PUBLIC SCHOOLS

Introduction to Fourth Amendment Analysis

The Fourth Amendment to the United States Constitution provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” The text of the amendment contains several ambiguities which courts have struggled with over the years.

One ambiguity is the meaning of “unreasonable.” When is a search or seizure unreasonable and when is it reasonable? Another is the relationship between the first part of the amendment describing a right against “unreasonable searches and seizures” and the second part of the amendment, the so-called warrant clause, which describes the requirements for obtaining a warrant. Does the amendment create a presumption in favor of obtaining a warrant to conduct a search or seizure or can a warrant be dispensed with if the search or seizure is reasonable? This leads to the related question of when a warrantless search or seizure is reasonable and when it is unreasonable, bringing us full circle back to the initial inquiry into the meaning of unreasonable.

In interpreting the Fourth Amendment, the Supreme Court has crafted several standards to apply in different circumstances. The probable cause standard in the text of the amendment means that the government will be able to secure a search warrant from a judge only if the government can show probable cause to believe that the search will reveal evidence of a crime. “Probable cause” exists where “the facts and circumstances within their [the officers’] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief” that evidence of a crime would be found in a search.” “Probable cause” is a higher evidentiary standard than “reasonable suspicion,” but less than the “beyond a reasonable doubt” standard required for a criminal conviction.

In general, reasonableness is defined by weighing in each particular circumstance the personal privacy rights of the person whose property is to be searched against law enforcement needs. Law enforcement needs include the safety of police officers and the possible destruction of evidence of a crime if the police are not allowed to act quickly.

Because of the importance of these law enforcement interests, the Supreme Court has carved out a number of “exigent circumstances” in which the police are able to act without a warrant. Some of these include emergency circumstances where there is no time to obtain a search warrant, the need to prevent the destruction of evidence, a search incident to a lawful arrest, and hot pursuit of a fleeing suspect where the suspect flees into a home or other protected place.

Moreover, exigent circumstances are not the only situations where the police can act without a warrant and without satisfying the probable cause standard. One example of another permitted police practice is stop and frisk where the police are allowed to stop and
question persons based on reasonable suspicion. Moreover, if the police believe a person they have stopped and are questioning could be armed, a limited search of the person is permitted.

In addition to its application to police officers, the Fourth Amendment also applies to other agents of the government. This broad application makes it possible for the amendment to apply to public school officials who conduct searches in order to find evidence of violations of school rules rather than criminal activities. The issue of whether and how the Fourth Amendment applies in the public school context has come before the Supreme Court on a number of occasions beginning with New Jersey v. T. L. O. in 1985. While T. L. O. involved a search based on individualized suspicion that the student subject to the search had violated a school rule, later cases have involved suspicionless, administrative searches of all students participating in a particular school activity.

A. Supreme Court Cases

1. NEW JERSEY v. T. L. O.
469 U.S. 325 (1985)

JUSTICE WHITE delivered the opinion of the Court.

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N.J. discovered two girls smoking in a lavatory. One of the girls was the respondent T. L. O., who at that time was a 14-year-old freshman. Because smoking in the lavatory was a violation of a school rule, the teacher took the two girls to the Principal’s office, where they met with Assistant Vice Principal Choplick. In response to questioning, T. L. O.’s companion admitted that she had violated the rule. T. L. O., however, denied that she had been smoking and claimed that she did not smoke at all.

Mr. Choplick asked T. L. O. to come into his private office and demanded to see her purse. Opening the purse, he found a pack of cigarettes, which he removed from the purse and held before T. L. O. as he accused her of having lied to him. As he reached into the purse for the cigarettes, Mr. Choplick also noticed a package of cigarette rolling papers. In his experience, possession of rolling papers by high school students was closely associated with the use of marijuana. Suspecting that a closer examination of the purse might yield further evidence of drug use, Mr. Choplick proceeded to search the purse thoroughly. The search revealed a small amount of marijuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one-dollar bills, an index card that appeared to be a list of students who owed T. L. O. money, and two letters that implicated T. L. O. in marijuana dealing.

Mr. Choplick notified T. L. O.’s mother and the police, and turned the evidence of drug dealing over to the police. At the request of the police, T. L. O.’s mother took her daughter to police headquarters, where T. L. O. confessed that she had been selling marijuana at the high school. On the basis of the confession and the evidence seized by Mr. Choplick, the State brought delinquency charges against T. L. O. Contending that Mr. Choplick’s search
of her purse violated the Fourth Amendment, T. L. O. moved to suppress the evidence found in her purse as well as her confession, which, she argued, was tainted by the allegedly unlawful search.

In determining whether the search at issue in this case violated the Fourth Amendment, we are faced initially with the question whether that Amendment’s prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. We hold that it does.

It is now beyond dispute that the Federal Constitution, by virtue of the Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers. Equally indisputable is the proposition that the Fourteenth Amendment protects the rights of students against encroachment by public school officials:

The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

*West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 637 (1943). These two propositions—that the Fourth Amendment applies to the States through the Fourteenth Amendment, and that the actions of public school officials are subject to the limits placed on state action by the Fourteenth Amendment—might appear sufficient to answer the suggestion that the Fourth Amendment does not proscribe unreasonable searches by school officials.

Notwithstanding the general applicability of the Fourth Amendment to the activities of civil authorities, a few courts have concluded that school officials are exempt from the dictates of the Fourth Amendment by virtue of the special nature of their authority over schoolchildren. Teachers and school administrators, it is said, act in loco parentis in their dealings with students: their authority is that of the parent, not the State, and is therefore not subject to the limits of the Fourth Amendment.

Such reasoning is in tension with contemporary reality and the teachings of this Court. We have held school officials subject to the commands of the First Amendment and the Due Process Clause of the Fourteenth Amendment. If school authorities are state actors for purposes of the constitutional guarantees of freedom of expression and due process, it is difficult to understand why they should be deemed to be exercising parental rather than public authority when conducting searches of their students. Today’s public school officials do not merely exercise authority voluntarily conferred on them by individual parents; rather, they act in furtherance of publicly mandated educational and disciplinary policies. In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the
parents, and they cannot claim the parents’ immunity from the strictures of the Fourth Amendment.

To hold that the Fourth Amendment applies to searches conducted by school authorities is only to begin the inquiry into the standards governing such searches. Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place. The determination of the standard of reasonableness governing any specific class of searches requires “balancing the need to search against the invasion which the search entails.” On one side of the balance are arrayed the individual’s legitimate expectations of privacy and personal security; on the other, the government’s need for effective methods to deal with breaches of public order.

We have recognized that even a limited search of the person is a substantial invasion of privacy. We have also recognized that searches of closed items of personal luggage are intrusions on protected privacy interests. A search of a child’s person or of a closed purse or other bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy.

To receive the protection of the Fourth Amendment, an expectation of privacy must be one that society is “prepared to recognize as legitimate.” The State of New Jersey has argued that, because of the pervasive supervision to which children in the schools are necessarily subject, a child has virtually no legitimate expectation of privacy in articles of personal property “unnecessarily” carried into a school. This argument has two factual premises: (1) the fundamental incompatibility of expectations of privacy with the maintenance of a sound educational environment; and (2) the minimal interest of the child in bringing any items of personal property into the school. Both premises are severely flawed.

Although this Court may take notice of the difficulty of maintaining discipline in the public schools today, the situation is not so dire that students in the schools may claim no legitimate expectations of privacy. Nor does the State’s suggestion that children have no legitimate need to bring personal property into the schools seem well anchored in reality. Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, and the necessaries of personal hygiene and grooming. In addition, students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items as photographs, letters, and diaries. Finally, students may have perfectly legitimate reasons to carry with them articles of property needed in connection with extracurricular or recreational activities. In short, schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds.

Against the child’s interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools.
have become major social problems. Even in schools that have been spared the most severe
disciplinary problems, the preservation of order and a proper educational environment
requires close supervision of schoolchildren, as well as the enforcement of rules against
conduct that would be perfectly permissible if undertaken by an adult. Accordingly, we
have recognized that maintaining security and order in the schools requires a certain
degree of flexibility in school disciplinary procedures, and we have respected the value of
preserving the informality of the student-teacher relationship.

How, then, should we strike the balance between the schoolchild’s legitimate
expectations of privacy and the school’s equally legitimate need to maintain an
environment in which learning can take place? It is evident that the school setting requires
some easing of the restrictions to which searches by public authorities are ordinarily
subject. The warrant requirement, in particular, is unsuited to the school environment:
requiring a teacher to obtain a warrant before searching a child suspected of an infraction
of school rules (or of the criminal law) would unduly interfere with the maintenance of the
swift and informal disciplinary procedures needed in the schools. Just as we have in other
cases dispensed with the warrant requirement when “the burden of obtaining a warrant is
likely to frustrate the governmental purpose behind the search,” we hold that school
officials need not obtain a warrant before searching a student under their authority.

The school setting also requires some modification of the level of suspicion of illicit
activity needed to justify a search. Ordinarily, a search—even one that may permissibly be
carried out without a warrant—must be based upon “probable cause” to believe that a
violation of the law has occurred. However, “probable cause” is not an irreducible
requirement of a valid search. The fundamental command of the Fourth Amendment is that
searches and seizures be reasonable, and although “both the concept of probable cause and
the requirement of a warrant bear on the reasonableness of a search, . . . in certain limited
circumstances neither is required.” Thus, we have in a number of cases recognized the
legality of searches and seizures based on suspicions that, although “reasonable,” do not
rise to the level of probable cause. Where a careful balancing of governmental and private
interests suggests that the public interest is best served by a Fourth Amendment standard of
reasonableness that stops short of probable cause, we have not hesitated to adopt such a
standard.

We conclud[e] that the accommodation of the privacy interests of schoolchildren with
the substantial need of teachers and administrators for freedom to maintain order in the
schools does not require strict adherence to the requirement that searches be based on
probable cause to believe that the subject of the search has violated or is violating the law.
Rather, the legality of a search of a student should depend simply on the reasonableness,
under all the circumstances, of the search. Determining the reasonableness of any search
involves a twofold inquiry: first, one must consider “whether the . . . action was justified at
its inception;” second, one must determine whether the search as actually conducted “was
reasonably related in scope to the circumstances which justified the interference in the first
place.” Under ordinary circumstances, a search of a student by a teacher or other school
official will be “justified at its inception” when there are reasonable grounds for suspecting
that the search will turn up evidence that the student has violated or is violating either the
law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

This standard will, we trust, neither unduly burden the efforts of school authorities to maintain order in their schools nor authorize unrestrained intrusions upon the privacy of schoolchildren. By focusing attention on the question of reasonableness, the standard will spare teachers and administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense. At the same time, the reasonableness standard should ensure that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools.

There remains the question of the legality of the search in this case. Our review of the facts surrounding the search leads us to conclude that the search was in no sense unreasonable for Fourth Amendment purposes. The incident that gave rise to this case actually involved two separate searches, with the first—the search for cigarettes—providing the suspicion that gave rise to the second—the search for marijuana. Although it is the fruits of the second search that are at issue here, the validity of the search for marijuana must depend on the reasonableness of the initial search for cigarettes, as there would have been no reason to suspect that T. L. O. possessed marijuana had the first search not taken place. Accordingly, it is to the search for cigarettes that we first turn our attention.

T. L. O. had been accused of smoking, and had denied the accusation in the strongest possible terms when she stated that she did not smoke at all. Surely it cannot be said that under these circumstances, T. L. O.’s possession of cigarettes would be irrelevant to the charges against her or to her response to those charges. T. L. O.’s possession of cigarettes, once it was discovered, would both corroborate the report that she had been smoking and undermine the credibility of her defense to the charge of smoking. To be sure, the discovery of the cigarettes would not prove that T. L. O. had been smoking in the lavatory; nor would it, strictly speaking, necessarily be inconsistent with her claim that she did not smoke at all. But evidence, to be relevant to an inquiry, need not conclusively prove the ultimate fact in issue, but only have “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. Rule Evid. 401. The relevance of T. L. O.’s possession of cigarettes to the question whether she had been smoking and to the credibility of her denial that she smoked supplied the necessary “nexus” between the item searched for and the infraction under investigation. Thus, if Mr. Choplick in fact had a reasonable suspicion that T. L. O. had cigarettes in her purse, the search was justified despite the fact that the cigarettes, if found, would constitute “mere evidence” of a violation.

A teacher had reported that T. L. O. was smoking in the lavatory. Certainly this report gave Mr. Choplick reason to suspect that T. L. O. was carrying cigarettes with her; and if she did have cigarettes, her purse was the obvious place in which to find them. Mr.
Choplick’s suspicion that there were cigarettes in the purse was not an “unparticularized suspicion or ‘hunch;’ ” rather, it was the sort of “common-sense conclusio[n] about human behavior” upon which “practical people”—including government officials—are entitled to rely. Of course, even if the teacher’s report were true, T. L. O. might not have had a pack of cigarettes with her; she might have borrowed a cigarette from someone else or have been sharing a cigarette with another student. But the requirement of reasonable suspicion is not a requirement of absolute certainty: “sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment.” Because the hypothesis that T. L. O. was carrying cigarettes in her purse was itself not unreasonable, it is irrelevant that other hypotheses were also consistent with the teacher’s accusation. Accordingly, it cannot be said that Mr. Choplick acted unreasonably when he examined T. L. O.’s purse to see if it contained cigarettes.

Our conclusion that Mr. Choplick’s decision to open T. L. O.’s purse was reasonable brings us to the question of the further search for marijuana once the pack of cigarettes was located. The suspicion upon which the search for marijuana was founded was provided when Mr. Choplick observed a package of rolling papers in the purse as he removed the pack of cigarettes. Although T. L. O. does not dispute the reasonableness of Mr. Choplick’s belief that the rolling papers indicated the presence of marijuana, she does contend that the scope of the search Mr. Choplick conducted exceeded permissible bounds when he seized and read certain letters that implicated T. L. O. in drug dealing. This argument, too, is unpersuasive. The discovery of the rolling papers concededly gave rise to a reasonable suspicion that T. L. O. was carrying marijuana as well as cigarettes in her purse. This suspicion justified further exploration of T. L. O.’s purse, which turned up more evidence of drug-related activities: a pipe, a number of plastic bags of the type commonly used to store marijuana, a small quantity of marijuana, and a fairly substantial amount of money. Under these circumstances, it was not unreasonable to extend the search to a separate zippered compartment of the purse; and when a search of that compartment revealed an index card containing a list of “people who owe me money” as well as two letters, the inference that T. L. O. was involved in marijuana trafficking was substantial enough to justify Mr. Choplick in examining the letters to determine whether they contained any further evidence. In short, we cannot conclude that the search for marijuana was unreasonable in any respect. Because the search resulting in the discovery of the evidence of marihuana dealing by T. L. O. was reasonable, the New Jersey Supreme Court’s decision to exclude that evidence from T. L. O.’s juvenile delinquency proceedings on Fourth Amendment grounds was erroneous.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, concurring in part and dissenting in part.

I emphatically disagree with the Court’s decision to cast aside the probable cause standard when assessing the constitutional validity of a schoolhouse search. The Court’s decision jettisons the probable cause standard on the basis of its Rohrschach-like “balancing test.” Use of such a “balancing test” to determine the standard for evaluating the validity of a full-scale search represents a sizable innovation in Fourth Amendment
Justices Stevens, with whom Justice Marshall joins, and with whom Justice Brennan joins as to Part I, concurring in part and dissenting in part.

In assessing the constitutionality of a warrantless search, it is necessary “first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,” for there is “no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.” But the majority’s statement of the standard for evaluating the reasonableness of such searches is not suitably adapted to that end. The majority holds that “a search of a student by a teacher or other school official will be ‘justified at its inception’ when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.”

This standard will permit teachers and school administrators to search students when they suspect that the search will reveal evidence of even the most trivial school regulation or precatory guideline for student behavior. The Court’s standard for deciding whether a search is justified “at its inception” treats all violations of the rules of the school as though they were fungible. For the Court, a search for curlers and sunglasses in order to enforce the school dress code is apparently just as important as a search for evidence of heroin addiction or violent gang activity.

The majority does not contend that school administrators have a compelling need to search students in order to achieve optimum enforcement of minor school regulations. A better [standard] would permit teachers and administrators to search a student when they have reason to believe the search will uncover evidence that the student is violating the law or engaging in conduct that is seriously disruptive of school order, or the educational process.

The logic of distinguishing between minor and serious offenses in evaluating the reasonableness of school searches is almost too clear for argument. In order to justify the serious intrusion on the privacy of young people that New Jersey asks this Court to approve, the State must identify “some real immediate and serious consequences.” While school administrators have entirely legitimate reasons for adopting school regulations for student behavior, the authorization of searches to enforce them “displays a shocking lack of all sense of proportion.”

In this case, Mr. Choplick overreacted to what appeared to be a minor infraction. As far as the smoking infraction is concerned, the search for cigarettes merely tended to corroborate a teacher’s eyewitness account of T. L. O.’s violation of a minor regulation.
designed to channel student smoking into designated locations. Because this conduct was neither unlawful nor significantly disruptive of school order or the educational process, the invasion of privacy associated with the forcible opening of T. L. O.’s purse was entirely unjustified at its inception.

The rule the Court adopts today is so open-ended that it may make the Fourth Amendment virtually meaningless in the school context. Although I agree that school administrators must have broad latitude to maintain order and discipline, that authority is not unlimited.

2. SAFFORD UNIFIED SCHOOL DISTRICT #1 v. REDDING
557 U.S. 364 (2009)

JUSTICE SOUTER delivered the opinion of the Court.

The issue here is whether a 13-year-old student’s Fourth Amendment right was violated when she was subjected to a search of her bra and underpants by school officials acting on reasonable suspicion that she had brought forbidden prescription and over-the-counter drugs to school. Because there were no reasons to suspect the drugs presented a danger or were concealed in her underwear, we hold that the search did violate the Constitution, but because there is reason to question the clarity with which the right was established, the official who ordered the unconstitutional search is entitled to qualified immunity from liability.¹

I

The events immediately prior to the search in question began in 13-year-old Savana Redding’s math class at Safford Middle School one October day in 2003. The assistant principal of the school, Kerry Wilson, came into the room and asked Savana to go to his office. There, he showed her a day planner, unzipped and open flat on his desk, in which there were several knives, lighters, a permanent marker, and a cigarette. Wilson asked Savana whether the planner was hers; she said it was, but that a few days before she had lent it to her friend, Marissa Glines. Savana stated that none of the items in the planner belonged to her.

¹ Professor’s Note: When school officials are named in their individual capacity as defendants in a lawsuit brought against the school board or school district claiming a constitutional violation, the school officials can assert the defense of qualified immunity. Using this defense, government officials can argue that the constitutional right they are claimed to have violated was not “clearly established” at the time of the conduct at issue. Because the right was not clearly established, the officials could not have known that their conduct was a violation of the law. If the qualified immunity defense succeeds, a lawsuit against the individual officials for damages will fail. However, the suit against the school board or school district will not fail on this ground. Instead, these entities are liable for unconstitutional policies and customs they adopt or acquiesce in and may, in certain circumstances, be liable for the actions of their employees.
Wilson then showed Savana four white prescription-strength ibuprofen 400-mg pills, and one over-the-counter blue naproxen 200-mg pill, all used for pain and inflammation but banned under school rules without advance permission. He asked Savana if she knew anything about the pills. Savana answered that she did not. Wilson then told Savana that he had received a report that she was giving these pills to fellow students; Savana denied it and agreed to let Wilson search her belongings. Helen Romero, an administrative assistant, came into the office, and together with Wilson they searched Savana’s backpack, finding nothing.

At that point, Wilson instructed Romero to take Savana to the school nurse’s office to search her clothes for pills. Romero and the nurse, Peggy Schwallier, asked Savana to remove her jacket, socks, and shoes, leaving her in stretch pants and a T-shirt (both without pockets), which she was then asked to remove. Finally, Savana was told to pull her bra out and to the side and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. No pills were found.

Savana’s mother filed suit against Safford Unified School District #1, Wilson, Romero, and Schwallier for conducting a strip search in violation of Savana’s Fourth Amendment rights. The individuals (petitioners) moved for summary judgment, raising a defense of qualified immunity.

II

In *T. L. O.*, we held that for searches by school officials “a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause.” We have thus applied a standard of reasonable suspicion to determine the legality of a school administrator’s search of a student, and have held that a school search “will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.”

III

In this case, the school’s policies strictly prohibit the nonmedical use, possession, or sale of any drug on school grounds, including “any prescription or over-the-counter drug, except those for which permission to use in school has been granted.’” A week before Savana was searched, another student, Jordan Romero (no relation of the school’s administrative assistant), told the principal and Assistant Principal Wilson that “certain students were bringing drugs and weapons on campus,” and that he had been sick after taking some pills that “he got from a classmate.” On the morning of October 8, the same boy handed Wilson a white pill that he said Marissa Glines had given him. He told Wilson that students were planning to take the pills at lunch.

Wilson learned from Peggy Schwallier, the school nurse, that the pill was Ibuprofen 400 mg, available only by prescription. Wilson then called Marissa out of class. Outside the classroom, Marissa’s teacher handed Wilson the day planner, found within Marissa’s reach, containing various contraband items. Wilson escorted Marissa back to his office.
In the presence of Helen Romero, Wilson requested Marissa to turn out her pockets and open her wallet. Marissa produced a blue pill, several white ones, and a razor blade. Wilson asked where the blue pill came from, and Marissa answered, “I guess it slipped in when she gave me the IBU 400s.” When Wilson asked whom she meant, Marissa replied, “Savana Redding.” Wilson then enquired about the day planner and its contents; Marissa denied knowing anything about them. Wilson did not ask Marissa any followup questions to determine whether there was any likelihood that Savana presently had pills; neither asking when Marissa received the pills from Savana nor where Savana might be hiding them.

Schwallier did not immediately recognize the blue pill, but information provided through a poison control hotline indicated that the pill was a 200-mg dose of an anti-inflammatory drug, generically called naproxen, available over the counter. At Wilson’s direction, Marissa was then subjected to a search of her bra and underpants by Romero and Schwallier, as Savana was later on. The search revealed no additional pills.

It was at this juncture that Wilson called Savana into his office and showed her the day planner. Their conversation established that Savana and Marissa were on friendly terms: while she denied knowledge of the contraband, Savana admitted that the day planner was hers and that she had lent it to Marissa. Wilson had other reports of their friendship from staff members, who had identified Savana and Marissa as part of an unusually rowdy group at the school’s opening dance in August, during which alcohol and cigarettes were found in the girls’ bathroom. Wilson had reason to connect the girls with this contraband, for Wilson knew that Jordan Romero had told the principal that before the dance, he had been at a party at Savana’s house where alcohol was served. Marissa’s statement that the pills came from Savana was thus sufficiently plausible to warrant suspicion that Savana was involved in pill distribution.

This suspicion of Wilson’s was enough to justify a search of Savana’s backpack and outer clothing. If a student is reasonably suspected of giving out contraband pills, she is reasonably suspected of carrying them on her person and in the carryall that has become an item of student uniform. If Wilson’s reasonable suspicion of pill distribution were not understood to support searches of outer clothes and backpack, it would not justify any search worth making. And the look into Savana’s bag, in her presence and in the relative privacy of Wilson’s office, was not excessively intrusive, any more than Romero’s subsequent search of her outer clothing.

Here it is that the parties part company, with Savana’s claim that extending the search at Wilson’s behest to the point of making her pull out her underwear was constitutionally unreasonable. The exact label for this final step in the intrusion is not important, though strip search is a fair way to speak of it. The very fact of Savana’s pulling her underwear away from her body in the presence of the two officials who were able to see her necessarily exposed breasts and pelvic area to some degree, and both subjective and reasonable societal expectations of personal privacy support the treatment of such a search as categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of outer clothing and belongings.
Savana’s subjective expectation of privacy against such a search is inherent in her account of it as embarrassing, frightening, and humiliating. The reasonableness of her expectation (required by the Fourth Amendment standard) is indicated by the consistent experiences of other young people similarly searched, whose adolescent vulnerability intensifies the intrusiveness of the exposure. The common reaction of these adolescents registers the obviously different meaning of a search exposing the body from the experience of nakedness or near undress in other school circumstances. Changing for gym is getting ready for play; exposing for a search is responding to an accusation reserved for suspected wrongdoers and fairly understood as degrading.

The indignity of the search does not, of course, outlaw it, but it does implicate the rule of reasonableness as stated in *T. L. O.*, that “the search as actually conducted [be] reasonably related in scope to the circumstances which justified the interference in the first place.” The scope will be permissible, that is, when it is “not excessively intrusive in light of the age and sex of the student and the nature of the infraction.”

Here, the content of the suspicion failed to match the degree of intrusion. Wilson knew beforehand that the pills were prescription-strength ibuprofen and over-the-counter naproxen, common pain relievers equivalent to two Advil, or one Aleve. He must have been aware of the nature and limited threat of the drugs he was searching for, and while just about anything can be taken in quantities that will do real harm, Wilson had no reason to suspect that large amounts of the drugs were being passed around, or that students were receiving great numbers of pills.

Nor could Wilson have suspected that Savana was hiding common painkillers in her underwear. Petitioners suggest that “students . . . hid[e] contraband in or under their clothing,” and cite a smattering of cases of students with contraband in their underwear. But when the categorically extreme intrusiveness of a search down to the body of an adolescent requires some justification in suspected facts, general background possibilities fall short; a reasonable search that extensive calls for suspicion that it will pay off. But nondangerous school contraband does not raise the specter of stashes in intimate places, and there is no evidence in the record of any general practice among Safford Middle School students of hiding that sort of thing in underwear; neither Jordan nor Marissa suggested to Wilson that Savana was doing that, and the preceding search of Marissa that Wilson ordered yielded nothing. Wilson never even determined when Marissa had received the pills from Savana; if it had been a few days before, that would weigh heavily against any reasonable conclusion that Savana presently had the pills on her person.

In sum, what was missing from the suspected facts that pointed to Savana was any indication of danger to the students from the power of the drugs or their quantity, and any reason to suppose that Savana was carrying pills in her underwear. We think that the combination of these deficiencies was fatal to finding the search reasonable.

In so holding, we mean to cast no ill reflection on the assistant principal, for the record raises no doubt that his motive throughout was to eliminate drugs from his school and protect students from what Jordan Romero had gone through. We do mean, though, to
make it clear that the *T. L. O.* concern to limit a school search to reasonable scope requires the support of reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing before a search can reasonably make the quantum leap from outer clothes and backpacks to exposure of intimate parts. The meaning of such a search, and the degradation its subject may reasonably feel, place a search that intrusive in a category of its own demanding its own specific suspicions.

IV

A school official searching a student is “entitled to qualified immunity where clearly established law does not show that the search violated the Fourth Amendment.” *T. L. O.* directed school officials to limit the intrusiveness of a search, “in light of the age and sex of the student and the nature of the infraction,” and the intrusiveness of the strip search here cannot be seen as justifiably related to the circumstances. But we realize that the lower courts have reached divergent conclusions regarding how the *T. L. O.* standard applies to such searches. The cases viewing school strip searches differently from the way we see them are numerous enough to counsel doubt that we were sufficiently clear in the prior statement of law. The strip search of Savana Redding was a violation of the Fourth Amendment, but petitioners Wilson, Romero, and Schwallier are nevertheless protected from liability through qualified immunity.

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, concurring in part and dissenting in part.

The strip search in this case was both more intrusive and less justified than the search of the student’s purse in *T. L. O.* Therefore, while I join Parts I-III of the Court’s opinion, I disagree with its decision to extend qualified immunity to the school official who authorized this search. In this case, we chart no new constitutional path. We merely decide whether the decision to strip search Savana Redding was prohibited under *T. L. O.* Our conclusion leaves the boundaries of the law undisturbed. The Court of Appeals properly rejected the qualified immunity defense.

JUSTICE GINSBURG, concurring in part and dissenting in part.

Here, “the nature of the [supposed] infraction,” the slim basis for suspecting Savana Redding, and her “age and sex” establish beyond doubt that Assistant Principal Wilson’s order cannot be reconciled with *T. L. O.* Wilson’s treatment of Redding was abusive and it was not reasonable for him to believe that the law permitted it. I join Justice Stevens in dissenting from the Court’s acceptance of Wilson’s qualified immunity plea.

JUSTICE THOMAS, concurring in the judgment in part and dissenting in part.

Unlike the majority, I would hold that the search of Savana Redding did not violate the Fourth Amendment. The majority imposes a vague and amorphous standard on school administrators. It also grants judges sweeping authority to second-guess the measures that these officials take to maintain discipline in their schools and ensure the health and safety of the students in their charge. This deep intrusion into the administration of public schools
exemplifies why the Court should return to the common-law doctrine of in loco parentis under which “the judiciary was reluctant to interfere in the routine business of school administration, allowing schools and teachers to set and enforce rules and to maintain order.” But even under the test established by New Jersey v. T. L. O., all petitioners are entitled to judgment in their favor.

I

For nearly 25 years this Court has understood that “[m]aintaining order in the classroom has never been easy, but in more recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems.” In schools, “[e]vents calling for discipline are frequent occurrences and sometimes require immediate, effective action.” For this reason, school officials retain broad authority to protect students and preserve “order and a proper educational environment” under the Fourth Amendment. This authority requires that school officials be able to engage in the “close supervision of schoolchildren, as well as . . . enforce[e] rules against conduct that would be permissible if undertaken by an adult.” Seeking to reconcile the Fourth Amendment with this unique public school setting, the Court in T. L. O. held that a school search is “reasonable” if it is “justified at its inception” and “reasonably related in scope to the circumstances which justified the interference in the first place.” The search under review easily meets this standard.

A “search of a student by a teacher or other school official will be ‘justified at its inception’ when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” As the majority rightly concedes, this search was justified at its inception.

Furthermore, in evaluating whether there is a reasonable “particularized and objective” basis for conducting a search based on suspected wrongdoing, government officials must consider the “totality of the circumstances.” School officials have a specialized understanding of the school environment which enables them to “‘formulat[e] certain common-sense conclusions about human behavior.’ ” And like police officers, school officials are “entitled to make an assessment of the situation in light of [this] training and familiarity with the customs of the [school].” Here, petitioners had reasonable grounds to suspect that Redding was in possession of prescription and nonprescription drugs in violation of the school’s prohibition of the “non-medical use, possession, or sale of a drug” on school property or at school events.

The remaining question is whether the search was reasonable in scope. The Court has generally held that the reasonableness of a search’s scope depends only on whether it is limited to the area capable of concealing the object of the search. The analysis of whether the scope of the search here was permissible under that standard is straightforward. Indeed, the majority does not dispute that students conceal “contraband in their underwear.” The reasonable suspicion that Redding possessed the pills for distribution purposes did not dissipate simply because the search of her backpack turned up nothing. It was eminently reasonable to conclude that the backpack was empty because Redding was secreting the pills in a place she thought no one would look.
The majority compounds its error by reading the “nature of the infraction” aspect of the *T. L. O.* test as a license to limit searches based on a judge’s assessment of a particular school policy. According to the majority, the scope of the search was impermissible because the school official “must have been aware of the nature and limited threat of the specific drugs he was searching for” and because he “had no reason to suspect that large amounts of the drugs were being passed around, or that individual students were receiving great numbers of pills.”

This approach directly conflicts with *T. L. O.* in which the Court was “unwilling to adopt a standard under which the legality of a search is dependent upon a judge’s evaluation of the relative importance of school rules.” Indeed, the Court in *T. L. O.* expressly rejected the proposition that “some rules regarding student conduct are by nature too ‘trivial’ to justify a search based upon reasonable suspicion.”

The majority has placed school officials in this “impossible spot” by questioning whether possession of Ibuprofen and Naproxen causes a severe enough threat to warrant investigation. Had the suspected infraction involved a street drug, the majority implies that it would have approved the scope of the search. In effect, then, the majority has replaced a school rule that draws no distinction among drugs with a new one that does. As a result, a full search of a student’s person for prohibited drugs will be permitted only if the Court agrees that the drug in question was sufficiently dangerous. Such a test is unworkable and unsound.

A rule promulgated by a school board represents the judgment of school officials that the rule is needed to maintain “school order” and “a proper educational environment.” Teachers, administrators, and the local school board are called upon to “protect the . . . safety of students and school personnel” and “maintain an environment conducive to learning.” They are tasked with “watch[ing] over a large number of students” who “are inclined to test the outer boundaries of acceptable conduct.” In such an environment, something as simple as a “water pistol or peashooter can wreak [havoc] until it is taken away.” The danger posed by unchecked distribution and consumption of prescription pills by students certainly needs no elaboration. Judges are not qualified to second-guess the best manner for maintaining quiet and order in the school environment. It is a mistake for judges to assume the responsibility for deciding which school rules are important enough to allow for invasive searches and which rules are not.

II

By declaring the search unreasonable in this case, the majority has “‘surrender[ed] control of the American public school system to public school students’” by invalidating school policies that treat all drugs equally and by second-guessing swift disciplinary decisions made by school officials. The Court’s interference in these matters illustrates why the most constitutionally sound approach to the question of applying the Fourth Amendment in local public schools would in fact be the complete restoration of the common-law doctrine of *in loco parentis.*
“[I]n the early years of public schooling,” courts applied the doctrine of in loco parentis to transfer to teachers the authority of a parent to “‘command obedience, to control stubbornness, to quicken diligence, and to reform bad habits.’” So empowered, schoolteachers and administrators had almost complete discretion to establish and enforce the rules they believed were necessary to maintain control over their classrooms. The perils of judicial policymaking inherent in applying Fourth Amendment protections to public schools counsel in favor of a return to the understanding that existed in this Nation’s first public schools, which gave teachers discretion to craft the rules needed to carry out the disciplinary responsibilities delegated to them by parents.

If the common-law view that parents delegate to teachers their authority to discipline and maintain order were to be applied in this case, the search of Redding would stand. There can be no doubt that a parent would have had the authority to conduct the search at issue in this case.

In the end, the task of implementing public school policies is beyond this Court’s function. Parents, teachers, school administrators, local politicians, and state officials are all better suited than judges to determine the appropriate limits on searches conducted by school officials.

3. VERNONIA SCHOOL DISTRICT 47J v. ACTON

JUSTICE SCALIA delivered the opinion of the Court.

The Student Athlete Drug Policy adopted by School District 47J in the town of Vernonia, Oregon, authorizes random urinalysis drug testing of students who participate in the District’s school athletics programs. We granted certiorari to decide whether this violates the Fourth and Fourteenth Amendments to the United States Constitution.

I

Petitioner Vernonia School District 47J (District) operates one high school and three grade schools in the logging community of Vernonia, Oregon. As elsewhere in small-town America, school sports play a prominent role in the town’s life, and student athletes are admired in their schools and in the community.

Drugs had not been a major problem in Vernonia schools. In the mid-to-late 1980's, however, teachers and administrators observed a sharp increase in drug use. Students began to speak out about their attraction to the drug culture, and to boast that there was nothing the school could do about it. Along with more drugs came more disciplinary problems. Between 1988 and 1989 the number of disciplinary referrals in Vernonia schools rose to more than twice the number reported in the early 1980’s, and several students were suspended. Students became increasingly rude during class; outbursts of profane language became common.

Not only were student athletes included among the drug users but, as the District Court found, athletes were the leaders of the drug culture. This caused the District’s
administrators particular concern, since drug use increases the risk of sports-related injury. Expert testimony at the trial confirmed the deleterious effects of drugs on motivation, memory, judgment, reaction, coordination, and performance. The high school football and wrestling coach witnessed a severe sternum injury suffered by a wrestler, and various omissions of safety procedures and mis-executions by football players, all attributable in his belief to the effects of drug use.

Initially, the District responded to the drug problem by offering special classes, speakers, and presentations designed to deter drug use. It even brought in a specially trained dog to detect drugs, but the drug problem persisted. At that point, District officials began considering drug-testing. They held a parent “input night” to discuss the proposed Student Athlete Drug Policy (Policy), and the parents in attendance gave their unanimous approval. The school board approved the Policy for implementation in the fall of 1989. Its expressed purpose is to prevent student athletes from using drugs, to protect their health and safety, and to provide drug users with assistance programs.

The Policy applies to all students participating in interscholastic athletics. Students wishing to play sports must sign a form consenting to the testing and must obtain the written consent of their parents. Athletes are tested at the beginning of the season for their sport. In addition, once each week of the season the names of the athletes are placed in a “pool” from which a student, with the supervision of two adults, blindly draws the names of 10% of the athletes for random testing. Those selected are notified and tested that same day, if possible.

The student to be tested completes a specimen control form which bears an assigned number. Prescription medications that the student is taking must be identified by providing a copy of the prescription or a doctor’s authorization. The student then enters an empty locker room accompanied by an adult monitor of the same sex. Each boy selected produces a sample at a urinal, remaining fully clothed with his back to the monitor, who stands approximately 12 to 15 feet behind the student. Monitors may (though do not always) watch the student while he produces the sample, and they listen for normal sounds of urination. Girls produce samples in an enclosed bathroom stall, so that they can be heard but not observed. After the sample is produced, it is given to the monitor, who checks it for temperature and tampering and then transfers it to a vial.

The samples are sent to an independent laboratory, which routinely tests them for amphetamines, cocaine, and marijuana. Other drugs, such as LSD, may be screened at the request of the District, but the identity of a particular student does not determine which drugs will be tested. The laboratory’s procedures are 99.94% accurate. The District follows strict procedures regarding the chain of custody and access to test results. The laboratory does not know the identity of the students whose samples it tests. It is authorized to mail written test reports only to the superintendent and to provide test results to District personnel by telephone only after the requesting official recites a code confirming his authority. Only the superintendent, principals, vice-principals, and athletic directors have access to test results, and the results are not kept for more than one year.
If a sample tests positive, a second test is administered as soon as possible to confirm the result. If the second test is negative, no further action is taken. If the second test is positive, the athlete’s parents are notified, and the school principal convenes a meeting with the student and his parents, at which the student is given the option of (1) participating for six weeks in an assistance program that includes weekly urinalysis, or (2) suffering suspension from athletics for the remainder of the current season and the next athletic season. The student is then retested prior to the start of the next athletic season for which he or she is eligible. The Policy states that a second offense results in automatic imposition of option (2); a third offense in suspension for the remainder of the current season and the next two athletic seasons.

In the fall of 1991, respondent James Acton, then a seventh-grader, signed up to play football at one of the District’s grade schools. He was denied participation, however, because he and his parents refused to sign the testing consent forms. The Actons filed suit, seeking declaratory and injunctive relief from enforcement of the Policy on the grounds that it violated the Fourth and Fourteenth Amendments to the United States Constitution.

II

The ultimate measure of the constitutionality of a governmental search is “reasonableness.” Whether a particular search meets the reasonableness standard “ ‘is judged by balancing its intrusion on the individual’s Fourth Amendment interests against its promotion of legitimate governmental interests.’ ” Where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, this Court has said that reasonableness generally requires the obtaining of a judicial warrant. Warrants cannot be issued, of course, without the showing of probable cause required by the Warrant Clause. But a warrant is not required to establish the reasonableness of all government searches; and when a warrant is not required, probable cause is not invariably required either. A search unsupported by probable cause can be constitutional, we have said, “when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.”

We have found such “special needs” to exist in the public-school context. The school search we approved in *T. L. O.*, while not based on probable cause, was based on individualized suspicion of wrongdoing. As we explicitly acknowledged, however, “ ‘the Fourth Amendment imposes no irreducible requirement of such suspicion.’ ” We have upheld suspicionless searches and seizures to conduct drug testing of railroad personnel involved in train accidents; to conduct random drug testing of federal customs officers who carry arms or are involved in drug interdiction; and to maintain automobile checkpoints looking for illegal immigrants and contraband and drunk drivers.

III

The first factor to be considered is the nature of the privacy interest upon which the search intrudes. The Fourth Amendment does not protect all subjective expectations of privacy, but only those that society recognizes as “legitimate.” What expectations are legitimate varies, of course, with context, depending, for example, upon whether the
individual asserting the privacy interest is at home, at work, in a car, or in a public park. In addition, the legitimacy of certain privacy expectations vis-a-vis the State may depend upon the individual’s legal relationship with the State. Central, in our view, to the present case is the fact that the subjects of the Policy are (1) children, who (2) have been committed to the temporary custody of the State as schoolmaster.

Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians. When parents place minor children in private schools for their education, the teachers and administrators of those schools stand in loco parentis over the children entrusted to them. In fact, the tutor or schoolmaster is the very prototype of that status.

In *T. L. O.* we rejected the notion that public schools, like private schools, exercise only parental power over their students, which of course is not subject to constitutional constraints. Such a view of things, we said, “is not entirely ‘consonant with compulsory education laws,’ ” and is inconsistent with our prior decisions treating school officials as state actors for purposes of the Due Process and Free Speech Clauses. But while denying that the State’s power over schoolchildren is formally no more than the delegated power of their parents, *T. L. O.* did not deny, but indeed emphasized, that the nature of that power is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults. “[A] proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult.” We have acknowledged that for many purposes “school authorities act in loco parentis,” *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 684 (1986), with the power and indeed the duty to “inculcate the habits and manners of civility.” Thus, while children assuredly do not “shed their constitutional rights . . . at the schoolhouse gate,” the nature of those rights is what is appropriate for children in school.

Fourth Amendment rights, no less than First Amendment rights, are different in public schools than elsewhere; the “reasonableness” inquiry cannot disregard the schools’ custodial and tutelary responsibility for children. For their own good and that of their classmates, public school children are routinely required to submit to various physical examinations, and to be vaccinated against various diseases. In the 1991-1992 school year, all 50 States required public-school students to be vaccinated against diphtheria, measles, rubella, and polio. Particularly with regard to medical examinations and procedures, therefore, “students within the school environment have a lesser expectation of privacy than members of the population generally.”

Legitimate privacy expectations are even less with regard to student athletes. School sports are not for the bashful. They require “suiting up” before each practice or event, and showering and changing afterwards. Public school locker rooms, the usual sites for these activities, are not notable for the privacy they afford. The locker rooms in Vernonia are
typical: no individual dressing rooms are provided; shower heads are lined up along a wall, unseparated by any sort of partition or curtain; not even all the toilet stalls have doors.

There is an additional respect in which school athletes have a reduced expectation of privacy. By choosing to “go out for the team,” they voluntarily subject themselves to a degree of regulation even higher than that imposed on students generally. In Vernonia’s public schools, they must submit to a preseason physical exam, acquire adequate insurance coverage or sign an insurance waiver, maintain a minimum grade point average, and comply with any “rules of conduct, dress, training hours and related matters as may be established for each sport by the head coach and athletic director with the principal’s approval.” Somewhat like adults who choose to participate in a “closely regulated industry,” students who voluntarily participate in school athletics have reason to expect intrusions upon normal rights and privileges, including privacy.

IV

Having considered the scope of the legitimate expectation of privacy at issue here, we turn next to the character of the intrusion that is complained of. We recognized in Skinner v. Railway Labor Executives’ Assn., 489 U.S. 602, 617 (1989), that collecting the samples for urinalysis intrudes upon “an excretory function traditionally shielded by great privacy.” We noted, however, that the degree of intrusion depends upon the manner in which production of the urine sample is monitored. Under the District’s Policy, male students produce samples at a urinal along a wall. They remain fully clothed and are only observed from behind, if at all. Female students produce samples in an enclosed stall, with a female monitor standing outside listening only for sounds of tampering. These conditions are nearly identical to those typically encountered in public restrooms, which men, women, and especially school children use daily. Under such conditions, the privacy interests compromised by the process of obtaining the urine sample are in our view negligible. The other privacy-invasive aspect of urinalysis is, of course, the information it discloses concerning the state of the subject’s body, and the materials he has ingested. In this regard it is significant that the tests at issue here look only for drugs, and not for whether the student is, for example, epileptic, pregnant, or diabetic. Moreover, the drugs for which the samples are screened are standard, and do not vary according to the identity of the student. And finally, the results of the tests are disclosed only to a limited class of school personnel who have a need to know; and they are not turned over to law enforcement authorities or used for any internal disciplinary function.

V

Finally, we turn to consider the nature and immediacy of the governmental concern at issue here, and the efficacy of this means for meeting it. That the nature of the concern is important—indeed, perhaps compelling can hardly be doubted. School years are the time when the physical, psychological, and addictive effects of drugs are most severe. “Maturing nervous systems are more critically impaired by intoxicants than mature ones are; childhood losses in learning are lifelong and profound”; “children grow chemically dependent more quickly than adults, and their record of recovery is depressingly poor.” And of course the effects of a drug-infested school are visited not just upon the users, but
upon the entire student body and faculty, as the educational process is disrupted. In the present case, moreover, the necessity for the State to act is magnified by the fact that this evil is being visited not just upon individuals at large, but upon children for whom it has undertaken a special responsibility of care and direction. Finally, it must not be lost sight of that this program is directed more narrowly to drug use by school athletes, where the risk of immediate physical harm to the drug user or those with whom he is playing his sport is particularly high. Apart from psychological effects, which include impairment of judgment, slow reaction time, and a lessening of the perception of pain, the particular drugs screened by the District’s Policy have been demonstrated to pose substantial physical risks to athletes.

As for the immediacy of the District’s concerns: We are not inclined to question—indeed, we could not possibly find clearly erroneous—the District Court’s conclusion that “a large segment of the student body, particularly those involved in interscholastic athletics, was in a state of rebellion,” that “[d]isciplinary actions had reached ‘epidemic proportions,’ ” and that “the rebellion was being fueled by alcohol and drug abuse as well as by the student’s misperceptions about the drug culture.”

As to the efficacy of this means for addressing the problem: It seems self-evident that a drug problem largely fueled by the “role model” effect of athletes’ drug use, and of particular danger to athletes, is effectively addressed by making sure that athletes do not use drugs. Respondents argue that a “less intrusive means to the same end” was available, namely, “drug testing on suspicion of drug use.” We have repeatedly refused to declare that only the “least intrusive” search practicable can be reasonable under the Fourth Amendment. Respondents’ alternative entails substantial difficulties—if it is indeed practicable at all. It may be impracticable, for one thing, simply because the parents who are willing to accept random drug testing for athletes are not willing to accept accusatory drug testing for all students, which transforms the process into a badge of shame. Respondents’ proposal brings the risk that teachers will impose testing arbitrarily upon troublesome but not drug-likely students. It generates the expense of defending lawsuits that charge such arbitrary imposition, or that simply demand greater process before accusatory drug testing is imposed. And not least of all, it adds to the ever-expanding duties of schoolteachers the new function of spotting and bringing to account drug abuse, a task for which they are ill prepared, and which is not readily compatible with their vocation. In many respects, we think, testing based on “suspicion” of drug use would not be better, but worse.

VI

Taking into account all the factors we have considered above—the decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met by the search—we conclude Vernonia’s Policy is reasonable and hence constitutional.

We caution against the assumption that suspicionless drug testing will readily pass constitutional muster in other contexts. The most significant element in this case is the first we discussed: that the Policy was undertaken in furtherance of the government’s
responsibilities, under a public school system, as guardian and tutor of children entrusted to its care. Just as when the government conducts a search in its capacity as employer (a warrantless search of an absent employee’s desk to obtain an urgently needed file, for example), the relevant question is whether that intrusion upon privacy is one that a reasonable employer might engage in, so also when the government acts as guardian and tutor the relevant question is whether the search is one that a reasonable guardian and tutor might undertake. Given the findings of need made by the District Court, we conclude that in the present case it is.

We may note that the primary guardians of Vernonia’s schoolchildren appear to agree. The record shows no objection to this district-wide program by any parents other than the couple before us—even though a public meeting was held to obtain parents’ views. We find insufficient basis to contradict the judgment of Vernonia’s parents, its school board, and the District Court, as to what was reasonably in the interest of these children under the circumstances.

JUSTICE O’CONNOR, with whom JUSTICES STEVENS and SOUTER join, dissenting.

The population of our Nation’s public schools, grades 7 through 12, numbers around 18 million. By the reasoning of today’s decision, the millions of these students who participate in interscholastic sports, an overwhelming majority of whom have given school officials no reason whatsoever to suspect they use drugs at school, are open to an intrusive bodily search.

In justifying this result, the Court dispenses with a requirement of individualized suspicion on policy grounds. First, it explains that precisely because every student athlete is being tested, there is no concern that school officials might act arbitrarily in choosing who to test. Second, a broad-based search regime, the Court reasons, dilutes the accusatory nature of the search. In making these policy arguments, the Court sidesteps powerful, countervailing privacy concerns. Blanket searches, because they can involve “thousands or millions” of searches, “pose a greater threat to liberty” than do suspicion-based ones, which “affec[t] one person at a time.” Searches based on individualized suspicion also afford potential targets considerable control over whether they will, in fact, be searched because a person can avoid such a search by not acting in an objectively suspicious way. And given that the surest way to avoid acting suspiciously is to avoid the underlying wrongdoing, the costs of such a regime, one would think, are minimal.

But whether a blanket search is “better” than a regime based on individualized suspicion is not a debate in which we should engage. In my view, it is not open to judges or government officials to decide on policy grounds which is better and which is worse. For most of our constitutional history, mass, suspicionless searches have been generally considered per se unreasonable within the meaning of the Fourth Amendment. And we have allowed exceptions in recent years only where it has been clear that a suspicion-based regime would be ineffectual. Because that is not the case here, I dissent.
JUSTICE THOMAS delivered the opinion of the Court.

The Student Activities Drug Testing Policy implemented by the Board of Education of Independent School District No. 92 of Pottawatomie County (School District) requires all students who participate in competitive extracurricular activities to submit to drug testing. Because this Policy reasonably serves the School District’s important interest in detecting and preventing drug use among its students, we hold that it is constitutional.

I

The city of Tecumseh, Oklahoma, is a rural community located approximately 40 miles southeast of Oklahoma City. The School District administers all Tecumseh public schools. In the fall of 1998, the School District adopted the Student Activities Drug Testing Policy (Policy), which requires all middle and high school students to consent to drug testing in order to participate in any extracurricular activity. In practice, the Policy has been applied only to competitive extracurricular activities sanctioned by the Oklahoma Secondary Schools Activities Association, such as the Academic Team, Future Farmers of America, Future Homemakers of America, band, choir, pom-pom, cheerleading, and athletics. Under the Policy, students are required to take a drug test before participating in an extracurricular activity, must submit to random drug testing while participating in that activity, and must agree to be tested at any time upon reasonable suspicion. The urinalysis tests are designed to detect only the use of illegal drugs, including amphetamines, marijuana, cocaine, opiates, and barbiturates, not medical conditions or authorized prescription medications.

At the time of their suit, both respondents attended Tecumseh High School. Respondent Lindsay Earls was a member of the show choir, the marching band, the Academic Team, and the National Honor Society. Respondent Daniel James sought to participate in the Academic Team. Together with their parents, Earls and James brought a 42 U.S.C. § 1983 action against the School District, challenging the Policy both on its face and as applied to their participation in extracurricular activities. They alleged that the Policy violates the Fourth Amendment as incorporated by the Fourteenth Amendment and requested injunctive and declarative relief. They also argued that the School District failed to identify a special need for testing students who participate in extracurricular activities, and that the “Drug Testing Policy neither addresses a proven problem nor promises to bring any benefit to students or the school.”

II

In Vernonia, this Court held that the suspicionless drug testing of athletes was constitutional. The Court, however, did not simply authorize all school drug testing, but rather conducted a fact-specific balancing of the intrusion on the children’s Fourth Amendment rights against the promotion of legitimate governmental interests. Applying
the principles of *Vernonia* to the somewhat different facts of this case, we conclude that Tecumseh’s Policy is also constitutional.

We first consider the nature of the privacy interest allegedly compromised by the drug testing. As in *Vernonia*, the context of the public school environment serves as the backdrop for the analysis of the privacy interest at stake and the reasonableness of the drug testing policy in general. A student’s privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety. Schoolchildren are routinely required to submit to physical examinations and vaccinations against disease. Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults.

Respondents argue that because children participating in nonathletic extracurricular activities are not subject to regular physicals and communal undress, they have a stronger expectation of privacy than athletes. This distinction, however, was not essential to our decision in *Vernonia*, which depended primarily upon the school’s custodial responsibility and authority.

In any event, students who participate in competitive extracurricular activities voluntarily subject themselves to many of the same intrusions on their privacy as do athletes. Some of these clubs and activities require occasional off-campus travel and communal undress. All of them have their own rules and requirements for participating students that do not apply to the student body as a whole. For example, each of the competitive extracurricular activities governed by the Policy must abide by the rules of the Oklahoma Secondary Schools Activities Association, and a faculty sponsor monitors the students for compliance with the various rules dictated by the clubs and activities. This regulation of extracurricular activities further diminishes the expectation of privacy among schoolchildren. We therefore conclude that the students affected by this Policy have a limited expectation of privacy.

Next, we consider the character of the intrusion imposed by the Policy. Urination is “an excretory function traditionally shielded by great privacy.” But the “degree of intrusion” on one’s privacy caused by collecting a urine sample “depends upon the manner in which production of the urine sample is monitored.” Under the Policy, a faculty monitor waits outside the closed restroom stall for the student to produce a sample and must “listen for the normal sounds of urination to guard against tampered specimens and to insure an accurate chain of custody.” The monitor then pours the sample into two bottles that are sealed and placed into a mailing pouch along with a consent form signed by the student. This procedure is virtually identical to that reviewed in *Vernonia*, except that it additionally protects privacy by allowing male students to produce their samples behind a closed stall. Given that we considered the method of collection in *Vernonia* a “negligible” intrusion, the method here is even less problematic.

In addition, the Policy clearly requires that the test results be kept in confidential files separate from a student’s other educational records and released to school personnel only on a “need to know” basis. Respondents nonetheless contend that the intrusion on students’ privacy is significant because the Policy fails to protect effectively against the
disclosure of confidential information and, specifically, that the school “has been careless in protecting that information: for example, the Choir teacher looked at students’ prescription drug lists and left them where other students could see them.” But the choir teacher is someone with a “need to know,” because during off-campus trips she needs to know what medications are taken by her students. In any event, there is no allegation that any other student did see such information. This one example of alleged carelessness hardly increases the character of the intrusion.

Moreover, the test results are not turned over to any law enforcement authority. Nor do the test results here lead to the imposition of discipline or have any academic consequences. Rather, the only consequence of a failed drug test is to limit the student’s privilege of participating in extracurricular activities. Indeed, a student may test positive for drugs twice and still be allowed to participate in extracurricular activities. After the first positive test, the school contacts the student’s parent or guardian for a meeting. The student may continue to participate in the activity if within five days of the meeting the student shows proof of receiving drug counseling and submits to a second drug test in two weeks. For the second positive test, the student is suspended from participation in all extracurricular activities for 14 days, must complete four hours of substance abuse counseling, and must submit to monthly drug tests. Only after a third positive test will the student be suspended from participating in any extracurricular activity for the remainder of the school year, or 88 school days, whichever is longer.

Given the minimally intrusive nature of the sample collection and the limited uses to which the test results are put, we conclude that the invasion of students’ privacy is not significant.

Finally, this Court must consider the nature and immediacy of the government’s concerns and the efficacy of the Policy in meeting them. This Court has already articulated the importance of the governmental concern in preventing drug use by schoolchildren. The drug abuse problem among our Nation’s youth has hardly abated since *Vernonia* was decided in 1995. In fact, evidence suggests that it has only grown worse. The health and safety risks identified in *Vernonia* apply with equal force to Tecumseh’s children. Indeed, the nationwide drug epidemic makes the war against drugs a pressing concern in every school.

Additionally, the School District in this case has presented specific evidence of drug use at Tecumseh schools. Teachers testified that they had seen students who appeared to be under the influence of drugs and that they had heard students speaking openly about using drugs. A drug dog found marijuana cigarettes near the school parking lot. Police officers once found drugs or drug paraphernalia in a car driven by a Future Farmers of America member. And the school board president reported that people in the community were calling the board to discuss the “drug situation.” We decline to second-guess the finding of the District Court that “[v]iewing the evidence as a whole, it cannot be reasonably disputed that the [School District] was faced with a ‘drug problem’ when it adopted the Policy.”

Respondents consider the proffered evidence insufficient and argue that there is no “real and immediate interest” to justify drug testing nonathletes. We have recognized,
however, that “[a] demonstrated problem of drug abuse [is] not in all cases necessary to the
validity of a testing regime,” but that some showing does “shore up an assertion of special
need for a suspicionless general search program.” The School District has provided
sufficient evidence to shore up the need for its drug testing program.

Furthermore, this Court has not required a particularized or pervasive drug problem
before allowing the government to conduct suspicionless drug testing. Indeed, it would
make little sense to require a school district to wait for a substantial portion of its students
to begin using drugs before it was allowed to institute a drug testing program designed to
deter drug use. Given the nationwide epidemic of drug use, and the evidence of increased
drug use in Tecumseh schools, it was entirely reasonable for the School District to enact
this particular drug testing policy.

Respondents also argue that the testing of nonathletes does not implicate any safety
concerns, and that safety is a “crucial factor” in applying the special needs framework.
They contend that there must be “surpassing safety interests,” or “extraordinary safety and
national security hazards,” in order to override the usual protections of the Fourth
Amendment. Respondents are correct that safety factors into the special needs analysis, but
the safety interest furthered by drug testing is undoubtedly substantial for all children,
athletes and nonathletes alike.

We also reject respondents’ argument that drug testing must presumptively be based
upon an individualized reasonable suspicion of wrongdoing because such a testing regime
would be less intrusive. In this context, the Fourth Amendment does not require a finding
of individualized suspicion, and we decline to impose such a requirement on schools
attempting to prevent and detect drug use by students. Moreover, we question whether
testing based on individualized suspicion in fact would be less intrusive. A program of
individualized suspicion might unfairly target members of unpopular groups. The fear of
lawsuits resulting from such targeted searches may chill enforcement of the program,
rendering it ineffective in combating drug use. In any case, this Court has repeatedly stated
that reasonableness under the Fourth Amendment does not require employing the least
intrusive means.

Finally, we find that testing students who participate in extracurricular activities is a
reasonably effective means of addressing the School District’s legitimate concerns in
preventing, deterring, and detecting drug use. While in Vernonia there might have been a
closer fit between the testing of athletes and the trial court’s finding that the drug problem
was “fueled by the ‘role model’ effect of athletes’ drug use,” such a finding was not
essential to the holding. Vernonia did not require the school to test the group of students
most likely to use drugs, but rather considered the constitutionality of the program in the
context of the public school’s custodial responsibilities. Evaluating the Policy in this
context, we conclude that the drug testing of Tecumseh students who participate in
extracurricular activities effectively serves the School District’s interest in protecting the
safety and health of its students.
JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE O’CONNOR, and JUSTICE SOUTER join, dissenting.

Seven years ago, in Vernonia School Dist. 47J v. Acton, this Court determined that a school district’s policy of randomly testing the urine of its student athletes for illicit drugs did not violate the Fourth Amendment. The Court emphasized that drug use “increase[d] the risk of sports-related injury” and that Vernonia’s athletes were the “leaders” of an aggressive local “drug culture” that had reached “‘epidemic proportions.’” Today, the Court relies upon Vernonia to permit a school district with a drug problem its superintendent repeatedly described as “not major” to test the urine of an academic team member solely by reason of her participation in a nonathletic, competitive extracurricular activity—participation associated with neither special dangers from, nor particular predilections for, drug use.

“[T]he legality of a search of a student,” this Court has instructed, “should depend on the reasonableness, under all the circumstances, of the search.” Although “‘special needs’ inhere in the public school context,” those needs are not so expansive as to render reasonable any program of student drug testing a school district elects to install. The testing program upheld today is not reasonable, it is capricious, even perverse: Petitioners’ policy targets a student population least likely to be at risk from illicit drugs and their damaging effects. I dissent.

B. Additional Situations

1. Pat-Down Searches of Prom Attendees

A public high school in Santa Fe, New Mexico had a practice of having security guards perform suspicionless pat-down searches of all students and their guests who attended the prom. The school administration believed that the searches “were reasonably required to exclude drugs, alcohol, weapons, and tobacco from the prom and to dissuade attendees from taking such things to the prom,” particularly in light of “a history of students and event attendees hiding banned items to take those items” into the prom. The pat-down searches were performed “in public view in the lobby” of the building where the prom took place. In some searches of female students attending the 2011 prom, female security guards touched their breasts, pulled their bras, lifted their dresses to mid-thigh and patted down their bare legs.


2. Locker Searches

a. Drug-sniffing dogs were brought to a public high school and walked along a hall where student lockers were located. When a dog “keyed in” on a particular locker, the locker would be searched. A search of a student locker keyed in on found marijuana inside the locker. As a result, the student was transferred to another school. The school district
had a policy “which said general searches of school property, including lockers and school buses, may be conducted at any time with or without the presence of students.” The policy was included in the student handbook. The school “maintained a confidential file of all lockers and the combinations thereto.”

Were the student’s Fourth Amendment rights violated? See *Zamora v. Pomeroy*, 639 F.2d 662 (10th Cir. 1981).

b. “On December 20, 2001, teachers and administrators at Muscatine High School attempted to complete an annual pre-winter break cleanout of the lockers assigned to each student at the school. The students were asked three to four days before the cleanout to report to their locker at an assigned time to open it so a faculty member could observe its contents. The general purpose of the cleanout was to ensure the health and safety of the students and staff and to help maintain the school’s supplies. Accordingly, faculty assigned to examine the lockers kept an eye out for overdue library books, excessive trash, and misplaced food items. They also watched for items of a more nefarious nature, including weapons and controlled substances. The cleanout functioned as expected for approximately 1400 of the 1700 students at the school. However, a sizeable minority—including Marzel Jones—did not report for the cleanout at their designated time.

The next day, two building aides went around to the lockers that had not been checked the day before. Acting pursuant to rules and regulations adopted by the school board, the aides opened each locker to inspect its contents. The aides did not know the names of the students assigned to the lockers they were inspecting. One of the lockers they opened contained only one item: a blue, nylon coat, which hung from one of the two hooks in the locker. Apparently curious about its ownership and concerned that it might hold trash, supplies, or contraband, one of the aides manipulated the coat and discovered a small bag of what appeared to be marijuana in an outside pocket. The aides then returned the coat to the locker and contacted the school’s principal.

After crosschecking the locker number with records kept by the administration, the principal determined the locker in which the suspected marijuana was found belonged to Jones. The principal and aides then went to Jones’ classroom and escorted him to his locker. Jones was asked to open the locker and, after doing so, was further asked if anything in the locker “would cause any educational or legal difficulties for him.” Jones replied in the negative. The principal then removed the coat from the locker. Jones grabbed the coat, and ran away. The principal gave chase and captured and held Jones until the police arrived. The police retrieved the bag and determined that it held marijuana. Jones was later charged with possession of a controlled substance. He subsequently filed a motion to suppress the marijuana obtained during the search of his locker. He claimed that the search violated his right to be free from unreasonable search and seizure pursuant to the Fourth Amendment.”

Did the search violate Jones’ Fourth Amendment rights? See *State v. Jones*, 666 N.W. 2d 142 (Iowa 2003).
3. Metal Detectors

“During the early morning hours of May 17, 1991, a team of Special Police Officers from the Central Task Force for School Safety set up several metal detector scanning posts in the main lobby of Washington Irving High School. Signs announcing a search for weapons were posted outside the building.

Washington Irving, which is in Manhattan, was one of several schools selected for periodic scanning. The students at these schools had been told at the beginning of the year that searches would take place but they were not given any specific dates in advance. The entire procedure was governed by written guidelines adopted a few years earlier by former Chancellor Richard E. Green. The stated purpose of the search is to prevent students from bringing weapons into the schools.

With regard to general procedures, the guidelines require that the officers use hand-held scanning devices rather than magnetometers. All students entering the school are subject to the search although the officers may choose to limit the search by any random formula. For example, if the lines become too long, the officers may decide to search every second or third student. The officers are prohibited, however, from selecting a particular student to search unless there is a reasonable suspicion to believe that the student is in possession of a weapon.

As to each individual search, the guidelines provide that the officer who conducts the search is to approach the student and explain the scanning process. Then the officer asks the student to place any bags and parcels on a table and remove all metal objects from pockets. If a student refuses to co-operate, the officer notifies the principal or administrator who is stationed nearby to monitor the search. If the student co-operates, then the scanning takes place, beginning at the toes and continuing up to the head without actually touching the body. The bags and parcels are scanned, too. Students are searched by officers of the same sex.

The guidelines provide further that when a student’s bag or parcel activates the scanning device, the officer is to request the student to open the container in question so that the officer can look for weapons. If a student’s body activates the device, the officer first repeats the request to remove metal objects. A second scan is then conducted and if the device is activated again, the officer escorts the student to a private area where a more thorough search is conducted.

Against this backdrop, the defendant Tawana Dukes, a student, entered the front lobby of Washington Irving at approximately 7:15 a.m. on the morning of May 17 and took her place in line. When Ms. Dukes’ turn came, Special Police Officer Jessica Wallace introduced herself and asked Ms. Dukes to place her bag on the table. After Ms. Dukes did so, Officer Wallace scanned the bag with a hand-held metal detector. The device signalled the presence of metal inside the bag.

Officer Wallace next asked Ms. Dukes to open the bag. When the defendant complied with this request, the officer reached into the bag and removed a folder. Once again, Ms.
Dukes agreed to open this folder at the request of the officer. Upon looking inside the folder, the officer saw a black switchblade knife which had a blade of 4 to 5 inches. While they were looking at the knife Ms. Dukes stated, ‘I had it for my protection.’