



Cathryn L. Hazouri, Executive Director • Mark Silverstein, Legal Director

ACLU NEWS RELEASE

FOR IMMEDIATE RELEASE: April 21, 2008

CONTACT: Mark Silverstein, ACLU Legal Director, 303-777-5482 ext 114

ACLU applauds Boulder Valley School District's decision to limit searches of students' cell phone text messages

A spokesperson for the ACLU of Colorado announced today that it welcomes a decision of the Boulder Valley School District (“BVSD”) to limit searches of students’ cell phone text messages, an issue the ACLU raised in a letter made public in October, 2007. In that letter, the ACLU asserted that non-consensual searches of text messages violate a Colorado criminal statute designed to protect the privacy of telephone and electronic communications.

New guidelines state that before searching text messages, BVSD administrators must not only satisfy the minimum federal constitutional standard for conducting a search, but must also obtain the consent of the student or parent. The only exception is an emergency in which there is an imminent threat to public safety.

“I commend the Boulder Valley School District for making a decision that protects students’ privacy and addresses the concerns raised in the ACLU’s letter,” said Mark Silverstein, ACLU Legal Director. “Meetings with the school district’s attorneys and ACLU representatives have been cordial and very productive.”

The Colorado statute makes it a crime to read, copy, or record a telephone or electronic communication without the consent of the sender or receiver. The ACLU’s October letter asserted that administrators at Monarch High School in Louisville had been violating the statute by seizing students cell phones; reading the text messages; transcribing messages administrators regarded as incriminating; and placing some transcriptions in students’ permanent files.

Silverstein noted that the BVSD attorneys do not agree that the Colorado statute applies to the cell phone searches criticized in the ACLU's letter. Nevertheless, he said, by ensuring that administrators will now obtain consent before conducting a search, the potential conflict with the statute is largely resolved.

Silverstein said that BVSD also will add a sentence to its "Student Rights and Responsibilities Guide" that says: "Except in cases of emergency, a cell phone or other electronic communication device will not be searched without the consent of either the student or parent."

In addition, administrators will fill out a one-page pre-printed checklist when a cell phone is searched. "The checklist functions as a written reminder to administrators of the minimum standards that must be met before searching a student's cell phone," Silverstein said. "It also reminds administrators that they can consult with the BVSD's legal counsel in close cases."

"Students' use of newer electronic devices pose a potential challenge for school administrators who must enforce school rules and ensure students' safety while also respecting their right of privacy," Silverstein said. "The new guidelines BVSD has adopted represent a substantial step toward reaching an appropriate balance. I have nothing but praise for BVSD's willingness to discuss the ACLU's concerns and to make these changes."

In addition to Silverstein, ACLU attorneys who met with BVSD attorneys included Taylor Pendergrass, ACLU Staff Attorney, and ACLU Cooperating attorney Michael Rollin.

- "School administrators violate state law, constitutional rights by searching students' text messages," ACLU News Release, October 10, 2007 , see http://www.aclu-co.org/news/pressrelease/release_monarchcellphone_10_10_07.htm
- ACLU Letter to BVSD Board of Education, Oct. 10, 2007, available at http://www.aclu-co.org/docket/200709/BVSD_ACLU_10-10-07.pdf

--end--

The ACLU is a nationwide, non-profit, non-partisan organization dedicated to defending and preserving the principles of the Bill of Rights through litigation, advocacy and public education. The ACLU Foundation of Colorado works to protect the rights of all Coloradoans.