ALAN WILSON
ATTORNEY GENERAL

August 25, 2011

The Honorable Shane Martin
Senator, District 13
Suite 501, Gressette Office Building
Columbia, SC 29202

Dear Senator Martin:

We received your letter requesting an opinion of this office on behalf of a constituent regarding the policy of Spartanburg School District Three (the "School District") requiring visitors to produce identification for scanning when entering a public school. Your constituent asks whether the School District may require a visitor to produce identification and whether this infringes upon a parent's right to visit a public school. She further questions whether the School District's policy is a violation of her constitutional rights to due process, assembly, privacy, freedom from unreasonable search or seizure, to be charged "without ascertainment of law", and to be free from cruel and unusual punishment.

By way of background, the School District adopted Policy KI "[t]o establish the basic structure for public visits to the school." The Policy states, in pertinent part:

> [t]he board encourages parents/legal guardians and other citizens of the district to visit classrooms at any time to observe the work of the school.
>
> The board requires that all visitors report to the school office and receive the principal's authorization before visiting elsewhere in the building. . . .
>
> Principals will not permit unauthorized persons in school buildings or on school grounds. Both state law and the school board authorize principals to take appropriate action to prevent unauthorized persons from entering buildings and from loitering on grounds.
>
> Further, state law allows school administrators to conduct reasonable searches of the person and property of visitors on school premises. . . .
>
> Schools must post notice of the search law at all regular school entrances and any other access point to the school grounds.

In response to your letter, we contacted the Office of the Superintendent of the School District. We obtained a copy of a Notice conspicuously posted at school entrances notifying visitors that they are required to provide a valid driver's license or state-issued identification to enter the school. We were further informed that the identification is scanned through a device called a "computer check in system" to generate a visitor's badge. Once the option of "visitor" or "volunteer" is selected, the computer provides instructions to properly scan the identification. If a visitor does not have identification, he or she must manually enter personal information into the computer. When the information is entered or scanned, a sex offender background check is performed. Once the background check is cleared, the computer will generate a "visitor" or "volunteer" badge with the person's name, photograph, and the date. A visitor or volunteer must wear the badge while on school premises.

In addition to posted signs at school entrances and in order to place visitors on notice of the new access procedures, the School District notified parents/guardians of the policy by written notice explaining the implementation of these additional security measures. We are informed the School District does not require additional scanning for visitors who have already had their identification or information scanned by the system.

Law/Analysis

Public schools of this State are governed by boards of trustees. Op. S.C. Atty. Gen., March 13, 1996 [noting that S.C. Code Ann. §59-19-10 bestows upon school trustees the authority for the "management and control" of each school district]. An opinion of this office dated February 16, 1983, further indicated that ". . . the board of trustees of a school district is responsible for the management and control of the district, subject only to the supervision and orders of the county board of education if there is a county board. . . (and) . . . has the power to make rules and regulations and to adopt policies." For example, an opinion of this office dated September 5, 1995, dealt with the specific question of whether a school district is authorized to permit a student to be released for religious instruction during certain school class hours. That opinion concluded that ". . . the extent of time for the release and the procedures for obtaining the release would be a matter for the district to determine . . . if the district chose to adopt such a policy." We have previously stated that "boards of trustees of the school districts have broad powers over district affairs . . ." Ops. S.C. Atty. Gen., May 20, 2011; March 13, 1996; October 5, 1979. This necessarily includes the authority to make rules that are necessary for its government and the government of its employees, the pupils of its schools, and all other persons entering upon its school grounds or premises. See generally §59-19-10. These boards are further vested with the authority to "[t]ake care of, manage and control the school property of the district." §59-19-90 (5).

We note that school districts are responsible for providing adequate supervision for the safety of students under their care as well as staff, teachers or others on school property. In an opinion dated April 11, 1994, this office concluded that school officials must ensure that schools are safe, "not just in name, but in fact. That includes every classroom, every hallway, each restroom, all gyms and parking lots." We emphasized that "[i]f school officials use the legal tools that are available to them, administrators, staff, teachers and students will not forfeit their right to safety and security at the schoolhouse door."

The United States Supreme Court has explained, "[t]he existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue." Perry Education Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 44 (1983). By way of illustration, the Court, when applying the strictures of the Fourth Amendment, treats the public school setting as an enclave of lowered expectations of privacy, because public school administrators have the heightened burden of providing a safe haven for students. See New Jersey v. T.L.O., 469 U.S. 325, 339 (1985). Clearly, the Court has recognized that schools require heightened security and, thus, a diminished expectation of privacy. See Vernonia School District v. Acton, 515 U.S. 646, 655 (1995) ["Fourth Amendment rights . . . are different in public schools than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children"] In T.L.O., the Court recognized "the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds." T.L.O., 469 U.S. at 339. Justice White noted that this substantial interest has been heightened because violent crime in high schools has become a pervasive social evil. Id. Based upon the substantial interest in furthering student safety, the Court in T.L.O. found that "maintaining security and order in the schools requires a certain degree of flexibility," and "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject." Id. at 340. Thus, in balancing governmental and privacy interests on school campuses under the Fourth Amendment, the Court would permit a departure from the probable cause standard to conduct searches of students because such administrators must be given the freedom to maintain order. Id. at 341.

In an opinion dated May 9, 2011, we advised that "[a]lthough students retain privacy interests at school, a court will balance these interests against the State's substantial interests related to protecting and maintaining the learning environment of a school and the safety and welfare of students . . ." See In re Thomas B. D., 326 S.C. 614, 486 S.E.2d 498, 504 (Ct. App. 1997) [recognizing the "special needs" exception regarding schools elucidated in T.L.O.]; see also Ops. S.C. Atty. Gen., June 10, 1997 [discussing the validity of video equipment in classrooms for surveillance purposes]; February 22, 1996 [discussing the use of drug dogs on school grounds]. The rationale in T.L.O. stems from the inherent authority and responsibility of school administrators to provide a safe environment for students. T.L.O. addressed that issue as it relates to the conduct of students, but that same need for a safe environment surely encompasses the conduct of non-student visitors who could pose a threat to that environment. In fact, other courts that have extended the T.L.O. standard to non-student visitors who may present a credible threat of physical harm to students on campus recognize it as a small but logical step to protect schools. See United States v. Aguilera, 287 F. Supp.2d 1204, 1208-09 (E.D. Cal. 2003); Smith v. Underhill, 2006 WL 383519, at *8 (D. Nev. 2006); In re D.D., 146 N.C. App. 309, 554 S.E.2d 346, 351-52 (2001).

The crux of the issue raised is whether the School District's policy violated fundamental rights of parents by denying visitors access to secure areas of the school campus without compliance with the District's visitor access procedures. We are unable to locate any decision creating a visitor's, much less a parent's, right of unfettered access to a child's classroom or other school property or facilities while school is in progress and other students are present. To the contrary, courts consistently find that school officials have the authority to control students and school personnel on school property, and also have the authority and responsibility for assuring that parents and third parties conduct themselves appropriately

while on school property. See, *e.g.*, Carey v. Brown, 447 U.S. 455, 470-71 (1980) [stating that the Constitution does not leave state officials powerless to protect the public from threatening conduct that disturbs the tranquility of schools]; Goss v. Lopez, 419 U.S. 565, 590 (1975) [a school official's determination of the existence of an ongoing threat of disruption of the academic process can justify immediately removing a person from school property]; Grayned v. Rockford, 408 U.S. 104, 118-19 (1972) [there exists a compelling interest in having an undisturbed school session conducive to student learning]. Many courts have upheld school officials' authority to control activities transpiring on school property. This includes the barring of third parties, including parents, from access to school property. See, *e.g.*, Lovern v. Edwards, 190 F.3d 648, 655-56 (4th Cir. 1999) [rejecting the claim that school administrators must provide parents with "boundless access" to school property]; Chiu v. Plano Indep. School District, 339 F.3d 273, 283 (5th Cir. 2003) [recognizing a school's legitimate interest in maintaining order and discipline on school grounds]; Van Deelen v. Shawnee Mission Unified School District, 316 F.Supp.2d 1052, 1057 (D. Kan. 2004) [finding that parents do not have a constitutional right to enter a school]; Rodgers v. Duncanville Indep. School District, 2005 WL 770712, at *2 (N.D. Tex. 2005) [granting summary judgment in favor of the school district, and finding the school district had not violated a parent's constitutional rights by denying him access to his children's school].

The School District has a compelling interest in verifying sex offender registry status of visitors to its campuses. The safety of persons on a school campus (particularly students) is perhaps the most compelling basis for any action taken by the School District. The Legislature addressed some of these concerns by enacting §59-63-1110, which provides that "[a]ny person entering the premises of any school in this State shall be deemed to have consented to a reasonable search of his person and effects." See also §59-63-1130 ["Notwithstanding any other provision of law, school principals or their designees may conduct reasonable searches of the person and property of visitors on school premises"]. In Reeves v. Rocklin Unified School Dist., 109 Cal. App.4th 652, 135 Cal. Rptr.2d 213 (2003), the court found that a school district restricting access to its campus would, under proper circumstances, be appropriate. The court described school districts and their students as having a unique relationship due to the "compulsory character of school attendance, the expectation and reliance of parents and students on schools and staff for safe buildings and grounds, and the importance to society of the learning activity which is to take place in public schools." The court, therefore, found that the school district had an affirmative duty "to take all reasonable steps to protect its students." Id., 135 Cal. Rptr.2d at 222.

Courts also recognize that limitations on access to school property are not limited to situations where a visitor has committed an illegal act, has been disruptive, or has violated a school rule or policy in the past. In fact, these cases do not find that when a visitor or parent has committed some bad act, there is no constitutional right to access. Rather, courts have found no constitutional right to parental access to all areas of their child's education, period. For example, in Mayberry v. Indep. School District No. 1 of Tulsa County, Oklahoma, 2008 WL 5070703 (N.D. Okla. 2008), the district court determined that a school district had not violated the constitution by banning a parent from future access to a school campus. The parent argued that many of the cases cited above were not applicable to her situation, because the cases involved banning a parent from school property after a pattern of misconduct by the parent. The court found this distinction "unconvincing" and rejected it, holding that a parent has no constitutional right of access to school property. Id., at *4-5.

In Mejia v. Holt Public Schools, 2002 WL 1492205 (W.D. Mich. 2002), a father had been tried and acquitted of an incident where he was accused of masturbating inside of his car in the parking lot of his son's school. However, the father was later informed by the school that he was no longer allowed on school property and would not be permitted to attend a school function. Both parents sued the school district. They claimed the school violated the father's fundamental right to participate in the education of his child, which they claimed was part of a parent's established fundamental right to "participate in the care, custody and control" of his minor children. Id., at *2. The district court rejected the parents' claim. The court noted that while parents have the right "to direct and control the education of their children," there is no corresponding right to go onto school property even if doing so is necessary to participate in the child's education, such as being present at parent-teacher conferences at school. Id., at *5-6. The court "decline[d] to hold that parents have a fundamental right to participate in their children's education through physical access to school property, teachers, or administrators." Id., at *6. Similarly, in Ryans v. Gresham, 6 F. Supp.2d 595 (E.D. Tex. 1998), a mother challenged a school district's decision to remove her from her son's instructional classroom The district court found the school district had not violated any constitutional right of the parent by not allowing her to stay in her son's classroom to monitor his environment. Moreover, after considering state law, the court held that "[t]he rights afforded to parents of students under Texas law include no duty to provide parents with access to classes." Id. at 602-603, n. 16; see also Crowley v. McKinney, 400 F.3d 965, 969 (7th Cir. 2005) [dismissed parent's claim of a constitutional right to be a playground monitor]; Harper v. Madison Metropolitan School Dist., 2004 WL 1873225 (7th Cir. 2004) [denying claim by parent of an equal protection right to visit daughter's classroom].

Relevant to the issue is the analysis of the district court in Meadows v. Braxdale, 2010 WL 55974 (W.D. Tex. 2010), where the parents of children at a public elementary school sued for similar constitutional violations after they refused to submit driver's licenses for a sex offender registry background check prior to being permitted unescorted access to secure areas of the school. The school district used a visitor management system ("Raptor") to electronically check all school visitors against registered sex offender databases. The Raptor system further allowed schools to make and issue photograph visitor badges, and to electronically monitor volunteer hours. The district court noted the security system had been endorsed by the United States Department of Justice, received federal grant money, and was used by schools throughout the country. The school district also notified parents of the new visitor's policy by placing signs on campus entry doors and in campus main offices, publishing articles in district newsletters, and posting information on the district's website. Id., at *2. The district court granted summary judgment to the school district, rejecting the parents' claim to possess a constitutional right to be physically present in the school. In fact, the district court acknowledged that neither the United States Supreme Court nor any other court has ever held the Constitution establishes a parental right to access a child's classroom or other school areas while school is in progress and other students are present. Id., at *5. On appeal from the district court, the Fifth Circuit Court of Appeals focused on the parents' claim that the school district's policy violated their substantive due process right to direct their children's' education. The court disagreed that this constitutional right extended to the unfettered right to visit all areas of a school campus where students were present. Most importantly, even assuming parental access to the school was a fundamental right, the court concluded the school district's policy would pass strict scrutiny because the district had a compelling government interest in protecting students by determining whether visitors were registered sex offenders before granting them unrestricted

access to all areas of its schools. The court concluded the policy was narrowly tailored to achieve this legitimate purpose. Meadows v. Lake Travis Indep. School District, 2010 WL 3516622, at *2 (5th Cir. 2010).

This office recognizes the compelling interests which prompted the School District's policy. Courts have repeatedly articulated that sex offenders present a particularly significant problem of committing further sex offenses. See, *e.g.*, McKune v. Lile, 536 U.S. 24, 33-34 (2002) (emphasizing the risk of sex-offender recidivism is "frightening and high"; "[w]hen sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault"); Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320, 324 (2003). South Carolina's response to the high likelihood of return to sexually assaultive conduct most notably includes the requirement that sex offenders register. South Carolina's Sex Offender Registry is codified at §§23-3-400 *et seq*. Our Sex Offender Registry statutes were specifically enacted as a public safety measure based on the Legislature's determination that convicted sex offenders pose an unacceptable risk to the general public once released from incarceration.[1] See §23-3-400 (stating because "[s]tatistics show that sex offenders often pose a high risk of re-offending [,]" the Sex Offender Registry Act serves to "promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens. . . ."); Williams v. State, 378 S.C. 511, 662 S.E.2d 615, 617-18 (Ct. App. 2008) (internal citation and quotation omitted) ("[T]he purpose of requiring registration is to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes"). The South Carolina Supreme Court has described the legislation creating the registry as follows:

> [t]he Act mandates that [convicted sex offenders] register as a sex offender in South Carolina for life. [§23-3-460]; See South Carolina Sex Offender Registry at http://www.sled.state.sc.us. The online registry provides information like sex, age, height, and weight to help identify the offender. It also includes the offender's last reported address and the sex offense he committed.

Hendrix, 579 S.E.2d at 322.

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[1]The nationwide registration of sex offenders is addressed in the Adam Walsh Child Protection and Safety Act of 2006. Title I of the Walsh Act is comprised of the Sex Offender Registration and Notification Act ("SORNA"), which establishes a national sex offender registry, the stated purpose of which is "[i]n order to protect the public from sex offenders and offenders against children. . . ." See 42 U.S.C.A. §16901. SORNA provides that every jurisdiction shall maintain a jurisdiction-wide registry conforming to specified requirements. 42 U.S.C.A. §16912. Information from this registry is to be made available on the internet in a manner that will permit the public to obtain relevant information for offenders within each jurisdiction, and each jurisdiction's website must be designed to allow it to integrate into and participate with the Attorney General's Dru Sjodin National Sex Offender Public Website. 42 U.S.C.A. §§16918, 16920. See Op. S.C. Atty. Gen., July 7, 2011 [discussing classifications of South Carolina sex offenders under SORNA].

In addition to general registration requirements provided for in South Carolina's Sex Offender Registry statutes, the Legislature has enacted specific laws seeking to keep sex offenders away from students at schools. See, *e.g.*, §23-3-490 (C) [requiring sheriff to notify the principals of public and private schools of any offender whose address is within one-half mile of a school]; §23-3-535 (B) [prohibiting registered sex offenders from residing within 1000 feet of a school]; §23-3-535 (F) (1) [providing that at the beginning of each school year, school districts must provide: (a) the names and addresses of every sex offender residing within 1000 feet of a school bus stop within the school district to the parents or guardians of a student who boards or disembarks a school bus at a stop; or (b) the hyperlink to the sex offender registry web site on the school district's web site for the purpose of gathering this information]; §23-3-535 (F) (2) [local law enforcement agencies must check the school districts' web sites to determine if each school district has complied with this provision and, if a hyperlink does not appear on a school district web site, the local law enforcement agency must contact the school district to confirm that the school district has provided the parents or guardians with the names and addresses of every sex offender who resides within 1000 feet of a school bus stop]; §§23-3-450, 460 [requiring sex offenders to register whenever they are employed, enrolled, volunteer, or intern at any public or private school].

We also refer to an opinion of this office dated January 7, 2008, in which we upheld a municipal ordinance prohibiting registered sex offenders from loitering within 2500 feet of any school. After discussing the compelling interests to protect children from registered sex offenders, we concluded:

> [n]umerous decisions have held similar statutes or ordinances to be constitutional against a variety of constitutional challenges, including procedural and substantive due process, equal protection, vagueness, etc. These decisions have focused upon the State's interest in the protection of children from convicted sex offenders as being paramount. Clearly, in this instance, the purpose of the . . . ordinance as stated therein is to "attempt to address the risk of sex crimes, the risk of recidivism of registered sex offenders, the threat posed by sex offenders, and the repercussions of sex crimes for the victims and for society as a whole." Inasmuch as courts have consistently recognized that the right of a convicted sex offender to a particular residency is not a "fundamental" right, we believe a court would likely uphold the . . . ordinance as a valid and rational means of addressing the threat posed by convicted sex offenders to young children in the places where children most likely congregate or frequent. In the words of one court, a municipality . . . "undoubtedly has a legitimate interest in protecting children from the most dangerous sex offenders." [Citation omitted]. As [that court] concluded, a legislative body may rationally choose a policy "designed to reduce proximity between the most dangerous offenders and locations frequented by children . . ." . . . Such is the case here.

To further ensure that public school students and their parents or guardians are secure in the knowledge that certified personnel employed by the local school district do not have criminal records and

are not a potential threat to the safety of students, the Legislature mandated that school districts provide for criminal record checks, including sex offender registry checks. Pursuant to §59-19-117:

> (A) An individual hired by a local school district board of trustees to serve in any capacity in a public school in this State shall undergo a name-based South Carolina criminal record search conducted by the local school district using records maintained by the State Law Enforcement Division pursuant to regulations contained in subarticle 1, Article 3, Chapter 73 of the Code of Regulations. By August 1, 2010, a school district board of trustees shall adopt a written policy that specifies the required criminal record search as well as how the information received from the search impacts hiring decisions. The district policy must stipulate whether the district assumes the cost of the criminal record search or that the applicant assumes the cost. The policy must include, at a minimum, a prohibition of hiring individuals convicted of violent crimes as defined in Section 16-1-60 and hiring recommendations relative to felony convictions and relevant just-cause examples provided in Section 59-25-160. The South Carolina Law Enforcement Division, working with the Department of Education, shall provide training to appropriate school district personnel regarding appropriate use of the information provided in criminal record searches.
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> (B) Each school district of this State shall perform a National Sex Offender Registry check on all district employees hired to serve in any capacity in a public school and all volunteers who work in a school on an interim or regular basis as mentors, coaches, or any other capacity, or volunteers who serve as student chaperones or any other capacity having direct interaction with students. The South Carolina Law Enforcement Division, working with the Department of Education, shall provide training to appropriate district personnel on the appropriate uses of the database. By August 1, 2010, the district board of trustees shall adopt a written policy that specifies the sex offender registry check as well as how information received from the search impacts hiring decisions. The policy must include, at a minimum, a prohibition of hiring individuals required to register as sex offenders pursuant to Section 23-3-430.

Denying unfettered access to a child's school, whether such access involves the school gym for a school dance, to visit a child's classroom, or to meet with parents and children during a school function does not violate a parent's right to free assembly and/or free association pursuant to the First Amendment. In Madrid v. Anthony, 510 F. Supp.2d 425 (S.D. Tex. 2007), for example, parents alleged that a school district violated their right to freely assemble by refusing to grant them unfettered access to the school premises. The district court rejected this argument, holding that school administrators are not required to provide parents with unfettered access to school property. Id. at 437. The court found that a school administration's authority to control activities on school property includes denying parental access to the premises when it deems it necessary. Id. at 438. In Lovern v. Edwards, supra, a parent was banned from

school property because of his continued pattern of verbal abuse and threatening behavior towards school officials regarding his allegations of public corruption. The Fourth Circuit Court of Appeals affirmed a district court's determination that the school did not violate the parent's First Amendment right of assembly. The court held that school officials have the authority to control students and school personnel on school property, and also have the authority and responsibility for assuring that parents and third parties conduct themselves appropriately while on school property. Id., 190 F.3d at 655-66. The court further noted the parent's conduct was only affected on school property; he was free to speak and publicize his complaints about school officials' corruption, so long as he was not on school property. Id. at 656.

We point out that visitor scans are not required at all times on campuses of the School District, which undercuts any claim that parents are not allowed to assemble or associate. According to additional information provided to us by the School District, scans are not required for numerous events on campus which usually occur either after school hours or inside controlled areas of school campuses. For example, visitor scans are not required for: registrations; meet the teacher sessions; open houses; PTO meetings; after-school conferences; athletic games; parent/grandparent luncheons; talent shows; Fall and art festivals; programs for Veterans Day, Thanksgiving, Christmas; after-school conferences; musical programs; Black History programs; musicals and theatrical productions; academic banquets; honors/awards days; student showcases; field days; and Yearbook days. We were further informed that parent-teacher conferences are held in the Main Office for any parent/guardian refusing to provide identification to school authorities under the District's policy. Parents are thus not wholly prevented from attending school activities and events, discussing their children's education or from communicating questions they may have about the classroom, teaching materials, or other concerns with school officials. The Mejia court, upholding the denial of parental access to school property, also observed:

> as a practical matter, physical exclusion from school property does not preclude a parent from communicating with his child's teachers or school authorities about issues involving the child, nor does it hinder a parent's ability to make informed decisions relating to the child's education because there are always alternate channels of communication available, such as communication through a spouse (in this case Mrs. Mejia), telephone, e-mail, or notes to the teacher or administrators. It is probably true that the educational experience will be less enriching for both parent and child if the parent is barred from coming onto school property to attend or participate in the child's school-related activities or sporting events. Those concerns, however, do not raise a constitutional issue.

Mejia, 2002 WL 1492205, at *6. We also note that the School District does not require driver's license scanning for visitors who have already had their driver's license scanned by the computer check-in system.

We have further found no authority conferring a constitutional right to privacy in driver's license information. See, *e.g.*, Phillips v. Bailey, 337 F. Supp.2d 804, 806 (W.D. Va. 2004) [finding plaintiff had no legitimate expectation of privacy in Department of Motor Vehicle records, because such information is typically a matter of public record and does not consist of highly intimate information]. In Reno v.

Condon, 528 U.S. 141, 150-51 (2000), the United States Supreme Court held the federal Driver's Privacy Protection Act of 1994 ("DPPA") was a proper exercise of Congress' authority to regulate interstate commerce by prohibiting states from selling driver's license information to individuals and businesses for significant revenues. However, the Court declined to address the issue of constitutional privacy rights in driver's license information. See Travis v. Reno, 163 F.3d 1000, 1006-07 (7th Cir. 1998) [same].

Even if there existed a constitutional right to privacy in driver's license information, a governmental entity may collect personal information, such as driver's license information, without violating a constitutional right to privacy as long as a state enacts statutes to safeguard this information against disclosure. For example, the Legislature has provided that the South Carolina Department of Motor Vehicles ("DMV") may not provide information from a person's driver's license or identification card to a private party. See, *e.g.*, §§30-4-160, 30-4-165 [under the Freedom of Information Act]; see also §56-1-25 ("It is unlawful for a person to disclose any confidential information which belongs to the [DMV] Motor Vehicle Division to an individual or entity that is not permitted to have access to the information during or after the transfer of the confidential information from the Motor Vehicle Division to the [DMV]); §56-3-545 ("The [DMV] may not sell, provide, or otherwise furnish to a private party Social Security numbers, copies of photographs, or signatures, whether digitized or not, taken for the purpose of a driver's license or personal identification card. A social security number, photograph, signature, or digitized image from a driver's license or personal identification card is not a public record").[2]

Although statutes limit disclosure of driver's license or personal information, these provisions would not pose an impediment to sharing information with relevant law enforcement agencies. See §30-2-320 ["Social security numbers and identifying information may be disclosed . . . to another governmental entity or its agents, employees, or contractors, if disclosure is necessary for the receiving entity to perform its duties and responsibilities . . .]; 18 U.S.C. §2721 (b) [DPPA allows driver's license information to be shared in certain circumstances, such as "by any government agency . . . in carrying out its functions"]. In Sloan v. S.C. Dept. of Public Safety, 355 S.C. 321, 586 S.E.2d 108 (2003), for example, the South Carolina Supreme Court affirmed the granting of a summary judgment against a citizen who alleged an invasion of privacy through the unlawful appropriation of her driver's license information by the Department of Public Safety ("DPS") and a company that contracted with DPS to obtain the information. The court concluded that although the company and DPS exceeded the statute authorizing such a sale by inadvertently transferring social security numbers, the statute specifically permitted the purchase arrangement and the company was entitled to rely on the statute. The court noted the company did not intend to use the information for other than fraud prevention, which was the stated purpose of the statute, and there was no evidence that the company ever used the citizen's social security number. Id., 586 S.E.2d at 110-11.

We believe that a court would find the School District's disclosure of visitors' driver's license information to the computer check-in system (*i.e.*, the sex offender registry) is for a permissible purpose

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[2]These statutes further demonstrate that driver's license information is not protected by a constitutional right to privacy. If it was, there would be no need for the statutes.

and is not a disclosure prohibited by South Carolina law.[3] Most important to the privacy claim raised by your constituent, however, we note there is no evidence to even suggest the School District has disclosed or has implemented a policy to permit disclosure of driver's license information to the public.[4]

With respect to Fourth Amendment claims regarding the School District's policy and as discussed above, visitors have no legitimate expectation of privacy in their driver's license information in this context. See, *e.g.*, State v. Pennison, 763 So.2d 671, 677 (La. Ct. App. 1999) [no expectation of privacy in driver's license information that would be protected against unreasonable search and seizure]. For example, in United States v. Miller, 425 U.S. 435, 442 (1976), the United States Supreme Court held that a bank depositor has no "legitimate 'expectation of privacy' " in financial information "voluntarily conveyed to . . . banks and exposed to their employees in the ordinary course of business." The Court explained:

> [t]he depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the Government. . . . This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.

Id. at 443. Without a legitimate expectation of privacy, a visitor's Fourth Amendment search or seizure claim would fail. See Rawlings v. Kentucky, 448 U.S. 98 (1980) [declaring a legitimate expectation of privacy is necessary to trigger Fourth Amendment protections]; State v. Missouri, 361 S.C. 107, 603 S.E.2d 594 (2004) [same]; see also State v. Forrester, 343 S.C. 637, 541 S.E.2d 837, 840-41 (2001) [recognizing the express right to privacy provision in S.C. Const. art. 1, §10]. Moreover, Fourth Amendment rights are personal rights which may not be vicariously asserted. In other words, a person claiming a Fourth Amendment violation "must establish that his own Fourth Amendment rights were violated" by the search or seizure. State v. McKnight, 291 S.C. 110, 352 S.E.2d 471, 473 (1987); see also Rakas v. Illinois, 439 U.S. 128, 138 (1981) (stating "rights assured by the Fourth Amendment are

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[3]This office has repeatedly indicated that we do not in an opinion construe federal law. See Op. S.C. Atty. Gen., April 6, 2011.

[4]There is no question that an individual cannot expect to have a constitutionally-protected privacy interest in matters of public record. Pursuant to §23-3-440, upon the release of a sex offender, the sheriff of the county where an offender intends to reside is notified of the release of that individual. An offender must register with the sheriff of the county where he resides pursuant to §23-2-450. As to the public's right to know about the presence of a sex offender, §23-3-490 states that "[i]nformation collected for the offender registry is open to public inspection . . ." and must be provided upon request in the manner specified. Registration as a sex offender pursuant to these provisions is a means of establishing an easily accessible public record of information that is already a matter of public court records. See Ops. Atty. Gen., August 6, 2006; April 10, 1995.

personal rights, [which] . . . may be enforced by exclusion of evidence only at the instance of one whose own protection was infringed by the search and seizure").

Regardless of any privacy interest, in an opinion dated May 9, 2011, we recognized that the United States Supreme Court has upheld both administrative searches and "suspicionless" searches in the school environment. See T.L.O., 469 U.S. at 341; see also Bd. of Education of Indep. School Dist. No. 92 of Pottawatomie County v. Earls, 536 U.S. 822 (1992) [using the phrases "administrative search" and "suspicionless" searches without a warrant interchangeably and approving both in the school context].[5] The standard for determining whether these searches violate the Fourth Amendment is whether they are reasonable. T.L.O., 469 U.S. at 341. The standard for reasonableness - - whether for administrative searches or suspicionless, warrantless searches - - is different in the school setting. The United States Supreme Court stated the following:

> Fourth Amendment rights, no less than First and Fourteenth Amendment rights are different in public schools than elsewhere; the "reasonableness" inquiry cannot disregard the schools' custodial and tutelary responsibility for children.

Acton, 515 U.S. at 656. A school's interest in maintaining a safe and orderly learning environment for its students outweighs an individual's privacy expectation when subjected to a search by the school. Earls, 536 U.S. 822, 829-30; see also §59-63-1110 [providing that "[a]ny person entering the premises of any school in this State shall be deemed to have consented to a reasonable search of his person and effects"]; §59-63-1130 ["Notwithstanding any other provision of law, school principals or their designees may conduct reasonable searches of the person and property of visitors on school premises"]. As previously stated, the School District has a compelling interest in the safety of its students. Therefore, we believe a court would find that requiring production of a driver's license in order to verify identity and sex offender registry status before granting access to the school campus is a reasonable action.[6]

Additionally, a Fourth Amendment violation for an alleged unreasonable search or seizure cannot occur if a person voluntarily consents to the alleged search or voluntarily relinquishes the item allegedly seized. See Smith v. Maryland, 442 U.S. 735, 743-44 (1979) ["This Court consistently has held that a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties"]; State v. Provet, 391 S.C. 494, 706 S.E.2d 513, 520 (Ct. App. 2011) [warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of

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[5]Such administrative searches have also been upheld by the Court in other special circumstances. See Skinner v. Railway Labor Exec. Ass'n, 489 U.S. 602 (1989) [drug testing of railroad personnel]; Treasury Employees v. Von Raab, 489 U.S. 656 (1989) [random drug testing of federal customs officers who carry arms or are involved in drug interdiction]; United States v. Martinez-Fuerte, 428 U.S. 543 (1976) [to maintain automobile checkpoints looking for illegal immigrants]; Michigan Dept of State Police v. Sitz, 496 U.S. 444 (1990) [drunk drivers].

[6]We note that if any visitor refuses to submit a driver's license to school authorities in connection with the policy then, obviously, there has been no search or seizure.

voluntary consent]. When a visitor hands over a driver's license to provide identification for scanning pursuant to the School District's policy, a court would likely deem such to be voluntary. There is certainly an absence of coercion under these circumstances, since a visitor is neither deprived of the right to otherwise leave the school campus nor subjected to physical force by the District. Additionally, when a visitor voluntarily provides a driver's license for one purpose - - to enter the school - - that visitor cannot claim to be subjected to an unreasonable search or seizure merely because the School District used it for another, legitimate purpose - - for electronic scanning. See SEC v. O'Brien, Inc., 467 U.S. 735, 743 (1984) [holding that when a person communicates information to a third party, even on the understanding that the communication is confidential, he cannot object if the third party conveys that information or records to law enforcement authorities]. When a visitor submits a driver's license or state-issued identification for the purpose of entering the school, the School District uses the identification for that purpose, and none other. Entering the school means compliance with the School District's policy. Whether a visitor's consent is voluntary or the product of duress or coercion, express or implied, is a question of fact which must be determined by the totality of the circumstances on a case-by-case basis. State v. Wallace, 269 S.C. 547, 238 S.E.2d 675 (1977). We note, however, that any determination of questions of fact is outside the scope of an opinion of this office. Ops. S.C. Atty. Gen., March 21, 2002; September 12, 1995.

Finally, that a visitor would be denied entrance into secured areas of a school by refusing to allow access to personal identification information and scanning violates neither the visitor's Sixth Amendment nor the Eighth Amendment rights. The Sixth Amendment provides that an accused in a criminal prosecution is entitled to defend the charges against him in a jury trial with the assistance of counsel and has a right to confront one's accusers. Because enforcement of the School District policy is neither a criminal nor quasi-criminal proceeding against a visitor, it does not implicate the Sixth Amendment. See In re McCracken, 346 S.C. 87, 551 S.E.2d 235, 240 (2001) [holding Sixth Amendment right to effective assistance of counsel was not implicated in civil proceeding under the Sexually Violent Predator Act]. Additionally, only criminal matters implicate the Eighth Amendment's prohibition against cruel and unusual punishment. Any issues arising from a visitor's refusal to submit identification and allow scanning are not criminal in nature and thus do not violate the Eighth Amendment's prohibition. See Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 260 (1989) [Court stated "our concerns in applying the Eighth Amendment have been with criminal process and with direct actions initiated by government to inflict punishment]; see also In re Ronnie A., 355 S.C. 407, 585 S.E.2d 311, 312 (2003) [finding sex offender registration is non-punitive and that no liberty interest is implicated].

Conclusion

The School District is empowered to adopt rules necessary to govern the privileges of persons entering its school grounds. Safety is one of the most important reasons the School District needs to control who enters its school campuses. The School District has an affirmative duty to take reasonable steps to protect students and staff as well as visitors to school campuses, and to ensure the education environment is distraction-free. No visitor has a cognizable constitutional right to unrestricted physical access to secure areas of a public school. The reality of our times, and indeed common sense, suggests that the public – parents included – cannot have unfettered access to the halls of learning. Registration by

visitors both allows for the administrative control of school grounds and serves as a deterrent to those who might otherwise enter a school with a criminal design. The School District has a compelling interest in knowing if a sex offender is seeking access to school grounds. Requiring production of identification in order to register, verify identity, and check sex offender status before granting access to a school campus is a reasonable policy narrowly tailored to meet the School District's interests. The computer check in system allows the School District to electronically process visitor information in a standardized and efficient way. The purposes of the sex offender registry statutes designed to protect children at schools and the School District policy are thus not only related; they are identical. Visitors are not wholly banned from school campuses. To the contrary, visitors and parental involvement are welcome and accommodated, provided they register. The School District does not require driver's license scanning for visitors who have already had their driver's license scanned by the computer check in system. Visitors are given sufficient notice of the registration policy, and alternative channels are readily available to parents/guardians outside compliance with the policy. We believe that a court would balance any conceivable interests of visitors, against the School District's substantial interests related to protecting and maintaining the learning environment of a school and the safety and welfare of its students, in favor of the latter.

If you have any further questions, please advise.

Very truly yours,

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