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Legislative Counsel Bureau Confirms: K-12 Schools Must Have Warrant to Search Student's Personal Device

On March 27, 2017, the Legislative Counsel Bureau issued an opinion interpreting the California Electronic Communications Privacy Act ("CalECPA") as applying to all California public entities, including K-12 school districts. In summary, CalECPA, which our firm previously discussed in a February 2016 [NewsFlash](#), imposes significant limitations on the ability of a state government entity to compel the production of – or access to – information on an electronic device, including cellphones, laptop computers, tablets or any other device that stores, generates or transmits information in electronic form.

The legislative history of CalECPA, codified in Penal Code Section 1546 et seq., indicated an intent to prevent law enforcement from conducting unlawful searches. However, the law's language more broadly applies to all political subdivisions of the state. It has therefore been widely understood – even prior to the Legislative Counsel Bureau's March 2017 opinion – that CalECPA's requirements apply to school districts. Therefore, a teacher or administrator in a K-12 public school must generally obtain a warrant before searching a student's personal electronic device, absent an exception authorized under CalECPA, such as consent of the authorized possessor of the device.

Prior to the Legislative Counsel Bureau's opinion, Assembly Member Jim Cooper (D-Elk Grove) introduced legislation to specifically exempt local educational agencies from application of CalECPA's requirements. Currently, AB 165 is in the California Assembly Committee on Privacy and Consumer Protection.

Unless AB 165, or other legislation, exempts K-12 school districts from CalECPA's requirements, CalECPA will continue to limit a school district's ability search students' private devices. Districts should contact legal counsel before confiscating or searching an electronic device.

If you have any questions regarding CalECPA, AB 165, or any other related issue, please call one of our six offices.

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