



June 30, 2009
Number 34

School Law *Bullet*

A News Publication of King, Spry, Herman, Freund & Faul, LLC
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To: **Public Education Clients and Friends**

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Student Strip Searches Contraindicated Absent Danger *Here's Our Bulletproof Analysis*

Strip searches in schools are not, as a general rule, a good idea, the United States Supreme Court advised last week. On June 25, 2009, in the case of Safford United School District #1, et al. v. Redding, the Supreme Court held by a majority of eight to one (Justice Thomas dissenting) that the strip search of a seventh grade, thirteen year old female student for prescription pills was unreasonable under the Fourth Amendment.

Facts In The Case

A thirteen year old female student, Savanna Redding, was strip-searched in school when a friend reported her for possession of prescription strength ibuprofen and over the counter naproxen. Her parent sued for violation of the Fourth Amendment.

The Court could not find that the strip search was reasonable on the facts reported. Even under the lesser standard for school searches requiring only a reasonable suspicion and not probable cause, the strip search of the female student conducted by an administrative assistant and the school nurse at the direction of the vice principal did not pass Constitutional muster.

The Court found that the investigation and the information upon which the vice principal relied

were insufficient to justify a search of the bra and underwear of a thirteen year old girl.

Therefore, on June 25, 2009, in the case of Safford United School District #1, et al. v. Redding, the United States Supreme Court held by a majority of eight to one (Justice Thomas dissenting) that the strip search of the seventh grade thirteen year old female student for the prescription pills was unreasonable under the Fourth Amendment test set out for school searches by the Supreme Court in New Jersey v. T.L.O., 469 U.S. 325 (1985).

At issue in this case were four prescription-strength ibuprofen and one over-the-counter naproxen handed over to the vice principal by two students, one of whom implicated Savanna. Possession of prescription or over-the-counter drugs in the school with-

out prior permission was strictly prohibited by school policy.

Upon questioning by the vice principal, Savanna admitted that she and her accuser were friends but denied knowledge of the pills and other contraband found in a day planner that Savanna had lent her friend, including several knives, lighters and a cigarette.

Even under the lesser standard for school searches requiring only a reasonable suspicion... [the search] did not pass Constitutional muster.

Other information informing the search was a boy's report to the vice principal a week before that certain students were bringing drugs and weapons onto campus. Also, the vice principal had been

continued...

told by school staff that Savanna and her accuser were part of an unusually rowdy group at the school's opening dance, during which alcohol and cigarettes were found in the girls' bathroom.

In addition, the boy had told the principal that before the dance, he had been at a party at Savanna's house, where alcohol had been served.

Court Addresses What is Reasonable and Permissible

A school search is permissible when the measures adopted are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction. The standard for school searches is a "moderate chance of finding evidence of wrong doing."

However, on such facts as these, the Supreme Court held that the strip search was not permissible. The Court distinguished between getting undressed in school for gym and getting undressed for a search. One is for "getting ready for play;" the other requires "responding to an accusation reserved for suspected wrongdoers and fairly understood as so degrading that a number of communities have decided that strip searches in schools are never reasonable and have banned them no matter what the facts may be."

Thus, both subjective and reasonable societal expectations of personal privacy led the Court to treat a school strip search as categorically distinct, requiring ele-

ments of justification on the part of school authorities for going beyond a search of outer clothing and belongings.

Under the facts of the strip search to which Savanna was subjected, the Supreme Court found that the vice principal's suspicion was enough to justify a search of her backpack and outer clothing but not of her person.

Missing from the reported facts was any indication of danger to the students from the power of the drugs or their quantity, and any reason to suppose that Savanna was carrying pills in her underwear.

As a result, the Court concluded that the combination of deficiencies was fatal to finding the search reasonable.

The school personnel sued individually by the parent were protected by qualified immunity by the Court because clearly established law didn't show that the strip search violated the Fourth Amendment. However, the case was remanded to determine liability by the District.

What is the Lesson From This Decision?

In Redding, the Court clarified what constitutes T.L.O.s "reasonable suspicion" justifying a strip search in school. While there are no fine bright lines, strip searches in school, if permitted by district policy, should be supported by indication of danger to the students and reason to suppose the student is concealing contraband beneath his or her clothing.

School Law Bullets are published by the Education Law Practice Group of KingSpry for our education clients and friends. Back issues are available on our website at www.kingspry.com.

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