

# School Law Alert

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## Supreme Court Clarifies Law on Student Searches

On June 25, 2009, the United States Supreme Court rendered its decision in *Safford Unified School District # 1 v. Redding*,<sup>1</sup> an important case involving the strip-search of a 13-year-old middle school student suspected of possessing and distributing prescription and non-prescription strength pain relievers. This decision clarifies the circumstances under which school officials may conduct searches, including strip searches, of students. In addition, the Court's decision in *Redding* makes it clear that a school policy that imposes an outright prohibition on the possession of any drugs, including legal, over-the-counter drugs, without advance permission is a permissible policy.

### Background

In October 2003, 13-year-old Savanna Redding was a student at Safford Middle School. Redding was called into the assistant principal's office after another student, Marissa Glines, was found with several pills that she claimed came from Redding—four prescription strength ibuprofen pills and one over-the-counter strength naproxen-sodium pill. Redding denied giving pills to Glines and agreed to allow the assistant principal to search her backpack. The assistant principal, along with a female administrative assistant, searched the backpack, finding nothing.

Redding was then sent to the nurse's office so that her clothing could be searched. The nurse and the administrative assistant, both females, requested that Redding remove her jacket, socks, and shoes. This search revealed no pills. They then told her to remove her stretch pants and t-shirt and to pull out her bra and shake it and to pull out the elastic on her underwear. Again, no pills were found. Redding's mother sued the school district, the assistant principal, the administrative assistant, and the nurse, claiming that the search was a violation of the Fourth Amendment.

### Student Searches

The Fourth Amendment protects against "unreasonable searches and seizures." As the Supreme Court previously held in *New Jersey v. T. L. O.*,<sup>2</sup> in the school setting, a search must be supported by a "reasonable suspicion" of wrongdoing and the search actually conducted must be "reasonably related in scope to the circumstances which justified the interference in the first place."<sup>3</sup> A search must not be "excessively intrusive in light of the age and sex of the student and the nature of the infraction."<sup>4</sup>

Applying this test, the Court first concluded that the search of Redding's backpack and outer clothing was a reasonable and permissible search. The assistant principal had a reasonable suspicion that Redding was involved in pill distribution based on the statements of Glines. The scope of the search—looking in Redding's backpack and asking Redding to remove her jacket, shoes, and socks—was not excessively intrusive.

Although the initial search of Redding's backpack and outer clothing was reasonable, the Court concluded that the final part of the search—requiring Redding to remove her pants and t-shirt and pull out her bra and underwear—was unreasonable and a violation of the Fourth Amendment. Interestingly, the Court noted that the "exact label for this final step of the intrusion is not important, though strip search is a fair way to speak of it."<sup>5</sup> In holding that the "strip search" was unreasonable, the Court explained that "the content of the suspicion failed to match the degree of intrusion" because the pills that were found were common pain relievers "equivalent to two Advil or one Aleve" and did not pose a great danger unless consumed in high quantities.<sup>6</sup> While the assistant principal had a reasonable suspicion that Redding was involved in pill distribution, 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."<sup>7</sup> Moreover, the assistant principal had no reason to suspect that Redding was concealing any pills in her underwear.

The Court rejected the argument that the search was justified because students are generally known to hide contraband in or under their clothing, stating that "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.”<sup>8</sup> Thus, the Court concluded that the strip search was unconstitutional because the scope of the search was not justified by the circumstances, stating:

In sum, what was missing from the suspected facts that pointed to Savanna [Redding] 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. We think that the combination of these deficiencies was fatal to finding the search reasonable.<sup>9</sup>

The Court did not hold that strip searches of students would be impermissible in all circumstances, but it did make clear that school officials must have a “reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing before a search can make the quantum leap from outer clothes and backpacks to exposure of intimate parts.”<sup>10</sup>

### **Policies Prohibiting Drugs**

Another important aspect of the Court’s opinion in *Redding* is that it upheld the school district’s strict ban on all drugs, including legal prescription and non-prescription drugs without prior permission. The Court acknowledged that “standards of conduct for schools are for school administrators to determine without second-guessing by courts lacking the experience to appreciate what may be needed.”<sup>11</sup> The Court also stated that:

There is no need here either to explain the imperative of keeping drugs out of schools, or to explain the reasons for the school’s rule banning all drugs, no matter how benign, without advance permission. Teachers are not pharmacologists trained to identify pills and powders, and an effective drug ban has to be enforceable fact. The plenary ban makes sense, and there is no basis to claim that the search was unreasonable owing to some defect or shortcoming of the rule it was aimed at enforcing.<sup>12</sup>

### **Qualified Immunity**

Finally, although the Court found that the strip search violated the Fourth Amendment, it concluded that the individual school officials—the assistant principal, administrative assistant, and the nurse—are entitled to qualified immunity and are not liable. In a student-search case, school officials are entitled to qualified immunity “where clearly established law does not show that the search violated the Fourth Amendment.”<sup>13</sup> While the standard that the Court applied in this case was previously set forth by the Court in the *T. L. O.* case, numerous lower court decisions since *T. L. O.* have reached varying conclusions regarding strip searches. Thus, the Court held that qualified immunity was appropriate in this case because “the cases viewing school strip searches differently from the way we see them are numerous enough, with well-reasoned majority and dissenting opinions, to counsel doubt that we were sufficiently clear in the prior statement of law.”<sup>14</sup> Now that the Supreme Court has clarified the circumstances under which a strip search may be conducted in the school setting, the law is “clearly established” for purposes of the qualified immunity analysis, and school officials involved in future searches cannot expect to be granted the same immunity as the officials in *Redding*.

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<sup>1</sup> 577 U.S. \_\_\_\_ (2009).

<sup>2</sup> 469 U.S. 325 (1985).

<sup>3</sup> *Redding*, 577 U.S. at \_\_\_\_ (citing *T. L. O.*, 469 U.S. at 341).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at n.1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

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