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Schools Learn Lessons From Strip Search Case

Attorneys advise educators seeking drugs to call police

By CHRISTIAN NOLAN

With the new school year underway, students may soon see whether their administrators and teachers did their homework over the summer.

If a student is subjected to a strip search and school officials claim they have an unquestioned right to conduct such searches, then the odds are they weren't paying attention to a U.S. Supreme Court decision released in June.

Connecticut education law experts say the case, *Safford Unified School District No. 1, et. al. v. Redding*, offers schools further guidance on how and when they might search a student for drugs, money or other contraband.

"Justifying a highly intrusive search is between difficult and impossible in the school setting," said Thomas B. Mooney, who heads up Shipman & Goodwin's School Law practice in Hartford. "If you're in that serious of a situation, I think you call the police and let them deal with it."

Middle school officials in Safford, Ariz., took a different approach after a student found with pills told a teacher that her supplier was a classmate, Savana Redding. The pills contained ibuprofen and naproxen, the same ingredients as an over-the-counter Advil and Aleve.

Nothing was found in Redding's backpack so two female administrators searched her clothing. Stripped to her bra and panties, the 13-year-old was forced to shake her underwear so anything hidden would fall out. Nothing did. The school defended its actions by claiming it was part of a crackdown on drug use.

Redding said it was the most "humiliating experience" of her life and, with the help of the American Civil Liberties Union, filed suit. Attorneys for the school district countered that the courts have always given educators plenty of leeway to keep order in school settings, and a ruling against them could jeopardize student safety.

But lower level courts said the Arizona administrators overreacted, and the Supreme Court ruled that educators, like other public officials, could not conduct unreasonable searches.

"What was missing from the suspected facts that pointed to Savana was any indication of danger to the students from the power of the drugs or their quantity, and any reason to suppose that Savana was carrying pills in her underwear," Justice David Souter wrote in the majority opinion. "We think that the combination of these deficiencies was fatal to finding the search reasonable."

Door Not Closed

Could such a sequence of events unfold in Connecticut? They already have.

Earlier this year, a principal and a teacher at an Ansonia school were fired after strip-searching four students who were suspected of stealing $70 from a teacher. A lawsuit has been filed on behalf of the students.

The Supreme Court case may have reduced the likelihood of future incidents, as education law attorneys are strongly advising educators to call in police rather than try to conduct intrusive searches on their own.

When police intervene, it becomes "a law enforcement function and you've removed the student from the presence of the rest of the student body. So then you've reduced the danger hopefully," said attorney Michelle Laubin, who writes the Connecticut Education Law Blog for her firm, Berchem, Moses & Devlin in Milford.

Law Tribune File Photo

Education attorney Thomas B. Mooney said he typically gets two or three questions a year from school districts regarding student searches.

Laubin said the only drawback is that if officers decide not to search a student, and if drugs or weapons aren't found, it makes it harder for school officials to take disciplinary action.

Laubin added that some districts have banned strip searches, but others will keep the option open, even after the Arizona case. "I don't think this closes the door on all strip searches involving drugs and weapons," she said.

Mooney said that before even considering a search, school officials must be sure they have reliable evidence that a student is

hiding something. In a best-case scenario, that means a teacher or school official actually witnessing a student tucking something into his or her clothing.

Even then, said Mooney, educators should try to avoid a search. The teacher might say, "'I saw you stuff the drugs down your pants, c'mon give it to me,'" said Mooney. "And in most cases, the kid would comply."

And if a student is suspected of having weapons? Mooney said that's grounds for a search, but he noted that firearms are usually large enough that an administrator wouldn't have to strip a student to his or her underwear to find them.

No Qualified Immunity

This isn't the first time that the Supreme Court has ruled on student searches.

In 1985, in *New Jersey v. T.L.O.*, the justices ruled that courts must determine whether a search has reasonable chance of turning up evidence and whether it is reasonable in scope and not excessively intrusive in light of the age and sex of the students.

Despite the ruling, districts facing lawsuits often continued to claim qualified immunity, which protects government officials who are doing their jobs from being sued unless they violated clearly established law. Districts often argued that the facts of their case were different from those of *T.L.O.,* in which a principal searched the purse of a 14-year-old accused of smoking in the girls' bathroom and found marijuana and other drug paraphernalia.

Since 1985, judges around the nation have come to different conclusions about immunity for school officials in strip search cases, which led the Supreme Court in the Arizona case to "doubt that we were sufficiently clear in the prior statement of law," Souter wrote.

The *Safford* case removes that doubt. The Supreme Court spared the Arizona administrators from damages because the educators believed they enjoyed qualified immunity. But educators in similar future cases will be vulnerable.

"With this [decision], we have a recent Supreme Court case clearly stating that a strip search under these particular circumstances is impermissible," said Matthew E. Venhorst, an associate at Shipman & Goodwin's School Law Practice Group. "In the future, if this were to happen again… the qualified immunity doctrine would not be available in light of this case."

Kelly Moyher, a staff attorney at the Connecticut Association of Boards of Education, said school districts were already fairly well versed on the law even before the Supreme Court decision. Part of that was due to *T.L.O.* But there was also a 2001 New Haven case where 16 female middle school students were strip-searched during gym class after a classmate reported $40 missing. The girls eventually collected $28,500 each in damages.

"I think that school districts are pretty well prepared to deal with situations like this," Moyher said. *Safford* "didn't make any sweeping changes to the law."

Mooney, who typically answers two or three questions a year from school administrators about student searches, recalled an inappropriate strip search in 1985 at Terryville High School. He said 30 or more male students were searched for alcohol.

Mooney recommended the district apologize to the students and their parents.

"People don't always sue to get money. Their sense of principle is offended," said Mooney. "We made a mistake. We [said we're] sorry and we never got sued. In *Safford* they didn't say that, and they went to the Supreme Court." ■