



# Iowa General Assembly

## 2009 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### **LEGAL UPDATE—UNREASONABLE STUDENT SEARCHES AND LIABILITY**

Filed by the Supreme Court of the United States  
June 25, 2009

Safford Unified School District #1 v. Redding  
No. 08-479

<http://supct.law.cornell.edu/supct/html/08-479.ZS.html>

**Background.** The Safford Unified School District's (Arizona) policies prohibit the nonmedical use, possession, or sale of any drug on school grounds. A 13-year-old student, Savana Redding, was accused by another student of providing that student with four prescription-strength ibuprofen pills and an over-the-counter naproxen pill. Ms. Redding permitted an assistant principal to search her belongings. When the search did not produce any pills, the assistant principal directed an administrative assistant to escort Ms. Redding to the nurse's office, where Ms. Redding was strip searched. Ms. Redding's mother filed suit against the school district and the school officials involved in the strip search, alleging that her daughter's Fourth Amendment rights had been violated.

**Procedure.** District Court granted defendants' motion for summary judgment and dismissed the case. On appeal, U.S. Court of Appeals, Ninth Circuit, affirmed (3 panel court). On rehearing, full Court of Appeals held that Redding's Fourth Amendment rights were violated (reversed).

**Issues.** Did the search meet the standards for school searches established by the United States Supreme Court (Court in *New Jersey v. T.L.O.*, 469 U.S. 325(1985)); and, were the school officials protected from liability by qualified immunity?

**Analysis - Fourth Amendment.** The Fourth Amendment establishes the "right of the people to be secure in their persons...against unreasonable searches and seizures." The Court, in the *T.L.O.* opinion, determined that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause (469 U.S. at 341), and the measures adopted for a school search must be "reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *Id.*, at 342. Justice David H. Souter, delivering the opinion of the 8-1 majority, held that in applying a standard of reasonable suspicion to the actions of the assistant principal, the official had sufficient suspicion to justify a search of Ms. Redding's backpack and outer clothing both because a student told the assistant principal during the prior week that other students were bringing drugs and weapons to school, and because another student had accused Ms. Redding of providing her with the pills. However, in the opinion, Justice Souter states, "both subjective and reasonable societal expectations of personal privacy support treatment of such a search as categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of outer clothing and belongings." The pills found on the other student were common pain relievers of limited threat. The assistant principal had no reason to believe that Ms. Redding was hiding more pills under her clothing, nor did he establish the date on which Ms. Redding allegedly gave the pills to her fellow student.

**Analysis - Qualified Immunity.** A school official would be entitled to qualified immunity "where clearly established law does not show that the search violated the Fourth Amendment." (*Pearson v. Callahan*, 555 U.S. \_\_\_, \_\_\_ (2009)). The Court determined that under established law Ms. Redding's Fourth Amendment rights had clearly been violated. However, a number of judges in lower courts have reached different conclusions regarding the *T.L.O.* standards, leaving the Court in doubt as to whether the Court was sufficiently clear in the prior statement of law. Justices John Paul Stevens and Ruth Bader Ginsburg, dissenting in part, argued that the clarity of a well-established right should not depend on whether jurists have misread our precedents, but the majority determined that the school officials are protected from liability by qualified immunity. The Court remanded the case to the United States Court of Appeals for the Ninth Circuit for

consideration of the school district's liability.

**Iowa Law Regarding Student Searches.** Iowa law specifically prohibits strip searches of students. Code Section 808A.2(1) requires schools to establish a student search rule, which must be published in the school's student handbook, and it allows a school to search a student or protected student area pursuant to the rule. The law provides further that "(a) school official may search individual students and individual protected student areas if...(t)he official has reasonable grounds for suspecting that the search will produce evidence that a student has violated or is violating either the law or a school rule or regulation, and...(t)he search is conducted in a manner which is reasonably related to the objectives of the search and which is not excessively intrusive in light of the age and gender of the student and the nature of the infraction." Under Section 808A.2(5), "(i)f a student is not or will not be present when a search of a protected student area is conducted, the student must be informed of the search either prior to or as soon as is reasonably practicable after the search is conducted." "Protected student area" is defined to mean a student's body, clothing worn or carried by the student, and any container used by a student for holding or carrying personal belongings of any kind and in the possession or immediate proximity of the student.

Code Section 808A.2(2) permits school officials to "conduct periodic inspections of all, or a randomly selected number of, school lockers, desks, and other facilities or spaces owned by the school and provided as a courtesy to a student. Providing a student with such equipment or space, or allowing students to use a separate lock on such equipment or space shall not give rise to an expectation of privacy on a student's part with respect to that equipment or space. School districts must notify students and their parents or guardians at the beginning of the school year that school officials may conduct periodic inspections of school lockers, desks, and other facilities or spaces owned by the school without prior notice.

Code Section 808A.2(3) establishes that "under no circumstances may a search be made which is unreasonable in light of the age of the student, the nonseriousness of the violation, the sex of the student, and the nature of the suspected violation." Code Section 808A.2(4), prohibits a school official from conducting a search which involves a strip search, a body cavity search, the use of a drug sniffing animal to search a student's body, or a search of a student by a school official not of the same sex as the student.

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