Law of the Workplace

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CLIENT ALERT

SUPREME COURT HOLDS SCHOOL OFFICIALS NOT LIABLE FOR UNCONSTITUTIONAL "STRIP SEARCH" OF STUDENT

In a case in which a school administrator ordered the search of a 13-year-old student's undergarments for drugs, the U.S. Supreme Court has found that although the search violated the student's constitutional rights, the individuals who ordered and conducted the search are protected by qualified immunity. The Supreme Court decided the matter of *Safford Unified School District No. 1 v. Redding* on June 25, 2009, and has remanded the case for a determination of the school district's liability.

Assistant Principal Wilson, acting on a tip that Savana Redding and another student were distributing prescription painkillers in school, conducted an investigation that turned up pills and knives, along with another student's confession that she and Redding were in possession of the pills on school grounds in violation of school policy. Upon questioning by Wilson, Redding denied that she was carrying the pills, and consented to a search of her backpack by Wilson and an administrative assistant. When no pills were found, Wilson instructed the administrative assistant to take Redding to the school nurse, where the two women had Redding pull out and shake her bra and the elastic waistband of her underwear. No pills were found. Redding's mother brought suit against the school district, as well as against the involved employees in their individual capacities, claiming that the search violated Redding's Fourth Amendment right to be free from unreasonable searches by public officials.

The *Redding* opinion asserts that confusion has ensued over the Supreme Court's 1985 decision of *New Jersey v. T.L.O.*, in which it held (1) that public school officials may conduct a search of a student when they have reasonable suspicion that the search will uncover evidence that the student has violated the law or a school policy; and (2) that a school search is permissible when conducted in a manner that is reasonably related to its objectives and not excessively intrusive in light of the student's age, sex and the nature of the infraction. The Court found that under *T.L.O.*, the search of Redding's undergarments was unjustified due to the relatively low danger posed by the painkillers to the student body, and the absence of any evidence that Redding was concealing pills in this manner. However, the individual defendants were entitled to qualified immunity due to the inconsistent application of *T.L.O.* by lower courts. In the context of school searches, qualified immunity protects individual school officials from liability where a reasonable person acting in the official's position would not have known that his or her actions violated clearly established law. As the Court stated, "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."

Three of the nine Supreme Court justices filed separate opinions. Justices Stevens and Ginsburg agreed that the search was unconstitutional, but reasoned that the assistant principal should not be protected by qualified immunity. Justice Ginsburg noted not only that the Assistant Principal did not thoroughly question the other student before searching Redding, but that Redding was required to sit outside the office for two hours and her parents were not called. On the opposite end of the spectrum, Justice Thomas found not only that qualified immunity was warranted, but that the search was not a violation of Redding's constitutional rights in light of circumstantial evidence connecting her with the pills, and the reasonableness of the administration's

belief that students can and do conceal drugs in their undergarments. Justice Thomas urged that the majority decision undermines the safe and orderly operation of the public schools "by invalidating school policies that treat all drugs equally and by second-guessing swift disciplinary decisions made by school officials," a nod to the Court's recent decision in the "Bong Hits 4 Jesus" case of *Morse v. Frederick*.

School officials should note that the search of Redding's outer clothing and backpack was found to meet the *T.L.O.* test of reasonableness. The *Redding* decision also protects well-intentioned administrators from liability for searches that, from the perspective of a reasonable administrator, may seem necessary and legally permissible under the circumstances. To this end, the Court observed "the high degree of deference that courts must pay to the educator's professional judgment." However, the school district in this case awaits judgment on its liability for what has been adjudged excessive intrusiveness, serving as a reminder that administrators must exercise the utmost caution in determining that safety and order are so threatened that a strip search or similar measure is warranted.

Employers with questions regarding education law issues may call the attorneys of Siegel, O'Connor, O'Donnell & Beck, P.C. at 860-727-8900 or by visiting us online at www.siegeloconnor.com.
