

ZERO TOLERANCE OR ZERO PRIVACY

A Lesson Plan for Teachers



ZERO TOLERANCE OR ZERO PRIVACY: STUDENT STRIP SEARCHES AT SCHOOL

Overview: Students will examine the recent Supreme Court case, *Safford v. Redding*, which involved a strip search of an Arizona female middle school student pursuant to the school's zero-tolerance drug policy. The case and the Court's ruling will be used to stimulate consideration and discussion of the most appropriate interpretation of students' constitutional Fourth Amendment rights and the balancing of students' rights with school officials' responsibility for maintaining school safety.

Central Question: What 4th Amendment protections should be guaranteed to students in school?

Instructional Outline:

- 1. Anticipate and prepare for study and discussion of students' Fourth Amendment rights at school:** Students will (a) Respond to anticipation questions (Attachment 1: Survey) regarding students' rights in schools and school policies regarding student searches; (b) briefly discuss selected responses to anticipation prompts; (c) take initial positions on selected propositions regarding students' privacy rights and schools' enforcement of zero tolerance policies.....**15 minutes**
- 2. Review and discuss Fourth Amendment and history Court precedents** relevant to student searches and school contraband policies. (Fourth Amendment can be found in Instructional Plan, 2a below; Rights precedents are in Attachment 2: Timeline of Selected Students' Rights Precedents).....**20 minutes**
- 3. Study *Safford Unified School District v. Redding (2009)*:** Students will (a) Review the facts and judicial background of the case (Attachment 3: Case Summary) and apply the Fourth Amendment and relevant precedent summaries (from Attachment 2) to develop a reasoned position on the correct constitutional ruling, (b) examine, evaluate, and discuss Justices' ruling and dissent in *Safford v. Redding* (from Case Summary).....**20-25 minutes**
- 4. Reflect on appropriate level of privacy for high school students and the future trajectory of students' rights** in light of recent Court rulings and actions in schools.....**10 minutes**
(Optional) Design a school drug policy in light of Constitutional rights and limits and based on assessments of the value of various policy options: Students will (a) Review considerations that must go into a school policy; (b) use a policy options template (Attachment 4) to develop a school drug policy.....**15-25 minutes**

Materials:

Posted Information:

- Response grid for anticipation survey (procedure 1a)
- Fourth Amendment (2a)
- Dates, bold titles, and case names from the Timeline of Selected Student Rights Precedents in Attachment 2 (optional)
- Discussion questions for 2b
- “Question Before the Court” (3a)
- List of considerations for public policy (4a)
- List of policy stakeholders (4d)
- Question 9 and question 10 from anticipation survey (5a)

Printed Handouts:

- Student Searches at School Survey (Attachment 1)
- Timeline of Selected Student Rights Precedents (Attachment 2)
- *Safford Unified School District v. Redding* (2009) (Attachment 3)
- Design A School Drug Policy Template (Attachment 4)

Common Core Standards (Grades 9-12)

ELA-Literacy.SL.9-10.1c Propel conversations by posing and responding to questions that relate the current discussion to broader themes or larger ideas; actively incorporate others into the discussion; and clarify, verify, or challenge ideas and conclusions.

ELA-Literacy.SL.9-10.1d Respond thoughtfully to diverse perspectives, summarize points of agreement and disagreement, and, when warranted, qualify or justify their own views and understanding and make new connections in light of the evidence and reasoning presented.

ELA-Literacy.SL.11-12.1 Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades 11–12 topics, texts, and issues, building on others’ ideas and expressing their own clearly and persuasively.

Instruction Procedures:

(Total Time: 60 minutes)

Anticipation

1. Anticipate and prepare for study and discussion: Student Survey..... (15 minutes)
 - a.) As students enter, distribute Student Survey on school searches and zero tolerance policies (Attachment 1) and ask them to begin filling it out; explain that they will be discussing their reasoning for their answers once everyone has completed the survey. (A definition of “zero tolerance policy” is provided on the back of the survey for students who may be unfamiliar with the term.). As students complete the survey invite them to enter their initials on a posted graph for questions 7-10. (To facilitate efficient completion of this step with larger groups, consider placing a number from 1 to 4 on each survey form, posting four numbered response graphs around the room and telling students to enter their responses on the corresponding graph.)

	SA	A	D	SD
Question 7				
Question 8				
Question 9				
Question 10				

A model flipchart (As an option, you may prefer to put all 10 questions on chart for complete visual representation.)

- b.) Let students know that shortly they will be looking at the recent ruling of the Supreme Court on a case involving a strip search of a thirteen year old middle school girl, and to prepare for delving into the details of that case they will first discuss school drug policies and the recent history of students’ rights at school. Take responses on selected items from the survey, asking various students to make a persuasive case for the positions they took in the survey. Allow students to talk briefly about drug policies or conditions at their schools. Allow students to briefly discuss their perceptions of the school’s current drug policies, how effective they seem, and how intrusive they seem.
- c.) Focusing on survey questions 7, 8, 9, and 10, probe areas of disagreement and tension regarding students’ rights versus keeping students safe and the educational environment orderly, but take care not to push to students to over-commit to a position before further study. Explain that their responses at this stage should be considered initial positions that people take before studying the facts and reasoning involved in a public issue.

Main Learning Activities:

2. Review and discuss Fourth Amendment and history of students' rights precedents..... (20 minutes)

a.) Post the Fourth Amendment :

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Quickly review the language and meaning of the Fourth Amendment and settled law on warrantless searches:

4th A. does not require that a warrant must be obtained for a search or arrest; it only guarantees against unreasonable search and seizure (including arrests); the Court has identified a number of warrantless search exceptions, including such circumstances as:

- Plain view: an officer is allowed to seize contraband objects that are in "plain view"
- Exigent circumstance: officers can search or arrest a suspect if they have to believe that there is an imminent danger to the lives or property of themselves or the public
- Searches incident to a lawful arrest: An officer making a lawful arrest is allowed to conduct a search of the arrestee in order to prevent the suspect from destroying evidence or using a weapon against the arresting officer.

In addition to these exceptions and a few others, it is settled Constitutional law (with numerous Supreme Court precedents upholding it) that *searches in public schools do not require warrants, as long as the searching officers have reasonable grounds for believing that the search will result in the finding of evidence of illegal activity*. [Time permitting, help students briefly examine the distinction between a standard of "probable cause" and a standard of "reasonable grounds."] Because the probable cause sets a much higher threshold for conducting a search than does "reasonable grounds" the "reasonable grounds" standard leaves open Fourth Amendment questions about what school officials may do in student searches and how far they can go to investigate possible violations of school zero-tolerance drug policies.

b.) Reveal a list of case names from the Timeline of Selected Student Rights Precedents (**Attachment 2**)(optional) showing only the dates, and bold titles. Divide students into groups of five and **give each group a copy of the Timeline**. (Appoint facilitators and scribe/reporters for each group) Ask students to review the timeline and discuss three posted questions:

- What is in loco parentis and how does it relate to students' rights at school?
- Which precedents seem most protective of students' rights; which seem least protective?
- Which precedents would promote the best learning environment?

Take a few responses to the questions from group scribe/reporters and probe for any disagreements about "best learning environment." (*Does restricting students' rights equal a proper learning environment? Does constraining school officials' authority to maintain safety and order equal a conducive learning environment?*)

c.) Ask all students: How would you describe the trend in Court rulings since 1969? How would you explain the trend? Ask all students which precedents are most relevant for examining students' Fourth Amendment rights at school.

d.) Explain that students will be using these precedents, just as Supreme Court Justices do, to help them determine the Constitutionality of a student search case decided by the Supreme Court. Explain that Justices hearing such a case are free to use any precedents they see as relevant, not just those directly related to Fourth Amendment cases, but that most (not all) Justices generally prefer not to upset or overturn a line of relevant precedents if they can avoid it.

3. Study *Safford Unified School District v. Redding*.....(20-25 minutes)

a.) Divide students into nine groups and tell them that each group will be acting as the clerks for one Supreme Court Justice. Make sure each group has a copy of the Precedent Timeline.

- Distribute the case briefing (**Attachment 3**), one copy per student, and make sure they do not look at the back side! Instruct students to read the case description and then discuss the questions at the bottom of the case description. [OPTIONAL: Leave case conclusion off original handout and put it on a second handout to distribute one per group for Step 3c below.]
- For approximately 10 minutes explain that students should review the precedents to determine in what way prior rulings do or do not apply to the facts of *Safford v. Redding*. Circulate among groups to ensure that students are using precedents and have come to reasoned answers to the discussion questions.
- Write "Question Before the Court" from the case summary (*Does the Fourth Amendment prohibit school officials from strip searching students suspected of possessing drugs in violation of school policy?*) on the board. Take reports from scribe/reporters on group answers/disagreements over their answers. Record by a show of hands how many students would answer "yes" to the question; how many "no". Record by a show of hands how many think the Court said "yes" and how many think the Court said "no".

b.) Invite students to turn over Case Summary and review the Court's decision and Justice Thomas' dissent. Match student predictions to outcomes and use differences to stimulate a critical discussion of the pros and cons of the constitutional reasoning behind the decision and dissent. Ask: *What steps could Stafford Middle School officials have taken in their investigation of Savana that might have been found constitutionally acceptable (either to the Court or to you)?*

c.) Ask students: **Does the decision ban strip searches?** (No. The Court specified that under the specific circumstances of this particular search for school-banned pain relievers, with the information the school officials had in-hand; the search of a middle school girl was Constitutionally unwarranted. The Court left open the door to other strip searches possible Constitutionality if the circumstances warrant it.) **Does the decision ban zero tolerance policies?** (Not at all.) Explain that the Courts' decisions on student Fourth Amendment rights places limited bans on public schools' policies and actions that may intrude on students' right to privacy, but no Court decisions require schools to provide students' lower protections than those afforded adults. This leaves it up to local and state school officials and communities to decide on appropriate policies and measures. This is probably something high school students themselves might want to contribute to (see extension activity below for a model of how students can design their own school drug policy).

Reflection:

4. Tug of Ideas: Students’ Rights vs. Order and Safety..... (10 minutes)

- a.) On opposite walls of the room, post statement 9 and statement 10 of the original survey. Explain that students must stand either under one sign, the other sign, or in a line in the middle of the room. Explain that groups at opposite ends will try to get the students in the middle to move toward agreeing with their position.
- b.) Ask one student in the middle to pose a question or challenge to either side; allow one student from the challenged group to respond; allow one student from the opposing group to respond to the first group’s answer; tell students in the middle to individually take one step in the direction of the better argument; so ends round one. Continue for three or four rounds or as time permits. Who found their initial position on these matters supported through what they studied, debated, or discussed? Who found their original position to be somewhat challenged by what they studied, debated, or discussed?

5. Prediction: What is the future of students’ rights at school? (5 minutes)

- a.) Ask students to consider the trend of the cases they reviewed, what they see happening in schools and youth culture, and the general mood of the nation. As think-pair-share, or whole group discussion (or journaling activity), ask students to predict whether in the future there will be greater emphasis on the rights of high school students at school or greater emphasis on granting school officials authority to protect the safety and order of schools. What role can they play in shaping that future? Challenge students to seek forums to present and advocate for their proposed policies. What might some of those forums be?

Extension Activity:

6. Design a School Drug Policy

- a.) Explain the rough outline of how your district or state provides opportunities for citizens to make proposals or provide input into school policies, Explain that our next endeavor will allow them to consider the kinds of drug policies for high schools they would recommend to their own local school board or state board of education. Explain that as they consider various policy options they should keep the following considerations in mind (post on flip):
 - Mission they believe high schools should serve
 - Constitutional protections for privacy enjoyed by citizens of democracy
 - Supreme Court decisions defining school officials’ authority to maintain order and safety
 - The interests and concerns of students
 - The interests and concerns of parents
 - The interests and concerns of the general community that supports the school system

Divide students into policy-making groups. Keep in mind, this is not a role-play, so students should be allowed to group in a way mostly likely to allow each group to achieve consensus on a shared set of proposals. As always, groups should not be larger than 5-6 students and each group should have someone responsible for facilitating discussion and someone else responsible for taking notes.

- b.) Distribute “Design a School Drug Policy Template” (**Attachment 4**) and explain that the template is a GUIDE to developing a policy proposal. They are free to choose the options they prefer as-is, but should probably just use them as a basis for crafting their own. They can remove, modify, or add to any of the provisions in the option they select. They can mix and match provisions between options, or they can start from scratch. But each group must come up with a proposal that has three sections:

- Description of what drugs/medications will be permitted and prohibited on school grounds and at school-related functions
- Description of what school officials will be authorized to do and within what limits
- Description of penalties (punishments) for students who violate the policy or refuse to comply with its provisions

- c.) As students discuss, post a list of the following stakeholders and opinion leaders:
 - PTA members in your district
 - Civil liberties groups in your area
 - Your hometown newspaper
 - Your school newspaper
 - Your town or city council
 - Your state governor
 - Your school’s principal
 - Your school’s guidance counselors
 - Your school’s teachers
 - The general student body at your school
 - Students who are high academic achievers
 - Students on sports teams
 - Students in clubs and other extra-curricular activities
 - Members of your student government
 - Your town’s local police department

As groups begin to conclude their write up, ask them to look over the list and pick two stakeholder/opinion leaders who will most support your proposal and two who most oppose it.

- d.) Rather than take group summary reports, ask one group to name the one source most likely to support their proposal and what they will find most desirable about the proposal; and one source of greatest opposition and what they will find most objectionable. Repeat with other groups on a volunteer basis, adjusting for time. BRIEFLY probe tensions: Push groups who leaned toward a high bar of protection for students’ rights to defend their proposals against criticism that school officials will be unable to adequately protect learning and safety; Push groups who leaned toward greater authority for school officials to defend their position against criticism that students will not learn to be responsible citizens of a democracy if their rights are not respected as such in their schools. And so forth.

SURVEY: STUDENT SEARCHES AT SCHOOL

1. The school I attend has a zero tolerance policy. (Check one)

- ☐ Yes ☐ No ☐ Not Sure

A definition of “zero tolerance policy” can be found on the back of this form.

2. The school I attend has conducted (Check all that apply)

- ☐ Random locker searches ☐ Searches using dogs ☐ Searches of personal items/clothing
☐ Strip searches
☐ Other (Describe) _____

3. The school I attend is (Check one)

- ☐ Public ☐ Private

In the section below, check the box that shows the degree to which you agree or disagree with the statement. Use the space provided to write down any questions or comments you have about the statement. You will be asked to discuss your responses with the group.

4. In order to protect the safety of everyone in the school, school officials should have the authority to search students’ property at school if they have a reason to suspect that drugs are being illegally used or distributed on campus.

5. School officials should be required to call police to search students’ property at school and police should only be allowed to conduct a search if they have probable cause to believe that a specific student is in possession of illegal drugs.

6. In many schools “zero tolerance” policies are necessary to combat drug abuse and drug distribution problems on school grounds. (A definition of “zero tolerance policy” can be found on the back of this form.)

Strongly Agree	Agree Somewhat	Disagree Somewhat	Strongly Disagree

7. Schools with a history of drug use on campus should be able to adopt zero tolerance drug policies enforced by locker searches, random drug sniffing dog searches, and strip searches without parental notification of targeted students.

8. Except in cases of extreme emergency, no matter what sort of history of drug problems a school has experienced, school officials should never be allowed to conduct an invasive search of any student without first notifying the student’s parent.

9. Students at school should be protected by the same level of Fourth Amendment privacy protections as adults.

10. School officials’ responsibility to provide a safe learning environment is more important than strict observance of students’ Fourth Amendment rights to privacy.

Zero-tolerance policy: A policy of not having any tolerance for any violation of existing laws or rules, regardless of mistakes, ignorance, or extenuating circumstances. Any violation for any reason is to be met with full punishment. Because of the spread of drug abuse among young people, many schools have enacted zero-tolerance policies concerning drugs. Such policies often disallow students from using or possessing any drugs or medications (even over-the-counter or prescription medicines) while on school property.

Strongly Agree	Agree Somewhat	Disagree Somewhat	Strongly Disagree

TIMELINE OF SELECTED STUDENT RIGHTS PRECEDENTS

U.S. courts have often been asked to rule on school policies or actions that may infringe on students' rights of free speech, free press, and freedom from unwarranted search and seizure. When school policies infringe on the rights of students the rationale most often cited by schools officials is the concept known as *in loco parentis* (a Latin phrase meaning "in place of the parents") which asserts that while a student is in the custody of a school, the school must have authority to act as a parent in a variety of circumstances. Over the years, U.S. courts have allowed schools a varying degree of latitude to act in the best interests of the students as they see fit, but have also sought to balance this with some protections for students' civil liberties.

Note that, in general, the precedents listed below apply only to public schools. Parents and students at private schools agree to abide by school policies; private schools are not subject to the same restrictions as public schools in terms of policies or practices that might impinge on the civil liberties of students.

- 1943 First Amendment protects students from being forced to recite Pledge of Allegiance.** One of the earliest rulings to restrict schools' *in loco parentis* authority came in the case *West Virginia State Board of Education v. Barnette*. The Supreme Court held that West Virginia's statute requiring students to salute the flag and recite the Pledge violated the Free Speech Clause of the First Amendment.
- 1969 School officials have to demonstrate constitutionally valid reasons for regulating student speech.** In the case *Tinker v. Des Moines Independent Community School District* the Supreme Court found unconstitutional Des Moines, Iowa school district's expulsion of 13 year old Mary Beth Tinker for wearing a black armband to school in protest of U.S. Vietnam War policies. The school claimed that its policy banning such symbolic actions was necessary to prevent disruption of classes and the educational enterprise at school. The Court acknowledged that school officials must have sufficient authority to maintain educational order and discipline, but found that Tinker's armband did not pose a sufficient threat to that order. Noted the court: "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."
- 1984 School officials do not need a warrant to search the belongings of students; they only need a "reasonable suspicion".** In one of the first cases involving students' Fourth Amendment rights at school, *New Jersey v. TLO*, the Court found that a New Jersey high school assistant principal did not violate a high school student's Fourth Amendment right when he searched her belongings after she denied violating the school's cigarette smoking restrictions (she had been observed smoking by a teacher who brought her directly to the assistant principal's office.) The Court asserted states have a duty to provide a safe school environment and that the law must balance a student's legitimate expectation of privacy against the school's interest in maintaining order and discipline. Therefore, school officials do not need a warrant to search the belongings of students, but they do require a "reasonable suspicion". This reasonable suspicion test establishes a lower standard than the probable cause standard required for all search and seizures of adults and juveniles in non-school settings.

- 1986 School officials can prohibit speech that is deemed inconsistent with the "fundamental values of public school education."** In *Bethel School District v. Fraser* the Court found that school officials did not violate the First Amendment when they suspended high school student Matthew Fraser for violating a school district prohibiting conduct which "substantially interferes with the educational process . . . including the use of obscene, profane language or gestures." Fraser had made a nomination speech for a fellow student for elective office. Fraser used a number of graphic sexual metaphors in his speech. According to the Court's majority opinion, "The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior," adding "'It does not follow ... that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, the same latitude must be permitted to children in a public school... The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.'"
- 1995 School officials can require student athletes to submit to random urine tests even in the absence of any suspicion that a student being tested has used drugs.** In *Vernonia School District v. Acton* the Supreme Court reviewed an Oregon School District's attempt to combat rampant student drug abuse by making a policy requiring student athletes to submit to weekly random urine sample tests. According to school officials, student athletes in the schools were heavily involved in illegal drug use; as role models and because of the danger of combining drug use with athletic activity, student athletes were reasonably singled out for drug testing, they claimed. The Supreme Court agreed, saying, "a drug problem largely fueled by the 'role model' effect of athletes' drug use, and of particular danger to athletes, is effectively addressed by making sure that athletes do not use drugs."
- 2002 Students who participate in any competitive extracurricular activities have a limited expectation of privacy and can be required to submit to random urine tests.** In *Board of Education v. Earls* the Supreme Court again reviewed a school system's (Oklahoma) attempt to combat student drug abuse through random urine sampling. In this case the school system was requiring students participating in any extracurricular activity to submit to testing. Lindsay Earls, a member of Tecumseh's show choir, the marching band and the academic team, filed suit in federal court. According to Court documents, Earls' attorney argued that "the 4th Amendment protects members of the choir, band and other non-athletic activities from the suspicionless, mandatory urinalysis." The Supreme Court disagreed, saying the school board's policy "effectively serves the School District's interest in protecting its students' safety and health. Preventing drug use by schoolchildren is an important governmental concern."
- 2007 School officials can prohibit students at school-sponsored events from displaying messages that may undermine the school's important mission to discourage drug use.** In *Morse et al. v. Frederick* looked at student free speech at a school-sponsored event. On January 24, 2002, students and staff at Juneau-Douglas High School (Juneau, Alaska) were permitted to leave classes to watch the Olympic Torch pass by. Off school grounds, Frederick and his friends waited for the television cameras so they could unfurl a banner reading "BONG HiTS 4 JESUS". Principal Deborah Morse suspended Frederick for ten days for violating the school's policy against the display of material that promotes the use of illegal drugs. Frederick sued, alleging a violation of his First Amendment right to freedom of speech. In a 5-4 vote, the Court held that although students do have some right to political speech even while in school, this right does not extend to pro-drug messages that may undermine the school's important mission to discourage drug use. In ruling for Morse, the Court affirmed that the speech rights of pub-

lic school students are not as extensive as those adults normally enjoy, and that the highly protective standard set by Tinker would not always be applied. The four dissenters argued that the majority opinion was “[...] deaf to the constitutional imperative to permit unfettered debate, even among high-school students [...].”

ATTACHMENT 3

STUDENT STRIP SEARCH AT SCHOOL

Case Summary

Safford Unified School District v. Redding (2009)*

Background of the case:

- Stafford Middle School, located in Arizona, adopted a zero tolerance drug policy which prohibited the use or possession of any drugs or medicines on school grounds or during any school functions without advance permission. The prohibition included non-prescription pain relievers such as aspirin, ibuprofen, etc.
- In 2003, a school official began a school-wide investigation regarding students allegedly bringing prescription drugs into the school but using them for non-medical reasons.
- In October 2003, a student suspected of improperly possessing and using drugs at school alleged that an eighth-grade student named Savana Redding had given some ibuprofen to another student. Based on this tip, the school official confronted 13-year-old Savana and escorted her to his office for questioning and further investigation.
- In his office, the official showed Savana a number of prescription-strength and over-the-counter pain relief pills. Savana said that the pills were not hers but agreed to let the official search her belongings. An administrative aide took Savana to the school nurse’s office to search her clothes. The aide and the nurse ordered Savana to remove her outer clothing, and then told her to pull her bra out and shake it, thus exposing her breasts, and to pull out the elastic on her underpants, thus exposing her pelvic area. The incident led Savana’s mother, April Redding, to sue school officials for the search.
- A District Court judge ruled for the school district and for school officials, finding that the tip from another student provided a sufficient justification for the search of Savana. Requiring her to strip, the District Court found, was sufficiently related to officials’ suspicion, and was not “excessively intrusive.” The Reddings appealed the case to the Ninth Circuit Federal Appeals Court.
- The Ninth Circuit reversed the lower court ruling and said that a strip search was not appropriate because it was excessively intrusive based on what school officials knew at the time. The Ninth Circuit also rejected the school officials’ claims that they were entitled to immunity against being sued for the unconstitutional search.
- Stafford District School officials appealed the case to the Supreme Court which heard and decided the case in the 2009 session.

Question before the Supreme Court:

Does the Fourth Amendment prohibit school officials from strip searching students suspected of possessing drugs in violation of school policy?

2009 Does the Fourth Amendment prohibit school officials from strip searching students suspected of possessing drugs? If such a search is unconstitutional, can school officials be sued individually for violating a student’s civil rights?

Safford Unified School District v. Redding

Discussion Questions:

1. As clerks for a Supreme Court Justice, which precedents would you suggest your Justice rely on to make his or her ruling?
2. Based on the precedents, the language of the Fourth Amendment, and the facts of the case, how would you advise your Justice to answer the question before the Court above?

*This case summary is adapted from The Oyez Project, www.oyez.org along with information from FindLaw's Supreme Court Case Collection, <http://laws.findlaw.com/us/000/08-479.html>

Safford v. Redding

Does the Fourth Amendment prohibit school officials from strip searching students suspected of possessing drugs in violation of school policy?

Conclusion:

Sometimes, depending on the facts. In this case, Savanna's Fourth Amendment rights were violated when school officials searched her underwear for non-prescription painkillers.

An 8 to 1 decision, reiterated that, based on a reasonable suspicion, search measures used by school officials to root out contraband 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." With David Souter writing for the majority and joined by Chief Justice John Roberts, and Justices Antonin Scalia, Anthony Kennedy, Stephen Breyer, and Samuel Alito, John Paul and Stevens Ruth Bader Ginsburg, and the Court ruled that Safford school officials did not have sufficient suspicion to warrant extending the search of Savanna to her underwear.

Dissent:

In his lone dissent, Justice Clarence Thomas wrote: "The majority imposes a vague and amorphous standard on school administrators. It also grants judges sweeping authority to second-guess the measures that these officials take to maintain discipline in their schools and ensure the health and safety of the students in their charge. This deep intrusion into the administration of public schools exemplifies why the Court should return to the common-law doctrine of in loco parentis...But even under the prevailing Fourth Amendment test established by *New Jersey v. T. L. O.*... all petitioners, including the school district, are entitled to judgment as a matter of law in their favor."

STUDENT STRIP SEARCH AT SCHOOL

DESIGN A SCHOOL DRUG POLICY TEMPLATE

In Section 1 below, decide what kinds of drugs/medications will be allowed or prohibited and under what conditions. In Section 2 (other side) you can decide on how to investigate, and enforce the policy. In Section 3, draft a statement outlining what penalties will be imposed on students who violate the policy.

DRUG POLICY FOR HIGH SCHOOLS IN _____

SECTION 1: Description of Drugs/Medications Permitted and Prohibited on Campus

Drugs which are illegal for use or possession in our state shall be prohibited from possession or use by students or school personnel on the school campus or at any school-related function. Alcohol and any drinks, fluids or products containing alcohol shall be prohibited from possession or use by students or school personnel on the school campus or at any school-related function. In addition:

A. Over-the-counter medications (check one or design your own)

☐ Students shall be permitted to possess and use over-the-counter medicines but only in a manner consistent with label instructions and may not distribute, share, or exchange them with other students.

OR

☐ Over-the counter medications are prohibited from possession or use by students on the school campus or at any school-related function unless with advance permission of the school nurse; students with advance permission will be instructed as to the specific quantity of medication they may bring to school or school-related functions and may possess only that amount.

OR

(Design your own) _____

B. Prescription medications (check one or design your own)

☐ Students may possess and self-administer prescription medications but only in a manner consistent with the prescription-label instructions.

OR

☐ Prescription medications are prohibited from possession or use by students on the school campus or at any school-related function unless with advance permission of the school nurse in which case they be will kept under the secured possession and supervision of the school nurse and the nurse will administer the medication directly to the student according to the prescription label instructions.

OR

(Design your own) _____

Section 2: Investigations and Enforcement

If a school official has reasonable suspicion that a violation of Section 1 above may have occurred, then:

A: Questioning students (check one)

- ☐ The principal or an assistant principal may question the specific student or students who may have information about the incident.
- ☐ School officials shall be authorized to question any student or students who may have any information about any such incidents.

B: Investigations (check one)

- ☐ If it is determined that a specific student or students may be in possession of substances prohibited in Section 1 above, the principal or an assistant principal will hold the suspected student or students, notify the parents of the suspected offense, and in the case of illegal substances, call the police to investigate.
- ☐ If it is determined that a specific student or any students may be in possession of substances prohibited in Section 1 above, the principal or an assistant principal shall be authorized to investigate students including questioning students; ordering students to empty pockets, bags and other possessions; and patting and searching the outer-clothing of students.

C: Student Searches (check one)

- ☐ The police will determine if probable cause exists to conduct a further criminal search and seizure. If police do not conclude that such cause exists, the student or students may be dismissed from school for the remainder of the day and no record of the incident will be recorded. If police determine probable cause exists for a criminal search, police officials will conduct the search in accordance with all applicable state and federal laws. School officials reserve the right to search any and all school property, including lockers, whenever they have reason to suspect that violations of Section 1 above may have occurred.
- ☐ If a principal or assistant principal determines that a specific student or specific students suspected of possessing substances prohibited in Section 1 above may pose a threat to the safety or good order of the school, the principal or assistant principal shall be authorized to accompany the suspected student or students to the nurse who shall be authorized to conduct a search of the student's or students' undergarments, including the removal of undergarments. In such cases, reasonable efforts will be made to have parents present for such searches, but the school principal and assistant principals shall retain the right to conduct such searches without parental presence or prior notification.

D: Drug Testing (check one)

- ☐ Drug tests shall only be authorized if there is probable cause to believe that a specific student or students may be users of illegal drugs, or may be using medications in an illegal manner.
- ☐ The school principal shall have the authority to oversee random drug testing, random locker searches, or random searches employing drug sniffing dogs on any student or students if the principal has reasonable suspicion that there exists widespread illegal drug use by students.

Section 3: Penalties

Describe penalties for students who violate the provisions of Section 1 or refuse to comply with the provisions of Section.

[illegible]