

## HOW DOES THE SUPREME COURT DECISION IN *SAFFORD UNIFIED SCHOOL DISTRICT #1 V. REDDING* AFFECT STUDENT SEARCHES?

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The Supreme Court's recent decision in *Safford Unified School District #1 v. Redding*, 2009 U.S. LEXIS 4735 (June 25, 2009), does not change the fundamental analysis courts use to determine whether a student search violates the 4<sup>th</sup> amendment. Savanna Redding was a 13-year-old girl who was searched after another student claimed Savanna gave her prescription and over-the-counter drugs in violation of the school's policy. Redding was called to the office, and, after a series of questions, her bag was searched by the assistant principal and an administrative assistant. Finding nothing, the assistant principal instructed the administrative assistant to take Savanna to the nurse's office and, with the nurse's assistance, to perform a search of Savanna's person. This search ultimately concluded with Savanna pulling her bra out and to the side, shaking the bra while pulled away from her body, and pulling out the elastic on her underwear. Again, no pills were found. Based on these facts, the Supreme Court ruled that the search was a violation of Savanna's 4<sup>th</sup> Amendment rights.

The Supreme Court has established a complex analysis for determining whether a search violates the 4<sup>th</sup> Amendment. In *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), the Court altered the level of suspicion needed to justify a student search and determined that a "reasonable suspicion" standard should govern school searches. The Court stated the scope of a search will be permissible "when the measures adopted are 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.

This search standard essentially looks at the degree of intrusion the search involves and balances that against the strength of the suspicion. For example, searching a student's book bag or outer clothing is a lower level of intrusion that may be justified by a tip that the student has some sort of contraband at school. However, such a tip would likely not create a high enough level of suspicion to allow the search's scope to be expanded from the outer clothing and book bag of the student to the student's undergarments. Searching an individual's undergarments is highly intrusive due to the extremely personal and private nature of the area being searched, therefore the school would need an extremely high level of suspicion, based on the quality and quantity of tips which create the suspicion in the first place and the seriousness of the infraction complained of, in order to warrant such a search. Therefore, this standard really requires you to ask two questions. First, how sure are you? Take a moment to reflect on the information you've received which supports the need to search. Secondly, how intrusive is the search? A search of a person's locker, for example, is less intrusive than the search of the student's person. Keep in mind that this is a vague standard and courts across the country have reached different conclusions as to what constitutes "reasonable suspicion." Thus, the Supreme Court's intent in hearing *Redding* was to clarify exactly which circumstances provide "reasonable suspicion" to allow the scope of a search to move beyond outer clothing and backpacks to more invasive areas. In the Court's words, there must be reasonable suspicion "of danger or of resort to underwear for hiding evidence of wrongdoing to make the quantum leap from outer clothes and backpacks to exposure of intimate parts."

Therefore, the Supreme Court has determined there must be a heightened level of suspicion required when conducting a search of a student's person beyond outer clothing. This ruling suggests that searching a student's person beyond his or her outer clothing is only reasonable in scope and thus valid

under the 4<sup>th</sup> Amendment if an administrator has strong, specific supporting information indicating the situation is dangerous, or similarly strong information the student has hidden contraband in his or her underwear. Ultimately, this does not modify the current analysis courts will use to determine whether a student search is in violation of the 4<sup>th</sup> Amendment, but it does limit the scope of allowable searches. Hence, the facts of the case will continue to be extremely important, and a search of a student's person without reasonable suspicion of danger or that the student has resorted to hiding the contraband in his or her underwear will be in violation of the 4<sup>th</sup> Amendment.

Due to the vagueness and factual specificity involved in these cases, KASB's longstanding policy has been that school authorities should not conduct strip searches and that all searches by the principal or other administrator shall be carried out in the presence of another adult witness. **KASB's recommended search procedure policy (JCABB) is as follows:**

- The student should be told why a search is being conducted.
- The student shall be requested to empty items such as, but not limited to, pockets, purses, shoulder bags, book bags, and briefcases.
- The principal shall attempt to call the student's parent/s and may call law enforcement.
- Items which the principal believes may be connected with illegal activity shall remain in the custody of the principal unless the items are turned over to law enforcement officials.
- A written report of each search shall be made by the principal and submitted to the superintendent. The superintendent shall keep a copy of the written report on file.
- If the student refuses to cooperate, the principal may take disciplinary action and/or seek assistance from law enforcement.

**If law enforcement assistance is present:**

- Further search of the student shall be with the cooperation and assistance of law enforcement officials.
- The principal shall remain with the student and be present during any search of the student made by law enforcement officials on school property.
- The principal shall receive and file a receipt for items turned over to law enforcement officials.

**If, upon review of your local policy and handbooks, there are additional questions please contact KASB's legal or policy staff at 1-800-432-2471.**