

CLIENT NEWS BRIEF

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**UNITED STATES SUPREME COURT HOLDS THAT STRIP SEARCH OF
STUDENT AT SCHOOL VIOLATED FOURTH AMENDMENT**

The United States Supreme Court issued an opinion on June 25, 2009 finding that a school district's strip search of a student for contraband pills was unlawful under the Fourth Amendment of the United States Constitution. In Safford Unified School District #1 v. Redding (June 25, 2009) ___ U.S. ___ ("Redding"), the Supreme Court held that, while an assistant principal had reasonable suspicion that a student was distributing contraband drugs, that principal's reasonable suspicion did not justify a strip search of the student. The Supreme Court further found that the law regarding strip searches of students was not clearly established and, therefore, school officials were entitled to qualified immunity from personal liability for damages based on their actions. While the California Education Code imposes an outright ban on the strip-searching of students by school officials, the Redding opinion sheds light on the permissible scope of *any* form of student search.

In Redding, the Supreme Court emphasized that a search must be justified and related in scope to the circumstances justifying the search in the first place. The facts in Redding indicated that some level of search of the student was justified, but a strip search exceeded the scope of the potential threat justifying the search in the first place. The school district had a zero tolerance policy for the use, possession or sale of any drug on school grounds, including prescription or over-the-counter drugs. The assistant principal reasonably suspected the student may have been passing out a limited number of common pain relievers on campus, based on another student's statement. However, the Supreme Court held that the administrator should have known common pain relievers did not pose a serious threat to other students. The Supreme Court also found that there were no facts to establish reasonable suspicion on the part of the assistant principal that the student would be hiding common pain relievers in her underwear. Given the minimal threat of harm and the extreme intrusiveness, embarrassment, and the indignity of a strip search at school of an adolescent girl with the particular sensitivities associated with her age and sex, the Supreme Court determined that the strip search was not related in scope

to the potential threat. Under the circumstances, the fact that the school had a zero tolerance rule banning all drugs, including pain relievers, only justified a search of her belongings and outer clothing.

As noted, California law bans strip-searching of students by school officials under Education Code section 49050; however, other types of searches are permissible in California. Redding is relevant in California in that the opinion highlights the proper application of the two-part test for student searches under the Fourth Amendment of the United States Constitution articulated in New Jersey v. T.L.O. (1985) 469 U.S. 325 (“T.L.O.”). The two-part standard under T.L.O. is that (1) a search of a student by a school official is justified at its inception if supported by reasonable suspicion that the student is violating a school rule or the law, and (2) the scope of the search thereafter is lawful if reasonably related to the circumstances that justified the original search and not excessively intrusive in light of the age and sex of the student and the nature of the presumed infraction. The Supreme Court in Redding described this reasonable suspicion standard as a determination by a school official that a search of a student poses “a moderate chance of finding evidence of wrongdoing.” Generally, California courts apply the T.L.O. standard affirmed in Redding when reviewing non-strip searches of students under California law.

For more information regarding student search and seizure or any other student matters, please contact any of our seven offices throughout the state.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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