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**MEMORANDUM**

To: Scott Haddock, Supervising Attorney

From: Shannan Epps-Lever, Paralegal

Date: March 4, 2025

Re: School Search of May Hemm
File No. 25-H188

## I. Questions Presented

1. Under federal law, may a public high school administrator legally conduct a strip search of a student in the administrator's office based on a reasonable suspicion of drug possession in violation of school policy?

2. Under state law, may a public high school administrator legally conduct a strip search of a student in the administrator's office based on a reasonable suspicion of drug possession in violation of school policy?

## II. Brief Answers

1. It Depends. Under federal law, a public high school administrator can conduct a strip search of a student if two factors are met: a) suspicion was justifiable in its inception, and b) the strip search was reasonable as it relates to the extent of suspicion, in light of a student's sex and age.

2. No. Under state law, a public high school administrator may not legally conduct a strip search of a student in the administrator's office based on a reasonable suspicion of drug possession in violation of school policy.

## III. Facts

Approximately two years ago, the school district for Alderwood High School (AHS), Lynnwood School District (LSD), implemented a standard drug policy prohibiting students from possessing or using illegal drugs. Then, for the 2024-2025 school year, LSD implemented a more aggressive policy that stated:

> *"Unless prescribed by a doctor's express written permission, all drugs—including prescription and over-the-counter medicine—are strictly prohibited in their use, possession, and distribution on LSD school grounds. Any violation of this policy shall result in an immediate suspension for a duration to be determined by the vice principal."*

On Thursday, February 6, 2025, at approximately 10:30 a.m., an undisclosed student informed Alderwood High School (AHS), Principal Dee Froster, that they saw a senior student handing a pill to May Hemm, an 18-year old student at the school. That afternoon, at approximately 1:30 p.m., VP Froster called Ms. Hemm into her office to discuss the matter. Ms. Hemm told VP Froster that the pill she was handed was an over-the-counter Tylenol. VP Froster told Ms. Hemm that the new policy strictly forbade any drug on campus, including over-the-counter medicines and instructed her to contact her parents.

As Ms. Hemm reached into her purse to retrieve her phone, a bag of small pills fell out. VP Froster alleged these were Ecstasy or MDMA (commonly known as "Molly"). She then demanded a further search of Ms. Hemm and ordered her to remove all her clothing, except for her underwear and bra. VP Froster conducted a manual search of Ms. Hemm's clothing, and when she did not find anything, instructed Ms. Hemm to jump up and down and shake her chest and abdomen to dislodge any additional pills. None were found. After the search was complete, VP Froster told Ms. Hemm to get dressed and wait in the lobby while she called her parents.

On Monday, February 10, 2025, VP Froster met with Ms. Hemm's parents in her office to inform them that Ms. Hemm would be suspended for one week, except that she could continue participating in volleyball provided she stayed out of further trouble.

## IV. Discussion

### School Strip Search Under Federal Law

The first issue is whether, under federal law, a public high school administrator may legally conduct a strip search of a student in the administrator's office based on a reasonable suspicion of drug possession in violation of school policy.

The Fourth Amendment of the United States Constitution states:

> *"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."*

In *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969), two high school students and a middle school student wore black armbands to protest the Vietnam War after the school district learned of their plans and implemented a policy against it. Several important rulings emerged from this case, establishing a foundation for future cases concerning schools and students' constitutional rights.

Supreme Court Justice Hortas authored three significant opinions in *Tinker*. First, students and teachers do not shed their constitutional rights at school. *Id*. at 506. Second, the opinions addressed their rights under the Fourteenth Amendment against the State and its agents, including the Board of Education. *Id*. at 507. Finally, it was ruled that schools do not have absolute authority over students, affirming they are "persons" under the Constitution with the same fundamental rights as all citizens. *Id.* at 511.

In 1985, the U.S. Supreme Court addressed a significant case concerning students' Fourth Amendment rights pertaining to intrusions and reasonable searches conducted by public school officials. In *New Jersey v. T.L.O.*, 469 U.S. 325, 332-36, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985), school officials searched a student's belongings. Justice White determined that, while students are shielded from unreasonable searches under the Fourth Amendment, the search in question was found to be reasonable. He noted that assessing the reasonableness of any search involves a dual inquiry: first, whether the action was justified at its outset, and second, whether the manner of the search was appropriately related to the circumstances that warranted the intervention, given that school officials had reasonable suspicion based on existing evidence. Consequently, the Court concluded that a school official should evaluate reasonableness by considering: a) if the search was justified at its inception; and b) whether it was reasonably related to the original justification for the search. *Id.* at 341.

In 2009, the U.S. Supreme Court ruled on a case in which the mother of a middle school student sued the school district, the school, the principal, and the assistant administrator under civil action for deprivation of rights (42 U.S.C. § 1983), alleging a violation of her daughter's Fourth Amendment rights. This case centered on the student's strip search, prompted by suspicions of distributing contraband drugs on school premises. After an initial search of her purse revealed contraband, she was instructed to remove her clothing down to her bra, lift its bottom, and pull out her underwear elastic, but no drugs were found. Justice Souter ruled that while the search of the student's belongings was reasonable at first, based on the principal's credible evidence, the strip search was excessive, considering the student's age and gender. *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 372-75, 129 S. Ct. 2633, 174 L. Ed. 2d 354 (2009). Therefore, the scope of the search is deemed permissible when it is "not excessively intrusive in light of the age and gender of the student and the nature of the infraction."

The Constitution protects students, and school staff do not have absolute authority over them. As stated in *Tinker*, students and school staff do not leave their Constitutional rights at the school's front gate. Federal law permits strip searches with reasonable suspicion at their inception, but only if the strip search itself does not exceed what is reasonable for a normal

person considering a student's sex and age. In *Redding*, Justice Souter ruled that unclear strip search laws provided the school with qualified immunity. Therefore, Ms. Hemm's right to privacy is protected under the Fourth Amendment, and the Court may rule in her favor if they find the strip search excessive in light of her age and sex. However, because most courts rule that school officials have qualified immunity, she may not be able to sue the school officials.

In conclusion, it depends on whether, under federal law, a public high school administrator can conduct a strip search of a student if two factors are met: a) suspicion was justifiable in its inception, and b) the strip search was reasonable as it relates to the extent of suspicion, and is not excessive in light of a student's sex and age.

**School Strip Search Under State Law**

The second issue is whether, under State law, a public high school administrator may legally conduct a strip search of a student in the administrator's office based on reasonable suspicion of drug possession in violation of school policy.

The Declaration of Rights of the State of Washington protects its citizens in almost the exact same way as the U.S. Constitution does. Washington Constitution Article 1 § 7 is similar to the Fourth Amendment in that it protects a person's private affairs and home from unreasonable search without the authority of law.

State law allows searches of a student's locker or personal belongings when school staff have reasonable grounds to suspect that the search will uncover illegal contraband according to state laws or school rules. A search is required if the student is suspected of carrying a firearm or deadly weapon. RCW 28A.600.230(1). The search is permissible if it satisfies a two-fold test: a) the search is reasonable in its inception, and b) it is not excessive based on the student's age and sex. *Id*. at § 2(a)(b). However, no principal, vice principal, or other school staff acting under their authority may subject a student to a strip search or body cavity search. *Id*. at § 3.

The State defines a strip search as one that requires a person to remove a part or all of his or her clothing so that parts of or all of their naked body can be examined, including, in the case of a female, a search to her underwear and bra. RCW 10.79.070(1).

The State Supreme Court has determined that the factors for assessing whether school officials have reasonable grounds to believe a search of a student is necessary include the child's age, history, and school record; the likelihood and seriousness of the issue; the urgency of conducting the search; and the evidence supporting the search justification. *State v. McKinnon*, 88 Wn.2d 75, 81, 558 P.2d 781 (1977).

In Washington, a search of a student's belongings or locker may be allowable if school officials determine that it is justifiable in its inception and not excessively intrusive in light of the student's age or sex. School officials are required to determine whether a search is reasonable

using several factors, including the child's age and school record. However, it is never permissible for a school official to conduct a strip search of a student, which includes clothes down to underwear and bra for a female student.

In conclusion, under State law, a public high school administrator may not legally conduct a strip search of a student in the administrator's office based on a reasonable suspicion of drug possession in violation of school policy.

## VI. Conclusion

To conclude, under Federal law, whether a school official may conduct a strip search on a student depends. If the school's search was reasonable in its inception and the strip search was not excessive in light of a student's age or sex, then it is permissible. In Washington, a strip search conducted by a school official or staff acting under the official's authority may not conduct a strip search of a student.