



High Court Sweeps Aside School Drug Case

Standing issues prevent discussion of constitutional issues

By **STEPHANIE REITZ**

Associated Press

Connecticut's Supreme Court has dismissed a couple's lawsuit over a random sweep with a drug-sniffing dog in their daughter's high school, letting stand a lower court ruling that says the practice is legal.

But the justices never had a chance to address the core questions about students' constitutional protections and whether the surprise sweeps infringe on parents' rights to guide their children's upbringing.

The high court said it had to dismiss Harold and Marianne Burbank's 2009 lawsuit because their daughter graduated last spring from Canton High School, giving them no legal standing to challenge school policies that no longer affect them.

The court's unanimous decision lets stand a lower court's ruling that said school officials have the right and obligation to eliminate drugs and contraband, and that students don't have the same privacy expectations on school property as elsewhere.

It also said that for constitutional purposes, a random "sweep" isn't the same as a "search," for which particular standards apply under the Fourth Amendment.

Several courts nationwide and the U.S. Supreme Court have made similar rulings over the years.

Patrice McCarthy, general counsel for the Connecticut Association of Boards of Education, said several towns either conduct random drug sweeps on school property or warn families in their student handbooks of the possibility.

"We've seen in the past, as in this case, courts trying to show deference to local school officials and acknowledge their responsibility for the safety and welfare of

all students," she said. "The priority is protecting student safety within the confines of the law."

Lockers And Cars

Harold Burbank, an attorney who represented himself and other parents in the lawsuit, did not return a call from the Associated Press seeking comment. Peter Murphy, the Canton school district's attorney, said he had no comment on the court's action.

But in the school district's brief to the state Supreme Court, attorney Peter Murphy, of Shipman & Goodwin in Hartford, argued: "The Board's policies do not violate the constitutional rights of students in the Canton Public Schools. To the contrary, they appropriately balance the students' rights against the Board's obligation to provide a drug-free, safe educational environment."

The lawsuit stemmed from random sweeps in Canton's high school and middle school in June 2008, in which school ad-



Law Tribune File Photo

Attorney Peter Murphy argued the Canton school district's sweeps actually protected the rights of students to be educated in a drug-free environment.

ministrators asked police with drug-sniffing dogs to check students' lockers and cars.

Students were kept in their classrooms – which opponents questioned as potentially unreasonable restraint under the constitution – and the schools were locked down.

Fifteen students were pulled from classes to watch as officers searched their lockers or cars. One teen was arrested when the dogs detected stems and seeds of marijuana

in an eyeglasses case in her vehicle.

The Burbanks and two other parents sued in spring 2009, asking the courts to either prohibit the random sweeps or force the district to inform parents at least 48 hours in advance.

The Connecticut chapter of the American Civil Liberties Union has criticized the random searches, saying drug-sniffing dogs are better suited to crime scenes and that bringing them into schools creates an atmosphere in which students feel like suspects.

A Superior Court judge ruled in the

school district's favor in fall 2009. One of the other two original plaintiffs with the Burbanks later withdrew from the suit, and the second did not join them in the Supreme Court appeal.

Justices noted that if she had, the court could have addressed the core questions since her child is still young enough to be in school and affected by the policies.

The U.S. Supreme Court has said school officials need a "reasonable suspicion" to justify a search, a lower standard than the probable cause or warrant that police must

have. But activities like the random Canton sweep also often haven't been considered "searches" in the manner addressed by the Connecticut and U.S. constitutions.

"In general, the Supreme Court hasn't applied the same constitutional standards to searches in schools as it does in other circumstances, on the theory that the state and schools have an interest in maintaining the integrity of the education process," said Richard Kay, a University of Connecticut constitutional law professor. ■