

109TH CONGRESS
2^D SESSION

H. R. 5295

To protect students and teachers.

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2006

Mr. DAVIS of Kentucky (for himself, Mr. KIRK, and Mr. KUHL of New York) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To protect students and teachers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student and Teacher
5 Safety Act of 2006”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The United States Department of Edu-
9 cation’s National Center for Education Statistics re-
10 ported in the 2005 Indicators of School Crime and
11 Safety that between 1993 and 2003, 17 percent of

1 students in grades 9–12 reported they carried a
2 weapon, with 6 percent reporting they had brought
3 one into school.

4 (2) The same survey reported that 29 percent
5 of all students in grades 9–12 reported that someone
6 offered, sold, or gave them an illegal drug on school
7 property within the last 12 months.

8 (3) The Supreme Court held that the judg-
9 ments of school officials are immune from suit only
10 as long as courts find that student searches do not
11 violate clearly established statutory or constitutional
12 rights (*Harlow vs. Fitzgerald* (1982)).

13 (4) The United States Constitution’s Fourth
14 Amendment guarantees “the right of the people to
15 be secure in their persons, houses, papers, and ef-
16 fects, against unreasonable searches and seizures”.

17 (5) That while the Supreme Court affirmed the
18 Fourth Amendment’s application to students in pub-
19 lic schools in *New Jersey vs. TLO* (1985), the Court
20 ruled that searches of students do not require war-
21 rants issued by judges showing probable cause. The
22 Court held that a search was permissible if—

23 (A) there are reasonable grounds for sus-
24 pecting the search will reveal evidence that the
25 student violated the law or school rules; and

1 (B) the measures used to conduct the
2 search are reasonably related to the search’s ob-
3 jectives, without being excessively intrusive in
4 light of the student’s age, sex, and nature of
5 the offense.

6 (6) The Federal court in the Eastern District
7 of Virginia later ruled that the smell of marijuana
8 did not provide reasonable suspicion to search book
9 bags, purses, and pockets (Burnham vs. West
10 (1987)) and the Florida Appellate Court ruled that
11 students huddled together with money and goods did
12 not justify a search (A.S. vs. State of Florida
13 (1997)).

14 (7) The Supreme Court noted the difficulty in
15 defining a “reasonable suspicion” to permit student
16 searches writing “articulating precisely what reason-
17 able suspicion means ... is not possible. Reasonable
18 suspicion is a commonsense, nontechnical conception
19 that deals with the factual and practical consider-
20 ations of everyday life on which reasonable and pru-
21 dent men, not legal technicians act (Orleans vs.
22 United States (1996))”.

23 (8) That while the Supreme Court held that po-
24 lice officers must have warrants issued by judges
25 based on probable cause to search students (Orleans

1 vs. United States), lower courts are divided on the
2 standards applied to school security officials. In the
3 Interest of Angelia D.C. (1997) a Wisconsin court
4 held police officers in schools did not need a warrant
5 while in State of New Hampshire vs. Heirtzler
6 (2000), the Supreme Court held that they did.

7 (9) The Ninth Federal Circuit ruled that a
8 school could not use drug-sniffing dogs unless school
9 officials showed an individualized, reasonable sus-
10 picion for each student. Prevention of drug abuse
11 did not justify searches using dogs because it
12 intruded on a child's expectation of privacy in school
13 (B.C. vs Plumas Unified School District (1999)).

14 (10) The Seventh Federal Circuit struck down
15 drug tests applied to students suspended for fighting
16 (Willis vs. Anderson School Corp. (1998)), or in the
17 Federal Eastern District of Texas for the general
18 student population (Tannahil vs. Lockney Inde-
19 pendent School District (2001)).

20 (11) The Supreme Court held in Earls vs.
21 Board of Education of Tecumseh Public School Dis-
22 trict (2002) that random drug testing was "reason-
23 able" and did not violate the Fourth Amendment.
24 The Court also held schools served as "guardian and
25 tutor", could exercise "greater control than those for

1 adults” and had “important interests” in the health
2 and safety of students. The Court finally held that
3 schools did not need to show an “individualized sus-
4 picion” nor a “demonstrated problem of drug abuse”
5 and there was no “threshold level” of violation that
6 needed to be satisfied.

7 (12) Based on the Supreme Court’s ruling in
8 Harlow, the enactment of a clear federal statute de-
9 fining “established statutory and constitutional
10 rights” would help to insulate teachers and school
11 officials who conduct student searches from lawsuits.

12 (13) While policies are best chosen by local
13 school boards, policies governing student searches
14 and seizures have been set federally and can only be
15 properly defined and upheld by congressional stat-
16 ute.

17 (14) By applying the Court’s standards affirm-
18 ing a school’s guardian role to not require a thresh-
19 old of violation in Earls, the Congress can clearly
20 define the rights of teachers and school officials to
21 ensure their classrooms are not just free from drugs
22 but also weapons.

23 **SEC. 3. SEARCHES ON COLORABLE SUSPICION.**

24 (a) IN GENERAL.—Each State, local educational
25 agency, and school district shall have in effect throughout

1 the jurisdiction of the State, agency, or district, as the
2 case may be, policies that ensure that a search described
3 in subsection (b) is deemed reasonable and permissible.

4 (b) **SEARCHES COVERED.**—A search referred to in
5 subsection (a) is a search by a full-time teacher or school
6 official, acting on any colorable suspicion based on profes-
7 sional experience and judgment, of any minor student on
8 the grounds of any public school, if the search is conducted
9 to ensure that classrooms, school buildings, and school
10 property remain free of all weapons, dangerous materials,
11 or illegal narcotics.

12 **SEC. 4. ENCOURAGEMENT TO PROTECT STUDENTS AND**
13 **TEACHERS.**

14 (a) **IN GENERAL.**—A State, local educational agency,
15 or school district that fails to comply with section 3 shall
16 not, during the period of noncompliance, receive any Safe
17 Schools and Citizenship Education funds after fiscal year
18 2008.

19 (b) **DEFINITION.**—In this section, the term “Safe
20 Schools and Citizenship Education funds” includes any
21 funds under any of the following provisions of the Elemen-
22 tary and Secondary Education Act of 1965:

- 23 (1) Subpart 3 of part C of title II.
24 (2) Part A of title IV.

1 (3) Subparts 2, 3, and 10 of part D of title V.

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