

THE  
NATIONAL LAW REVIEW

---

## Federal Appeals Court Holds That Public School District May Drug Test Substitute Teacher Applicants

---

Sunday, January 6, 2019

A federal appeals court has held that a public school district may drug test applicants for substitute teacher positions, concluding that such testing does not violate the Fourth Amendment's prohibition against unreasonable searches and seizures. [Friedenberg v. School Bd. Of Palm Beach County](#), 9:17-cv-80221-RLR (11<sup>th</sup> Cir. Dec. 20, 2018).

Joan Friedenbergr applied for a position as a substitute teacher in the Palm Beach County School District. Among other things, the School District required her to take and pass a pre-employment drug test. She refused to do so. Friedenbergr subsequently sued the School Board in federal court, claiming that the suspicionless drug testing of applicants violated the Fourth Amendment. She sought class action relief, describing the putative class as including "all job applicants for non-safety-sensitive positions with the Palm Beach County School District." She sought declaratory and injunctive relief. The district court denied injunctive relief, noting that the School Board had established a "special need" to conduct drug testing of substitute teacher applicants because even "a momentary lapse of attention . . . could be the difference between life and death," and that the balance of the interests weighed in the School Board's favor. Friedenbergr appealed.

In reviewing whether injunctive relief was appropriate, the Court first analyzed whether there was a substantial likelihood of success on the merits, *i.e.*, whether the drug testing constituted an unreasonable search and seizure in violation of the Fourth Amendment. Given that the drug test was conducted without individualized suspicion, the School Board was required to demonstrate a "special need" to conduct the drug testing. The Court agreed with the School Board that a "special need" existed, given that the School Board has a "compelling interest in ensuring that teachers - including substitutes - are not habitual drug users." Among other things, the Court focused on the safety-sensitive aspects of the substitute teacher's job, including: being alone with students; monitoring students for safety purposes such as preventing or stopping fights; reporting and addressing hazards or other unsafe circumstances; detecting and promptly responding to student health issues; detecting and reporting student drug use or possession; and reporting suspected child abuse.

Once the "special need" was established, the Court then weighed the competing private and governmental interests implicated by the search. Noting that public school teachers "enter a heavily regulated field with diminished privacy expectations," the Court examined the testing protocol adopted by the School District and the efficacy of the testing regime. The drug testing was performed in accordance with the requirements of the Florida Administrative Code, Fla. Admin. Code R. 59A-24.005(3), and pursuant to the School District's written policy. The Court concluded that the urine drug testing regime was "minimally intrusive" and that the School District had a "compelling interest" in weeding out applicants who abuse drugs "in order to better achieve the basic safety and tutelary obligations of our schools."

In sum, the Court held: "[a]s we see it, ensuring the safety of millions of schoolchildren in the mandatory supervision and care of the state, and ensuring and impressing a drug-free environment in our classrooms, are compelling concerns. Because we recognize today a special need to conduct such testing, and because the balance of interests weighs heavily in its favor, we hold that the suspicionless testing of substitute teacher applicants in Palm Beach County is permissible. . . ."

**jackson lewis.**

Article By [Jackson Lewis P.C.](#)  
[Kathryn J. Russo](#)  
[Drug and Alcohol Testing Law Advisor](#)  
[Blog](#)  
[Labor & Employment](#)  
[Litigation / Trial Practice](#)  
[11th Circuit \(incl. bankruptcy\)](#)

**Source URL:** <https://www.natlawreview.com/article/federal-appeals-court-holds-public-school-district-may-drug-test-substitute-teacher>