

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

D. H., a minor by his)
mother ANGELA DAWSON;)
))
Plaintiff,)
))
vs.)
))
CLAYTON COUNTY SCHOOL DISTRICT;)
CHIEF KEMUEL KIMBROUGH,)
of the Clayton County Sheriff's Office,)
individually,)
Former Eddie White Academy)
ASSISTANT PRINCIPAL)
TYRUS MCDOWELL, individually,)
Former SCHOOL RESOURCE OFFICER)
RICKY REDDING, individually;)
))
Defendants.)

CIVIL ACTION
FILE NO. _____

COMPLAINT

COME NOW Plaintiff, D.H., a seventh grader formerly at Eddie White Academy, and brings this lawsuit to recover damages and for the degrading strip search he endured -- without any individualized suspicion or probable cause.

JURISDICTION

1.

This action arises under the authority vested in this Court by virtue of 42 U.S.C. §§ 1983 & 1985, 28 U.S.C. § 1331, 28 U.S.C. §§ 2201 & 2202, 28 U.S.C. § 1343(3) and 28 U.S.C. § 1367 (pendent jurisdiction). Venue is appropriate under 28 U.S.C. § 1391.

PARTIES

2.

Plaintiff, D.H., was a seventh grader at Eddie White Academy and sues through his mother, Angela Dawson.

3.

Defendant, CLAYTON COUNTY SCHOOL DISTRICT may be served by Dr. Edmund Heatley, Superintendent, Clayton County Board of Education, 1058 Fifth Avenue, Jonesboro, Georgia 30236.

4.

Defendant, Chief KEMUEL KIMBROUGH is sued individually for supervisory liability and may be served by Clayton County Sheriff's Office 9157 Tara Boulevard, Jonesboro, Georgia 30236.

5.

Defendant TYRUS MCDOWELL, is the former Assistant Principal of Eddie White Academy and is sued in his individual capacity.

6.

Defendant RICKY REDDING, was an School Resource Officer with the Clayton County Police Department and is sued individually.

FACTUAL ALLEGATIONS

7.

On February 8, 2011, three students (Darian Voglsya, Rodriques Collier and Tafar Davis) were suspected of having marijuana on school property and were strip searched.

8.

One of those students, Mr. Collier, falsely told the school resource officer that Plaintiff-D.H. and another student had marijuana. The other student, Anferenee Drake, was, on information and belief, strip searched and no marijuana was found.

9.

D.H. was then brought to the Vice Principal's office. Present were Resource Officer Redding, Vice Principal McDowell, and students Darian Voglsya, Rodriques Collier and Tafar Davis.

10.

D.H.' pockets and book bag were searched, and no contraband was found.

11.

Mr. Collier then admitted he had lied and informed the school resource officer and vice principal not once, but twice, that D.H. had no contraband. The resource officer responded "why didn't you tell me this before we brought him into the office." Nevertheless, D.H. was not allowed to return to his classroom.

12.

Despite (1) having found no contraband in less intrusive searches, (2) the accuser's accusations having proven untrue as to another student strip searched and (3) the accusers twice admitting that he lied that D.H. had contraband - the strip search proceeded without individual suspicion, reasonable suspicion or probable cause.

13.

D.H. begged to be taken to the bathroom for the search, but that request was denied.

14.

D.H.' family was not called or informed in any way before the search.

15.

In the presence of the Vice Principal, school resource officer and three students, D.H. was ordered to take off his pants, shirt, socks and underwear to a point where he was fully nude. Stripped naked, in the presence of school personnel and students, no contraband was found.

16.

D.H. was degraded, traumatized, embarrassed, humiliated and profoundly affected by the Defendants' actions causing fear, anguish and emotional distress which inhibits his personal and educational growth and progress as well as ability to trust persons in positions of authority and adults in general. He now carries a nickname "Superman" for his underwear worn that day, and is taunted by other students for having been stripped searched and (wrongly) suspected of drug activities.

17.

The strip searches were done intentionally, willfully, wantonly, maliciously, recklessly, sadistically, deliberately, with callous indifference to their consequences and/or with gross negligence which was the proximate cause of harm to the students.

18.

In *Safford United School District #1 v. Redding*, the Supreme Court clearly established and definitively held that school officials may not perform even a partial strip search of a student in an effort to locate drugs not permitted on school grounds even if they have probable cause to do so. 129 S.Ct. 2633 (2009); see also *Knisley v. Pike Cty. Joint Vocational Sch. Dist.*, 604 F.3d 977 (6th Cir. 2010) (no qualified immunity for strip search of students for missing credit cards and other items).

19.

In the wake of *Safford*, and even before, district courts in this Circuit have twice rejected qualified immunity claims for strip searches in non-weapons cases. In *Foster v. Raspberry*, Judge Land found that the prior Eleventh Circuit decision in *Thomas v. Clayton County School District* “put Defendants on notice that the search of King violated King's Fourth Amendment rights.” 652 F.Supp.2d 1342 (M.D. Ga. 2009) (citing *Thomas*, 261 F.3d 1160, 1167 (11th Cir.2001), vacated, 536 U.S. 953 (2002), reinstated, 323 F.3d 950 (11th Cir.2003)); *H.Y. v. Russell Cty. Bd. of Educ.*, 490 F.Supp.2d 1174, 1189 (M.D. Ala. 2007) (rejecting qualified immunity in student strip search case).

20.

In *Thomas*, the Clayton County School District employees were found to have conducted over a dozen unconstitutional strip searches of students. Since the decision in *Thomas*, no corrective action was taken in training or policy to prevent future similarly unconstitutional searches.

21.

On March 17, 2011, Officer Redding was terminated for conduct unbecoming an officer, neglect of duty and lack of truthfulness for acts in connection with this incident including giving two “totally different” stories about what happened in the course of multiple interviews. The Department investigation stated there was a “strip search of several juveniles” where students “were in the same room together,” “instructed to disrobe” and had “private parts exposed.” The investigation noted “discrepanc[ies] ... as to who ordered and directed the searches.”

22.

While Officer Redding claimed to receive 4-5 hours of training for his position as a School Resource Officer, the Department investigation revealed he had received no SRO training whatsoever. Chief Kimbrough is the final decisionmaker for all training of his officers. The lack of training about the role of an SRO and the constitutional obligations in conducting searches of students was a moving force for

Hastings injuries. This amounted to deliberate indifference particularly given that a prior lawsuit alleged that such lack of training caused what federal courts held was an unconstitutional strip search of an entire Clayton County School District class by a school resource officer. Officer Redding in fact stated in the investigation that it was his "understanding" based upon his training that the a principal could strip search a student for "suspected" drug use.

23.

On February 11, 2011, Assistant Principal McDowell was placed on administrative leave as a result of the strip searches. An investigation concluded that the strip searches were both improper and that it "resulted in the students exposing their genitals." On information and belief, McDowell subsequently resigned.

24.

Other strip searches have occurred within the Clayton County School District, and been found to be unconstitutional by federal appellate courts. With deliberate indifference, no policy was ever developed regarding strip searches or when personal bodily searches may be conducted. The only policy addressing searches of students is Clayton County Policy JD-R(1). This policy fails to address intrusive physical searches of students, does not require individual suspicion and permits

intrusive bodily searches for “prohibited” items that present no safety danger or other immediate need. This policy is in sharp contrast with that of other local school districts, many of which bar strip searches or place sharp limitations which allow them only where students safety problems are imminent.

25.

The Clayton County School District, and Chief Kimbrough were the final decision makers for policies, practices, customs and procedures which were a moving force for the suspicionless strip searches of plaintiff and others. These policies, practices, customs and procedures were developed with negligence, and gross and deliberate indifference to the rights of the students.

26.

The Clayton County School District and Chief Kimbrough were deliberately indifferent in failing to instruct, supervise, discipline and/or control the individual defendants in conducting school strip searches and that failure was a moving force for the unconstitutional suspicionless strip searches of the plaintiff-student.

27.

D.H. filed a Ante-Litem Notice of Claim, but no resolution transpired.

CLAIMS FOR RELIEF

Federal Causes of Action

28.

The actions of the defendants deprived D.H. of his rights to privacy, and to be secure in their persons and to be free from unreasonable searches and seizures as protected by the Fourth and Fourteenth Amendments of the United States Constitution.

State Causes of Action

29.

The actions of the defendants deprived D.H. of his rights to be free from unreasonable searches and seizures under Ga. Const. Art. I, Sec. I, Par. XIII & XVII.

30.

The actions of the defendants deprived the students of their rights to privacy under Ga. Const., Art. I, Sec. I, Par. I.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff prays that this Court grant the following relief:

- (1) Compensatory damages for in an amount to be determined by the trier of fact;
- (2) Punitive damages against McDowell and Redding and according to federal and state law;
- (3) Expungement of all student records concerning these searches;
- (4) Reasonable attorneys fees, expenses and costs of litigation pursuant to 42 U.S.C. § 1988 and other applicable laws;
- (9) Such further relief as this Court deems just and proper.

A JURY TRIAL IS REQUESTED.

DATED: This the 15th day of February, 2012.

Respectfully submitted,

/s/ Gerald Weber

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