BEARD LEGAL GROUP
EDUCATION LAW REPORT
Published in Cooperation with the Pennsylvania School Study Council, Inc.

April 2022

Strip Search – Not So Fast

The Eleventh Circuit Court of Appeals recently addressed the issue of school officials conducting strip searches of students in T.R. v. Lamar Cnty. Bd. of Educ., No. 21-12424 (11th Cir. Feb. 4, 2022). This case marks the most recent application of the United State Supreme Court's precedential decision in Safford Unified Sch. Dist. v. Redding, 557 U.S. 364 (2009) regarding student strip searches and the Fourth Amendment's protections from unreasonable searches and seizures.

The events of the T.R. case occurred at the beginning of the 2018-2019 school year, at which time T.R. was an eighth-grade female student with an IEP. One of T.R.'s classmates complained regarding the smell of marijuana in a classroom, which was relayed to administration and subsequently prompted the classroom to be sequestered and each student's belongings searched. The principal and vice principal conducted the initial student searches, which uncovered drug paraphernalia in T.R.'s backpack. The paraphernalia included "marijuana stems, marijuana seeds, rolling paper, two lighters, and an assortment of [loose] pills," but did not include actual marijuana. The administrators directed T.R. to the guidance office and the female principal and counselor conducted a strip search, but did not obtain superintendent approval prior to conducting the strip search, as required by their school board policy. The strip search included directives such as lifting her breasts, spreading her legs, and bending over, but yielded no additional drugs or drug paraphernalia. Thereafter, the school contacted T.R.'s mother, who arrived at the school shortly thereafter. At this time, the school conducted a second strip search of T.R. with the same directives. This second search similarly produced no additional drugs or drug paraphernalia. Both of these searches occurred in an office area with a door window leading directly into a school hallway. Although T.R. conceded that she regularly used marijuana, she denied that she was currently in possession of it; however, her teacher found a used marijuana cigarette, or a "joint," under T.R.'s desk the next day.

T.R. filed a federal claim against both the school district and school officials, alleging violations of the Fourth Amendment, invasion of privacy, and outrage. The District Court lamented the events that lead to the court action, but found that the school officials were shielded from all liability due to qualified immunity. On appeal, the Eleventh Circuit resoundingly rejected the District Court's theory of qualified immunity, citing the Safford decision.

In Safford, the Supreme Court applied its two-prong test for assessing student searches from T.L.O. v. New Jersey, 469 U.S. 325 (1985) to student strip searches. The two-prong test requires that the search (1) "be 'justified at its inception' by reasonable suspicion…" and (2) use measures that are "reasonably related

(Continued on Next Page)

Inside …

Strip Search - Not So Fast

...Continued

to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." In applying this test, the Eleventh Circuit concluded that the district and school officials failed both prongs.

First, the search was not justified at its inception because the record did not reflect any reason for school officials to believe that the drugs or drug paraphernalia either presented a danger or were concealed in T.R.'s underwear. Second, the school officials' decision to strip search T.R. twice and in front of a window "exposed [T.R.] to an unnecessary level of intrusion that rendered the search excessive in scope, and, therefore, unconstitutional."
Accordingly, what amounts to an erroneous hunch cannot serve as adequate justification for such an extraordinary intrusion. The school district and school officials argued to preserve the finding of qualified immunity, claiming that their actions were among their discretionary powers and their violations of school board policy do not undermine qualified immunity because such policies are more akin to guidelines. The Eleventh Circuit was unimpressed with these arguments: "…the school board policy is not a guideline, which, if not followed, would have no impact on a school official's entitlement to State-agent immunity. Rather, the policy is a detailed set of rules and regulations." The Court reversed on all charges and remanded the case back to the District Court for further proceedings.

These cases serve as a cautionary tale regarding the use of strip searches on students, but do not serve as an absolute prohibition, as evidenced by a Pennsylvania case from 2018: Highhouse v. Wayne Highlands Sch. Dist., 3:16-cv-00078 (M.D. Pa. Sep. 24, 2018).

Search of Student Found Constitutional

In contrast with the preceding cases, Highhouse v. Wayne Highlands Sch. Dist. represents a case in which the limited strip search of a student was found to be constitutional. In this case, Highhouse was granted permission by his gym teacher to return to the locker room early to prepare for a scheduled IEP meeting with his parents. While in the locker room unsupervised, Highhouse found another student's wallet and took at least $150.00 before he proceeded to his IEP meeting. The other student reported the theft promptly upon discovering it when he returned to the locker room. The gym teacher relayed the incident and his suspicions of Highhouse (due to his unmonitored time in the locker room) to administration.

The principal questioned Highhouse regarding the stolen money and asked Highhouse to empty his pockets and lift his pant legs; Highhouse denied he stole the money and the search yielded no results. Thereafter, Highhouse was asked to wait in the office area, where "in plain view of office staff" he extracted the money and "stuffed it down his underwear." These observations were relayed to the principal, who questioned Highhouse further, but Highhouse continued to deny the allegations.

Thereafter, the administration conducted a limited strip search of Highhouse in accordance with District policy. The principal enlisted the gym teacher, a teacher who is the same gender as Highhouse, to partake in the search. The search took place in a closed area, in a non-contact manner, and did not extend beyond the removal of the outer clothes. The principal observed "a green wad" of money in the waistband of Highhouse's underwear and instructed him to relinquish it. Thereafter, Highhouse's mother was notified of the incident, but were not initially informed of the strip search.

Highhouse filed a federal claim against the school district and school officials, alleging violations of his rights under the Fourth, Fifth, and Fourteenth Amendments. The District Court granted summary judgment in favor of the school district and school officials after analyzing the foregoing circumstances under Safford. The Court emphasized the details of the search in its rationale, finding the searches of Highhouse to be constitutional. The Court reasoned that the initial search was justified at its inception by the circumstances compounded with the gym teacher's observations. This search also only entailed the emptying of pockets and raising of pant legs, which do not represent an excessively intrusive search for a high school boy accused of stealing

money. Thereafter, this reasonable suspicion was increased by the office staff's observations, which segued to the strip search. The observations marked a particularized suspicion based on observation that the contraband was concealed in Highhouse's underwear. But the school officials still limited the scope of the strip search to only insofar as was necessary and conducted it while making several efforts to afford Highhouse decency and dignity.

These cases serve as a cautionary tale regarding searches of students. Strip searches are an extraordinary measure only to be utilized in correspondingly extraordinary circumstances. Ultimately, if confronted with this issue, it is critical to (1) have a reasonable suspicion—with an emphasis on articulable details—before conducting the search; (2) limit the magnitude of the intrusion by taking steps to protect everyone involved and extending the search only so far as the circumstances support; and (3) consult with the Superintendent's office or School Solicitor before proceeding.

Practice Note: All school entities are encouraged to ensure their school district policies and administrative regulations, as well as the student handbooks, are up to date regarding this issue.

Federal Court Upholds Parent's Ban from Athletic Events and District Property

McNett v. Jefferson-Morgan School District 2021 WL 5505849 (W.D. Pa. 2021)

Jefferson-Morgan School District, like many Pennsylvania school districts who are a part of PSBA's Policy Service, has what some might refer to as a "Fan Decorum" Policy. In this case, the District's Policy is entitled "Public Attendance at School Events."

In this particular case, the parent of a high school football player was issued a ban that prohibited him from entering School District grounds and buildings and/or attending or participating in school sponsored or sanctioned events.

According to the decision, Virgil McNett had been warned on several occasions regarding his interactions with School District officials and/or the coach that the District considered "loud, profane, aggressive, and disruptive conduct." The incident that resulted in the ban occurred on September 18, 2020 while picking up his son after a football game.

Parents were waiting for buses to arrive in the District's parking lot after an away football game when Mr. McNett approached the football coach and asked him to resign.

As a result of same, the District Superintendent sent a letter to the parent explaining that his "most recent disruptive and inappropriate behavior which occurred on September 18, 2020 in the presence of students and was directed at coaches, along with earlier instances of similar behavior at school events, have left the school district with no choice but to prohibit you from coming to school district grounds and attending events. Bullying, intimidation, physical and verbal aggression, and the repeated use of profanity have no place on our campus."

Although Mr. McNett's request that the ban be lifted was denied, the District did, however, give permission to the parent to attend some events while the ban was in place.

The parent threatened the School District with legal action and ultimately filed a Motion in Western District Federal Court for a preliminary injunction seeking to lift the ban. The parent alleged in his motion that his First and Fourteenth Amendment rights were violated. The Complaint also contained a claim for defamation.

According to the Complaint, the District's actions have:

- Prevented Plaintiff from coaching at the district's football field for his youth league practices or events.
- Put Plaintiff in a position where he cannot respond to emergency issues with his children who attend Defendant's school, as Plaintiff cannot come to pick up his children from the school.
- Plaintiff will be unable to see his son's senior football season or attend his son's graduation.

(Continued on Next Page)

Federal Court Upholds Parent's Ban from Athletic Events and District

...Continued

In denying the parent's request for a preliminary injunction, the Court found that the parent, despite discussions with school officials, "continued to act in, at best, a disrespectful, disruptive, and intimidating manner towards the football team coaching staff."

After all the dust settled, the Court found that the evidence and testimony established that the parent's disruptive and aggressive behavior resulted in restricted access to school property. Based on all of the evidence submitted, the Court denied the Motion for Preliminary Injunction.

This case is an important case for school districts and administrators alike. Everyone is aware that school district policy is the cornerstone to smooth and orderly operations of the school district. In this case, the District had established a Policy that was made known to staff, student athletes, and parents alike.

In the long run, a well-drafted policy on the topic of fan decorum proved successful to the district in defending a federal complaint.

Practice Note: School Districts should review their policies to ascertain whether they do, in fact have such a policy or statement outlined within a Student Code of Conduct or a Student Athlete Handbook that addresses this particular issue. Having such a policy can help prevent a successful challenge to a parent being banned from school property and/or attending school athletic events.

Each year, schools in the months of April and May look to revise their Student Athlete Handbooks and/or Student Code of Conduct. Consideration should be given to incorporating some type of Fan Decorum procedure into the Handbooks as well as ensuring that there is an overall school district policy in place to further back up the content of the Student Code of Conduct and/or Athletic Handbook.

Beard Legal Group PC can assist in developing school district policy and review student discipline and athletic handbooks with a view toward minimizing and/or preventing litigation claims against a district.

Presentation at Annual COSA Conference

Carl P. Beard and Jennifer L. Dambeck were honored to be invited to present at the Council of School Attorneys Conference in San Diego on March 31, 2022. Attorney Beard and Attorney Dambeck presented to attorneys from across the country on "Pandemic Problems: Struggling with Student Mental Health." Attorney Beard and Attorney Dambeck were also invited to speak at the 2020 Conference on "Protection from Abuse Orders: A School Solicitor's Newest Challenge."

Beard Legal Group Education Law Report

As solicitors, labor counsel and special counsel, Beard Legal Group represents more than 80 School Districts in Pennsylvania. The Firm has successfully negotiated hundreds of teacher and support staff contracts.

The Firm also represents a large area of the State for coverage of school board directors through their insurance carriers.

Our legal expertise includes: Solicitorship Services, Collective Bargaining – Teacher and Support Contracts, Employment Matters, Labor Arbitrations, Special Education Issues and Proceedings, Defense of Tax Assessment Appeals, PHRC/EEOC Complaints, Student Expulsion Hearings and Constitutional Issues.

About the Pennsylvania School Study Council

The Pennsylvania School Study Council (PSSC), a partnership between the Pennsylvania State University and member educational organizations, is dedicated to improving education by providing research information, professional development activities, and technical assistance to enable its members to meet current and future challenges. The PSSC offers professional development to the membership through colloquiums, workshops, study trips, consultation, publications, and customized services. For more information, visit the PSSC website, *www.ed.psu.edu/pssc/* or contact the Executive Director Dr. Peggy Schooling *mxs284@psu.edu.*

Subsequent Issues

If you have a school law question or topic you would like to have addressed in subsequent issues of the newsletter, please send an email to:

Carl P. Beard* *cbeard@beardlegalgroup.com*
Elizabeth Benjamin* *ebenjamin@beardlegalgroup.com*
Ronald N. Repak* *rrepak@beardlegalgroup.com*
Jennifer L. Dambeck *jdambeck@beardlegalgroup.com*
Carl Deren Beard *cdbeard@beardlegalgroup.com*
Krystal T. Edwards *kedwards@beardlegalgroup.com*
Joseph D. Beard *jbeard@beardlegalgroup.com*
Shelby S. Gawley *sgawley@beardlegalgroup.com*
Margaret R. Thompson *mthompson@beardlegalgroup.com*

*Partner

Education Law Report is published by Beard Legal Group, P.C.

Prior issues are available on our website.

BEARD
LEGAL GROUP

MAIN OFFICE:
3366 Lynnwood Drive P.O. Box 1311
Altoona, PA 16603-1311
814/943-3304 FAX: 814/943-3430
www.beardlegalgroup.com