

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

ASHLEY SMITH, a minor by her)
father RAYMOND SMITH;)
MICHAEL YOUNG, a minor by his)
mother INGE YOUNG,)
Plaintiffs,)

vs.)

CIVIL ACTION
FILE NO. _____

COBB COUNTY SCHOOL DISTRICT;)
EUGENE WRIGHT, individually and in his)
official capacity as Principal of)
Garrett Middle School;)
ANNE WADDELL, individually and in her)
official capacity as Assistant Principal)
of Garrett Middle School,)
Defendants.)

_____)

VERIFIED COMPLAINT

COMES NOW Plaintiffs, Ashley Smith and Michael Young, former sixth grade students in the Cobb County School District (CCSD), by and through their parents who bring this lawsuit seeking relief after suffering suspensions under a vaguely worded and irrationally applied weapons policy that has resulted in their suspensions for bringing non-weapons to school for wholly innocent purposes. Other students have suffered similar unjust suspensions, and Plaintiffs serve notice

that they may seek class certification as discovery proceeds.

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).

Parties

2.

Plaintiff, ASHLEY SMITH, is an eleven year old student at Garrett Middle School and brings this action as a minor by her father Raymond Smith.

3.

Plaintiff, MICHAEL YOUNG, is an eleven year old student at Garrett Middle School and brings this action as a minor by his mother Inge Young.

4.

Defendant, COBB COUNTY SCHOOL DISTRICT may be served by Cobb County Board of Education, 514 Glover Street, Marietta, Georgia 30060.

5.

Defendant EUGENE WRIGHT, is the Principal of Garrett Middle School and is sued in his individual/official capacity and may be served at 5235 Austell-Powder Springs Road, Austell, Georgia 30106.

6.

Defendant ANNE WADDELL, is the Assistant Principal of Garrett Middle School and is sued in her individual/official capacity and may be served at 5235 Austell-Powder Springs Road, Austell, Georgia 30106.

Factual Allegations

7.

Since 1992, numerous students have been suspended under the Cobb County School District's vague and overbroad weapons policy (hereinafter CCSD Weapons Policy). Exhibit A, the current CCSD Weapons Policy, is attached and incorporated herein.

8.

CCSD Weapons Policy has been applied arbitrarily and irrationally to punish students who did not and could not reasonably believe that their wallets, toys and similar items were weapons; who brought their items to school for wholly innocent

purposes; and where school officials knew that the items possessed by students were never intended to serve as weapons.

Ashley Smith

9.

Ashley Smith was a sixth grade student at Garrett Middle School. At the end of the 1999-2000 school year, a friend of her family gave her a Tweety Bird wallet both to reward her for her studies and because she is a fan of Tweety. Ashley's love for Tweety led her to create a web site for her favorite cartoon character. Exhibit B, her webpage, is attached and incorporated herein.

10.

Ashley's Tweety Bird wallet has a very thin chain which allows her to attach the wallet to her belt loop of her pants so that she won't lose her wallet. It also has an illustration of Tweety with Ashley's name below. Exhibit C, a photo of the wallet's chain and Tweety Bird, is attached and incorporated herein.

11.

Since the beginning of the 2000-2001 school year, Ashley has worn her wallet to class almost every day without incident and with the knowledge of numerous school officials.

12.

Ashley has always brought her wallet to school for innocent purposes, has never understood the wallet to be a weapon under the CCSD's Weapons Policy and has never intended or even imagined using the wallet as a weapon.

13.

Numerous other students have similar wallets or key chains which they bring to CCSD schools for similar innocent purposes.

14.

The CCSD Weapons Policy, student handbook, and widespread use of wallet chains by other students (without punishment) gave Ashley no fair warning that her wallet might be considered a weapon.

15.

At the beginning of the school year, Ashley attended an assembly where a school administrator identified an approximately two foot long, thick metal chain as an example of a weapon. This sample weapon, bearing no resemblance to Ashley's wallet chain, only reinforced Ashley's understanding that her wallet was not prohibited under the CCSD's Weapons Policy.

16.

On Thursday, September 21, 2000, Ashley was in the lunch line. Assistant Principal Anne Waddell came up behind Ashley and confiscated her wallet without explanation.

17.

The following week, on September 26, 2000, Ashley was again in the lunch line. Assistant Principal Anne Waddell told Ashley to come to her office. Once there, the Assistant Principal immediately suspended her for ten (10) days for possession of her Tweety Bird wallet. Exhibit D, the letter of suspension, is attached hereto and incorporated herein.

18.

Ashley's parents were called and she was escorted out of the building. She was and is upset, humiliated and feels treated like a criminal by defendants.

19.

Ashley began serving her suspension. While she could call a taped recording giving her assignments, she could not pursue her studies adequately because she was not receiving instruction, could not ask questions, and was not provided worksheets.

20.

Ashley and her family fear that as a result her grades suffered -- having long term consequences for her education. She and her parents also fear that the "black mark" of a weapons suspension on her record might wrongly suggest dangerous criminal conduct and impact her later educational and life pursuits.

21.

After significant public controversy and after numerous complaints by Ashley's parents and her counsel, CCSD reversed the suspension. CCSD offered no apology or other relief and, on information and belief, failed to expunge Ashley's disciplinary file.

22.

Because CCSD Weapons Policy is vague and overbroad, and CCSD refused to work with the Smiths to correct the policy to ensure that CCSD's Weapons Policy gave Ashley fair future warning of what items cannot be brought to school or to offer any assurances that similar suspensions would not occur for similar innocent conduct by Ashley that was very likely to occur in the future, Ashley has a real and immediate fear that she is specially likely to be subject to future arbitrary,

unwarned, irrational and unconstitutional discipline and suspension for violations of CCSD's Weapons Policy.

23.

Because CCSD refused to work with the Smiths to resolve problems in the weapons policy or offer any assurances that similar suspensions would not occur for similar innocent conduct by Ashley that was very likely to occur in the future, the Smiths decided to temporarily transfer Ashley to a private school. After over a year, when her family's money and other sources to fund private schooling dried up, Ashley has decided to return to the Cobb County schools despite her fear of further and similarly unjust and unconstitutional suspensions.

Michael Young

24.

In January 2000, Michael Young was given a small, thin chain wallet as a gift from a family friend.

25.

Michael Young brought his wallet to Garrett Middle School early in the semester. Although he did not believe it could possibly be construed to be a weapon

and brought it to school for entirely innocent purposes, he presented it to his teacher, Ms. Denny, to ensure compliance with CCSD's Weapons Policy.

26.

While Ms. Denny indicated she did not believe the wallet violated CCSD's Weapons Policy, she and Michael went to meet with Assistant Principal Hoover to be certain.

27.

Even though the Assistant Principal was made aware of the fact that Michael brought his wallet to the teacher to make sure he complied with all school rules and that Michael neither believed his wallet to be a weapon nor intended it as such, the Assistant Principal suspended Michael for ten (10) days.

28.

Michael's parents were called and he was escorted out of the building. He was and is upset, humiliated and feels treated like a criminal by defendants.

29.

Although Michael believed he did not violate the CCSD Weapons Policy, Michael served out his suspension because he feared that taking issue with the suspension might subject him to harassment and/or retaliation. While he could call

a taped recording giving his assignments, he could not pursue his studies adequately because he was not receiving instruction, could not ask questions, and was not provided worksheets.

30.

Michael and his family fear that his grades suffered having long term consequences for his education. He and his mother also fear that the “black mark” of a weapons suspension on his record might wrongly suggest dangerous criminal conduct and impact his later educational and life pursuits.

31.

In late September 2000, Michael brought a toy to school with a two inch long, thin chain. Michael did not believe the item was a weapon nor did he intend it as such. He was nevertheless given a warning (**written?**) and was told that the chain was not permitted under the weapons policy.

32.

Inge Young has contacted numerous officials of the CCSD in an effort to have her child’s suspension and warning investigated and expunged, but CCSD has refused to take any action.

33.

Because the CCSD Weapons Policy is vague and overbroad and CCSD refused to work with the Youngs to ensure that the CCSD's Weapons Policy gave Michael fair future warning of what items cannot be brought to school or to offer any assurances that similar suspensions would not occur for similar innocent conduct by Michael that was very likely to occur in the future, Michael has a real and immediate fear that he is specially likely to be subject to future arbitrary, unwarned, irrational and unconstitutional suspension for violations of CCSD's Weapons Policy.

District Wide Factual Allegations

34.

Suspensions are required for violations of CCSD's Weapons Policy.

35.

Suspensions under CCSD's Weapons Policy are required if CCSD determines that an item is a weapon under the policy even though the impacted student has not knowingly or consciously brought a weapon to school and does not personally or reasonably believe the item is a weapon in violation of the CCSD's Weapons Policy.

36.

Suspensions under CCSD's Weapons Policy are required if CCSD determines that an item is a weapon under the policy even though the impacted student had entirely innocent purposes and no intent to use the item as a weapon and CCSD knows the innocent purposes of the student.

37.

The CCSD Weapons Policy mandates punishment if a school official believes an item is a weapon under the policy even though the school official is convinced that a student neither believed an item was a weapon nor intended it as such.

38.

Short term suspensions of "not more than ten (10) days" for weapons violations are not appealable. CCSD's short term suspension policy affords such students "no appeal rights."

39.

The CCSD Weapons Policy is applied arbitrarily and irrationally. Many students who bring to school small, thin wallet chains and key chains or other similar items not reasonably viewed as weapons nor intended as such are

suspended while others are allowed to bring their similar items to school without suspension or other discipline.

40.

Defendants' actions and suspensions of Plaintiffs and others were under color of law and done intentionally, willfully, maliciously, recklessly, deliberately, with callous indifference to their consequences and/or with gross negligence which was the moving and proximate cause of harm to plaintiffs and others.

41.

Defendant-Cobb County School District's lack of clear policies, constitutionally inadequate training and supervision, and the suspension decisions of principals and assistant principals as "designated" final decision makers for short term weapons suspensions (under the CCSD Weapons Policy) and ratification by CCSD thereof individually and collectively were moving forces and caused plaintiffs and others' injuries. These policies, practices, customs and procedures were developed with negligence, and gross, reckless and deliberate indifference to the rights of students.

42.

The actions of defendants were in violation of clearly established statutory

and/or constitutional rights of which a reasonable official should have known as set forth in the Claims for Relief.

43.

The Smith and Young families attempted to resolve this matter with the defendants and even appeared before the Cobb County Board of Education. They were not even given the dignity of a written response to all their concerns.

Federal Causes of Action

44.

Plaintiffs have a property and liberty interest in an education under Georgia law.

45.

Plaintiffs did not knowingly or consciously possess weapons in violation of CCSD's Weapons Policy.

46.

Plaintiffs did not personally or reasonably believe that they possessed weapons in violation of CCSD's Weapons Policy.

47.

Plaintiffs did not intend to use their wallet or key chains as weapons and they were not used as weapons.

48.

CCSD's Weapons Policy does not require that a student knowingly or consciously possess a weapon, personally or reasonably believe that an item is a weapon, or that a student intend to use an item as a weapon to attack or defend for it to be considered a weapon under CCSD's Weapons Policy.

49.

The CCSD's Weapons Policy is facially vague, overbroad and lacks any semblance of fair warning and thus violates the requirements of due process and fair warning under the First, Fifth and Fourteenth Amendments of the United States Constitution.

50.

The CCSD Weapons Policy lacks adequate procedures or such procedures are not followed and thus violates procedural and substantive due process on its face and as applied to numerous students where punishment was not rationally related to the otherwise legitimate school interest of preventing weapons from being used in

school thus violating the First, Fifth and Fourteenth Amendments of the United States Constitution.

51.

Because (a)plaintiffs were suspended for longer periods of time than other students who possessed knives and other more dangerous items (under Category II and III of the CCSD Weapons Policy), and (b)other students with similar or identical items to plaintiffs of which school officials were fully aware were never punished; their suspensions violated the equal protection, procedural and substantive due process and the First, Fifth and Fourteenth Amendments of the United States Constitution.

State Causes of Action

52.

The actions of defendants denied, breached their duty and wrongfully interfered with the students rights to an education under Ga. Const, Art. VIII, Sec. I, Par. I; their rights to procedural and substantive due process under Ga. Const, Art. I, Sec. I, Par. I; their rights to equal protection under Ga. Const, Art. I, Sec. I, Par. II; their freedom of conscience under Ga. Const, Art. I, Sec. I, Par. III; and their rights to freedom of expression under Ga. Const, Art. I, Sec. I, Par. V.

Prayers for Relief

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

(1) Declaratory/Injunctive relief against further enforcement of the current CCSD Weapons Policy Categories II and III;

(2) Declaratory/Injunctive relief ordering defendants to adopt constitutional and clear policies, procedures and training for ensuring that dangerous weapons do not enter school and that students not are not punished for bringing non-weapons to school;

(3) Declaratory/Injunctive relief against systemic arbitrary and irrational application of the CCSD Weapons Policy such that said policy only punishes students for improperly bringing items about which the CCSD has rational and legitimate concerns;

(4) Expungement of all individual student records concerning plaintiffs' suspensions and/or warnings;

(5) Compensatory damages for each child in an amount to be determined by a jury;

(6) Punitive damages according to federal and state law against the individual defendants;

(7) Reasonable attorneys' fees, expenses and costs of litigation pursuant to 42 U.S.C. § 1988 and other applicable laws;

(8) Such further relief as this Court deems just and proper.

A JURY TRIAL IS REQUESTED ON ALL ISSUES SO TRIABLE.

DATED: This the __th day of August, 2001.

Respectfully submitted,

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