

RESTRAINT, DETAINMENT, AND SECLUSION OF
STUDENTS IN PUBLIC SCHOOLS

by

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ABSTRACT

This study examines how the courts have addressed the restraint, detainment, and seclusion of students in public schools. The study includes an analysis of 100 court cases on the topic of restraint, detainment, and seclusion of students in public schools, which occurred in state and federal jurisdictions, from 1977 to 2012. Cases were examined over time and by prevailing party, constitutional claim(s), grade range, student population, and type of seizure. The analysis revealed guiding principles to help educators and school administrators protect the constitutional rights of students and avoid potential litigation. The analysis also formulated a set of guidelines for educators and school administrators to use in situations where the need for student seizure may arise.

DEDICATION

A wise person, long before the journey to earn my doctorate began, explained an important concept to me--balcony people. Balcony people are those in our lives who triumph in our accomplishments, are our cheerleaders, the ones that encourage us and bring us to new heights. Fortunate for me, my balcony people are also the most important people in my life! And, as John C. Maxwell explains, “people tend to become what the most important people in their lives think they will become.”

Always in my balcony is my family. My daddy, Mike Tidwell, teaches me more through his example than anything I could learn in a classroom--integrity, perspective, and determination. My mother, Debbie Tidwell, is most responsible for stirring my strong will and self-confidence, which gives me a great advantage in life. My granny, Flo Tidwell, passed on her tenacity and independent-spirit reinforcing the belief that if you want something done, do it. And my MaMa Nell Morris, who is now in the highest balcony of heaven watching over me, has perhaps given me my greatest motivation throughout this process. There was a moment we shared just before she passed when we realized she wouldn't be here in body to celebrate this achievement, but greater is the fact that her absolute faith in my ability to see it through has been my inspiration during every weak or discouraging moment along the way. Each member of my family is an example of what a hardworking, loyal-hearted person can accomplish in life. They have supported me unconditionally through this journey and much of this accomplishment is owed to them--thank you from the bottom of my heart!

Thank you Terry Casey for mentoring me and setting me on my postgraduate path; but more for being my faithful friend, encouraging me to be the best version of myself, and teaching me the value of accepting and loving others for who they are and the potential within them. I would also like to thank the many in my “family of friends.” Too many to name are those who have taught me valuable lessons about myself and supported me at various stages. Thank you to my mentors and colleagues in Albertville City Schools who have given me “the Albertville advantage” and have already helped me accomplish more professional goals than I ever dreamed possible. Especially, thank you to Paul McAbee--a supportive leader and coach who inspires commonsense greatness with loyalty and humor. Each of you has made me the person I am and I know, without a doubt, I would not have reached this goal without you in my balcony!

A special student inspired this study. He and I spent a lot of time together my second year as a school counselor. He taught me that educators have to be quick on their feet and smart in their decisions--every day, all the time--if they are going to survive and make a difference. I dedicate this dissertation to him and *all* my students--who have taught me more than I could ever dream of teaching you! My hope is that this personal accomplishment is evidence to you that two things are most important in this life--relationships and education.

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Collectively, my committee is a testament to the rich tradition of excellence at The University of Alabama. Each is an example of a high-quality educational leader and all inspired me to be a self-directed, life-long learner.

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CHAPTER I
INTRODUCTION TO THE STUDY

Introduction

On March 5, 2005, members of the quiet community of Williamsburg, Virginia, awoke to find a disturbing story on the front page of their newspaper. According to the paper,

Police arrested an 8-year-old boy who allegedly had a violent outburst in school, head-butting his teacher and kicking an assistant principal, when he was told he couldn't go outside to play with other students. The 4-foot pupil was led away . . . in handcuffs . . . [after his] chair-tossing, desk-turning outburst. (Croston, 2009, p. 39)

In 2002, a headline of the American Statesman in Austin, Texas, read that a 14-year-old boy died after being restrained in a classroom by his teacher. According to the GAO (2009), a 230-pound special education teacher placed the 129-pound student into a prone restraint and lay on top of him because he would not stay seated; the student died as a result of compression of the trunk.

In 2001, a suit was filed against school leaders who escorted a middle school, special education student to the office after the student picked up a chair and threatened a teacher (Croston, 2009).

Certainly, these are “nightmare” scenarios for public school administrators, but unfortunately the incidents are not uncommon. These scenarios and examples like them are frequent in public schools today (Croston, 2009).

It is the call every principal dreads: a student has lost control and is endangering himself, other students, teachers, and staff. When the call is answered, it is the principal's job to respond quickly and appropriately. It requires clear thinking and knowledge of sound policies and procedures (CCBD, 2009).

School administrators have complex and demanding jobs. They are challenged to perform countless duties. “Faced with multiple needs, with the necessity of making fast decisions in an atmosphere of fragmented time, administrators are liable for everything they do” (Watson, 1977, p. 1). Chiefly, they are responsible for providing a safe and orderly school environment that is conducive to learning.

Administrators are often asked to address disruptive or dangerous behavior. The responsibility to provide a safe and orderly environment at school sometimes presents the need for administrators to seize students. Seizure, within the Fourth Amendment, suggests the taking of one physically or usefully into custody and holding him, causing a denial of his freedom in a significant way, with real interruption of his liberty of movement (Black, 1990). Rossow and Potter (2008) explained that a student seizure may occur whenever a student is apprehended by a school official; thus, for the purpose of this study, school or student seizure was defined as the act of restraining, detaining, or secluding a student. Student seizure may be necessary to keep students safe from harm, protect teachers, or maintain an environment where learning can take place.

Due to increased litigation surrounding school seizure, the dilemma for school administrators is how to maintain the safety of all students without violating any student’s constitutional rights. It is crucial that school leaders understand the rights guaranteed to students by the Fourth Amendment and how the Fourth Amendment applies to the school setting.

Statement of the Problem

The Fourth Amendment is “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” (Legal Information Institute,

2012, p. 1). In *New Jersey v. T.L.O.* (1985), the U.S. Supreme Court set forth the principles governing searches by public school authorities. The Fourth Amendment applies to searches conducted by public school officials; however, the school setting requires some easing of the restrictions (GPO, 2002). In *T.L.O.*, the Court held that determining the reasonableness of any search involved a twofold analysis: (1) whether the search was justified at its inception and (2) whether the search, as conducted, was reasonable related to the scope to the circumstances that initially justified the search (Clarke, 2010; GPO, 2002; Rossow & Potter, 2008).

It is common to interchange search and seizure under the Fourth Amendment. Often, scholars examine Fourth Amendment issues with search and seizure introduced collectively, but then focus exclusively on different types of student searches. However, there are two sides to the Fourth Amendment--search and seizure. The Supreme Court has only established a test for searches; *T.L.O.* (1985) developed the reasonableness standard for search cases. The Supreme Court has not specifically set a test for seizures; thus, leaving the courts without a specific standard for seizure cases (Croston, 2009; Rossow & Potter, 2008).

Significance of the Problem

As dangerous and disruptive behavior problems continue to occur in public schools, the need to seize students continues. There is a call for public school leaders to know and understand the issues related to the restraint, detainment, and seclusion of students. It is important to examine and analyze case law and standards for seizures in public schools. Likewise, it is essential to formulate a set of guidelines for educators to use in situations where the need for seizure may arise (Croston, 2009; Rossow & Potter, 2008; Ryan, Robbins, Peterson, & Rozalski, 2009).

Statement of Purpose

The purpose of the study was to examine how the courts have addressed the restraint, detainment, and seclusion of students in schools. School seizure is an area of law that continues to develop and there is a need to know and understand case law as it pertains to the legal responsibility of school administrators. It was the researcher's goal that this study will provide sound principles to help educators protect the constitutional rights of students and avoid potential litigation.

Research Questions

1. What are the fact patterns in court cases involving the restraint, detainment, and seclusion of students?
2. What are the outcomes of court cases involving action against public school educators who restrain, detain, or seclude a student?
3. What are the trends of court cases involving the restraint, detainment, and seclusion of students?
4. What principles for public school educators may be discerned from court cases involving the restraint, detainment, and seclusion of students?

Limitations

1. This study was conducted by a student in the educational leadership program at The University of Alabama, and the scope of the study may be restricted because it was conducted by an individual who received training in educational leadership, not educational law.
2. This study was limited to public PK-12 education in the United States.

3. The court cases reviewed were restricted to those obtained from Westlaw using a word search method; key words in the search included the following: schools, students, seizure, restraint, restrain, detain, seclusion, use of force, and bodily integrity. The researcher did not presuppose a variety of definitions for these terms in the courts.

4. The principles gleaned from the study were limited to those addressed in the case briefs.

Assumptions

1. It was assumed that all decisions in the court cases studied had been rendered in compliance with existing local, state, and federal laws.

2. It was assumed that all cases studied were recorded in full in the West Education Law Reporter.

3. It was assumed that the analyses of the cases would yield principles that may be generalized to the practices of educators.

Definitions

The relevant legal and educational terms used in this research study are defined in this section.

Appeal: “a proceeding undertaken to have a decision reconsidered by a higher authority; esp., the submission of a lower court’s or agency’s decision to a higher court for review and possible reversal” (Garner, 1996, p. 39).

Assault: “in criminal and tort law, the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact” (Garner, 1996, p. 44).

Assumption of risk: “in tort law, the principle that one who has taken on oneself the risk of loss, injury, or damage consequently cannot maintain an action against the party having caused the loss” (Garner, 1996, p. 48).

Brief: “a written statement setting out the legal contentions of a party in litigation, esp. on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them” (Garner, 1996, p. 81).

Briefing: “an analytical summary of single court opinion” (Statsky & Wernet, 1995, p. 39).

Case brief: “to identify the essential components of an opinion” (Statsky & Wernet, 1995, p. 39).

Case law: “the collection of reported cases that form the body or jurisprudence within a given jurisdiction” (Garner, 1996, p. 84).

Citation: “the identifying information that enables you to find a law or other document in a law library” (Statsky & Wernet, 1995, p. 24).

Certiorari: “an extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review; certiorari is used by the U.S. Supreme Court to review the cases it wants to hear” (Garner, 1996, p. 90).

Chemical restraint: “the use of medication to control behavior or restrict an individual’s freedom of movement” (CCBC, 2009; Ryan & Peterson, 2004; Ryan et al., 2009).

Common law: “the body of law derived from judicial decisions and opinions, rather than from statutes or constitutions” (Garner, 1996, p. 113).

Corporal punishment: “physical punishment as distinguished from pecuniary punishment or a fine; any kind of punishment of or inflicted on the body” (Black, 1990, p. 339).

Detain: “to arrest, to check, to delay, to hinder, to hold, or keep in custody, to retard, to restrain from proceeding, to stay, to stop, to withhold” (Black, 1990, p. 449).

Detainment: “the act of detaining” (Black, 1990, p. 449).

Detention: “the act of keeping back, restraining or withholding, either accidentally or by design, a person or thing” (Black, 1990, p. 450).

Duty: “in tort law, a legal relationship arising from a standard of care, the violation of which subjects the actor to liability” (Garner, 1996, p. 212).

Fact Pattern: “a summary of what took place in a case for which relief is sought” (Legal Dictionary, 2012, p.1); “a series of facts that are presented in story form” (Courts of BC, 2012, p. 1).

Fourteenth Amendment: “secures all persons against any state action which results in either deprivation of life, liberty, or property without due process of law” (Black, 1990, p. 657).

Fourth Amendment: “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” (Legal Information Institute, 2012, p. 1).

Harm: “the existence of loss or detriment in fact of any kind to a person resulting from any cause” (Black, 1990, p. 718).

Immunity: “performing duties which the law generally requires other citizens to perform; exemption from penalty, burden, or duty” (Black, 1990, p.751).

Investigative detention: a temporary seizure for the purpose of determining if there is probable cause or if further investigation is necessary (Hutchins, 2010a).

Liability: “the quality or state of being legally obligated or responsible” (Garner, 1996, p. 376).

Mechanical restraints: Restraint techniques that include devices, as opposed to personal or physical holds or positions, to control behavior. These devices include straps, cuffs, belts, soft splints, weighted vests, or strait jackets, or objects such as boards, chairs, and beds that have ties that can be used to secure a person to the object (Busch & Shore, 2000; Day, 2002; Ryan, Peterson, & Rozalski, 2007).

Personal liberty: “guaranteed by Thirteenth Amend., U.S. Const.; the right or power of locomotion; of changing situation, or moving one’s person to whatsoever place one’s own inclination may direct, without imprisonment or restraint, unless by due course of law” (Black, 1990, p. 919).

Physical or manual restraints: Techniques that involve a person or persons holding another person or restricting their movement by using bodily strength or positioning (Busch & Shore, 2000; Day, 2002; Ryan et al., 2007).

Probable cause: “reasonable cause; having more evidence for than against; a reasonable ground for belief in certain alleged facts” (Black, 1990, p. 1201).

Qualified immunity: “affirmative defense which shields public officials performing discretionary functions from civil damages if their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known” (Black, 1990, p. 752).

Reasonable person: “a hypothetical person used as a legal standard, esp. to determine whether someone acted with negligence; the reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions” (Garner, 1996, p. 523).

Reasonable belief: “when facts and circumstances within the arresting officer’s knowledge, and of which he had reasonably trustworthy information, are sufficient in themselves to justify a man of average caution in belief that a felony has been or is being committed” (Black, 1990, p. 1265).

Reasonable care: “that degree of care which a person of ordinary prudence would exercise in the same or similar circumstances; failure to exercise such care is ordinary negligence” (Black, 1990, p. 1265).

Reasonable cause: “is such a state of facts as would lead man of ordinary care and prudence to believe and conscientiously entertain honest and strong suspicion that person sought to be arrested is guilty of committing a crime” (Black, 1990, p. 1265).

Reasonable force: “degree of force which is not excessive and is appropriate in protecting one’s self or one’s property; when such force is used, a person is justified and is not criminally liable, nor is he liable in tort” (Black, 1990, p. 1266).

Reasonable standard: “the standard which one must observe to avoid liability for negligence is the standard of the reasonable man under all the circumstances, including the foreseeability of harm” (Black, 1990, p. 1266).

Restrain: “to restrict a person’s movements in such a manner as to interfere substantially with his liberty” (Black, 1990, p. 1314).

School or student seizure: the act of restraining, detaining, or secluding a student; may occur whenever a student is apprehended by a school official; can take place in an office, classroom, or other location controlled by the school (Rossow & Potter, 2008).

Search: an examination of a person's effects or of his person "with a view to the discovery of contraband or illicit or stolen property or some evidence of guilt" (Black, 1990, p. 1349).

Seclusion: The involuntary restriction of a person to a specific area, where the person is alone. This term does not include "timeout" practices, which can be inclusionary or exclusionary (Busch & Shore, 2000; Day, 2002; Ryan et al., 2007).

Seize: "To 'seize' means to take possession of forcibly, to grasp, to snatch or to put in possession" (Black, 1990, p. 1359).

Seized: "a person is 'seized' within Fourth Amendment when police officer restrains person's freedom to walk away. It exists when reasonable person would feel that he was not free to leave" (Black, 1990, p. 1359).

Seizure: seizure, within the Fourth Amendment, "connotes the taking of one physically or constructively into custody and detaining him, thus causing a deprivation of his freedom in a significant way, with real interruption of his liberty of movement" (Black, 1990, p. 1359).

Standard of care: "in the law of negligence, the degree of care that a reasonable person should exercise" (Garner, 1996, p. 589).

Statute: "a law passed by a legislative body" (Garner, 1996, p. 675).

Substantive due process: "the constitutional guarantee that no person shall be arbitrarily deprived of his life, liberty, or property; protection from arbitrary and unreasonable action" (Black, 1990, p. 1429).

Tort: “a civil wrong for which a remedy may be obtained, usually in the form of damages (Garner, 1996, p. 629).

Writ: “a courts written order in the name of the state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act” (Garner, 1996, p. 785).

Organization of the Study

Chapter I is an introduction to the study. A statement of the problem, the significance of the problem, the purpose of the study, the research questions, limitations of the study, assumptions of the study, and definitions of operational terms are included in this chapter.

Chapter II is a review of relevant literature. It identifies and discusses the three primary types of student seizures, including restraint, detainment, and seclusion. The researcher provides a brief history of restraint and seclusion in schools. Two research bases are discussed for the use of restraint and seclusion in schools. Then, legal implications related to the topic are presented. The Fourth Amendment in public schools, the reasonableness standard, and the issue of liability are all analyzed to provide a comprehensive overview of legal principles related to student seizure. The chapter concludes with information related to legislation on the research topic.

Chapter III describes the methodology for the study. It explains that the study employed a qualitative, legal-historical, document-based research design to gain insight into legal issues related to the topic. It includes the research questions and outlines how data were collected and analyzed.

Chapter IV includes a comprehensive analysis of select cases relating to the topic of study.

Chapter V provides closure to the study. It contains the summary, conclusions, recommendations for further study, and practical guidelines for educators.

CHAPTER II

REVIEW OF THE LITERATURE

Introduction

A significant topic in both educational leadership and educational law is the issue of student seizure. School leaders are often asked to address disruptive or dangerous behavior. One of their primary responsibilities is to provide and maintain a safe and orderly environment that is conducive to learning. In order to meet that complex demand, school officials are sometimes called upon to seize students. In certain circumstances, student seizures are necessary to keep students safe from harm, protect teachers, or maintain a safe school environment.

Due to increased litigation and pending legislation surrounding student seizure, it is crucial that school leaders understand what is considered a student seizure and the rationale for restraint, detainment, and seclusion use in schools. It is just as important that administrators understand the legal implications related to this topic. The Fourth Amendment, the standard of reasonableness, and the issue of liability are included in this understanding. Finally, it is critical that public school leaders are aware of legislation related to restraint and seclusion so that they are prepared with sound policy and practice.

This chapter provides a review of relevant literature on restraint, detainment, and seclusion in schools. It also presents a literature review relative to the legal implications and considerations surrounding this issue.

School or Student Seizure

Seizure, within the Fourth Amendment, suggests the taking of one physically or usefully into custody and holding him, causing a denial of his freedom in a significant way, with real interruption of his liberty of movement (Black, 1990). A school or student seizure is the act of restraining, detaining, or secluding a student. This may occur whenever a student is held by a school official. School or student seizures can take place in an office, classroom, or other location controlled by the school (Rossow & Potter, 2008). The three types of school or student seizure are discussed below.

Restraint

Restraint is the act of restraining; it is any method of restricting an individual's movements in a manner that interferes substantially with his liberty (Black, 1990). The International Society of Psychiatric and Mental Health Nurses (1999) defined restraint as any method of restricting freedom of movement, physical activity, or normal access to his body. There are three primary types of restraint procedures: mechanical, chemical, and physical. Mechanical restraint involves the use of an object or device, such as a harness or tape, to limit an individual's movement. It is used to prevent or manage out-of-control behavior. Chemical restraint uses medication to control behavior or restrict an individual's freedom of movement. Physical restraint, also known as manual or ambulatory restraint or therapeutic holding, involves one or more staff members using their bodies to restrict an individual's body movement. It is used to reestablish behavioral control. Physical restraint is also used to promote or maintain safety for the individual, his/her peers, and staff (CCBC, 2009; Ryan & Peterson, 2004; Ryan et al., 2009).

Chemical restraint is typically used only in institutional or hospital programs, because it needs to be directly monitored and controlled by physicians and guardians. Mechanical restraint is sometimes used in schools; though, physical restraint is the most commonly used procedure in schools (Ryan & Peterson, 2004; Ryan et al., 2009). Historically, restraint procedures were used primarily in special education programs; however, the use of physical restraint in public schools has increased as more students with difficult or severe behavioral needs are being served in general education schools and classes (CCBD, 2009).

In schools, the rationale for the use of physical restraint is to control the behavior of a student in a crisis situation to prevent immediate danger or possible injuries to the student or others in the school environment (CCBD, 2009). However, the Child Welfare League of America (2002) estimated that between 8 to 10 deaths occur each year as a result of improperly performed restraint procedures.

The Council for Children with Behavioral Disorders (CCBD) (2009) believed that physical restraint should be used in school settings only when the physical safety of the student or others is in immediate danger. Other child mental health and disability advocacy organizations have developed positions strongly opposing any use of physical restraint procedures in schools due to ethical and moral concerns about the loss of dignity and individual rights. Injuries and fatalities among students due to the use of restraint procedures, and the resulting media attention and litigation, have placed pressure on educational agencies to develop policies and guidelines concerning their use in schools (CCBD, 2009; Ryan et al., 2009).

Detainment

Detainment is the act of detaining. It is also referred to as detention. The words restraint and detainment are frequently construed as equivalents (Black, 1990). Evidence of this can be found in research related to student seizure; however, it is important to make a distinction between the two. For example, the act of detaining a student generally does not require the use of force.

Detainment in schools is often used for investigative purposes. An investigative detention is a temporary seizure of a student for the purpose of determining whether there is probable cause that a student is in violation of a law or school rule or if further investigation is needed in a school-related incident (Hutchins, 2010a). Because of the overriding need to provide students with a safe environment free of harm and disruption, detentions on school grounds are viewed as necessary components of student discipline and are often permitted (Hutchins, 2007, 2010b). The requirements for detaining students on school grounds are the least demanding of school seizures. Neither probable cause nor reasonable suspicion is required. Additionally, detentions of students are relatively unobtrusive because a student's freedom of movement is restricted simply by virtue of being on school property (Hutchins, 2007).

Again, the terms "restraint" and "detainment" are often synonymous when discussing student seizures. To detain is to "restrain" from proceeding; thus, it could be considered the least demanding and intrusive method of restraint in a school setting (Black, 1990; Hutchins, 2010a). The reader should note that the terms may be used separately or interchangeably throughout the research.

Seclusion

Seclusion is the involuntary restriction of a person to a specific area, where the person is alone (Busch & Shore, 2000; Day, 2002; Ryan et al., 2007). In the education setting, the term “timeout” is often used synonymously with seclusion. However, it is important to clarify the relationship between these two terms. For the purpose of this study, the term “timeout” is not associated with student seizure and the term seclusion does not include “timeout” practices that can be inclusionary or exclusionary (Busch & Shore, 2000; Day, 2002; Ryan et al., 2007).

Alberto and Troutman (2006) defined timeout as a behavior reduction procedure or punishment for students who display a predefined inappropriate behavior; it is when a student is suspended for a short period of time from access to opportunities to receive positive social reinforcement. This definition is often not the actual practice used by teachers. In practice, the goal of timeout is not to control access to reinforcement for the student, but rather to describe interventions primarily aimed at purposes such as calming a student, removing the student from the group, or engaging the student in problem solving or self-reflection. A more common understanding of timeout is a punishment where the student is moved from one location to another (Ryan et al., 2007).

Ryan et al. (2007) categorized timeout procedures into four types: inclusion, exclusion, restrained, and seclusion timeout. Inclusion timeout is the least restrictive of the four and entails placing a student in an area of the classroom where he can continue to observe instruction, but denies a student the opportunity to participate in activities (Ryan et al., 2007). Exclusion timeout is when a student is separated in a designated area away from his peers, but is not physically prevented from leaving. This procedure is similar to inclusion timeout, but is more restrictive because it denies the student an opportunity to either visually observe or hear what is occurring

in the student's normal educational environment (Ryan et al., 2007; Westling, Trader, Smith, & Marshall, 2010). Restrained timeout is frequently called movement suppression or therapeutic holding and is actually a combination of a timeout procedure and physical restraint. Generally it consists of a staff member positioning a student in a timeout position and maintaining the student in that position through the use of physical restraint (Ryan & Peterson, 2004; Ryan et al., 2007). Seclusion timeout is when a student is removed from the classroom environment and, for a period of time, placed alone in an environment in a situation in which he is prevented from leaving (Busch & Shore, 2000; Ryan et al., 2007; Westling et al., 2010). Timeout environments are commonly referred to as isolation rooms, timeout rooms, quiet rooms, or seclusion rooms; other euphemisms are used as well but all describe a similar environment. Seclusion timeout is considered one of the most restrictive forms of timeout because it completely removes the student from access to the educational environment and usually entails isolation of the student from other students and staff (Ryan et al., 2007; Westling et al., 2010). Seclusion timeout should be distinguished from the situation in which a student makes a free-will choice to go to a room where they are alone and where they have the ability to leave and return to the classroom anytime. Some schools have rooms, sometimes called "safe places" or "cool-down rooms," for this purpose. When used in a voluntary way, these types of procedures would not constitute seclusion (CCBD, 2009).

Seclusion is considered a form of student seizure because it is "the involuntary confinement of a student alone in a room or area to which the student is physically prevented from leaving" (CCBD, 2009, p. 335). This includes situations where a door is locked, blocked by an object, or blocked or held by staff. Restrained timeout and seclusion timeout are the timeout procedures associated with seclusion (Ryan et al., 2007). Regardless of the intended

purpose or the name applied to the procedure, when a student is left involuntarily alone in a room and prevented from leaving it is considered seclusion (CCBD, 2009).

Seclusion has been widely used in schools for a long period of time. Although historically its use in education was typically in special education programs, seclusion procedures are now widely believed to be used more broadly with any student and may be viewed as a part of the overall classroom discipline plan or school program. Although little data exist about the circumstances of the use of seclusion in schools, most believe that the use of these procedures in schools has increased as more students with difficult or severe behavioral needs are being served through general education schools and classes (CCBD, 2009).

The purposes for the use of seclusion in schools include removal from a reinforcing environment, permitting the student's emotions to cool down, or permitting the student to engage in a problem-solving process (CCBD, 2009). Other reasons might include restoring order to the learning environment or providing relief for the teacher (Ryan et al., 2007). However, a wide variety of injuries and deaths have occurred while students are in seclusion environments including suicide, electrocution, and self-injury due to cutting, pounding, and head banging (CCBD, 2009; National Disability Rights Network, 2009; Westling et al., 2010).

Seclusion procedures are controversial. Most professionals believe that seclusion is warranted only when a student's behavior is so out of control or dangerous that the student's behavior in the current environment poses a risk of injury to the student or others (CCBD, 2009). Wolf, McLaughlin, and Williams (2006) explained that the technique is controversial due to misunderstanding, ineffective use, and ethical considerations. There is a concern for the basic constitutional rights of students such as freedom from incarceration, cruel and unusual punishment, and loss of personal liberty (Ryan et al., 2007; Wolf et al., 2006). The use of

seclusion also jeopardizes a student's right to a least restrictive environment in education, because students are excluded from participation with their peers while in seclusion. Furthermore, the No Child Left Behind Act (NCLB) of 2001 stimulated professional concerns regarding the usefulness of seclusion as an intervention. NCLB implies that only scientifically-based interventions should be used in school settings and the lack of research support for the effectiveness of seclusion compounds the controversy about its use in schools (Ryan et al., 2007).

As a result of recent controversy and litigation, there is a call for the development and implementation of specific policies regarding the use of seclusion in school settings. Student advocacy groups implore schools to explore alternatives to seclusion as interventions (CCBD, 2009; Ryan et al., 2007; Westling et al., 2010; Wolf et al., 2006).

Historical Background of Restraint and Seclusion in Schools

There is a long history of restraint and seclusion in societal institutions such as hospitals, residential facilities, and other types of therapeutic settings; however, restraint and seclusion were not prevalent in American schools until the 1970s and 1980s (Masters, 2002; Ryan et al., 2007; Soloff, 1984; Stewart, 2010).

Early documentation of the use of restraint and seclusion stems from the late 1700s in France and England (Fischer, 1994). In the late 1700s, Philippe Pinel, a French physician who supervised wards and hospitals for people with mental illnesses, explained the decision to use restraint as a need to reach a balance between ensuring the safety of individuals (both patient and staff alike) and not infringing upon patient rights of autonomy, respect, and freedom (Fischer, 1994; Masters, 2008; Tovino, 2007). In America, by the late 1800s, the number of patients in

large, state-run institutions was overwhelming. By the early 1900s, the appropriateness of such institutions was called into question because of reports of widespread abuse of patients and a lack of positive outcomes (Stewart, 2010; Tovino, 2007).

Trends began to change in how society understood and dealt with people with disabilities or those who presented challenging and violent behavior. A sense of moral responsibility to care for the disabled in appropriate settings prevailed and new psychotropic medications that significantly reduce behavioral problems were created and put to use. Community-based placements were viewed as less-costly alternatives to large, state-run institutions by state legislatures and local communities, especially when there was federal funding attached to the community placements (Krieg, 2003; Parish, 2005; Stewart, 2010). These changes prompted a push to find places for the disabled in community-based settings. This de-institutional movement reached its peak in the 1960s through the 1980s and continues today (Stewart, 2010; Tovino, 2007).

The 1960s and the 1970s were the times of the civil rights movement and the passage of new federal laws and protections for people with disabilities. In 1971, Section 504 of the Rehabilitation Act, prohibiting discrimination on the basis of disability, was enacted. In 1975, the Education for Handicapped Children Act, later known as the Individuals with Disabilities in Education Act or IDEA, required schools to place children with disabilities in the regular or general education classroom to ensure they were educated in the least restrictive environment. Because of these legal mandates, children with more severe disabilities were placed in schools. At that point in the 1970s and 1980s, school staff began to restrain and seclude children in greater numbers (Ryan et al., 2007; Stewart, 2010).

In 2009, the United States Governmental Accountability Office's (GAO) report on "Seclusions and Restraints," stated that it obtained data showing that thousands of public and private school students were restrained or secluded during the last academic year. Public school officials in Texas stated that they restrained 4,202 students 18,741 times during the September 2007 through June 2008 academic year (GAO, 2009).

Research Bases for the Use of Restraint and Seclusion in Schools

There are two primary reasons for the use of restraint and seclusion in schools. One basis is that the use of restraint and seclusion can be therapeutic and beneficial for children. The other main justification is that restraint and seclusion are needed on a containment or safety basis (Stewart, 2010).

Therapeutic Basis

Some researchers believed that the use of restraint and seclusion can be therapeutic and beneficial for children (Cotton, 1989; Fisher, 1994; Gutheil, 1978; Tovino, 2007). Acceptance of this idea is widely debated. Some authors noted that restraint and seclusion are used effectively as part of an overall plan, such as a student's behavior plan (Cotton, 1989; Gutheil, 1978; Liberman & Wong, 1984; Stewart, 2010). Others believed that there is no demonstrated benefit to restraint and seclusion and its use is an unwarranted infringement on a student's dignity and autonomy and can constitute abuse (Garrison, 1984; Mohr, 2010; Steele, 1993; Stewart, 2010).

The predominant criticism of the therapeutic basis for restraint and seclusion is that there is little research support to justify their use in a school (Busch & Shore, 2000; Day, 2002; Ferleger, 2008; Stewart, 2010). Most schools reject the premise of restraint and seclusion as

therapeutic and instead recommend that these measures only be used in emergency situations (Busch & Shore, 2000; Ferleger, 2008). Schools are fundamentally not equipped to use restraint and seclusion as therapy (Amos, 2004; Stewart, 2010).

Safety or Containment Basis

This basis is acknowledged on the grounds that restraint and seclusion can be used to prevent harm, property damage, or undue disturbance to a program (Allen, 2000; Stewart, 2010). Restraint and seclusion are seen as a means to prevent harm to a person, including self-injurious behavior, to prevent property damage, or to reduce disruption in an environment (Day, 2002; Stewart, 2010). An important element underlying the safety rationale is that restraint and seclusion are only used if no other immediately effective strategies are available to prevent injury (Fisher, 1994; Persi & Pasquali, 1999; Stewart, 2010). In the containment basis, conditions of use exist to ensure that restraint and seclusion are only used when warranted. The conditions include the following: (1) where preventative approaches for use have been implemented and failed, such as de-escalation strategies; (2) permissible and impermissible situations for use, for example, when a student's behavior poses a bodily threat to the individual or others; (3) precautions to ensure safety of the approach, such as training of staff and constant monitoring of the individual during the procedure; and (4) review procedures, such as documenting the incident and reporting it to parents or appropriate authorities (Busch & Shore, 2000; Fisher, 1994; Gutheil, 1978; Masters, 2002; Mohr, 2008; Petti, Mohr, Somers, & Sims, 2001; Stewart, 2010; Yell, 1994).

The predominant criticism of the safety or containment basis for restraint and seclusion is that schools often lack trained staff, an appropriate place to restrain or seclude students, and the

overall financial resources needed to safely use restraint and seclusion techniques. When they enter the field, most educators do not have the necessary training or expertise in restraining and secluding students; therefore, it leaves the necessary training to individual school districts (Stewart, 2010). Despite concerns, the safety and containment basis for restraint and seclusion is routinely employed in schools (Stewart, 2010).

Understanding Legal Implications

Leading a school is a complex and demanding job. The challenges facing school leaders are stressful and ever changing. To be effective, an administrator must carefully balance professional, ethical, and supervisory responsibilities. Included in these responsibilities is the duty to develop sufficient knowledge of legal obligations to teachers, students, and parents. It is also imperative that a school administrator know his own legal rights (DeMitchell, 2007; Taylor, 2001).

Guided by the U.S. Constitution, federal law, state law, and local regulations, principals are bound to deliver educational services required by law. Principals are responsible for maintaining order and safety in schools. They are also accountable for knowing and respecting the rights of their students and teachers as guaranteed by the U.S. Constitution (Militello, Schimmel, & Eberwein, 2009; Taylor, 2001). Fischer, Schimmel, and Stellman (2007) suggested there are “a wide range of legal issues that influence the lives of teachers, students, parents, and administrators” (p. xi) in the field of public education.

The impact of litigation on a school leader is significant. Militello et al. (2009) reported a 20% increase in education-related cases between the mid-1980s and mid-1990s. This means that one of five school principals can expect to be involved in a court case in his or her tenure. Even

though schools win more court cases than they lose, the real and perceived threat of litigation can have a negative effect on attitudes and practice, ultimately negatively affecting the educational climate (Militello et al., 2009). Thus, school leaders must have an understanding of the major concerns that frequently arise in education law. One of the most prominent of those major concerns is search and seizure (Taylor, 2001).

Case law indicated that search and seizure, as a cohesive legal concept, did not exist in public schools prior to the 1960s or perhaps not to any great extent until *T.L.O.* in 1985 (Heder, 1999). Prior to then, few students claimed their rights to privacy. Judicial appeals in the interest of students' rights under the constitution were practically nonexistent prior to the 1960s (Heder, 1999). Perhaps it is because the searches for bubblegum or "cheat notes" in the 1950s hardly compare or have the same constitutional ramification as a search for illegal drugs or a concealed weapon in the present day. Perhaps it is because even corporal punishment was widely accepted and tolerated by parents in the 1950s, whereas today educators are under constant scrutiny for their disciplinary actions. The fact is, public school administrators must understand how that shift of attitude defines their role and responsibility (Heder, 1999).

The U.S. Constitution prohibits unreasonable search and seizure, but there are certain situations in which a student's expectation of privacy does not outweigh school safety concerns. A lawful search by a school official is justified if it is considered reasonable and a good faith effort to protect the school environment (Rossow & Potter, 2008; Taylor, 2001). Understanding legal concerns and decisions related to student seizure can help principals develop and follow appropriate procedures that govern the restraint, detainment, and seclusion of students (Croston, 2009; Rossow & Potter, 2008; Taylor, 2001).

The Fourth Amendment in Public Schools

The Fourth Amendment is “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” (Legal Information Institute, 2012, p. 1). The Constitution clearly protects citizens against “unreasonable” searches and seizures. The key component of reasonableness is a warrant issued on “probable cause.” Any search conducted without a warrant is presumably unreasonable. However, there are defined exceptions where a search without a warrant, but based on probable cause, can take place if complicated circumstances exist. Additionally, the law allows searches without probable cause and often without a warrant if the need for a search arises in a “unique setting” that demands that the typical Fourth Amendment protections be relaxed (Atwell, 1978).

A public school is considered a unique setting. In *New Jersey v. T.L.O.* (1985), the U.S. Supreme Court set forth principles governing searches by public school authorities. The Fourth Amendment applies to searches conducted by public school officials because school officials are considered representatives of the state; however, the school setting requires some easing of the restrictions (GPO, 2002; Strobe & Dunaway, 1985). In public schools, a warrant is not required, nor is the probable cause standard appropriate (GPO, 2002). “Instead, a simple reasonableness standard governs all searches of students’ persons and effects by school authorities” (GPO, 2002, p. 1247).

Scholars often examine Fourth Amendment issues with search and seizure collectively, but then focus entirely on different types of student searches. However, there are two separate issues addressed in the Fourth Amendment--search and seizure.

A search is an examination of a person’s effects or of his person “with a view to the discovery of contraband or illicit or stolen property or some evidence of guilt” (Black, 1990, p.

1349). Student searches are an established issue in public schools and one widely researched and discussed (Croston, 2009; McKinney, 1994; Rossow & Potter, 2008). Beneficially, the Supreme Court set a test for searches in *T.L.O.* and developed the reasonableness standard for search cases (Rossow & Potter, 2008).

“A seizure, within the Fourth Amendment, is defined as the taking of one physically or constructively into custody and detaining him, thus causing a deprivation of his freedom in a significant way, with real interruption of his liberty of movement” (Black, 1990, p. 1359). As noted, student seizure is also a significant issue in public schools today. Yet, the Supreme Court has not specifically set a test for seizures thus leaving the courts without a specific standard for seizure cases (Rossow & Potter, 2008).

As of June 2008, however, several lower federal courts, including the Third, Fourth, Fifth, Seventh, Ninth, Tenth, and Eleventh Circuit Courts of Appeal, had applied the Fourth Amendment in seizure cases. Thus, a majority of the federal appellate courts have directly embraced the application of the Fourth Amendment and its reasonableness standard to situations of student seizure in public schools (Croston, 2009). The district courts in the Second, Sixth, and Eighth Circuits have also applied the Fourth Amendment reasonableness standard in similar situations (Croston, 2009). Without a clear Supreme Court decision on seizure in public schools, there are no nationally-binding rules, but the growing trend of case law is that reasonableness should be the guiding principle for student seizure (Croston, 2009).

The Reasonableness Standard

Because of the unique context of public schools, courts have struggled to create a consistent Fourth Amendment framework for situations involving public school students.

Urbonya (2000) explained that public school officials “exercise neither criminal law enforcement powers nor parental powers but rather “custodial” and “tutelary” powers,” (p. 424) thus complicating the Fourth Amendment analysis of reasonableness (Croston, 2009; Urbonya, 2000). The Supreme Court suggested that the Fourth Amendment concept of reasonableness, as it applies to seizures, is not capable of precise definition and requires case-by-case judgment (Croston, 2009).

Determining whether a student seizure is reasonable under the Fourth Amendment requires a careful balance between the interest of the student’s privacy and the interest of school safety. In the direct quote below, Croston (2009) shared reasonableness factors for consideration by school officials with regard to student seizure or use of force:

The Court indicated that it would consider the “totality of the circumstances” in determining whether a government actor’s use of force was reasonable. The Court also suggested three (non-exclusive) factors that could be particularly relevant to this balancing test. As applied to a public school setting, these factors would be: (1) the severity of the student’s disruption; (2) the danger presented by the student’s behavior; and (3) whether the student actively resisted the staff member’s authority. Additionally, “the reasonableness of a particular use of force must be judged from the perspective of a reasonable staff member on the scene, rather than with a 20/20 vision of hindsight.” (pp. 43-44)

In *T.L.O.* (1985) the Court held that determining the reasonableness of any search involved a twofold analysis: (1) whether the search was justified at its inception and (2) whether the search, as conducted, was reasonable related to the scope to the circumstances that initially justified the search (GPO, 2002; Rossow & Potter, 2008). Although *T.L.O.* was not a school seizure case, there has been a tendency in the lower courts to at least consider *T.L.O.* when dealing with student seizure issues (Croston, 2009; Rossow & Potter, 2008).

According to Rossow and Potter (2008), case law on school seizures dates back to the first seizure case in 1987, *Edwards v. Rees*. In this case, a high school student, Edwards, was

accused by other students of calling in a bomb threat at the local junior high school. The assistant principal, Mr. Rees, went to the nearby high school, had Edwards removed from class, and took him into a room for questioning about the threat. Edwards claimed that the 20-minute questioning was in violation of his Fourth Amendment right to be free from unreasonable seizures (Rossow & Potter, 2008).

The court determined that Mr. Rees's conduct and the seizure were justified at its inception. The court also found that questioning the student for twenty minutes was reasonably related in scope given the serious nature of the offense. The lower court's summary judgment in favor of Mr. Rees and the school district was affirmed (Rossow & Potter, 2008). Thus, *Edwards* (1987) marked the beginning of school seizure jurisprudence and it proved to be an important case because it was the first case to apply the *T.L.O.* two-pronged reasonableness standard to a student seizure.

Another instrumental case in developing the constitutional outline of a reasonable seizure was the Seventh Circuit case of *Wallace v. Batavia School District* (1995). In this case, a teacher returned to his classroom after a short absence and found two 16-year-old female students, Heather Wallace and Kim Fairbanks, in a loud verbal altercation. The teacher ordered both girls to sit down and be quiet. When his warning was not successful and the altercation continued to escalate, the teacher told Wallace to get her books and leave the classroom. She did so slowly, so the teacher took Wallace by the arm to speed her exit and remove her from the classroom. Through her mother, Wallace sued the teacher and Batavia School Corporation alleging violations of her Fourth Amendment right against unreasonable seizures. The court found the teacher's actions reasonable under the Fourth Amendment (Croston, 2009).

In this case, the court referenced *Terry v. Ohio* (1985) and concluded there was a need to fit a proper Fourth Amendment standard to the threat, or lack thereof, that a given type of seizure creates (Rossow & Potter, 2008). The court in *Wallace* proceeded to differentiate the setting and purpose of a police seizure and a school seizure. The court noted that the purpose of a seizure in a school is to protect the educational process (Rossow & Potter, 2008). A direct quote from the decision in *Wallace* (1995) is important to student seizure case law:

We thus hold that, in the context of a public school, a teacher or administrator who seizes a student does so in violation of the Fourth Amendment only when the restriction of liberty is unreasonable under the circumstances then existing and apparent. Therefore, in seeking to maintain order and discipline, a teacher or administrator is simply constrained to taking reasonable action to achieve those goals. Depending on the circumstances, reasonable action may certainly include the seizure of a student in the face of provocative or disruptive behavior. (Rossow & Potter, 2008, p. 2)

Since *Edwards* (1987), courts have adopted a “modified” *T.L.O.* approach for school seizure cases. “The slight difference in a *T.L.O.* and “modified” *T.L.O.* approach for seizures was noted in the *Shuman v. Penn Manor School District* (2005) decision when the court said that “*T.L.O.* solely addressed the standard applied to searches in public schools, however, and thus left open the appropriate standard governing seizures in that context” (Rossow & Potter, 2008, p. 3). The *T.L.O.* test and the “modified” *T.L.O.* test balance competing interests; a seizure affects a person’s possessory interests, while a search affects a person’s privacy interests (Rossow & Potter, 2008).

In *T.L.O.* (1985), the U.S. Supreme Court noted that the legality of the search of a student should depend merely on the reasonableness of the search. It is the student’s interest of privacy that must be balanced against the interest of school safety. “However, for seizures, the balance is between the interest of the students in maintaining their *liberty* and the interest of the schools in: (1) maintaining discipline, (2) carrying out goals and responsibilities in light of educational

objectives and (3) providing a safe and orderly environment conducive to learning” (Rossow & Potter, 2008, p. 3). Hence, it is important to understand the “modified” *T.L.O.* standard for student seizure cases and what it means for school leaders.

As explained in the research, a student seizure may take place anytime a student is stopped, detained, questioned, interviewed, isolated, or restrained for disciplinary reasons. However, before a school official can seize a student, there should be reasonable suspicion that the student is a disruption to the safety of the school environment (Rossow & Potter, 2008). Simply stated, there must be reasonable suspicion for student seizures. Likewise, the majority of student seizure cases have considered reasonable scope. The court’s deliberations have focused on the (1) measures or methods used to seize the student, (2) the location or conditions within the seizure setting, and (3) the time or duration of the seizure (Rossow & Potter, 2008).

In summary, Rossow and Potter (2008) explained that in order to prevail in seizure litigation, schools have to show that the seizure was reasonable in both suspicion and scope. Furthermore, the school must successfully argue that its educational mission was at stake (Croston, 2009; Rossow & Potter, 2008).

The Issue of Liability

Liability is the quality or state of being legally responsible (Garner, 1996). School leaders are essentially liable for everything they do (Watson, 1977). Under Section 1983, public school employees acting under color of state law can be held personally liable for actions that infringe on students’ federal rights. However, the Supreme Court recognized that in some circumstances school officials can claim qualified immunity to protect them from personal liability when they have acted reasonably and in good faith (Cambron-McCabe, McCarthy, &

Thompson, 2004; Clarke, 2010). Black (1990) defined qualified immunity as the “affirmative defense which shields public officials performing discretionary functions from civil damages if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known” (p. 752). A reasonable person is a hypothetical person used as a legal standard. Basically, a reasonable person acts sensibly, without delay, and takes proper precautions (Garner, 1996).

In 2009, the U.S. Supreme Court decided *Safford Unified School District #1 v. Redding*, its second Fourth Amendment school search decision. In this case, officials at Safford Middle School in Safford, Arizona, received information that a 13-year-old girl, Savana Redding, had given a classmate prescription-strength ibuprofen and over-the-counter naproxen. Based on this suspicion, the assistant principal searched her belongings and no contraband was found. The assistant principal then ordered a strip search of Savana. Savana was asked to strip off her clothing, pull out her bra, and then her underpants waistband, and shake them. The officials did not find any contraband on Redding’s person. The search led to Redding’s mother filing a § 1983 civil rights action against the school district, the assistant principal, and other school officials (Clarke, 2010; Harvard Law Review, 2008).

In *Safford* (2009), the Court held that the strip search of Savana Redding was unreasonable and violated her Fourth Amendment rights, but that the defendants were entitled to qualified immunity (Clarke, 2010). This was the Court’s first opportunity to apply both the *T.L.O.* test and the qualified immunity standard in a school search case (Clarke, 2010).

According to Clarke (2010), “a likely result of *Safford* is that school officials now have more protections than qualified immunity normally grants” (p. 314); he refers to this as “qualified immunity plus.” An opinion is that if the strip search that occurred in *Safford* (2009)

is not enough to overcome the qualified immunity defense, it is difficult to imagine circumstances where school officials would be held liable (Clarke, 2010). In a direct quote from Clarke (2010), he discussed this opinion:

Qualified immunity plus is an appropriate standard for school officials--especially classroom teachers. They should have a broader shield than other government actors because their principal role is not law enforcement but rather educating the youth. However, courts should explicitly state that school officials are granted a higher protection from civil suit than other government officials. Otherwise, school officials will be granted qualified immunity plus but courts will refer to the standard as qualified immunity. (p. 314)

Clarke (2010) believed that the ruling in *Safford* (2009) would cause lower courts to struggle with the reasonableness standard in future school search and seizure cases and, moreover, the near-absolute immunity given to school officials. Eventually, it is likely that the Supreme Court will be challenged to readdress this issue and provide a clearer rule that can be applied uniformly across the nation (Clarke, 2010).

Reflectively, *Safford* (2009) related to a student search and not a student seizure. However, due to the common connection between search and seizure cases, the researcher believed it was an important part of the research related to Fourth Amendment rights in public schools. Although no current evidence was discovered, it is possible that this Supreme Court ruling could be applied to student seizure cases.

Relevant Legislation

On May 19, 2009, the House of Education and Labor Committee held a hearing on the use of restraint and seclusion in our nation's schools. Investigators from the GAO, parents, and education officials shared testimony about hundreds of students who were restrained or secluded at school. The GAO (2009) found no federal laws restricting the use of restraints and seclusion

in public schools and widely divergent laws at the state level. In 2009, the National Disability Rights Network (NDRN) report, *School is Not Supposed to Hurt*, provided examples of children who have died and were physically and psychologically injured as a result of restraint or seclusion in schools (National Disability Rights Network, 2009). As a result, media attention and litigation placed pressure on many state and local education agencies to develop policies or guidelines concerning restraint and seclusion in schools. Ryan et al. (2009) were able to identify 31 states with documented policies or guidelines on the use of restraint in school districts. Fourteen states reported having no policy or guidelines to direct the use of restraint, with seven of those states specifically designating the responsibility to individual school districts.

Also in 2009, the United States Congress began considering legislation to regulate the use of restraint and seclusion across American schools. In March 2010, the United States House of Representatives passed the *Keeping All Students Safe* bill, H.R.4247. The bill's purpose was to allow the Secretary of Education to issue regulations regarding restraint and seclusion practices for students in public and private schools that receive federal funding (Nishimura, 2011). The bill was never voted on by the Senate thus this bill never became law. On April 6, 2011, the "Keeping All Students Safe" bill was reintroduced in the House. This bill was designed to prevent and reduce the use of physical restraint and seclusion in schools (GovTrack, 2012). As of March 2012, the bill was in committee and had not yet reached the United States House of Representatives for a vote.

Summary

As more and more students with difficult or severe behavioral needs are served in public schools, and as disciplinary problems persist, the need to seize students will continue. Restraint,

detainment, and seclusion techniques are currently used in public education and, as a result, litigation ensues.

In order to prevail in seizure litigation, schools must show that seizures are reasonable at their inception. In student seizures, school officials must have a reason to believe that a safety, discipline, or educational issue needs to be addressed and that the seizure of a student is a reasonable way of meeting that need (Rossow & Potter, 2008). School seizure is an area of law that continues to develop and, as the research suggests, there are still many legal questions that surround the issue. Furthermore, the pending nature of legislation related to restraint and seclusion in schools calls for educational leaders to be prepared with sound policy and practice to prevent the violation of students' rights and possible litigation.

CHAPTER III

METHODOLOGY

Introduction

This study employed a qualitative, legal-historical, document-based research design to gain insight into legal issues related to the restraint, detainment, and seclusion of students in a public school setting. The study, grounded in case law, includes court cases from 1977-2012; this timeframe allows a sufficient number of cases for comparison and analysis. These legal cases were analyzed to determine trends in court decisions to help provide educators with guiding principles to avoid potential litigation.

Research Questions

The research questions that guided this study follow:

1. What are the fact patterns in court cases involving the restraint, detainment, and seclusion of students?
2. What are the outcomes of court cases involving action against public school educators who restrain, detain, or seclude a student?
3. What are the trends of court cases involving the restraint, detainment, and seclusion of students?
4. What principles for public school educators may be discerned from court cases involving the restraint, detainment, and seclusion of students?

Methodology

The purpose of this study was to provide educators with insight about how the courts have ruled in cases involving the restraint, detainment, and seclusion of students. Qualitative research was used. Qualitative research seeks to understand how people make sense of the world and the experiences they have in that world (Creswell, 2007). It uses a holistic approach and reports multiple perspectives and identifies many factors; this allows the researcher to sketch a larger picture that emerges from the data (Patton, 2002). Content analysis was used to condense the collected cases into patterns, themes, and categories and then synthesize the data into useful information (Berg, 2004; Gall, Borg, & Gall, 1996; Merriam, 1998). The researcher's goal was to step beyond what we know, as practicing educators, into the world of case law to see the issue from that perspective and make discoveries that will contribute to the development of empirical knowledge (Strauss & Corbin, 1998).

A legal-historical, document-based research design was chosen. Case law over a 36-year period was used because it provided enough data for a thorough analysis over time. Historical research is unique to educational research in that it discovers rather than creates data. Many educational issues are enhanced based on past experiences; therefore, historical research is critical in education (Berg, 2004; Gay & Airasian, 2000; Gall et al., 1996). Gall et al. (1996) suggested that, despite potential inaccuracies of predictions, historical research may even provide the basis for predicting future outcomes of current events. Document-based methodologies are underused in qualitative research; however, for a study of this nature, multiple-case legal research is a sound method. Documentary data are objective and nonreactive. The data are not polluted by the influence of the researcher's presence during an interview. Yet, the document-based case briefing method is similar to an interview method of data collection. It is as if the

researcher asks the judges a list of questions. When briefing a case, the researcher asks about the key facts of the case, what laws were applied to the situation, the decision, and the reasoning for the outcome (Merriam, 1998). A volume of document-based case data was readily available on the research topic.

Data Collection

The researcher used resources held at the Bounds Law Library at The University of Alabama in Tuscaloosa, Alabama, and Houston Cole Library at Jacksonville State University in Jacksonville, Alabama. Internet search engines and electronic resources were used to collect supporting data. The cases reviewed in this study were obtained from Westlaw using a word search method. Key words in the search included schools, students, seizure, restraint, restrain, detain, seclusion, use of force, and bodily integrity. Cases rendered using the word searches were reviewed to determine relevancy to the study. The study required legal cases from the state and federal courts that dealt with issues related to the restraint, detainment, or seclusion of students. Cases meeting the requirements set forth in the study were printed and assembled in notebooks. The researcher also compiled a list of cases collected using a Microsoft Excel spreadsheet. When each new case was discovered, the case was compared to the list to prevent any identical cases. The study included 100 legal cases relevant to the research topic.

In order to collect the court opinions into a form of useful analysis, Statsky and Wernet's (1989) case briefing method was used in this study. The outline for the briefing method is as follows:

1. Citation: Information necessary to locate the legal document in a law library.

2. Key Facts: Facts which are essential to the court's decision; facts that would have changed the holding if it had been different or had not been in the opinion.
3. Issue: A specific legal question under consideration.
4. Holding(s): The answer to a legal question; the result of the court's application of one or more rules of law to the facts of the dispute.
5. Reasoning: The explanation of how the court reached a particular decision regarding a specific issue.
6. Disposition: The directive of the court resulting from the holdings of an opinion.

Creswell (2007) suggested that all data be organized and reduced to codes before analysis. Codes are categories used to reduce data into meaningful segments. Then, codes are reduced into themes for analyzing. Formatting the court cases as described above allowed the researcher to organize the analysis in a manner that promotes understanding. This was accomplished by systematically classifying the cases based on key facts, holding(s), and reasoning.

Thus, once data were collected, content analysis was employed to provide a systematic procedure for describing the contents of the cases. The content analysis technique allows for analyzing the content of the documents in order to extract recurring themes and patterns (Merriam, 1998); this method takes the information in the case briefs and converts it to data. The case briefing was used for the process of creating categories and finding regularities in the study (Marshall & Rossman, 1995). Marshall and Rossman (1995) encouraged the use of categorical aggregation, direct interpretation, correspondence and pattern, and natural generalization. Categorical aggregation is finding sums or distribution of code data; direct interpretation is drawing key meanings from a coded event; correspondence and pattern is the

search for consistency in patterns and in certain conditions; and natural generalization is interpretation based largely on experience. Merriam (1998) added description as a fifth component to analysis; a description gives a comprehensive view of the facts of the case.

Data Analysis

Content analysis means organizing and interrogating data in ways that allows the researcher to see patterns, identify themes, discover relationships, develop explanations, make interpretations, or generate theories (Creswell, 2007). Content analysis is an organized way to discern meaning; and, it is a way to process qualitative data so that what has been learned can be communicated to others (Hatch, 2002). For this study, case law involving the restraint, detainment, or seclusion of students was analyzed for trends in the opinions rendered by the courts. A useful form of analysis for this type of study is a holistic approach. In this approach, the researcher examines the cases, provides a description of each, extracts themes from the data, and presents interpretations or assertions that can apply to the whole (Creswell, 2007).

Analysis of the study revealed legal trends that developed, over time, from litigation arising from student seizures. The analysis of case law is an important step in identifying trends and themes that educators need to be cognizant of in practice. The reasoning behind the courts' decisions gave the researcher insight to aid educators dealing with student seizure. It was the researcher's goal that this study will provide sound principles to help educators avoid potential litigation.

CHAPTER IV
DATA PRODUCTION AND ANALYSIS

Introduction

This chapter includes a description of 100 court cases concerning the restraint, detainment, and seclusion of students in a public school setting dating from 1977 to 2012. The data were collected through individual analysis of each case using a standard format outlined by Statsky and Wernet (1989). The cases are listed in chronological order by date of decision. Each brief includes the case citation, key facts, issues, the holding of the court, the reasoning behind the court's decision, and final disposition of the case.

Case Briefs

1977

Citation: *Ingraham v. Wright*, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977).

Key Facts: James Ingraham and Roosevelt Andrews filed the complaint in this case on January 7, 1971, in the United States District Court for the Southern District of Florida. At the time both were enrolled in the Charles R. Drew Junior High School in Dade County, Florida. The complaint contained three counts, each alleging a separate cause of action for deprivation of constitutional rights. Counts one and two were individual actions for damages by Ingraham and Andrews based on paddling incidents. Count three was a class action for declaratory and injunctive relief filed on behalf of all students in Dade County schools. Named as defendants in all counts were Willie J. Wright (principal), Lemmie Deliford (assistant principal), Solomon

Barnes (assistant principal), and Edward L. Whigham (superintendent). Because he was slow to respond to his teacher's instructions, Ingraham was subjected to more than 20 licks with a paddle while being held over a table in the principal's office. The paddling was so severe that he suffered a hematoma requiring medical attention and keeping him out of school for several days. Andrews was paddled several times for minor infractions. On two occasions he was struck on his arms, once depriving him of the full use of his arm for a week. The District Court made no findings on the credibility of the students' testimony. Rather, assuming their testimony to be credible, the court found no constitutional basis for relief. With respect to count three, the class action, the court concluded that the punishment authorized and practiced generally in the county schools violated no constitutional right. With respect to counts one and two, the court concluded that while corporal punishment could in some cases violate the Eighth Amendment, in this case a jury could not lawfully find "the elements of severity, arbitrary infliction, unacceptability in terms of contemporary standards, or gross disproportion which are necessary to bring 'punishment' to the constitutional level of 'cruel and unusual punishment.'" A panel of the Court of Appeals voted to reverse. The panel concluded that the punishment was so severe and oppressive as to violate the Eighth and Fourteenth Amendments, and that the procedures outlined failed to satisfy the requirements of the Due Process Clause. Upon rehearing, the en banc court rejected these conclusions and affirmed the judgment of the District Court. The plaintiffs appealed to the Supreme Court. The Supreme Court granted certiorari, limited to the questions of cruel and unusual punishment and procedural due process.

Issue: At issue was whether school officials violated the students' constitutional rights when they were subjected to disciplinary corporal punishment.

Holding: The Supreme Court held that the cruel and unusual punishments clause of the Eighth Amendment did not apply to disciplinary corporal punishment in public schools; and that the due process clause did not require notice and hearing prior to the imposition of corporal punishment in the public schools, as that practice was authorized and limited by Florida's preservation of common-law constraints and remedies.

Reasoning: Although the early cases viewed the authority of the teacher as deriving from the parents, the concept of parental delegation has been replaced by the view more consonant with compulsory education laws that the State itself may impose such corporal punishment as is reasonably necessary "for the proper education of the child and for the maintenance of group discipline." All of the circumstances are to be taken into account in determining whether the punishment is reasonable in a particular case. Among the most important considerations are the seriousness of the offense, the attitude and past behavior of the child, the nature and severity of the punishment, the age and strength of the child, and the availability of less severe but equally effective means of discipline. In the few cases where the Court has had occasion to confront claims that impositions outside the criminal process constituted cruel and unusual punishment, it has had no difficulty finding the Eighth Amendment inapplicable. The prisoner and the schoolchild stand in wholly different circumstances. The schoolchild has little need for the protection of the Eighth Amendment. Though attendance may not always be voluntary, the public school remains an open institution. While at school, the child brings with him the support of family and friends and is rarely apart from teachers and other pupils who may witness and protest any instances of mistreatment. The openness of the public school and its supervision by the community afford significant safeguards against the kinds of abuses from which the Eighth Amendment protects the prisoner. Public school teachers and administrators are privileged at

common law to inflict only such corporal punishment as is reasonably necessary for the proper education and discipline of the child; any punishment going beyond the privilege may result in both civil and criminal liability. Therefore, the Court concludes that when public school teachers or administrators impose disciplinary corporal punishment, the Eighth Amendment is inapplicable. The pertinent constitutional question is whether the imposition is consonant with the requirements of due process. The Fourteenth Amendment prohibits any state deprivation of life, liberty, or property without due process of law. Application of this prohibition requires the familiar two-stage analysis: We must first ask whether the asserted individual interests are encompassed within the Fourteenth Amendment's protection of "life, liberty or property;" if protected interests are implicated, we then must decide what procedures constitute "due process of law." Following that analysis here, the Court finds that corporal punishment in public schools implicates a constitutionally protected liberty interest, but the Court holds that the traditional common-law remedies are fully adequate to afford due process. This constitutionally protected liberty interest is at stake in this case. There is a *de minimis* level of imposition with which the Constitution is not concerned. But at least where school authorities, acting under color of state law, deliberately decide to punish a child for misconduct by restraining the child and inflicting appreciable physical pain, the Court holds that Fourteenth Amendment liberty interests are implicated. Under the common law, an invasion of personal security gave rise to a right to recover damages in a subsequent judicial proceeding. But the right of recovery was qualified by the concept of justification. Thus, there could be no recovery against a teacher who gave only "moderate correction" to a child, to the extent that the force was reasonable in light of its purpose, it was not wrongful, but rather "justifiable or lawful." The concept that reasonable corporal punishment in school is justifiable continues to be recognized in the laws of most States.

Under that longstanding accommodation of interests, there can be no deprivation of substantive rights as long as disciplinary corporal punishment is within the limits of the common-law privilege. This is not to say that the child's interest in procedural safeguards is insubstantial. In any deliberate infliction of corporal punishment on a child who is restrained for that purpose, there is some risk that the intrusion on the child's liberty will be unjustified and therefore unlawful. In these circumstances the child has a strong interest in procedural safeguards that minimize the risk of wrongful punishment and provide for the resolution of disputed questions of justification.

Disposition: The Supreme Court decided that public school students could be paddled without first receiving a hearing.

1980

Citation: *Hall v. Tawney*, 621 F.2d 607 (4th Cir. 1980).

Key Facts: The action arose from an incident occurring on December 6, 1974, in which Naomi, then a student at Left Hand Grade School in West Virginia, was paddled by a teacher in that school. The complaint stated that the defendant, Tawney, struck the plaintiff with a homemade paddle across her left hip and thigh. In an ensuing struggle, Tawney "violently shoved the minor plaintiff against a large stationary desk" and then "vehemently grasped and twisted the plaintiff's right arm and pushed her into" the presence of Defendant Claywell who then granted permission to Tawney to "again paddle the minor plaintiff." It is stated that the minor plaintiff was again stricken repeatedly and violently by Tawney with the rubber paddle under the supervision and approval of Claywell. The result of this application of force was a visit to the emergency room where Naomi was admitted and kept for a period of 10 days for the

treatment of traumatic injury to the soft tissue of the left hip and thigh, trauma to the skin and soft tissue of the left thigh, and trauma to the soft tissue with ecchymosis of the left buttock. The district court dismissed action against the school teacher and school officials brought by the parents and minor child who was subjected to corporal punishment. The plaintiffs appealed.

Issue: At issue was whether the teacher violated the student's constitutional rights when he paddled her.

Holding: The Court of Appeals held that (1) parents could not maintain action, (2) under certain circumstances infliction of corporal punishment to pupil may violate pupil's substantive due process rights, and (3) complaint did not state cause of action against school officials who were not directly involved in inflicting punishment but did state cause of action on behalf of pupil against persons directly involved in paddling.

Reasoning: The plaintiffs, conceding that *Ingraham* (1977) has effectively foreclosed their procedural due process and cruel and unusual punishment claims, press only the substantive due process claims of Naomi and of the parents, respectively. Appellants have not raised the equal protection claim on this appeal, and it is therefore not before this court. The plaintiffs argued that Naomi's paddling violated the right of her parents to determine the means by which she could be disciplined. They had told school officials, including Tawney, that they did not want Naomi corporally punished. The state interest in maintaining order in the schools limits the rights of particular parents unilaterally to except their children from the regime to which other children are subject. Here the plaintiffs alleged that the corporal punishment inflicted was not "reasonable," but "severe." This court does not believe, however, that any constitutional right of parents to choose the means by which their child should be disciplined can be made to turn on the severity of the punishment. This court therefore concludes that the parents' claim was rightly

dismissed. However, this court concludes that there may be circumstances under which specific corporal punishment administered by state school officials gives rise to an independent federal cause of action to vindicate substantive due process rights under § 1983. They further conclude that whether those circumstances existed in the instant case could not properly be determined as to the defendants directly involved in the paddling on the motion to dismiss and that the case must therefore be remanded for further proceedings in respect of Naomi's substantive due process claim. In ruling on the defendant's motion to dismiss, the district court considered Naomi's substantive due process claim only to the point of concluding, in reliance upon the Fifth Circuit's decision in *Ingrahm* (1977) and the Supreme Court's denial of review on the issue, that because corporal punishment per se did not violate substantive due process no cognizable claim was stated under § 1983. This court disagrees with that conclusion and has held instead that a cognizable claim based upon an episode application of force not authorized by state law or policy may be stated under the substantive due process standard here recognized. When this court looks to the complaint, it cannot say that under that substantive standard it fails to state a claim for relief against Tawney and Claywell, the direct participants in the December 6 paddling incident. Upon full development of a summary judgment or trial record, it may appear that the actual facts of the incident do not support a claim of substantive due process violation. But this court cannot say from the bare pleading of allegations that "it appears beyond doubt that the plaintiff can prove no set of facts in support of her claim which would entitle her to relief" (*Conley v. Gibson*, 1957). Accordingly, it was error to dismiss the action against these two defendants as to the minor plaintiff's substantive due process claim. The allegations of the complaint do not suffice to state substantive due process claims under § 1983 against any of the other defendants than Tawney or Claywell. These other defendants were the former and current

superintendents of the County School system and the members of the County Board of Education. While these defendants were alleged in conclusory terms to have condoned a general policy of inflicting excessive corporal punishment on students in the school system, none was alleged specifically to have directed, supervised, participated in, authorized, or even to have condoned by knowing acquiescence the specific incident upon which this claim for relief is based. Under the circumstances, they would not be liable directly or vicariously for any constitutional deprivation suffered in the incident.

Disposition: The District Court's dismissal of the action is affirmed in respect of all the claims alleged except the substantive due process and pendent state tort claims of the minor plaintiff, and in respect of all the defendants except Tawney and Claywell. As to the latter claims and defendants, the judgment of dismissal is reversed and the action remanded for further proceedings.

1982

Citation: *Youngberg v. Romeo*, 457 U.S. 307, 102 S.Ct. 2452 (1982).

Key Facts: Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an 18-month-old child with an I.Q. between 8 and 10. He cannot talk and lacks the most basic self-care skills. Until he was 26, Romeo lived with his parents. But after the death of his father in May 1974, his mother was unable to care for him. Within 2 weeks of the father's death, Romeo's mother sought his temporary admission to a nearby Pennsylvania hospital. Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. On June 11, 1974, the Court of Common Pleas committed Romeo to the Pennhurst State School and Hospital, pursuant to the applicable

involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act. At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Romeo's mother became concerned about these injuries. After objecting to the respondent's treatment several times, she filed a complaint on November 4, 1976, in the United States District Court. The complaint alleged that "during the period of June 1974 to the present, the plaintiff had suffered injuries on at least 63 occasions," thus violating his rights under the Eighth and Fourteenth Amendments. Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day. In December 1977, a second amended complaint was filed alleging that the defendants were restraining Romeo for prolonged periods on a routine basis. The District Court rendered judgment for the defendants, and the plaintiff appealed. The Court of Appeals, Third Circuit, reversed and remanded for new trial.

Issue: At issue was whether institution officials violated a mentally retarded individual's constitutional rights to safe conditions of confinement, freedom from bodily restraint, and training or "habilitation."

Holding: The Supreme Court held that the respondent had constitutionally protected liberty interests under the due process clause of the Fourteenth Amendment to reasonably safe conditions of confinement, freedom from unreasonable bodily restraints, and such minimally adequate training as reasonably might be required by these interests.

Reasoning: The Court considers here for the first time the substantive rights of involuntarily committed mentally retarded persons under the Fourteenth Amendment to the Constitution. In this case, Romeo had been committed under the laws of Pennsylvania, and he

did not challenge the commitment. Rather, he argued that he had a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed on these rights by failing to provide constitutionally required conditions of confinement. The state conceded that Romeo had a right to adequate food, shelter, clothing, and medical care. The Court must decide whether liberty interests also existed in safety, freedom of movement, and training. If such interests did exist, the Court must further decide whether they had been infringed on in this case. Romeo's first two claims involved liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish. The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes a "historic liberty interest" protected substantively by the Due Process Clause. And that right is not extinguished by lawful confinement, even for penal purposes. If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed--who may not be punished at all--in unsafe conditions. Next, the respondent claimed a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "liberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action" (*Greenholtz v. Nebraska Penal Inmates*, 1979). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment. The respondent's remaining claim was more troubling. In his words, he asserted a "constitutional right to minimally adequate habilitation." In addressing the asserted right to training, the Court started from established principles. As a general matter, the State is under no constitutional duty to provide substantive services for those within its border. When a person is institutionalized--and wholly independent

on the State--it is conceded by petitioners that a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities. The record reveals that Romeo's primary needs were bodily safety and a minimum of physical restraint, and the respondent clearly claimed training related to these needs. As the court has recognized that there is a constitutionally protected liberty interest in safety and freedom from restraint, training may be necessary to avoid unconstitutional infringement of those rights. In the circumstances presented by this case, the Court agreed with Romeo's view and concluded that the respondent's liberty interests required the State to provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint. In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance "the liberty of the individual" and "the demands of an organized society" (*Poe v. Ullman*, 1961). Accordingly, whether Romeo's constitutional rights had been violated must be determined by balancing his liberty interests against relevant state interests. The court therefore turned to consider the proper standard for determining whether a State adequately has protected the rights of the involuntarily committed mentally retarded. The best standard articulated would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professional acceptable choices should have been made."

Disposition: The Supreme Court concluded that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. The court vacated the decision of the Court of Appeals and remanded for further proceedings consistent with this decision.

Citation: *Smith v. The West Virginia State Board of Education*, 170 W.Va. 593, 295 S.E.2d 680 (West Vir. App. 1982).

Key Facts: George David Smith, through his parents and next friends, seeks to challenge the constitutionality of the in loco parentis doctrine generally embodied in W.Va.Code, 18A-5-1. On September 15, 1981, Petitioner Smith, who was age 11 at the time and a student at Clover Elementary School, along with fellow student, James Greathouse, were “severely struck” with a wooden paddle by the respondent, Jack Sharp, a teacher and the principal. As a result of the striking, Smith’s legs received large bruises that required medical treatment at a local hospital. Allegedly the petitioner subsequently developed a negative attitude about school. The respondents admitted to the use of corporal punishment by Sharp who had stated that he “gave each boy three moderate licks with a wooden paddle on their buttocks.” He further stated that he told the boys that this punishment was for their disobedience of school rules regarding fighting. The boys were caught fighting in the bathroom.

Issue: At issue was the constitutionality of the in loco parentis doctrine as it applies to corporal punishment in West Virginia schools.

Holding: The Supreme Court of Appeals held that (1) the petitioner’s initial constitutional challenge to the in loco parentis concept embodied in statute, when coupled with failure of the State Board of Education to make a rule relative to corporal punishment, were sufficient predicates to warrant acceptance of petition for writ of mandamus; (2) doctrine of in loco parentis cannot be interpreted as permitting corporal punishment of public school children by means of a paddle, whip, stick, or other mechanical devices; and (3) in loco parentis doctrine does not prohibit spanking by hand, the physical seizure and removal of unruly students from

classroom, nor the use of physical force to restrain students from fighting or engaging in destructive or illegal acts.

Reasoning: In the present case, the Court believed that the petitioner's initial constitutional challenge to the in loco parentis concept embodied in W.Va.Code, 18A-5-1, when coupled with the failure of the West Virginia State Board of Education to make a rule relative to corporal punishment under W.Va.Code, 18-2-5, were sufficient predicates to warrant accepting the petition for writ of mandamus. These are issues of substantive public importance bearing upon the welfare and conduct of pupils and teachers throughout the state. The doctrine of in loco parentis originated in the English common law and recognizes that a parent delegates part of his parental authority to school personnel while the child is in their custody and for purposes consonant to the school setting. Even though the in loco parentis doctrine covers more than the discipline of school children, it is not without constitutional limitations. The Court believes the doctrine of in loco parentis as contained in W.Va.Code, 18A-5-1, in light of present day standards and legislative enactments in the child abuse area, cannot be interpreted as permitting corporal punishment of public school children by means of a paddle, whip, stick, or other mechanical devices. In the vast majority of cases where the question of excessive force has arisen in suits against teachers, they have involved the use of such mechanical contrivances. To sanction this type of physical punishment in a school context under the doctrine of in loco parentis is to ignore those cases that have held such practices are impermissible when applied to persons incarcerated in the penal system. The limiting force of the Court's opinion is directed at the use of whips, paddles, or other contrivances to administer corporal punishment. The very nature of these devices is such that their use often leads to excessive force and injury. The Court believes that the doctrine of in loco parentis cannot be interpreted in light of current attitudes,

particularly as reflected in child abuse statutes, as permitting corporal punishment by mechanical devices. The Court's decision does not prohibit the spanking by hand, the physical seizure and removal of unruly students from the classroom, nor the use of physical force to restrain students from fighting or engaging in destructive or illegal acts. Although the Court declined to address the petitioner's constitutional arguments relative to cruel and unusual punishment and substantive due process claims, the Court does believe that some minimal procedural due process must be afforded before manual corporal punishment can be utilized as a disciplinary measure. The Court concluded that the following minimal due process procedures should be utilized. First, the student should be given an opportunity to explain his version of the disruptive event as such an explanation may convince a fair-minded person that corporal punishment is not warranted. Second, in the absence of some extraordinary factor, the administration of corporal punishment should be done in the presence of another adult. This latter requirement is designed to protect both the student and the person administering corporal punishment by providing a neutral observer.

Disposition: The court concluded that a writ of mandamus should be issued directing the State Board of Education to promulgate corporal punishment regulations not consistent with the standards set out herein.

1985

Citation: *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733 (1985).

Key Facts: A teacher at a New Jersey high school, upon discovering the respondent, then a 14-year-old freshman, and her companion smoking cigarettes in a school lavatory in violation of a school rule, took them to the Principal's office, where they met with the Assistant Principal.

When the respondent denied that she had been smoking and claimed that she did not smoke at all, the Assistant Principal demanded to see her purse. Upon opening the purse, he found a pack of cigarettes and also noticed a package of cigarette rolling papers that are commonly associated with the use of marijuana. He then proceeded to search the purse thoroughly and found some marijuana, a pipe, plastic bags, a fairly substantial amount of money, an index card containing a list of students who owed respondent money, and two letters that implicated her in marijuana dealing. Thereafter, the State brought delinquency charges against the respondent in the Juvenile Court, which, after denying the respondent's motion to suppress the evidence found in her purse, held that the Fourth Amendment applied to searches by school officials but that the search in question was a reasonable one, and adjudged the respondent to be a delinquent. The Appellate Division of the New Jersey Superior Court affirmed the trial court's finding that there had been no Fourth Amendment violation but vacated the adjudication of delinquency and remanded on other grounds. The New Jersey Supreme Court reversed and ordered suppression of evidence found in the student's purse holding that the search of the purse was unreasonable, and writ of certiorari was granted.

Issue: At issue was whether school officials violated a student's Fourth Amendment rights by conducting a search of her purse.

Holding: The Supreme Court held that (1) Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials, and (2) search of student's purse was reasonable.

Reasoning: The Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials and is not limited to searches carried out by law enforcement officers. Nor are school officials exempt from the Amendment's dictates by

virtue of the special nature of their authority over schoolchildren. In carrying out searches and other functions pursuant to disciplinary policies mandated by state statutes, school officials act as representatives of the State, not merely as surrogates for the parents and they cannot claim immunity from the Fourth Amendment's strictures. Schoolchildren have legitimate expectations of privacy. They may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items by bringing them onto school grounds. But striking the balance between schoolchildren's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public school authorities are ordinarily subject. Thus, school officials need not obtain a warrant before searching a student who is under their authority. Moreover, school officials need not be held subject to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a determination of whether the search was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. Under ordinary circumstances the search of a student by a school official will be justified at its inception where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. And such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the student's age and sex and nature of the infraction. Under the above standard, the search in this case was not

unreasonable for Fourth Amendment purposes. First, the initial search for cigarettes was reasonable. The report to the Assistant Principal that the respondent had been smoking warranted a reasonable suspicion that she had cigarettes in her purse; thus the search was justified despite the fact that the cigarettes, if found, would constitute “mere evidence” of a violation of the no-smoking rule. Second, the discovery of the rolling papers then gave rise to a reasonable suspicion that the respondent was carrying marijuana as well as cigarettes in her purse, and this suspicion justified the further exploration, which turned up more evidence of drug-related activities.

Disposition: The Supreme Court reversed the decision of The New Jersey Supreme Court.

Citation: *Gaspersohn v. Harnet County Board of Education*, 75 N.C.App. 23, 330 S.E.2d 489 (N.C. App. Ct. 1985).

Key Facts: Shelly Gaspersohn alleged that while she was a student at Dunn Senior High School in 1981, Glenn Varney, who was serving as assistant principal, administered upon her excessive and unreasonable corporal punishment by striking her six times upon the buttocks with a paddle. She alleged that as a result of this punishment she suffered extensive bruising “to both buttocks, and permanent psychological injuries.” The evidence shows that on December 1, 1981, Gaspersohn, two other girls, and a boy skipped school. On December 2, 1981, Gaspersohn was given 6 days in-school suspension as punishment for skipping school. At the time she and the other two girls received this discipline, they were adamant that they did not want to be in in-school suspension and requested that they “receive licks” as an alternative. Mr. Varney explained to them that the rule was that they would have to take three licks for each day of suspension which would be eighteen licks, which was too many for them. He asked them to

report for in-school suspension and told them that perhaps something could be done in a few days. The girls went to in-school suspension. After the girls had been in in-school suspension for 3 days they sent for Mr. Varney and asked him again to let them “receive licks” in lieu of further in-school suspension. At this time, Mr. Varney reduced the number of licks each girl was to receive from nine to six and administered them. Each girl was given three licks and each then requested that the punishment should continue. Each girl was then given three more licks. A member of the faculty witnessed the proceedings. The girls were then allowed to return to class.

Issue: At issue was whether an assistant principal’s administration of corporal punishment constituted assault and battery.

Holding: The Court of Appeals held that a teacher may use reasonable force in exercise of lawful authority to restrain or correct pupils and maintain order. (There are 8 other issues not briefed because of irrelevance to the study.)

Reasoning: There have been two cases in our Supreme Court dealing with corporal punishments (see *Drum v. Miller* (1904) and *State v. Pendergrass* (1837)). In *Pendergrass*, our Supreme Court reversed the conviction of a school teacher for assault and battery. The evidence showed that the teacher whipped a 6- or 7-year-old girl so as to cause marks upon her body, which disappeared within a few days. The Court said “it was their duty to acquit the defendant, unless the facts testified induced a conviction in their minds that the defendant did not act honestly in the performance of duty, according to her sense of right, but under the pretext of duty, was gratifying malice.” In *Drum*, our Supreme Court granted a new trial for an error in the charge. In that case, the defendant schoolteacher threw a pencil at the plaintiff who was a student in his class. The pencil struck the plaintiff in the eye, inflicting serious injury. Our Supreme Court held that it was not necessary for the jury to find the defendant should have

foreseen the particular injury that occurred. The Court said it was necessary for the jury to find only that a permanent injury would be the natural and probable consequences of his act. The Court cited *Pendergrass* and said, “It is undoubtedly true that a teacher is liable if, in correcting or disciplining a pupil, he acts maliciously or inflicts a permanent injury, but he has the authority to correct his pupil when he is disobedient and inattentive to his duties, and any act done in the exercise of his authority and not promoted by malice is not actionable, though it may cause permanent injury, unless a person of ordinary prudence could reasonably foresee that permanent injury of some kind would naturally or probably result from the act.” This court believes the rule from *Pendergrass* and *Drum* is that a teacher has the right to administer corporal punishment to students so long as it is done without malice and to further an educational goal. If a teacher inflicts serious injury on a student, the teacher is liable although acting without malice and to further an educational goal if he should have reasonably foreseen that a serious or permanent injury of some kind would naturally or probably result from the act. The Court charged the jury that a teacher may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. The Court charged the jury further that if Mr. Varney failed to exercise ordinary care and inflicted permanent or long-lasting injury, which was the natural and probable result, he would be liable to the plaintiff. This court believed this is a correct statement of the law as applied to the facts of this case. It appears that the judge relied on *Pendergrass* and *Drum* in defining reasonableness as used in the statute. In this, the court finds no error.

Disposition: The Court of Appeals found no error in the Superior Court’s decision to dismiss the action.

1986

Citation: *Willoughby v. Lehrbass*, 150 Mich.App. 319, 388 N.W.2d 688 (Mich. App. Ct. 1986).

Key Facts: On January 23, 1981, plaintiff Frank Dain Willoughby was a student in defendant Roger Lehrbass's fifth hour advertising class at Freesoil Community School. On that date, after helping the principal with a task, Willoughby walked into the advertising class a few minutes late. As he walked by Lehrbass's desk, he brushed into the wastebasket a number of papers sitting on his desk. As Willoughby swept his hand across the desk, Lehrbass grabbed his arm and instructed him not to touch the papers. Willoughby then intentionally or accidentally kicked the wastebasket over, and, according to Lehrbass, mumbled something that sounded disrespectful. When he was halfway to a seat, Lehrbass came up from behind, grabbed his left arm, and twisted it behind his back in a "half nelson." Lehrbass began marching Willoughby to the principal's office. Lehrbass pushed Willoughby out of the classroom and up the steps. Willoughby said, "Let me go, you're hurting me." On the landing, Willoughby squirmed loose and said he could find the office himself. However, Willoughby started toward the steps going down-away from the office. Lehrbass then grabbed Willoughby in a "full nelson," with his arms underneath Willoughby's armpits and his palms on the back of Willoughby's neck. Willoughby testified that he heard cracking up and down his back, and felt pain and soreness as Lehrbass pushed against his neck and back. Inside the office, Willoughby and Lehrbass each told the principal, defendant James Duvall, their versions of what had transpired. Willoughby asked to call home, but Duvall refused this request. Willoughby then attended his next class, physical education, where he participated in a game of speedball. Willoughby testified that he consulted a chiropractor that evening because of continuing soreness in his back, neck, and shoulders. He

was treated by the chiropractor for some time. Subsequently, he saw an orthopedic surgeon who diagnosed his condition as myofascitis, an inflammation of the back muscles or tissues.

Issue: At issue was whether school officials violated the civil rights of a student when they restrained him and later detained him in the principal's office.

Holding: The Court of Appeals held that (1) dismissal of civil rights count was harmless error, (2) corporal punishment statute did not deny equal protection of laws, (3) verdict was not contrary to great weight of evidence, (4) instructions on battery and use of unreasonable force were proper, (5) school district and related parties were immune from counts of negligent hiring and supervision, (6) school principal was immune from suit on count of false imprisonment, and (7) there was no cause of action against teacher for his false imprisonment.

Reasoning: Because the jury specifically found that Lehrbass had comported with the Michigan statute, and because the Michigan statute is a codification of the common law which, in *Ingraham*, was found not to violate constitutional right, it is clear that even if the trial judge had allowed the civil rights claim to go to the jury, the jury still would have found no violation under federal law. Defense counsel's statement does not constitute misconduct that prejudiced the plaintiffs. Concerning the plaintiffs' claim of error in the jury instruction, the court finds that this argument is lacking in merit and finds no reversible error. The plaintiffs argued that the statute was unconstitutional as a denial of equal protection of the laws. The statute serves the important governmental objective of maintaining discipline in the schools to ensure a proper environment for education. Allowing the teacher to use limited physical force in certain circumstances is substantially related to achieving this objective. Hence, the court must reject plaintiffs' equal protection challenge. The plaintiffs contend they are entitled to a new trial because the verdict of the jury was contrary to the great weight of evidence. Because the

testimony so clearly discloses conflicting views as to the appropriateness of the degree of force used as well as conflicting views as to whether Willoughby was indeed injured, reasonable minds could differ. Accordingly, the trial court did not err in denying the plaintiffs' motion for judgment notwithstanding the verdict. Finally, it is argued that trial court erred by granting summary judgment in favor of both the corporate defendants and individual defendants. The trial judge applied case law and determined that the defendants' activities in screening, hiring, and supervising a teacher are activities falling under the statute providing immunity to governmental agencies. Hence, according to the trial judge, dismissal was appropriate based upon the governmental immunity doctrine. Also, the trial judge stated that Duvall's and Lehrbass's activities constituted supervisory functions establishing grounds for a finding that immunity existed for such activities. In this case, the School Code expressly provides that the board of a school district has the authority to hire and contract with qualified teachers and to continue their contracts as it deems appropriate. Hence, it is evident that the school district was engaged in the exercise of a governmental function; therefore, it was entitled to governmental immunity from tort liability and the trial judge did not err in granting summary judgment. Regarding named individuals, *Ross* requires application of the test for individual governmental immunity; namely, whether the individual employees (a) were acting during the course of their employment and acting, or reasonably believed they were acting, within the scope of their authority; (b) acting in good faith; and (c) performing discretionary-decisional, as opposed to ministerial-operational acts. There is no allegation that Hoyt or Duvall was not acting in the course of their employments; therefore, the first prong of the *Ross* test is satisfied. Allegations that these two defendants willfully or recklessly or negligently failed to supervise Lehrbass simply are not sufficient to establish bad faith on the part of these defendants. Therefore, the

second prong of the *Ross* analysis was satisfied. Thus, summary judgment with regard to these two defendants was also appropriately entered pursuant to the doctrine of governmental immunity. The plaintiffs alleged that Principal Duvall falsely imprisoned Willoughby by refusing his requests to leave Duvall's office and for permission to call his parents. During this time, the decision facing Duvall was how to discipline, and that involved the exercise of discretion. Accordingly, the court believed the trial judge acted properly in granting summary judgment in favor of Duvall based upon governmental immunity. It is well established that in order to establish the tort of false imprisonment a plaintiff has the burden of proof to establish that he was intentionally and unlawfully restrained against his will. Because the plaintiffs did not specifically allege in their complaint that Lehrbass did any act that resulted in the detention of Willoughby in Duvall's office and because Lehrbass soon left Duvall's office, it would appear that no cause of action regarding false imprisonment existed against Lehrbass. Therefore, although the trial judge may have incorrectly granted summary judgment in favor of Lehrbass on the basis of governmental immunity, nevertheless, because the result was appropriate, reversible error did not occur. Therefore, summary judgment in favor of defendant Lehrbass was appropriately entered.

Disposition: Finding no error mandating reversal, the judgment of the trial court was affirmed.

1987

Citation: *Dickens v. Johnson County Board of Education*, 661 F.Supp. 155 (E.D. Tenn. 1987).

Key Facts: During the 1984-1985 school year, plaintiff Ronnie Dickens enrolled as a sixth grader at Johnson County Elementary School. Ronnie often misbehaved and disrupted his class. After trying various disciplinary methods with limited success, Ms. Riggs, his teacher, decided to try an isolation technique known as “timeout.” Whenever Ronnie disrupted class, she placed him in a “timeout” area, which segregated him from the other students. Ms. Riggs used a cardboard refrigerator carton, approximately five feet tall and seven feet long to shield him from the other students. The “timeout box,” which had three sides, contained a school desk and stood against a wall in the corner of the classroom. The plaintiff testified that whenever he was placed in “timeout” he could not see the other students, although he could hear and “sometimes” see Ms. Riggs. Ms. Riggs allowed him to return to his regular seat “sometimes” in order to see the chalkboard. He was permitted to participate in class activities, but he usually did not listen. The plaintiff contended that he was placed in “timeout” for as long as 4.5 hours on 6 consecutive days. However, he was permitted to leave “timeout” to go to the bathroom; to attend classes, such as reading and physical education, in other areas of the school; and to eat lunch in the cafeteria. The plaintiff contended that the defendants deprived him of his property interest in receiving a public education, as well as his liberty interest in remaining free from unlawful restraint, when they placed him in “timeout” without benefit of a due process hearing. Further, he claimed that this punishment was grossly disproportionate to his offense and thus violated his substantive due process rights under the Fourteenth Amendment. Finally, the plaintiff asserted state claims for false imprisonment, battery, outrageous conduct, and intentional infliction of emotional distress.

Issue: At issue was whether a teacher violated a student’s constitutional rights by temporarily isolating him in “timeout.”

Holding: The District Court held that the student's temporary isolation in "timeout" was a de minimus interference with his property and liberty interest and, moreover, the discipline was not unduly harsh or disproportionate to the offense.

Reasoning: The issue this action presents is whether isolating a student within the classroom amounts to "a total exclusion from the educational process for more than a trivial period (*Goss v. Lopez*, 1975) or whether it amounts to no more than a de minimus interference, such as that discussed in *Fenton*. After reviewing the facts, the Court found that Ronnie's temporary isolation in "timeout" was a de minimus interference with his property and liberty interests. The plaintiff conceded that he was permitted to remain in the classroom; encouraged to perform class work; and allowed to attend all his classes, including those in other parts of the school. He was not expelled, suspended, or totally excluded. In fact, as the subject of the classroom discipline for interfering with the rights of other students, he was very much participating in the educational process. Furthermore, he was free to leave "timeout" for appropriate reasons. He was not physically restrained, nor was he subjected to physical pain. Accordingly, the Court found that the defendants did not violate the plaintiff's due process rights by failing to conduct a formal, due process hearing before placing him in "timeout." The plaintiff also claimed that the defendants violated his substantive due process rights to liberty and to property by placing him in the "timeout" area. The plaintiff charged that the defendants' actions were arbitrary; that the penalty was extremely harsh and severe; and, further, that the defendants did not even specify the plaintiff's offense. Obviously, the purpose for placing Ronnie in "timeout" was two-fold: (1) to modify Ronnie's behavior without expelling him from the classroom, and (2) to preserve the rights and interests of the other students in receiving an education. The Court found these to be legitimate ends. It appeared to the Court that judicious

use of behavioral modification techniques such as “timeout” should be favored over expulsion in disciplining disruptive students, particularly the handicapped. The Court found that the defendants’ use of timeout in this case was not unduly harsh or grossly disproportionate. The Court found that while prolonged, uninterrupted confinement to a “timeout” area might give rise to a constitutional claim, the plaintiff’s punishment was not unduly harsh, was not grossly disproportionate to his offense, and was rationally related to a legitimate purpose. Accordingly, the plaintiff failed to establish a violation of his substantive rights. Finally, the Court found no merit in the plaintiff’s claim for “deliberate indifference.” As the plaintiff conceded, the standard of “deliberate indifference” is developed in a § 1983 prisoner action charging cruel and unusual punishment under the Eighth Amendment. Accordingly, after careful consideration, the Court found that since no genuine issue of material fact existed as to the plaintiff’s constitutional claims, the defendants were entitled to summary judgment.

Disposition: The defendants’ motion for summary judgment was granted and the action was dismissed.

Citation: *Garcia by Garcia v. Miera*, 817 F.2d 650 (10th Cir. 1987).

Key Facts: In 1982, Teresa Garcia was a 9-year-old student in the third grade at the Penasco Elementary School in Penasco, New Mexico. On February 10, 1982, the defendant-appellee, Theresa Miera, the school principal, summoned Garcia to her office for hitting a boy who had kicked her. Miera instructed Garcia to go to her chair to be paddled. Garcia refused and told Miera that her father said that “Mrs. Miera had better shape up.” Miera responded by calling J.D. Sanchez, a teacher at the school, for assistance. Sanchez held Garcia upside down by her ankles while Miera struck Garcia with a wooden paddle. Miera hit Garcia five times on the front of the leg between the knee and the waist. After the beating, Garcia’s teacher, Ruth

Dominez “noticed blood coming through Garcia’s clothes,” and, on taking Garcia to the restroom, was shocked to see a “welt” on Garcia’s leg. The beating made a two-inch cut on her leg that left a permanent scar. Shortly after this incident, Garcia’s mother and father told Miera “not to spank Teresa again unless we were called.” The second beating at issue occurred on May 13, 1983. Miera summoned Garcia to her office for saying that defendant Judy Mestas had been seen kissing a student’s father. Miera proceeded to strike Garcia two times with the paddle on the buttocks. Garcia then refused to be hit again. Miera responded by calling defendant Edward Leyba, an administrative associate at the school. Leyba pushed Garcia toward a chair over which she was to bend and receive three additional blows. Garcia and Leyba struggled and Garcia hit her back on Miera’s desk, from which she suffered back pains for several weeks. Garcia then submitted to the last three blows. The beating caused severe bruises on Garcia’s buttocks, which did not stop hurting for 2 or 3 weeks. Throughout the May 13 incident, Garcia kept asking Miera to allow her to call her mother. The principal refused, saying that she knew the law.

Issue: At issue was whether a principal violated a student’s constitutional rights by using corporal punishment.

Holding: The Court of Appeals held that (1) corporal punishments that are inflicted on students and are so grossly excessive as to be shocking to the conscience violate the student’s substantive due process rights, without regard to adequacy of state remedies, and (2) unconstitutionality of excessive corporal punishment was clearly established at the time of alleged beatings, and, thus, principal, teacher, administrative associate, and others were not entitled to qualified immunity from liability, even though United States Supreme Court had declined to decide issue, and even though there was conflict among Courts of Appeals.

Reasoning: Although *Ingraham* (1977) makes clear that ordinary corporal punishment violates no substantive due process rights of school children, by acknowledging that corporal punishment implicates a fundamental liberty interest protected by the Due Process Clause, the court believed that opinion clearly signaled that, at some degree of excessiveness or cruelty, such punishment violates the substantive due process rights of the pupil. The Fourth Circuit in *Hall v. Tawney* (1997), a case closely analogous to the this one, found a substantive due process right to be free of brutal, demeaning, and excessive paddling by public school officials. The court here reaffirmed the view, set out in *Milonas* (1987) that at some point of excessiveness or brutality, a public school child's substantive due process rights are violated by beatings administered by government-paid school officials. This court envisioned three categories of corporal punishment. Punishments that do not exceed the traditional common law standard of reasonableness are not actionable; punishments that exceed the common law standard without adequate state remedies violate procedural due process rights; and finally, punishments that are so grossly excessive as to be shocking to the conscience violate substantive due process rights, without regard to the adequacy of state remedies. Concluding that grossly excessive corporal punishment may indeed constitute a violation of substantive due process rights under the governing law, the court examined whether that law was established with sufficient clarity at the time of the beating incidents at issue here. The district court in the case noted the split between the Fourth and Fifth Circuits on the substantive due process issue, and the Supreme Court's refusal to decide the question in *Ingraham* (1977), and on that basis found the law was not "clearly established." It therefore found for defendants. This court held that, at least by the time of the second beating, the law was clearly established that excessive corporal punishment could deny substantive due process. This court agreed that a direct conflict exists between the Fourth

Circuit in *Hall* (1997), which has rejected, and the Fifth Circuit in *Ingraham* (1977), which has upheld the constitutionality of grossly excessive corporal punishment. But the decisions of one circuit court of appeals are not binding upon another circuit. Despite the Fifth Circuit's position, this court believed the law was clearly established before *Milonas* that some high level of force in a corporal punishment context would violate a child's substantive due process rights. This court thinks a reasonably competent legal advisor to a school district should have realized that egregious invasions of a student's personal security would be unconstitutional. Therefore, this court determined that these claims may not survive the crucible of the trial, but they overcome the defendants' motion for summary judgment.

Disposition: The Court of Appeals reversed and remanded.

Citation: *Frederick B.*, 192 Cal.App.3d 79, 237 Cal.Rptr. 338 (1st Cir. 1987).

Key Facts: On June 13, 1985, Bartlett, a school police officer employed by the Richmond Unified School District, was leaving the building when he observed Frederick and another student standing close together exchanging paper currency. Bartlett approached the two boys and asked them what they had exchanged. After he heard a response he believed to be false and because he had made two detentions for narcotics-related incidents in the same area, Bartlett asked the boys to accompany him to the dean's office to check it out. Frederick refused. Frederick, who was very obviously nervous, continued to refuse prompts to go to the dean's office. Bartlett used a walkie-talkie to summon another security guard. Upon hearing this, Frederick started to walk away. Bartlett "pursued him and stood in front of him again and again . . . asked him to come to the office." Frederick continued to walk away. At that time, Bartlett made the decision to physically detain him. As Bartlett and another security officer were in the process of bodily restraining Frederick, Bartlett discovered a pistol in the front of Frederick's

waistband. Bartlett further testified that the officers wrestled Frederick to the ground, handcuffed him, and took him to the dean's office. Frederick was then searched. In addition to the firearm--which was loaded--Frederick was found to be carrying a number of baggies containing a white substance, \$27 in cash, and a "half-smoked hand-rolled butt of a cigarette." At the ensuing dispositional hearing, the referee made an order continuing Frederick's status as a ward and placing him in a county institution for six months. This timely appeal followed.

Issue: At issue was whether the public school security guard had reasonable suspicion to detain a high school student.

Holding: The Court of Appeal held that the public school security guard had reasonable suspicion that the high school student had been engaged in a drug transaction, thus justifying detention of the student.

Reasoning: Both the United States and the California Constitutions have been construed to permit governmental searches of students and their effects if founded upon reasonable suspicion that "the search will turn up evidence that the student has violated or is violating either the law or the rules of the school" (*New Jersey v. T.L.O.*, 1985). There can be no question but that a detention was affected by Officer Bartlett when he in effect accused Frederick of being involved in a drug transaction and when he blocked Frederick's attempt to walk away. Bartlett was further justified in continuing the detention, and in blocking Frederick's repeated attempts to walk away while questioning Frederick. Frederick's response and his actions militated against discontinuing the detention. Officer Bartlett's proposal that they proceed to the dean's office entailed a reasonable accommodation of Frederick's right to personal security and Bartlett's duty to promote campus and student safety. Moreover, it would ensure that further questioning and a possible search would occur in a setting of greater privacy and in the presence of a school

administrator. This would be to the mutual advantage of student and school official alike. Frederick aborted this possibility by his final attempt to walk away. Officer Bartlett was well within his authority in preventing this by physically restraining Frederick. The court's conclusions are as follows: (1) Officer Bartlett had reasonable if minimally grounded suspicion that Frederick was engaged in illegal activity; (2) the ensuing detention was reasonable in all respects; and (3) the discovery and seizure of the weapon was proper. It follows that Frederick's suppression motion was not well taken and was correctly denied.

Disposition: The Court of Appeal affirmed the decision of the Superior Court.

Citation: *Hayes v. Unified School District*, 669 F.Supp. 1519 (D. Kan. 1987).

Key Facts: During the 1980-1981 school year, the plaintiffs in this case, Dennis and Sally Hayes, were tested and placed in the personal/social adjustment program (PSA) at Effingham Middle School. Both children had a history of academic and behavioral problems both inside and outside their academic environment. Instances of truancy, fighting, violent behavior, and willful disobedience of school rules occurred throughout the school year. The children's father, Mr. Walter Hayes, after hearing that Dennis and Sally were being placed in an isolation area during the school day, took it upon himself to try to remove his children from that portion of the PSA program. Specifically, he sought to have the school officials not place his children in the 3' x 5' room for timeout periods and in-school suspensions. "Timeout" is a phrase used to mean a period of time in which a child may be placed in an isolated area away from other students in order to regain composure and so as not to disrupt the class. The defendants never placed Dennis or Sally in "timeout" without cause. The plaintiffs claimed that the emotional problems of the Hayes children stemmed from the use of the timeout room during

the 1980-1981 school year. Neither plaintiff claimed any physical injury. Both Dennis and Sally Hayes did have emotional problems prior to the 1980-1981 school year.

Issue: At issue was whether school officials violated the students' constitutional rights by placing them in timeout rooms for in-school suspensions. (There are 3 other issues not briefed because of irrelevance to the study.)

Holding: The District Court held that the Eighth Amendment was inapplicable and students were not deprived of property or liberty interests in education.

Reasoning: The defendants sought summary judgment on the plaintiffs' Eighth Amendment claims on the grounds that the Eighth Amendment is inapplicable. The United States Supreme Court decision in *Ingraham v. Wright* (1977) and its progeny have definitely held that Eighth Amendment protection against cruel and inhumane punishment should not be extended to offer a theory of recovery for students of public schools. Thus, the defendants' motion for summary judgment as to the plaintiff's Eighth Amendment claim should be granted. The plaintiffs also alleged a violation of their Fourteenth Amendment rights. While the court recognizes that the case law clearly states that a student has both a property and liberty interest in receiving an education, the case law further stands for the proposition that a student shall not be deprived of his or her right to an education without due process of law. The court found, however, that the record has not established that the plaintiffs have been deprived of their property or liberty interests in education. While the court finds that the use of the timeout room may not be the most effective or sensible disciplinary measure, the court cannot find that it constitutes a constitutional deprivation. Rather, the court finds that the school's use of the timeout room ensures that a student would not be deprived of their educational rights while they were on suspension. The court further finds that the clearly-established procedures, as well as

the listed reasons for a write-up, provided the students with adequate notice to enable them to protect against being placed in the timeout room. The court also finds that the use of the timeout room for cool-down periods does not constitute a constitutional deprivation. Rather, the use of the timeout room for cool-down periods was done to ensure the safety of other students in the classroom from disruptive behavior of another student. The record also indicated that, prior to being placed in the timeout room, the students were given sufficient notice of the reasons for the placement in the room. The record also demonstrated that a written notice was sent home to the parents. Finally, the court cannot find that the record establishes that the use of the 3' x 5' room deprived the plaintiffs of adequate air, ventilation, or light. The court also addressed the plaintiffs' allegations that the plaintiffs' Fourth Amendment rights against unreasonable seizure have been violated. The court found that the recent decision in *New Jersey v. T.L.O.* (1985) is instructive on this issue. The Court recognized that although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search or seizure takes place. While this court recognized that the decision in *T.L.O.* addressed mainly the issue of the reasonableness of a search within a school context, the reasoning was applicable. After reviewing the record in this case, the court found that it has not been disputed that the plaintiffs Dennis and Sally Hayes were disruptive in their behavior and violated school rules. The court further found that the school officials' conduct was reasonably related to their authority and ability to discipline the students and that such discipline, including placing these plaintiffs in the timeout room, was justified. The court therefore found that the defendants' motion for summary judgment on the plaintiffs' claims under the Fourth Amendment should be granted. In sum, the court found the defendants' motion for summary judgment on plaintiffs' claims under § 1983 should be granted.

Disposition: The defendants' motion for summary judgment was granted.

Citation: *Metzger v. Osbeck*, 1987 WL 13320 (E.D. Pa. 1987).

Key Facts: Charles Metzger was enrolled in a swimming class taught by defendant Richard Osbeck. Metzger was failing swimming for failure to participate in class, but had not been a source of disciplinary problems for Osbeck. January 28, 1983, was the last day of the marking period, so Osbeck used class time for a recreational swim. Metzger had a written excuse from class that day and instead was trading baseball cards with several fellow students on the pool deck. Several feet away, Osbeck stood talking to a student teacher. Osbeck overheard Metzger using inappropriate language in the course of a conversation with a female student. He walked to where Metzger was standing, and, standing behind him, placed his arms around Metzger's neck and shoulder area. Holding Metzger in that position, Osbeck asked him about his language. In the course of the questioning, Osbeck's arm moved slightly upward, from Metzger's Adam's apple to under his chin; at some point, Metzger felt pressure on the underneath portion of the chin and had to stand up on his toes. Osbeck then released Metzger, intending to turn him around. Instead, Metzger, who had lost consciousness at some point, fell face down onto the pool deck. After Metzger fell, Osbeck assisted him; an ambulance crew was sent for and arrived accompanied by the police. As a result of the fall, Metzger sustained lacerations of his lower lip and a broken nose; he also required orthodontia work to correct tooth damage. Osbeck was arrested on March 9, 1983, and tried on charges of assault and recklessly endangering another person. He was acquitted in June of 1983. Dr. White, supervisor of secondary education, explained that in reviewing matters of discipline with staff, he distinguishes between "restraining" and "hitting." Slapping, punching, and hitting are to be avoided at all times. Restraining, however, has a proper place. Osbeck physically restrained students in order

to stop inappropriate behavior approximately five times a year in the course of his 20 years as a teacher. The facts of these past incidents are not of record, and no official action of any sort was taken against Osbeck as a result of these incidents. In the aftermath of the Metzger incident, no disciplinary action was taken against Osbeck beyond the filing of a memorandum in his personnel file.

Issue: At issue was whether a physical education teacher violated a student's constitutional rights when he physically restrained him, causing the student to fall unconscious and suffer injuries from the fall.

Holding: The District Court held that no substantive due process violation can be found, that Metzger was not deprived of liberty in a constitutional sense, and the factual record cannot support a finding of liability against the supervisory defendants or of constitutionally inadequate training.

Reasoning: Count I alleges violations of the First, Fourth, Ninth, and Fourteenth Amendments; the Fourteenth Amendment claims include violations of Metzger's right to substantive due process, procedural due process, and equal protection of the laws. The plaintiffs' response to the defendants' motion for summary judgment makes clear that they do not claim that Osbeck's physical contact with Metzger, in and of itself, violated Metzger's constitutional rights. Rather, their claim is that Osbeck used excessive force against Metzger, force which was "out of all proportion both to the alleged offense and to the surrounding circumstances at the time." The plaintiffs' response also makes clear that they now rely exclusively on theories of substantive and procedural due process to support their contention that Osbeck's use of excessive force violated Metzger's constitutional rights. In light of the plaintiffs' response, the court shall restrict discussion to those claims. The nature of the distinction between substantive and

procedural due process claims are illustrated by *Ingraham v. Wright* (1977), the leading case in the area of the use of excessive force against students in public schools. The question of whether the conduct is violative of substantive due process rights is, at its core, a question of degree. A court must ask whether the force applied was so excessive in relation to the particular government interest as to offend the decency and fairness “implicit in the concept of ordered liberty.” In such an extreme case, a court might properly conclude that no state remedy, be it pre-deprivation or post-deprivation, would “afford adequate process under the Fourteenth Amendment” and that the conduct implicates substantive rather than procedural rights. The court shall first consider the question of whether the incident at the swimming pool implicated Metzger’s substantive due process rights. The most commonly cited framework for evaluating excessive force claims is that employed in *Johnson v. Glick* (1973), which stated that when

determining whether the constitutional line has been crossed, a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm. (page 5)

On the basis of the *Glick* factor--particularly the extent of the injury and the motive of the state official--the court concluded that no substantive due process violation can be found. Turning to procedural due process, the court must first ask whether Osbeck’s conduct reached beyond the “de minimus level of imposition with which the Constitution is not concerned.” Far from an abuse of power, lack of due care suggests no more than a failure to measure up to the conduct of a reasonable person. To hold that injury caused by such conduct is a deprivation within the meaning of the Fourteenth Amendment would trivialize the centuries-old principle of due process of law. It is not the fact of physical contact, but the asserted disproportion of that contact to the conduct which led to it that must be analyzed to determine whether Osbeck’s conduct was

negligent or intentional. The court found that the restraint imposed by Osbeck, in the circumstances in which it was employed, does not permit the inference that Osbeck intended to injure. Therefore, the court concluded that this record cannot support a finding that Metzger was deprived of liberty in a constitutional sense. Thus, the defendants' motion for summary judgment was granted as to Count I. Counts II and III of the plaintiffs' complaint are directed not at Osbeck but at the Centennial School District. Count III alleged that the supervisory defendants' conduct denied Metzger and children in the District the equal protection of the laws. This theory was not pursued in the plaintiffs' submissions, and the court saw no basis for it on this record. Count II alleged that the supervisory defendants were responsible for establishing a policy, custom, and practice of inadequate training of teachers, leading to improper corporal punishment and other violations of students' constitutional rights. The factual record in this cannot support a finding of liability against the supervisory defendants. The court also concluded that the record cannot support a finding of constitutionally inadequate training. Therefore, the court granted the defendants' motion for summary judgment as to Counts II and III.

Disposition: The defendants' motion for summary judgment was granted and Counts I, II, and III are dismissed with prejudice.

Citation: *Webb v. McCullough*, 828 F.2d 1151 (6th Cir. 1987).

Key Facts: Wendy Webb joined about 140 other members of the Hixson High School Band in a trip to Hawaii for a band competition in late March 1985. On March 29, Webb and her roommates were getting ready to go shopping when appellee Thomas McCullough, the principal, used a key to enter their hotel room without warning, in the company of a chaperone. He informed the girls that the front desk had told him to search the room for alcoholic beverages.

He searched the bedroom, bathroom, and Webb's suitcase. Neither that search nor contemporaneous searches of other students' rooms found any alcoholic beverages. Later that evening, after getting other reports of alcohol possession, having a male in her room, and finding a boy on the balcony of an adjacent room that the girls had trespassed into, Webb told the girls to pack their bags because he was sending them home on the first available flight. While he was doing this, one of the chaperones found a six-pack of beer and a quart of wine in the adjacent room's refrigerator. According to Webb, McCullough then left and she locked herself in the bathroom. One roommate was crying and the other two called for McCullough to return. McCullough was quite angry when he realized Webb was in the bathroom. He tried to jimmy the bathroom door lock, but Webb would not let him in. He then slammed the door three or four times with his shoulder. The door finally gave way, knocking Webb against the wall. McCullough then thrust the door open again and it struck Webb again, throwing her to the floor. He then grabbed Webb from the floor, threw her against the wall, and slapped her. She then broke away and ran to her roommates. McCullough telephoned Webb's parents and informed them that she was being sent home. On April 5, McCullough suspended Webb and the roommates, effective April 8, for violation of curfew, having a male in their room, having liquor in the next room, and trespassing into adjacent rooms of the hotel.

Issue: At issue was whether the principal violated the student's Fourteenth Amendment rights when he broke into a bathroom and knocked her against a wall. (There are 2 other issues not briefed because of irrelevance to the study.)

Holding: The Court of Appeals held that the principal's actions, when he broke through locked bathroom door in student's hotel room and knocking her against wall, involved disputed fact questions, precluding summary judgment.

Reasoning: It is well established that persons have a Fourteenth Amendment liberty interest in freedom from bodily injury. Because the alleged blows were not struck in the school context, where the need for immediate disciplinary control described in *T.L.O.* (1985) is at its greatest, McCullough was *in loco parentis* to Webb, and because it is possible that the blows were not disciplinary in nature, a trier of fact could find that under the circumstances, McCullough's need to strike Webb was so minimal or non-existent that the alleged blows were a brutal and inhumane abuse of McCullough's official power, literally shocking to the conscience. This makes summary judgment inappropriate.

Disposition: The court reversed the district court's grant of summary judgment insofar as it applied to the alleged blows, and remanded the issue for further proceedings.

1988

Citation: *Metzger v. Osbeck*, 841 F.2d 518 (3rd Cir. 1988).

Key Facts: Charles Metzger, a student at Log College Junior High School in Bucks County, Pennsylvania, was enrolled in a swimming class taught by the defendant, Richard Osbeck. January 28, 1983, was the last day of the marking period, so Osbeck used class time for a recreational swim. Metzger had a written excuse from class that day; he recalls that he was suffering from the flu and had a swollen leg. During class, Metzger traded baseball cards with several fellow students on the pool deck. Osbeck overheard Metzger using inappropriate language in the course of the conversation with a female student. Osbeck walked to where Metzger was standing, and, standing behind him, placed his arms around Metzger's neck and shoulder area. Holding Metzger in that position, Osbeck asked him "Was that you using foul language" and, when there was no response, said, "That kind of language is unacceptable in this

class. Do you understand me?” In the course of questioning, Osbeck’s arm moved slightly upward, from Metzger’s Adam’s apple to under his chin; at some point, Metzger felt pressure on the underneath portion of the chin and had to stand up on his toes. Osbeck then released Metzger, who had lost consciousness at some point and fell face down on to the pool deck. As a consequence of the fall, Metzger suffered lacerations to his lower lip, a broken nose, fractured teeth and other injuries requiring hospitalization.

Issue: At issue was whether a physical education teacher violated a student’s civil rights in a poolside disciplinary encounter from which student emerged with broken nose and other injuries.

Holding: The Court of Appeals held that genuine issue of material fact as to whether physical education teacher, in disciplining the student, intended to harm student precluded summary judgment for teacher in civil rights action brought by student.

Reasoning: The court concluded that they couldn’t agree with the district judge to the extent he found that the restraint employed by Osbeck “in the circumstances in which it was employed, does not permit the inference that Osbeck intended to injure Metzger or recklessly disregarded a risk of injury of which he should reasonably have been aware.” A decision to discipline a student, if accomplished through excessive force and appreciable physical pain, may constitute an invasion of the child’s Fifth Amendment liberty interest in his personal security and a violation of substantive due process prohibited by the Fourteenth Amendment. In determining whether the constitutional line has been crossed, a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm. This

court believed that a reasonable jury could find that the restraints employed by Osbeck, if responsible for the student's loss of consciousness, exceeded the degree of force needed to correct Metzger's alleged breach of discipline and that the substantial injuries sustained by Metzger served no legitimate disciplinary purpose. If the jury is persuaded that Osbeck employed those restraints with the intent to cause harm, Osbeck will be subject to liability for crossing the "constitutional line" separating a common law tort from a deprivation of a substantive due process. In reaching this conclusion, the court noted that it is undisputed that Osbeck intentionally placed his arms around Metzger's neck and shoulders. While the court realized that Osbeck disclaims any ill-will and that the circumstances of the encounter suggest he was motivated by a legitimate disciplinary desire to admonish, not injure, the student, the court cannot say that a reasonable jury could not believe that Osbeck intended the consequences of his act or believe them to be a substantially certain result of it. Thus, the court cannot deprive plaintiffs of an opportunity to have a jury resolve the issue of Osbeck's intent in their favor. In this regard, the court observed that a jury might reasonably conclude that in view of Osbeck's position as a physical education instructor and wrestling coach, he was aware of the inherent risk of restraining Metzger. Thus, the evidence at this stage of the proceedings is not so one-sided that Osbeck must prevail as a matter of law (*Anderson*, 1986).

Disposition: The Court of Appeals reversed the dismissal of the Metzgers' substantive due process claim and pendent state claims against Osbeck and remanded the matter for further proceedings based on their opinion of the evidence. The Court, however, affirmed the dismissal of all other constitutionally based claims against Osbeck and all claims against the other defendants for the reason set forth in the district court's opinion.

Citation: *Wise v. Pea Ridge School District*, 855 F.2d 560 (8th Cir. 1988).

Key Facts: On February 20, 1986, Daniel Wise, a sixth grade student, was playing “dodge ball” with six other boys. The school coach, Coach Larry Walker, had previously told the boys not to play the game. After class, Coach Walker gave each of the boys two “licks” on the buttocks with a wooden paddle. Corporal punishment is authorized by the school district’s policies and Coach Walker complied with them by administering the punishment in the presence of two witnesses. Daniel developed bruises on his buttocks as a result of the paddling. The other school action challenged in this appeal involves a form of in-school suspension called the Special Assignments Class (SAC). Michael Decker, also a student at Pea Ridge School District, was placed in the SAC classroom for 3 days because he was tardy seven times. Michael is a seventh grade special education student. The Special Education Committee determined that the school district’s disciplinary policies would not adversely affect Michael’s education. The description of the SAC classroom given by the appellants gives one the impression that students are disciplined by placing them in an unsupervised cubicle or storage closet. In fact, the SAC classroom is quite roomy, providing 34 square feet per child--the minimum recommended under Arkansas law is 30 square feet per child. The SAC classroom contains eight study carrels, a teacher’s desk, windows, and is located next to the restroom. SAC students are allowed three regularly scheduled restroom breaks throughout the day, and at other times students are allowed to visit the restroom with permission from the supervising teacher.

Issue: At issue was whether a coach violated students’ substantive due process rights when he disciplined them with “two licks” to the buttocks and whether the District violated another student’s substantive due process rights through a placement in in-school suspension.

Holding: The Court of Appeals held that (1) the student’s substantive due process rights were not violated when the coach used corporal punishment to discipline him, and (2)

disciplinary action against the second student, consisting of the student being placed on in-school suspension, did not violate student's substantive due process rights.

Reasoning: Daniel Wise argued that his substantive due process rights guaranteed under the Fourteenth Amendment were violated when Coach Walker used corporal punishment to discipline him. This court did not believe that the facts of the case rose to the level of a substantive due process violation. The court agreed that at some point the administration of corporal punishment may violate a student's liberty interest in his personal security and substantive due process rights; however, not the conduct in the instant case. The court believed that a substantive due process claim in the context of disciplinary corporal punishment is to be considered under the following test: (1) the need for the application of corporal punishment, (2) the relationship between the need and the amount of punishment administered, (3) the extent of injury inflicted, and (4) whether the punishment was administered in a good faith effort to maintain discipline or maliciously and sadistically for the very purpose of causing harm. Applying this test, the court did not believe that Daniel's substantive due process rights were violated. The final issue raised in this appeal involved Michael Decker's placement in the SAC classroom for 3 days. Michael argues that since he was a special education student, his substantive due process rights were violated when he was denied access to his special education teacher and resource materials. Michael also challenged his placement in the SAC classroom because of its physical size and the manner in which the classroom was administered. Michael argued that the SAC classroom was often unsupervised and students were denied access to the restroom. When researched, the court did not turn up a single decision in any of the Federal Courts of Appeal that addressed a substantive due process challenge to a student's placement in an in-school suspension program. There are a few district court cases that have been reported

that provide some guidance. However, none of those cases has sustained a substantive due process claim in this context. Likewise, the court did not believe that Michael sustained any violation of his substantive due process rights when he was placed in the SAC classroom. Contrary to Michael's description of the SAC classroom that gave the impression that the room was a broom closet, the room is actually quite spacious--providing 34 square feet per student. The room has good lighting as well as several windows. The fact that Michael did not have ready access to his special education teacher and resources was also of no consequence. The facts reflect that the Special Education Committee determined that Michael would not be adversely affected by being placed in the SAC classroom. Michael was given all of his regular class assignments and completed them while in the SAC classroom. The record also did not support Michael's claim that he was denied access to the restroom. The court believed that Michael's assertion that his substantive due process rights had been violated was without merit.

Disposition: The district court's judgment was affirmed.

1989

Citation: *Hayes v. Unified School District*, 877 F.2d 809 (10th Cir. 1989).

Key Facts: Prior to the commencement of the 1980-1981 school year, the plaintiff-children, Dennis and Sally Hayes, were tested and evaluated to be candidates for the Personal/Social Adjustment Program (PSA Program) through the Atchison-Jefferson Educational Cooperative in Unified School District No. 377. The children's mother, Mrs. Lucy Hayes, met with school personnel to discuss the placement of the children and signed a form agreeing to her children's placement in the PSA Program. Dennis and Sally Hayes were placed in the PSA Program for the 1980-1981 school year. During that year both children behaved in a disruptive

manner and violated school rules. Consequently, the children were required, at various times, to stay in a 3-foot by 5-foot room for “timeout” periods and in-school suspensions. Neither of the children’s parents requested a hearing at any time to institute a change in placement for the children or to object to the disciplinary use of the 3-foot by 5-foot room. Instead of pursuing their claims through the administrative hearing procedure, the plaintiffs brought state law claims and a federal § 1983 claim based on alleged violations of the United States Constitution. The District Court held that remedies provided by the Education for All Handicapped Children Act were not exclusive means by which students could bring action. An appeal was filed.

Issue: At issue was whether school officials violated special education students’ constitutional rights and the Education for All Handicapped Children Act by placing them in timeout rooms for in-school suspensions.

Holding: The Court of Appeals held that in-class discipline fell within purview of the Act, and children’s parents were required to exhaust administrative remedies before bringing suit in court.

Reasoning: Before considering the plaintiff’s substantive claims, the court must determine whether these claims are properly before the court, or whether the plaintiffs were required first to exhaust their administrative remedies under the EHA. In 1984, the Supreme Court concluded that the EHA was the exclusive avenue through which claims regarding a publicly financed special education could be pursued. Congress passed the Handicapped Children’s Protection Act of 1986, expressly amending the EHA to make attorneys’ fees available to claimants prevailing under the Act, and to clarify that the EHA does not provide the exclusive remedy available to handicapped students. Although Congress’s amendment of the EHA makes clear that the EHA is not the exclusive remedy available to handicapped students

seeking public educational benefits, that amendment is equally clear in preserving the requirement that, if relief could be sought under EHA, exhaustion of the Act's administrative remedies is necessary before any action is brought in federal court. The determination here is whether the plaintiffs are required to exhaust their administrative remedies under the EHA; therefore, turns on whether the disciplinary measures giving rise to their action are encompassed within the provision of a "free appropriate public education" guaranteed by the Act. Because the disciplinary measures complained of here are within the purview of the EHA, the plaintiffs are required to present their complaints concerning such disciplinary action according to the procedures set forth by the Act, whether or not they bring additional causes of action "under the Constitution, title V of the Rehabilitation Act of 1973, or other federal statutes protecting the rights of handicapped children and youth." The rule that administrative remedies under the EHA must be exhausted before judicial review is sought, however, should not be applied inflexibly. For example, exhaustion of administrative remedies is not required if adequate relief is not reasonably available or pursuit of such relief would be futile. Here, nothing in the record indicates, nor do the parties argue, that administrative relief would be inappropriate in any way.

Disposition: The Court of Appeals held that the district court erred in proceeding to the merits of the federal constitutional and state law claims in this case, for the reason that the plaintiffs failed to exhaust their administrative remedies as required under EHA. Therefore, the court reversed and remanded to the district court with instructions to dismiss for lack of jurisdiction.

Citation: *Edwards v. Rees*, 883 F.2d 882 (10th Cir. 1989).

Key Facts: In December 1985, Dale Rees, a vice principal at Farmington Junior High School in Farmington, Utah, removed Craig Edwards from the class he was attending at Davis

High School. Mr. Rees did this after a bomb threat was called in at his school and after several students reported that Edwards was the offender. Mr. Rees took the student to a closed office where he interrogated him for 20 minutes concerning the bomb threat received earlier at Farmington Junior High. Charles Edwards, the father, filed suit alleging that the interrogation incident constituted a denial of Edwards' rights under the Fourth, Fifth, and Fourteenth Amendments and also brought pendent state law claims. The District Court entered summary judgment in favor of the vice principal and the school district. The guardian appealed.

Issue: At issue was whether a vice principal violated a student's constitutional rights when he questioned a student for 20 minutes about accusations that the student had called in a bomb threat.

Holding: The Court of Appeals held that (1) the vice principal's seizure of the student for questioning did not violate the Fourth Amendment, and (2) the vice principal's actions did not violate due process.

Reasoning: In determining what limits the Constitution places on the investigative and disciplinary activities of school authorities, the courts have always sought to accommodate both the interests protected by the Constitution and the interests in providing a safe environment conducive to education in the public schools. For the purposes of this appeal, the court assumed without deciding that Mr. Rees seized Craig Edwards for the purposes of the Fourth Amendment, but holds that any such seizure was reasonable. In considering whether Mr. Rees's conduct constituted an unreasonable seizure, the trial court applied the standard enunciated by the Supreme Court with respect to searches by school officials in *New Jersey v. T.L.O.* (1985). The Court held that a search of a student by a school official is reasonable if it is "justified at its inception," and "reasonably related in scope to the circumstances that justified the interference in

the first place.” This court believed that the same considerations that moved the Supreme Court to apply a relaxed Fourth Amendment standard in cases involving school searches supported applying the same standard in school seizure cases. Mr. Rees’s conduct was justified at its inception by the statements made to him by two students, both of which implicated Edwards as the individual who called in the threat. Given the seriousness of the suspected offense, questioning Edwards in an office in the school building for 20 minutes was reasonably related in scope to determining whether he had indeed called in the bomb threat. The court held that by removing Edwards from class for 20 minutes to discuss the accusations against him, Mr. Rees did not deprive Edwards of a property interest protected by the due process clause. The appellant also claimed that Edwards was deprived of his liberty interest in a good reputation without due process. In order to establish an action under § 1983 on this basis, the plaintiff must show that the damage to his reputation also resulted in damage to some tangible interest entangled with his reputation, such as an employment interest. The appellant presented no evidence of damage to such an entangled interest.

Disposition: The judgment of the District Court was affirmed in all respects.

1990

Citation: *Thrasher v. General Casualty Company of Wisconsin*, 732 F.Supp. 966 (W.D. Wis. 1990).

Key Facts: The plaintiff, Jeffrey Thrasher, was a student at Monroe High School (MHS). Defendant James Munro was the Superintendent of Schools for the Monroe School District and Maurice Sathoff was the Principal at MHS. Defendant William Dehn was a mathematics and physical education teacher at MHS. General Casualty Company of Wisconsin had issued to the

Monroe School District a policy of liability insurance that covered acts and omissions of the School District and its employees and agents. This policy was in effect on September 5, 1986, when the incident in question occurred. Thrasher was a student in Dehn's mathematics class. During class, Dehn asked Thrasher to pay attention to his work. Subsequently Dehn asked Thrasher to solve a problem on the blackboard. Thrasher refused. At the end of class, Dehn asked Thrasher to stay after class. After the other students left, Dehn made a statement to Thrasher to the effect that, "We're going to have a problem if you don't follow along with what I'm doing." During the time Dehn made the statement, he used some portion of his fist or hand to move Thrasher's face and/or neck so that Thrasher was looking him in the eye. Subsequently, Thrasher used one or both of his hands to remove Dehn's hand or hands. Dehn responded by grabbing Thrasher's jacket and either pushed or threw Thrasher into the blackboard. After Thrasher was placed against the blackboard there was a verbal exchange. Dehn straightened Thrasher's jacket and Thrasher departed the classroom. At the time of the incident there was a "physical force" policy in effect in the Monroe Public Schools.

Issue: At issue was whether a high school teacher violated a student's constitutional rights when he used force against student during a conversation about the student's misbehavior.

Holding: The District Court held that (1) the teacher could not be liable under the Eighth Amendment; (2) genuine issues of material fact precluded summary judgment for teacher on the substantive due process claim; and (3) federal claims against the school district, school superintendent, and school principal could not be maintained.

Reasoning: The plaintiffs asserted that Dehn violated Thrasher's Eighth Amendment rights when he engaged in an act of physical force on September 5, 1986. The United States Supreme Court has explicitly stated that the Eighth Amendment protection against cruel and

unusual punishment is not to be used to scrutinize the imposition of disciplinary corporal punishment in public schools (*Ingraham v. Wright*, 1976). The Court concluded that when public school teachers or administrators impose disciplinary corporal punishment, the Eighth Amendment is inapplicable. Accordingly, while Dehn's conduct may have exceeded the parameters of "disciplinary corporal punishment," the Eighth Amendment is not the proper vehicle by which to impose liability. The plaintiffs asserted that Dehn violated Thrasher's Fourteenth Amendment right to due process. However, the plaintiffs' only claim against Dehn appeared to revolve around a Fourteenth Amendment substantive due process violation and not procedural due process. Cases of disciplinary corporal punishment have been scrutinized using a substantive due process analysis. Courts have recognized the right to substantive due process as the proper method by which to impose constitutional liability on a public school teacher for improper punishment of a school child. Through *Metzger v. Osbeck* (1988), the Eighth Circuit has adopted a four-part test to determine whether the physical force administered by a teacher crossed the constitutional line. The test provides (1) the need for the application of corporal punishment, (2) the relationship between the need and the amount of punishment administered, (3) the extent of injury inflicted, and (4) whether the punishment was administered in a good faith effort to maintain discipline or maliciously and sadistically for the very purpose of causing harm. Another commonly referred to standard was stated by the Fourth Circuit in *Hall v. Tawney* (1980). The *Hall* court stated that the substantive due process inquiry in school corporal punishment cases must be whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking the conscience. Applying these tests to the circumstances

surrounding this incident there does not appear to be a substantive due process violation. However, there are factual issues surrounding the actual events that occurred in the classroom to preclude resolution by summary judgment. Accordingly, summary judgment cannot be granted concerning the Fourteenth Amendment substantive due process claims. One of the rights guaranteed by the Fourth Amendment is the right to be free from unreasonable seizures of one's person. However, the Fourth Amendment has never been used to find a constitutional violation of a student's rights when the student was allegedly exposed to an overuse of physical force. Accordingly, in light of the narrow use of the Fourth Amendment by the Seventh Circuit, this court is not compelled to provide the Fourth Amendment as a method to impose liability pursuant to these circumstances. In addition, although Thrasher was seized within the literal meaning of that term when he was pushed, thrown, or shoved against the chalkboard, this contact constitutes a *de minimus* level of imposition that does not warrant the invocation of Fourth Amendment protection. The defendants' School District of Monroe, School Superintendent James Munro, and Principal Maurice Sathoff cannot be held liable for the acts of defendant Dehn on the basis of a theory of respondent superior. In order to be liable to the plaintiffs, the entity and its officials must have either directly participated in the alleged incident against Thrasher or promulgated a school policy that was the "moving force" of the constitutional violation. Accordingly, all federal claims were dismissed against the defendants School District Monroe, Sathoff, and Munro.

Disposition: The motion of defendant Dehn and General Casualty Company of Wisconsin for summary judgment was denied. The motion of defendants School District of Monroe, Maurice A. Sathoff, and James Munro for summary judgment was granted. It was further ordered that the plaintiffs' motion for reconsideration was denied.

1994

Citation: *Wallace v. Batavia School District 101*, 870 F.Supp. 222 (N.D. Ill. 1994).

Key Facts: The plaintiff, Heather Wallace, was a student at Batavia High School. She was enrolled in James Cliffe's co-op class during the fall of 1993. On September 22, 1993, Wallace entered Cliffe's classroom and began to talk to her friends. Cliffe entered the room, told students to continue working on an assignment, and then Cliffe left the room. Wallace and another student became engaged in a shouting match. Cliffe reentered the classroom and told the girls to sit down. Wallace did so, but the other student began to walk toward Wallace and tried to hit her. Cliffe intervened and stood between the two girls. Cliffe told Wallace to leave the classroom. According to Wallace, she was leaving slowly, but apparently not fast enough for Cliffe, who then reached over a desk and grabbed Wallace's left wrist and right elbow. In the process, Wallace tripped over a chair and a desk. Cliffe tugged at Wallace, telling her to "come on;" she refused to move for a short time. Cliffe then released Wallace's elbow and she left the room. Wallace went to the nurse's office where she was treated with ice-packs for soreness to her wrist and elbow.

Issue: At issue was whether the teacher violated a student's civil rights by momentarily grabbing her wrist and elbow to send her from classroom.

Holding: The District Court held that (1) the seizure of a student by a teacher did not rise to the level of a Fourth Amendment violation, (2) the claim of excessive force by a school official is properly considered under line of cases addressing corporal punishment, (3) the student's due process rights were not violated, and (4) the teacher was entitled to qualified immunity.

Reasoning: Despite the plaintiff's attempts to characterize the classroom incident as a seizure in which excessive force was used, her Fourth Amendment claim had no merit.

Although the plaintiff was momentarily seized, this kind of *de minimus* seizure does not rise to the level of a Fourth Amendment violation. School disciplinary actions frequently involve some form of physical contact, but every effort to physically restrain or direct a student does not constitute a seizure in the constitutional sense. The plaintiff also argued that her substantive due process rights under the Fourteenth Amendment had been violated. The Eighth Circuit has adopted a four-part test for evaluating substantive due process violations in this context. To determine whether a school official's actions rise to the level of a constitutional violation, the court should consider the following: (1) the need for application of corporal punishment, (2) the relationship between the need and the amount of punishment administered, (3) the extent of injury inflicted, and (4) whether the punishment was administered in a good faith effort to maintain discipline or maliciously and sadistically for the very purpose of causing harm. The defendant may have been careless or overzealous, but the plaintiff presented no evidence that his effort to eject Wallace from the classroom was inspired by malicious or sadistic intent. Thus, no reasonable jury could find that the plaintiff's substantive due process rights were violated.

Consequently, the plaintiff's Fourteenth Amendment claim was also without merit. Because the plaintiff failed to raise any issues of material fact that implicated her constitutional rights, the § 1983 claims against the defendants Cliffe and Batavia School District 101 were dismissed. Furthermore, the § 1983 claim against Cliffe would have to be dismissed because Cliffe is entitled to qualified immunity. Under the doctrine of qualified immunity, a public official performing discretionary function is protected against suit from damages unless the officials' conduct violates clearly established statutory or constitutional right (*Cornfield by Lewis v. School*

Dist. No. 230, 1993). Similarly, the § 1983 claim against Batavia School District 101 would also have to be dismissed because the plaintiff has failed to show that a custom or policy of using excessive force to restrain students existed, as required under the standard for public entity liability established in *Monell v. Dept. of Social Services of New York* (1980).

Disposition: The District Court ordered that the defendants' motion for summary judgment was granted. The Clerk of the Court was directed to enter judgment in favor of the defendants and against the plaintiff, dismissing the plaintiff's federal cause of action with prejudice and the plaintiff's state law cause of action without prejudice for lack of subject matter jurisdiction.

1995

Citation: *Hassan v. Lubbock Independent School District*, 55 F.3d 1075 (5th Cir. 1995).

Key Facts: On February 27, 1992, approximately 103 sixth graders from James A. Whiteside Elementary School in Lubbock, Texas, visited the Lubbock County Youth Center, a facility housing both the Lubbock County Probation Office and a detention center for minors between the ages of 10 and 17 who are either in custody awaiting adjudication on criminal offenses or being detained thereafter. Williams and Thomas accompanied the children. Once at the center, the students were divided in groups. One group consisted of 15 boys, Williams, Thomas, and a Center employee, Ricky Atkins. Hassan was cautioned repeatedly for being inattentive and disrespectful during the tour. When he persisted, Williams and Thomas asked Atkins to place him in a holding room so that the other students could continue the tour without distraction. Hassan was locked in this room for approximately 50 minutes, monitored continuously by Center employees and Thomas who returned to the area to check on him. When

the other students finished their tour, school officials led them to the room where Hassan was held and told them to look at him. After arriving back at the school, Thomas had Hassan tell the class about his behavior and the resulting punishment and what he had learned from the experience. The next day Williams met with Hassan's parents. Manifesting disagreement, Hassan's parents removed him from Whiteside Elementary and enrolled him in another school. The instant action followed, claiming that LISD, Williams, Thomas, and Atkins violated Hassan's constitutional rights. The United State District Court denied their motion for summary judgment based on claim of qualified immunity. School officials and employee appealed.

Issue: At issue was whether school officials and a center employee violated a student's Fourth and Fourteenth Amendment rights when isolating him for misbehavior, while other students took a tour.

Holding: The Court of Appeals held that school officials and center employee were entitled to qualified immunity from liability.

Reasoning: This court reviews a district court's denial of summary judgment *de novo*, applying the same standard as the district court. In examining the claims of qualified immunity on summary judgment, the court first inquired whether Hassan had alleged "the violation of a clearly established constitutional right." Then, the court inquired whether the defendants' conduct was objectively reasonable in light of the legal rules clearly established at the time of the incident in issue. Thus, even if the court found a violation of Hassan's constitutional rights, the individual defendants were immune from liability if reasonable public officials could differ on the lawfulness of their actions. In his first claim, Hassan alleged that the acts of Williams, Thomas, and Atkins violated his Fourth Amendment right to be free from an unreasonable seizure. While school officials are subject to the limitations of the Fourth Amendment, the

reasonableness of seizures must be determined in light of all of the circumstances, with particular attention being paid to whether the seizure was justified at its inception and reasonable in scope. At the time of the instant seizure, Hassan was touring a juvenile detention center as part of a school-sponsored educational field trip. The two school officials supervising the trip, Williams and Thomas, were charged with the care and control of all the students. The detention center contained both older and younger youths awaiting adjudication for criminal offenses, or residing at the center following adjudication for criminal offenses; these surroundings understandably heightened the need for a disciplined attitude by the visiting students to ensure their safety and to maintain order among the residents of the facility. In this setting Hassan misbehaved. Williams and Thomas responded to Hassan's behavior by separating and isolating him until the other students had finished their tour. These actions properly maintained order and discipline within the touring group, making it possible for the other students to continue their valuable learning experience. The court concluded that Hassan's seizure was reasonably justified at its inception. The placement of Hassan in the holding room at the detention center was also reasonably related in scope to the relevant circumstances, thus justifying the action. The presence of other potentially dangerous juveniles militated against Hassan being left alone in an easily accessible area. Further, this restriction of his freedom of movement lasted no longer than was absolutely necessary. He was released from the room when the other students had completed their tour. Under these circumstances, the court found no violation of any of Hassan's clearly established constitutional rights by either Williams or Thomas. Nor did the court perceive anything in Atkins' role as a center employee or his actions in this incident that warranted the application of a different standard to his conduct. The court therefore concluded that Hassan had not shown that Atkins violated a clearly established Fourth Amendment right. Hassan also claimed that

Williams, Thomas, and Atkins “incarcerated” him in a “jail cell” in violation of the due process clause of the Fourteenth Amendment. The court perceived no constitutional violation inherent in the detention of Hassan in the center’s intake room. The room was relatively large with 80 square feet of space and was furnished with a toilet and a bed and had a glass partition in the door. Although Hassan could not leave the room, he was not otherwise physically restrained. He remained under adult supervision and protection. Putting Hassan in that room was done in response to his behavior and was a measure of punishment in a safe and supervised manner. The court concluded that Hassan’s punishment was within the range of discretion accorded to school officials and that the punishment bore a rational relationship to the goal of providing a valuable and safe educational experience for the other 102 children. Perceiving no summary judgment evidence of a constitutional violation, the court concluded that there was not a violation of a clearly established constitutional right.

Disposition: The Court of Appeals reversed the denial of summary judgment for Williams, Thomas, and Atkins and rendered judgment in their favor. The Court dismissed the appeal of LISD for lack of appellate jurisdiction.

Citation: *Wallace v. Batavia School District 101*, 68 F.3d 1010 (7th Cir. 1995).

Key Facts: When business teacher James Cliffe returned to his Batavia High School classroom after a few minutes’ absence, two 16-year-old female students, Wallace and Fairbanks, were screaming at each other and calling each other names. Cliffe ordered both girls to take their seats and be quiet. Wallace sat down, but stood up again when Fairbanks approached her yelling. Cliffe told both students to sit down. Wallace did so, but Fairbanks attempted to take a swing at Wallace. Cliffe stepped between the two girls. While facing Fairbanks, he told Wallace to get her books and leave the classroom. Wallace gathered her

books and began to walk out of the room slowly. Cliffe reached and took Wallace by her left wrist to speed her exit. Cliffe told Wallace to hurry up and grasped her right elbow to move her out of the classroom. Wallace stopped her movement toward the door and told Cliffe to let go. When Cliffe released Wallace, she walked out of the classroom and slammed the door. A fight indeed did occur later in the day. Both girls were suspended from the school for 3 days.

Claiming that Cliffe caused injury to her elbow, Wallace sued Cliffe and the Batavia School Corporation alleging that her constitutional rights had been violated. The District Court granted defendants' motion for summary judgment, and student appealed.

Issue: At issue was whether a teacher violated a student's civil rights by momentarily grabbing her wrist and elbow to send her from classroom.

Holding: The Court of Appeals held that (1) the student was not deprived of her liberty interest, and (2) even if the teacher's actions constituted corporal punishment, the student was not deprived of her due process rights.

Reasoning: Wallace theorized that Cliffe violated her Fourth Amendment right to be free from unreasonable seizures when he grabbed her elbow and wrist. The Supreme Court has applied the Fourth Amendment's protection to searches of students by school administrators at public schools (*New Jersey v. T.L.O.*, 1985). *T.L.O.* instructed that teachers and administrators must respect students' privacy interests, but that they may search students where it is reasonable to do so under the circumstances. The Court crafted its decision in *T.L.O.* around the role public schools play in furthering "publicly mandated educational and disciplinary policies." The Court also recognized that "the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult." Although *T.L.O.* dealt only with

searches, several circuit courts have relied upon it to find that seizures of students by teachers also come within the ambit of the Fourth Amendment. Here, the defendants did not dispute that Cliffe ordered Wallace out of the classroom and grabbed her in order to prevent a fight and restore order and discipline. This action of classroom control can be characterized as an administrative function designed to effectuate school policies and standards. While in school or under the supervision of school authorities, public school students are in a unique constitutional position enjoying less than the full constitutional liberty protection afforded those persons not in school. The reasonableness of a Fourth Amendment seizure of a public school student by a teacher must be evaluated in the context of the school environment, where restricting the liberty of students is a *sine qua non* of the educational process. In the context of a public school, a teacher or administrator who seizes a student does so in violation of the Fourth Amendment only when the restriction of liberty is unreasonable under the circumstances then existing and apparent. Therefore, in seeking to maintain order and discipline, a teacher or administrator is simply constrained to taking reasonable action to achieve those goals. Depending on the circumstances, reasonable action may certainly include the seizure of a student in the face of provocative or disruptive behavior. It was clear that Wallace had not stated a viable claim for the constitutional deprivation of her liberty interest as a public school student. The court did not believe a reasonable jury could find that Cliffe's actions were disproportionate to the interference with the educational process that the situation presented. Cliffe's conduct can hardly be seen as unreasonable. Wallace also claimed that Cliffe violated her substantive due process rights under the Fourteenth Amendment by using excessive corporal punishment when he seized her to escort her from the classroom. However, the court does not believe that the Fourteenth Amendment's Due Process Clause afforded Wallace any greater protection than the Fourth Amendment from

unwarranted discipline while in school (see *Darryl H. v. Coler*, 1986). Because a student is at least as much seized when a school official administers corporal punishment as Wallace was here, corporal punishment may be evaluated under the Fourth Amendment standard. Therefore, even assuming that Cliffe's actions constituted corporal punishment, the court rejected Wallace's theory of recovery under the Fourteenth Amendment as they did under the Fourth Amendment. The court concluded that public school teachers and administrators must have considerable latitude in performing their educational responsibilities, including maintaining order and discipline by reasonably restraining the liberty of students.

Disposition: The summary judgment entered by the district court was affirmed.

1996

Citation: *Lillard v. Shelby County Board of Education*, 76 F.3d 716 (6th Cir. 1996).

Key Facts: The defendant, Gary Leventhal, was a coach and teacher at Germantown High School in Shelby County, Tennessee. The plaintiffs were three girls who attended Germantown High School. Leventhal was hired by Principal Ernest Chism in 1986 to be a physical science teacher and girls' soccer coach. By August 1992, he had been removed from the coaching position because of numerous complaints against him. On August 30, 1991, Andrea Lillard was 14 years old. Leventhal detained her after class and verbally abused her, in an unspecified manner, for unspecified reasons. He then held her chin with one hand and slapped her across the face; a slap that according to Leventhal was "perhaps harder than he meant." Leventhal also made unspecified threats to Andrea after the slapping. In a separate incident, Leventhal told Julie McCarter he would let her back on the soccer team, but "she would have to 'kiss his ass' for the rest of the season." Her parents also had to promise not to complain

about Leventhal's conduct if she was permitted to rejoin the team. This complaint also contained an allegation that Leventhal "placed his hands between Julie's breasts" and "fondled her buttocks" on unspecified dates, and also secured duplicate keys to her room while on road trips for the soccer team. During the 1991-1992 school year, Briana Little was a freshman in Leventhal's physical science class. The Littles alleged that Leventhal abused, humiliated, and intimidated Briana in a number of ways, including staring at her, making "kissing" noises, and generally insulting her. Leventhal also telephoned Briana at home on two occasions, questioning her about her relationships with other students and instructing her to stay away from Andrea Lillard. On May 27, 1992, Leventhal sent Briana a note asking her to come to his classroom. Shortly thereafter, he passed her in the hallway and rubbed her stomach, telling her "he had arranged for permission for her to come to his class . . . after her last exam." It was after this incident that Briana's parents decided "Leventhal's actions were clearly sexual in nature and that he had a problem with power over young girls." Following the district court's certification of its partial disposition of the plaintiff's claims, the plaintiffs filed this appeal.

Issue: At issue was whether a teacher/coach violated students' constitutional rights by allegedly sexually harassing and physically abusing them. (There are 2 other issues not briefed because of irrelevance to the study.)

Holding: The Court of Appeals held that the teacher's single slap of the student did not violate the student's substantive due process rights; the teacher's rubbing of the student's stomach, accompanied by sexually suggestive remark did not violate student's substantive due process rights; the students' First Amendment claims were not stated with sufficient specificity; and the principal, board, and superintendent were not liable under § 1983 for the teacher's constitutional torts.

Reasoning: The plaintiffs' claims are premised on the alleged violation of a constitutionally protected liberty interest, within the meaning of the Fourteenth Amendment, in their personal bodily integrity. The court noted that, despite the plaintiff's suggestions to the contrary, there was no doubt that the "shocks the conscience" standard is applicable here. The court did not dispute that Leventhal's actions were careless and unwise; but they fell far short of "brutal," or "inhumane," or any of the other adjectives employed to describe an act so vicious as to constitute a violation of substantive due process. Moreover, the slap did not result in any physical injury to Lillard. While the court did not suggest that school systems should tolerate a teacher who slaps a student in anger, neither did they conclude that one slap rises to the level of a constitutional violation. While Leventhal should reasonably expect to face serious consequences for his treatment of Lillard, those consequences should not be found in a federal court through the mechanism of a § 1983 action. The same is true with respect to Little's claims. Accepting all of the plaintiff's allegations as true, the incident in the hallway, while deplorable, simply is not of the outrageous and shocking character that is required for a substantive due process violation. Again, Leventhal should have serious disciplinary consequences; however, it is not conduct that creates a constitutional claim. Accordingly, the court concluded that the district court did not err in dismissing Lillard's and Little's due process claims. The plaintiffs also argued that the First Amendment "provides protection for parents of their right to speak out without fear or actual retaliation." The Lillard's and Little's First Amendment claims were properly dismissed. The plaintiffs' vague assertions that they feared retaliation for their speech are empty, in the absence of some claim that Leventhal ever retaliated against them, or threatened to do so. The fact that they may believe he retaliated against someone else is of no merit, especially in light of the complete lack of an articulated basis for such belief. Next, the

court considered whether the district court erred in granting summary judgment to the School Board, Superintendent Anderson, and Principal Chism in both his official and individual capacities. Here, there was no evidence that any of the supervisory defendants either encouraged Leventhal's behavior, or directly participated in it. The only information any of these defendants had was of isolated and apparently unrelated incidents of bad behavior by Leventhal.

Disposition: The court reversed the district court's judgment in part, and affirmed it in part, and remanded for further proceedings.

Citation: *Seattle School District v. Stokes*, 1996 WL 252632 (Wash. App. Ct. 1996).

Key Facts: Stokes teaches severely behaviorally disturbed elementary students in the Seattle School District. The district superintendent sent Stokes notice of probable cause for a 2-day suspension for unprofessional conduct related to physically restraining a student and "dropping" a student to the floor. Stokes requested a "sufficient cause" hearing. The hearing officer heard significantly conflicting testimony from Stokes and Principal Cook. Stokes was accompanying two students to class when one of them kicked Stokes in the leg; Stokes physically restrained the student face down on the floor and the appropriateness of that restraint was not in question. After the student calmed down and the restraint was lifted, Stokes directed the student's progress back to class. According to Stokes, the student "went limp" and resisted his efforts to get him to class. Stokes was unable to support his dead weight and warned the student that he would be unable to continue to support him and would have to let him go if he refused to stand up. Stokes attempted to pull him up a couple of times, but he remained limp and would fall back to the floor when the student failed to comply. Then the student tried to bolt and hit Stokes in the groin. Stokes restrained the student again by lowering him to the floor on his back. Principal Cook testified that Stokes released the student from the first restraint, then

picked him up in a bear hug with his feet dangling from the ground, dropped him, picked him up and dropped him again, and then “wrestled” him to the ground. The District characterized the dropping incident as an excessive use of force in anger. The hearing officer found that the dropping of the student was not appropriate and represented unprofessional conduct; however, he determined that suspension was “too harsh” a punishment. A superior court reversed the hearing officer’s decision. Stokes appealed.

Issue: At issue was whether a 2-day suspension was suitable for a teacher who physically restrained a student.

Holding: The Court of Appeals of Washington, Division 1, held that the District had sufficient cause to suspend Stokes and affirmed the superior court’s decision.

Reasoning: The District charged Stokes with “unprofessional conduct, which included his improper, excessive, and unnecessary physical force. . . .” The hearing officer found that the dropping incident was “not appropriate” and constituted “unprofessional conduct.” The hearing officer’s conclusion that suspension was “too harsh” suggests that disciplinary action of some sort was appropriate. The court agreed that inappropriate use of force and unprofessional conduct constitute sufficient cause for discipline less than discharge. Once the hearing officer and reviewing courts found that there was cause to impose a sanction, what sanction to be imposed was a policy decision with the District’s province (*Simmons v. Vancouver School Dist. No. 37*, 1985). Although the sanctions remained subject to review under the court’s inherent authority, this court did not find that a 2-day suspension was arbitrary, capricious, or contrary to law under the circumstances (see *Butler*, 49 Wn.App. at 712).

Disposition: The Court of Appeals of Washington, Division 1, affirmed the superior court’s decision.

Citation: *Jones v. Witinski*, 931 F.Supp. 364 (M.D. Penn. 1996).

Key Facts: This case was a result of an incident that occurred on November 18, 1992, when the plaintiff, Lucas Jones, was a student in defendant James Witinski's seventh grade mathematics class. Jones and his fellow students agreed before class began that they would engage in unison coughing to disrupt the class. As soon as Witinski entered the room, the students began coughing and would not stop when Witinski demanded order. According to Jones, this sustained coughing lasted approximately 8 to 10 minutes. The coughing eventually ceased, and Witinski lectured three students who engaged him in an argument. With his back to Jones, Witinski made a statement that the students' parents would be ashamed of their conduct. Jones repeated the statements. Witinski then turned around and asked Jones what he said. Witinski told him to leave the classroom. According to Jones, Witinski then grabbed his arm and pulled him toward him, across Jones's desk. Jones banged into the desk then somehow bumped into the bulletin board, struck his arm, and ended up on the floor.

Issue: At issue was whether a teacher violated a student's civil rights as a result of disciplinary measures taken by the teacher when he grabbed the student's arm and pulled him across a desk.

Holding: The District Court held that the conduct of a teacher, in an attempt to discipline a student, in grabbing the student by the arm and pulling the student toward the teacher across the desk did not rise to the level of substantive due process violation.

Reasoning: The plaintiffs can establish a § 1983 violation only by demonstrating that the defendants violated Jones's federal constitutional rights (*Gonzalez v. Torres*, 1996). It has been well established since 1977 that disciplinary corporal punishment of public school students by teachers or administrators does not give rise to an Eighth Amendment violation (*Ingraham v.*

Wright, 1977). Such conduct may, however, rise to a claim under the Substantive Due Process Clause of the Fourteenth Amendment (*Metzger by and through Metzger v. Osbeck*, 1988). Whether constitutional rights are implicated depends upon the degree of force used, the injury, if any, sustained, and the methods employed (*Hall v. Tawney*, 1980). Pulling a student by the arm is not “a brutal and inhumane abuse of official power literally shocking the conscience” (*Hall v. Tawney*, 621 F.2d at 613; *Metzger*, 841 F.2d at 520). The fact that Jones may have sustained serious injury as a result of the fall is extremely unfortunate, but does not alter the character of Witinski’s acts. It appeared from all the evidence before the court that Witinski never intended to harm Jones nor cause him to fall against the bulletin board. According to Jones, Witinski was immediately very concerned and apologetic and offered several times to have him seen by the school nurse. There is nothing before the court to suggest that Witinski’s grabbing of the plaintiff was anything other than a disciplinary measure. The fact that this was an isolated incident adds to the impression that the results were not intended, and that Witinski did not willfully pull Jones across the desk with the intent of causing him injury. The court measured Witinski’s conduct not by the unintended consequences, but by the act that set this chain of events in motion. Grabbing a student’s arm to propel him toward the door is not a constitutional violation under the standard adopted by this circuit in *Metzger*.

Disposition: The District Court granted the motion for summary judgment in part. Judgment was entered in favor of defendant Witinski on the § 1983 claims. The Court declined to exercise supplemental jurisdiction over the remaining state law claims asserted and dismissed those claims without prejudice.

Citation: *Heidemann v. Rother*, 84 F.3d 1021 (8th Cir. 1996).

Key Facts: Cherry was a nonverbal, mentally and physically disabled girl who was 9 years old at the time this action was filed, but functioned at approximately a 1-year-old level. She attended school in the School District of Elk Creek, Nebraska, which contracted with the District to provide special services to Cherry. At times, Cherry's teachers used a treatment on her referred to as "blanket wrapping." The blanket wrapping technique involved binding her body in a way that she could not use her arms, legs, or hands. Defendant Joy, a licensed physical therapist who operated under a contract with the District to provide physical therapy and related services to special education students, recommended the use of the blanket wrapping technique for Cherry. The defendants maintained that the blanket wrapping was therapeutic and claimed Cherry by giving her a sense of warmth and security. The defendants further claimed that June Heidemann approved the use of blanket wrapping for Cherry and never voiced any objections to its use until on or about October 18, 1993, approximately 1 week before she removed Cherry from the District's special education programs. The plaintiffs, by contrast, alleged that the blanket wrapping was used as a means of physical restraint. They alleged that it was administered as a substitute for educational and habilitative programming, merely for the defendants' convenience. They alleged that Cherry was wrapped against her will for periods of 1.5 hours or more. On October 6, 1993, June Heidemann allegedly found Cherry blanket wrapped on the floor, with flies crawling in and around her mouth and nose; the blanket was so tightly wrapped, according to June Heidemann, that she needed assistance to remove it. She allegedly did not know that the blanket wrapping was being used in this manner. One week later, June Heidemann again found Cherry blanket wrapped on the floor and was again unable to remove the blanket without assistance. Shortly thereafter, June Heidemann removed Cherry from the public school system and enrolled her elsewhere.

Issue: At issue was whether the school district and the physical therapist violated a student's constitutional rights by using a physical restraint technique.

Holding: The Court of Appeals held that (1) the conduct of the school district did not violate the student's constitutional right to be free from unreasonable bodily restraint; (2) authorized professional acting under color of state law and exercising professional judgment in treating disabled individual under state's care is entitled to qualified immunity for exercise of judgment which would otherwise cause unconstitutional bodily restraint if such treatment is within scope of professionally acceptable choices; (3) no genuine dispute existed as to whether technique recommended by therapist represented substantial departure from accepted professional judgment, practice, or standards in student's care and treatment; (4) student's equal protection rights were not violated by district's utilization of technique recommended by therapist; (5) district and therapist were entitled to qualified immunity as matter of law with respect to student's claims under Rehabilitation Act; and (6) general and punitive damages for pain, suffering, emotional anxiety, distress, and loss of skills are not available as matter of law under Individuals with Disabilities Act (IDEA).

Reasoning: The plaintiffs' substantive due process claim was governed by the Supreme Court's decision in *Youngberg v. Romeo* (1982). The Supreme Court held that, "in determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance 'the liberty of the individual' and 'the demands of an organized society.'" The Supreme Court "concluded that the appropriate standard was whether the defendants' conduct was 'such a substantial departure from accepted professional judgment, practice, or standards in the care and treatment of the plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment.'" In the present case, the court held that the

constitutionally-protected interest in freedom from bodily restraint in the context of Cherry's public school education must be evaluated under the standard adopted in *Youngberg v. Romeo*. Applying those standards, the court concluded that the school defendants' conduct in using the blanket wrapping technique at defendant Joy's recommendation did not violate Cherry's clearly established right to be free from unreasonable bodily restraint. Defendant Joy is unquestionably a licensed professional therapist. Moreover, the plaintiffs conceded that the school defendants were following the recommendation of defendant Joy in using the blanket wrapping treatment. Certainly, even if the blanket wrapping treatment did constitute as substantial departure from professional norms (which it did not), a reasonable official would not have known that to be true. Therefore, the school defendants are entitled to qualified immunity on this claim as a matter of law. The plaintiffs alleged that defendant Joy, as a contract employee of the District, was acting under color of state law in recommending the use of blanket wrapping for Cherry. In considering whether defendant Joy was protected by qualified immunity for recommending the blanket wrapping treatment for Cherry, the court notes that the traditional objective reasonableness test is unworkable. In other words, the court cannot logically say that, even assuming the blanket wrapping treatment was not within the realm of professionally acceptable choices, a reasonable professional such as defendant Joy would not have known that to be true. The plaintiffs' assertion that defendant Joy violated Cherry's right to freedom from bodily restraint falls within a class of constitutional claims for which "it is nearly impossible to separate the constitutional violation analysis from the clearly established right analysis" (*Manzano*, 60 F.3d at 510). Accordingly, when an authorized professional acting under color of state law exercises professional judgment in treating a disabled individual under the state's care, and that exercise of judgment would otherwise cause unconstitutional bodily restraint, he or she is

entitled to qualified immunity if such treatment is within the scope of professionally acceptable choices, which, for purposes of judicial review, is broadly defined to include any choice that is not a substantial departure from accepted professional judgment, practice, or standards. In the present case, defendant Joy stated in her affidavit that “blanket wrapping for individuals such as Cherry Heidemann was and is an accepted practice in the field of pediatric physical therapy and occupational therapy” and “the use of blanket wrapping was the most effective and least restrictive form of treatment for an individual such as Cherry Heidemann at the time of the incidents complained of.” Thus, the court held that the plaintiffs’ submission of evidence on summary judgment was insufficient to create a genuine dispute as to whether the blanket wrapping treatment represented a substantial departure from accepted professional judgment, practice, or standards in the care and treatment of Cherry. Accordingly, defendant Joy was protected by qualified immunity as a matter of law. The court next turned to the plaintiffs’ equal protection claim. The defendants argued that the plaintiffs had failed as a matter of law to allege a violation of a clearly established constitutional right. The court agreed. In view of the facts that the school defendants were following defendant Joy’s recommendation in using the blanket wrapping technique, that defendant Joy is a licensed professional therapist, and that her recommendation has not been shown to be beyond the scope of professionally acceptable choices, the court held that the plaintiffs failed to genuinely dispute the fact that defendants’ actions were rationally related to a legitimate governmental purpose--namely, providing appropriate care for Cherry as part of her public school education. Accordingly, the court held that it was beyond genuine dispute that Cherry’s equal protection rights were not violated. Because there was no genuine issue of material fact as to whether the defendants violated Cherry’s clearly established equal protection rights, the defendants were entitled to qualified

immunity on this claim as a matter of law. The court next considered the plaintiffs' claim that the defendants violated Cherry's rights under the Rehabilitation Act. The defendants did not depart grossly from acceptable standards among qualified professionals. There being no genuine issue of material fact as to whether the defendants violated Cherry's clearly established rights under the Rehabilitation Act, the defendants were entitled to qualified immunity on this claim as a matter of law. Finally, the court considered the plaintiffs' claim that the defendants violated the IDEA. The court held that the plaintiffs' claims based upon the defendants' alleged violations of the IDEA may not be pursued in this § 1983 action because general and punitive damages for the types of injuries alleged by the plaintiffs are not available under IDEA. Therefore, the court held that the plaintiffs in the present case cannot recover general or punitive damages arising out of the defendants' alleged violations of the IDEA and, accordingly, defendants are entitled to qualified immunity for the plaintiffs' IDEA claim and related procedural due process claim.

Disposition: The court held that the district court erred in denying both the school defendants' motion for partial summary judgment and defendant Joy's motion for partial summary judgment on the basis of their qualified immunity defenses. The orders of the district court were reversed and the case was remanded for further proceedings consistent with this opinion.

Citation: *Widdoes v. Detroit Public Schools*, 218 Mich.App. 282, 553 N.W.2d 688 (Mich. App. Ct. 1996).

Key Facts: The incident at issue occurred in February 1990. An eighth grade student, who helped clean the gymnasium after it was used as a lunchroom, played dodge ball with several other students. A custodian had told them they could play, although the student knew

that he should not be playing in the gym at that time. Widdoes entered the gym and told the students to leave. The student attempted to retrieve his shirt. Widdoes grabbed him by the arm and pulled him toward the door, telling him that he had to leave. The student tried to get away, called the teacher a “white bitch,” threatened to hit him, and made an obscene gesture. The student later apologized to Widdoes and testified that he did not use “real bad force” or “hurt him in any way.” In June 1990, Widdoes received written charges of using excessive force that stated that on February 23, 1990, he used inappropriate and excessive force on a student and this was at least the second incident in which he had used force on a student in an unprofessional manner. The notice also explained that these charges, if proven, constituted just and reasonable cause for disciplinary action. In December 1990, the Detroit Board of Education stated that it found sufficient evidence to support the charge of excessive force and immediately terminated Widdoes’s employment. Widdoes then appealed to the State Tenure Commission. The commission denied the petition. Widdoes appealed to the circuit court. The circuit court reversed the decision of the commission and adopted the dissent. It found that the commission’s decision was not supported by competent material and substantial evidence of excessive force. The court also awarded reasonable attorney fees to the petitioner. The city public schools appealed.

Issue: At issue was whether a teacher’s employment should be terminated after using force to remove a student from a gymnasium.

Holding: The Court of Appeals held that (1) the teacher’s discharge for excessive use of force was not supported by competent, substantial and material evidence of violation of corporal punishment statute in effect at the time of incident; (2) the issue of whether teacher’s actions violated excessive force policy of city public schools, while not rising to level of corporal

punishment under statute, was remanded to Commission; and (3) the teacher was not entitled to attorney fees.

Reasoning: This court agreed with the circuit court that the discharge was not supported by competent, substantial, and material evidence of a violation of the corporal punishment statute. The student testified that Widdoes did not “hurt him in any way.” Thus the evidence clearly contradicted the “infliction of physical pain” element of corporal punishment. Local school boards are free to develop and enforce policies as long as such policies are generally within the scope of the educational mission and are not prohibited by statute. Accordingly, the court remanded this matter to the State Tenure Commission for reconsideration of the basis of the petitioner’s discharge. The Detroit Public Schools appealed the trial court’s award of attorney fees to Widdoes. Generally, attorney fees are not awarded unless specifically provided for by statute; therefore, this court reversed the circuit court’s award of attorney fees to the petitioner.

Disposition: The Court of Appeals affirmed the circuit court’s reversal of the petitioner’s dismissal under the corporal punishment statute but remanded to the State Tenure Commission for further consideration. The Court also reversed the circuit court’s award of attorney fees to the petitioner.

Citation: *Rasmus v. State of Arizona*, 939 F.Supp. 709 (D. Ari. 1996).

Key Facts: Charles Ramus suffers from Attention Deficit Disorder, which prevents him from making correct judgments concerning how to respond to others. He has a history of disciplinary problems. In 1993, Charles was referred to Roadrunner School, a school in the Paradise Valley Unified School District for emotionally disabled children. This school has an alternative classroom. The northeast corner of the alternative classroom contains a closet known

as a “timeout room.” The closet is approximately 6’ x 4’ x 8’ x 10.’ It has plywood covered interior walls and a carpeted floor. It lacks furniture, but is equipped with an overhead light, fire sprinkler, air vent, and viewing peephole. A person in the closet can hear and talk to persons in the rest of the classroom. The closet door was equipped with two exterior mounted steel bolt locks at the time of the incident in question. The room was intended to be used as a disciplinary tool in situations where students become violent or disruptive to the point that they need to be segregated from other students. On February 22, 1994, Mrs. Forbes sent Charles to the alternative classroom. In the detention classroom, Charles became involved in a confrontation with another student and had to be reminded of the rules of the alternative classroom more than once. Mr. Rojas warned that further disruption would not be tolerated. Mr. Rojas then ordered Charles to go into the timeout room. Mr. Rojas closed and locked the door behind Charles. Charles paced back and forth, tried to open the door but found it locked, and tried to look out the peephole but could not see. He felt trapped and was worried about what would happen if someone set a fire while he was in the closet. After approximately 10 minutes, Mr. Rojas let Charles out of the room. Charles was well-behaved for the rest of the day. He finished his school year at Roadrunner with perfect attendance, and was later “mainstreamed” into the Paradise Valley High School. Charles’ parents were notified on the same day that Charles had been confined in the timeout room. Mrs. Ramus called the fire department to request a safety inspection of the closet. A deputy fire marshall inspected the room and found that the locks violated the fire code. The locks have since been removed. The Rasmuses also requested an investigation by the Arizona Department of Education into Roadrunner’s timeout practices. The Department found that the school was in compliance with existing laws and regulations. Mr. Rojas testified that prior to starting his job at Roadrunner he had received no training in special

education. He also testified that he had been told that he had “absolute discretion” to put students in the timeout room. He admitted that there was no upper limit on the amount of time a child could be placed in the closet. Dan Peel, the Roadrunner School Principal, testified that he was personally involved with the implementation of the policy governing the use of the timeout room. He stated that the room had been used in the school since 1983 without problems.

Issue: At issue was whether school officials violated a student’s constitutional rights by briefly confining him in a “timeout” room.

Holding: The District Court held that (1) there were issues of fact precluding summary judgment on Fourth Amendment claim as to whether student was seized and whether such seizure was reasonable; (2) any violation of student’s property and liberty interests were *de minimis*, so that due process procedures were not invoked; (3) substantive due process claim was precluded because Fourth Amendment placed explicit limitations on the type of government conduct challenged; (4) there was no violation of the Americans with Disabilities Act; (5) individual defendants were entitled to qualified immunity; (6) there was no false imprisonment; and (7) parties would be required to file joint brief in support of position that Eleventh Amendment did not apply.

Reasoning: The defendants contended that Charles was not seized within the meaning of the Fourth Amendment because he “voluntarily” entered the timeout room. Charles testified that he felt he had no choice when Mr. Rojas ordered him to enter the room; he had seen Mr. Rojas physically seize other students and throw them into the room when they refused to enter on their own; he entered the room on his own to avoid such treatment. This testimony is sufficient to withstand summary judgment on the issue of whether a seizure occurred. The defendants argued that even if Charles were “seized” within the meaning of the Fourth Amendment, his seizure was

reasonable under the circumstances. A seizure of a student by a school official is reasonable if it is “justified at its inception” and “was reasonably related in scope to the circumstances which justified the interference in the first place.” The Court found that *AZ-TAS* provided admissible evidence from which a reasonable fact finder could conclude that the defendants’ placement of Charles in a locked timeout room was “excessively intrusive” in light of his age and emotional disability. *AZ-TAS* contained comprehensive and specific guidelines prepared by the state agency that monitors special education programs throughout Arizona. These guidelines included general standards addressing the use of seclusionary timeout and specific prohibitions on locked timeout. They indicated that placing Charles in a locked timeout room constituted an unreasonable response to his behavioral problems. Accordingly, the defendants were not entitled to summary judgment on the plaintiffs’ Fourth Amendment claim. The defendants also sought summary judgment with respect to the plaintiffs’ Fourteenth Amendment claims. The Due Process Clause forbids arbitrary deprivations of liberty. The defendants argued that the plaintiffs had no claim for violation of Charles’s property interest in receiving a public education. The Court agreed. Charles was excluded from the classroom and denied the ability to work on his assignments for only 10 minutes. The defendants’ restriction of his property right was *de minimis*. Similarly, the violation of Charles’s liberty interests was also *de minimis*. Even assuming that the infliction of appreciable emotional or psychological pain also implicated liberty interests, the plaintiffs had presented no expert evidence indicating that Charles suffered such pain. Charles left the room exhibiting no signs of trauma. Accordingly, the plaintiffs have not established that the defendants’ conduct implicated a due process liberty interest. The defendants were entitled to summary judgment on the plaintiffs’ procedural due process claims. The plaintiffs also claimed that Charles’s confinement violated substantive due process.

However, under the rule of *Graham v. Connor* (1989), substantive due process cannot supply the basis for a civil rights claim if the challenged governmental conduct is prohibited by another, more specific, constitutional right. Here, *Graham* precludes the plaintiffs' substantive due process claim because the Fourth Amendment places explicit limitations on the type of government conduct challenged. Accordingly, the defendants' are entitled to summary judgment on the plaintiffs' substantive due process claim. Assuming that Charles is a qualified individual with a disability, the record does not indicate that he was excluded from any service or program or denied any benefit on account of his disability. The plaintiffs provided no evidence indicating that Charles was treated differently than other Roadrunner School students on the basis of his disability. Accordingly, the plaintiffs failed to state a claim for relief under the Americans with Disabilities Act. Summary judgment was warranted on this claim as well. Public school officials are entitled to assert a qualified immunity defense. The determination of whether the law governing the conduct at issue is clearly established is a question of law for the court. The determination of whether the facts alleged could support a reasonable belief that the defendant's conduct was lawful is also a question for the court. Based on the lack of clearly established law and the undisputed facts, the Court found that the individual defendants could have objectively believed that their conduct and policies were lawful. Mr. Rojas seized Charles only after Charles had acted violently and disruptively. He then locked Charles in the timeout room to protect the other students and enable Charles to cool off. Mr. Rojas never left the alternative classroom during the period of Charles's confinement. In addition, Mr. Rojas was able to observe Charles and communicate with him. In light of the absence of clearly established law, the Court found that Mr. Rojas could have objectively believed that his conduct was lawful under the circumstances. Mr. Peel and Mr. Jurs were responsible for formulating and implementing the

school's timeout policies. These policies authorized school personnel to use the timeout room as a means of protecting students and staff and providing disruptive students with time to cool down. Because no decisional law held that such policies contravened the Fourth Amendment, the Court found that Mr. Peel and Mr. Jurs could have reasonably believed that their policies and conduct were lawful. Accordingly, the Court held that all three individual defendants were entitled to qualified immunity. The plaintiffs acknowledged that state law claims lacked merit. Thus, the defendants were entitled to summary judgment on all of the plaintiffs' state law claims. Finally, at oral argument the Court raised the possibility that the Eleventh Amendment was a jurisdictional bar to imposing damage liability against Paradise Valley Unified School District and its Governing Board. Counsel for the parties offered no definitive opinion on this issue. Consequently, the parties were ordered to file a joint brief in support of their position that the Eleventh Amendment did not apply to this case and that this Court was vested with subject matter jurisdiction over the School District and Governing Board.

Disposition: The defendants' motion for summary judgment was granted in part and denied in part and it was ordered that the parties were to file a joint brief in support of their position that the Eleventh Amendment does not apply.

Citation: *P.B. v. Koch*, 96 F.3d 1298 (9th Cir. 1996).

Key Facts: Defendant Alfred Koch was the principal of Preston High School, a public high school in Preston, Idaho. Three students, N.B., L.G., and D.D., sued Koch for use of excessive force. On September 14, 1990, N.B. a 15-year-old sophomore was with several friends in the parking lot after a school football game. N.B. said something like "Yeah, Hail Hitler," referring to the quarterback. Koch walked by and heard him and assumed the comment was directed toward him. Without giving K.B. a chance to explain, Koch admitted that he hit

N.B. with the back of his hand and then the front of his hand across the mouth. Koch grabbed N.B.'s neck and squeezed, causing bruises which turned purple and lasted a couple of days. N.B. went to the emergency room and was given Advil and an ice pack. He was hoarse for several days. N.B. reported the incident to the police, who investigated and charged Koch with assault and battery. Koch pled guilty and was placed on 3 months' probation. L.G. was a freshman at Soda Springs High School and was attending a basketball game at Preston. He was sitting in the bleachers watching the game. During halftime, the drill team began a special service for their recently deceased drill teacher. L.G. testified that he was unaware of the special program being performed. Koch appeared and asked him to be quiet. L.G. did not hear him. L.G. testified that Koch "grabbed me by the arm and pulled me outside and punched me around, and he punched me in the chest." Although Koch disputed the details of the incident, he admitted that he used physical force, which he guessed he did not have to use. On March 27, 1991, Koch saw D.D. wearing a hat in the school corridor and asked him to remove it. D.D. did but put his hat back on after passing Koch. Koch snatched the hat off D.D.'s head. According to D.D.,

Mr. Koch had his hands around my neck . . . and he threw me headfirst into the lockers, and my head hit into the lockers and I fell to my knees when my head hit into the lockers. And he grabbed me by the back of my neck again and lifted me up. . . . He yanked me into his office and he hit me in the chest with the back of his hand. (p. 4)

According to Koch, he did not push or shove D.D.; D.D. stumbled and fell to the ground. The police investigated the incident but did not file charges against Koch. In 1991, the three students, through their mothers, filed suit against Koch. The district court denied the principal's motion for qualified immunity. The principal appealed.

Issue: At issue was whether a high school principal violated a student's constitutional rights by using excessive force.

Holding: The Court of Appeals held that the principal was not entitled to qualified immunity to students' § 1983 action alleging excessive use of force for his actions in using force against students including slapping, punching, and choking students.

Reasoning: Government officials enjoy qualified immunity from civil damages unless their conduct violates "clearly established constitutional rights of which a reasonable person would have known" (*Harlow v. Fitzgerald*, 1982). "A public official is not entitled to qualified immunity when the contours of the allegedly violated right were sufficiently clear that a reasonable official would understand that what he was doing violated that right" (*Osolinski*, 1996). The Supreme Court held as early as 1977 that public school students have a right guaranteed by the Due Process Clause "to be free from, and to obtain judicial relief for, unjustified intrusions on personal security" (*Ingraham v. Wright*, 1977). In reliance on *Ingraham* and other Supreme Court decisions, the Third, Fourth, Sixth, Eighth, and Tenth Circuits had held prior to 1990 that excessive corporal punishment can violate a student's substantive due process rights. In the instant case, there was no need to use force against the three students.

Accordingly, the force Koch allegedly used bears no reasonable relation to the need. Because there was no need for force, one can reasonably infer that Koch took these actions not in good faith but for the purpose of causing harm. Furthermore, Koch could not have reasonably believed his alleged conduct to be lawful. The district court correctly denied Koch's motion for summary judgment on the grounds of qualified immunity. The plaintiffs had, by 1990, a clearly established constitutional right to be free from the unreasonable force allegedly used by Koch.

Disposition: The Court of Appeals affirmed the opinion of the district court.

1997

Citation: *Lewandowski v. Ypsilanti School District Board of Education*, 1997 WL 33330678 (Mich. App. Ct. 1997).

Key Facts: This case arose from a December 20, 1995, incident in Richard Lewandowski's classroom at West Middle School. In order to help with the cleaning of the classroom, Lewandowski asked students in his sixth-hour class to place their chairs on top of the classroom tables at the end of class. On this day, some students caused a disruption and knocked some of the chairs from the tables. He demanded that the students stay and pick them up. One of the students responsible for knocking down some of the chairs attempted to leave despite the teacher's instruction. Several students testified that Lewandowski grabbed the student and pulled him back into the room. The student attempted to strike the teacher with a chair and, after the teacher took the chair away from him, a scuffle ensued, during which the student tried to kick and punch the teacher. The teacher and the assistant principal eventually restrained the student. At the time of the December 1995 incident, Lewandowski was under a directive issued to him by his principal based on a prior incident; the formal reprimand included the following directive: "I am directing you not to touch students unless faced with a situation where not touching them would clearly result in harm to you or another person." Thus, the teacher's suspension resulted from this confrontation. The teacher appealed the decision.

Issue: At issue was whether a teacher should be suspended for one semester for using physical force to prevent a student from leaving his classroom.

Holding: The Court of Appeals held that they must affirm the State Tenure Commission's order because it was based upon factual findings that they concluded were supported by competent, material, and substantial evidence on the whole record.

Reasoning: This Court's review of the Tenure Commission's findings was limited to a determination whether they were supported by competent, material, and substantial evidence on the record (*Tomczik v. State Tenure Comm.*, 1989). This Court gave due deference to the expertise of an administrative agency, and will not "invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views" (*Widdoes v. Detroit Public Schools*, 1996). In this case, the Tenure Commission found that the appellant employed physical force to prevent the student from leaving the classroom, and that these actions violated the principal's directive because the student did not pose a danger to the appellant or anyone else at the point he was restrained from leaving the classroom. These findings were supported by substantial evidence. Several witnesses testified before the commission that the appellant grabbed the student and pulled him back into the classroom. The record also supported the Commission's finding that there was no imminent danger consistent with the principal's directive which justified the appellant's actions at the doorway. The Court discerned no basis for disturbing the Tenure Commission's findings that appellant used physical force and that those actions were in contravention of the principal's directive. The Tenure Commission's findings were supported by competent, material, and substantial evidence on the record.

Disposition: The Court of Appeals affirmed the State Tenure Commission's decision.

1998

Citation: *Campbell v. McAlister*, 162 F.3d 94, 1998 WL 770706 (5th Cir. 1998).

Key Facts: On February 28, 1994, Dennis Campbell, Jr., a 5-year-old kindergarten student at Dulles Elementary School, was misbehaving in class. Dennis refused to obey his

teacher's instructions. Feeling that she could no longer control him, the teacher requested the assistance of the assistant principal. Dennis, however, continued to be defiant. The assistant principal then summoned the help of Mr. Oliver McAlister, a Sugarland police officer who had recently been assigned to the school. Being the only adult male in the building at the time, McAlister was asked if he would remove Dennis from the classroom and escort him to the principal's office. McAlister twice requested that Dennis get up and go with him, but Dennis refused. At this point, the accounts of what happened diverge. The Campbell's alleged that McAlister "slammed Dennis to the floor" and "dragged him along the ground to the principal's office." The approximate distance to the principal's office was approximately 200-300 feet. Nevertheless, in her deposition, Mrs. Campbell conceded that Dennis did not have any scratches, bleeding, or torn clothing. The doctor who examined Dennis the next morning discovered some bruising under his arm, but no other injury requiring x-rays or follow-up medical treatment. Although school officials described a more belligerent Dennis and a less forceful McAlister, the court assumed the truth of the Campbell's allegations.

Issue: At issue was whether a school official's use of excessive force to remove a disruptive kindergarten student from his classroom constituted an unreasonable seizure under the Fourth Amendment or a denial of substantive due process under the Fourteenth Amendment.

Holding: The Court of Appeals held that, under either Amendment, the school official's use of force was not a constitutional violation.

Reasoning: The essence of the Campbell's claim in this case is that McAlister used excessive force to remove Dennis from his classroom. The Supreme Court rejected the "notion that all excessive force claims brought under § 1983 are governed by a single generic standard" (*Graham v. Connor*, 490 U.S. 386, 393 (1989)). The proper analysis "begins by identifying the

specific constitutional right allegedly infringed by the challenged application of force.” Whether the right has been violated “must then be judged by reference to the specific constitutional standard which governs that right.” Drawing on *Ingraham v. Wright* (1977) and *T.L.O.* (1985), this court and other courts have considered claims involving allegedly unreasonable detention of students under the Fourth Amendment. In *Hassan* (1995), school officials detained a sixth grader in a room as punishment for misbehaving on a field trip. Examining the case under both the Fourth and the Fourteenth Amendments, the court held that the seizure was neither unreasonable nor a violation of substantive due process liberty interests. This court reaches the same conclusion here. The Campbells simply have not alleged conduct rising to the level of an unreasonable seizure or a denial of substantive due process. Even assuming the full use of force alleged by the Campbells, the coercive nature of McAlister’s conduct in removing Dennis from his classroom was not unreasonable under the circumstances. The fact that less force could have been used, or that a more appropriate punishment may have been available, is not enough to establish that the punishment administered was unconstitutional. The Fourth Amendment’s reasonableness standard must afford school officials with a relatively wide range acceptable action in dealing with disruptive students. Because McAlister’s conduct was not objectively unreasonable as a matter of law, the district court did not err in concluding that the Campbells failed to establish a Fourth Amendment claim. The court then turned to the Campbells’s claim that McAlister used excessive force in violation of Dennis’s substantive due process rights. In this case, there was no question that McAlister’s use of force to remove Dennis from his classroom was rationally related to legitimate school interests to maintain order. As the district court noted and the Campbells apparently conceded, Texas provides civil and criminal post-deprivation remedies for the excessive use of force by school officials. Thus, the district

court correctly concluded that the Campbell's substantive due process claim fails as a matter of law.

Disposition: The judgment of the district court was affirmed.

1999

Citation: *Jensen v. Reeves*, 45 F.Supp.2d 1265 (D. Utah 1999).

Key Facts: C.J. attended Sharon Elementary School in Orem, Utah, beginning the first grade in 1996. During both his first and second grade years, C.J. accumulated an extensive history of misconduct, including complaints for harassment. After several acts of misconduct and an initial suspension, the District and the Jensens disputed issues and were in the process of disciplinary hearings. In the meantime, on March 2, 1998, C.J. was involved in yet another confrontational incident on the school's playground, and was called to the principal's office. Principal Reeves questioned all students involved in the incident, including C.J. Each student was given an opportunity to give his or her version of the incident. Harassment complaints were thereafter filed against C.J. by several parents of students who claimed to have been hit or touched in an offensive manner by C.J. The next day, March 3, 1998, Principal Reeves requested a meeting with the Jensens. Mr. Jensen refused, stating that he wanted attorneys present and that he had already told this to Mr. Pherson. On March 4, 1998, Principal Reeves informed the Jensens that in accordance with district policy C.J. was suspended for 10 days or until the meeting between counsel for the District and the Jensens, whichever occurred first. The Jensens responded by filing this lawsuit, pursuant to § 1983, for various violations of constitutional or statutory rights on both C.J. and the Jensens themselves.

Issue: At issue was whether a school principal violated a student's constitutional rights by questioning the student in the presence of classmates.

Holding: The District Court held that (1) the student was afforded due process, and (2) the principal's questioning of the student in the presence of classmates, regarding alleged playground misconduct, did not violate the student's right of privacy or right against unlawful search and seizure.

Reasoning: The plaintiffs' due process claim arose out of the events surrounding C.J.'s 10-day suspension and the alleged failure on the part of the defendants to comply with the procedural due process requirements of the Fourteenth Amendment. First, the plaintiffs argued that the manner in which Principal Reeves investigated and handled the events leading up to C.J.'s suspension was in violation of C.J.'s due process rights. Second, the plaintiffs alleged that when the school convened a hearing regarding the expulsion or suspension of C.J. they did so in violation of district policies. In *Lopez* (1975), the Court announced that "due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." Particularly applicable to the present case, the Court in *Lopez* also held that "there are recurring situations in which prior notice and hearing cannot be insisted upon. Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school." In light of *Lopez*, the Court was satisfied that in the present case the plaintiff was afforded every procedural due process protection owed to him. There was ample evidence to support the argument that C.J. posed such a threat to other students and to the academic process. The incident in question occurred on March 2, 1998, and Principal Reeves

informed C.J. on March 2, 3, and 4, 1998, of the complaints and charges being made against him. Principal Reeves allowed C.J. and the other students an opportunity to explain their side of the story. Furthermore, the Jensens were contacted on March 3, 1998, and invited to meet with the principal regarding the incident. After all of this, Principal Reeves informed the Jensens that C.J. was suspended for a period of 10 days or until a meeting with the parents and their attorneys occurred, whichever occurred first. Regarding the hearing that was convened, the plaintiffs complained that the hearing was being held without them and that they were not afforded adequate notice of the allegations against their son. The record indicates, however, that the Jensens were given an opportunity to attend the hearing. The plaintiffs do not refute that in the context of public schools, the Supreme Court has established that “privacy interests of school children” must be balanced against the “substantial need of teachers and administrators for freedom to maintain order in schools” and that this standard replaces the probable cause requirement. The plaintiffs alleged that the defendants infringed upon this right when “C.J. was called in by defendant Reeves to review the March 2, 1998, playground incident” and was pressured into explaining his conduct in front of six or more other classmates. Having determined that Principal Reeves adequately handled the situation pursuant to the holding of *Lopez* (1975), the Court cannot find that such conduct violated C.J.’s or his parents’ right of privacy or right against unlawful search and seizure. Again, it appeared to this Court that Principal Reeves’s questioning of C.J. and other students was reasonable and in fact necessary under the circumstances. The plaintiffs provided no precedent that would suggest that Principal Reeves’s actions were not in conformance with both the Fourteenth and Fourth Amendments. The plaintiffs’ Equal Protection claim is based on a belief that other students similarly situated received different treatment from the defendants than C.J. received. The record seems to suggest

that, if anything, C.J. was given more leniency and forbearance than many other students. The Court found that the defendants were entitled to qualified immunity and the plaintiffs' claims were dismissed.

Disposition: Defendants motion to dismiss the plaintiffs' first amended complaint was granted.

Citation: *Kurilla v. Callahan*, 68 F.Supp.2d 556 (M.D. Penn. 1999).

Key Facts: On October 3, 1995, Kurilla was an eighth grade student at Mid-Valley Secondary Center. According to Kurilla, on that date, he was attending a study hall supervised by Defendant Kevin Callahan, where Kurilla got into a fight with another student. Callahan called both Kurilla and the other student to his desk and asked the other student what happened. Kurilla interrupted and began explaining his side of the story, to which Callahan responded by telling Kurilla to "Shut up or I will lay you out on the floor." Kurilla attempted again to tell his side of the story when Callahan grabbed him by the shirt with clenched hands and proceeded to pull Kurilla very hard, causing Kurilla's chest to strike Callahan's closed fists. Kurilla claims that Callahan's action, which allegedly had the identical effect as if Callahan punched him, resulted in bruising on Kurilla's chest. The bruise was on Kurilla's right side, above the nipple. In addition to the bruise on his chest, Kurilla alleged that he had a red mark on the back of his neck and on the left side of his chest. The only photographs taken were of the bruise on Kurilla's right side, above the nipple. According to Kurilla's father, the photographs were taken 2 or 3 hours after the incident with Callahan. Following the incident, Kurilla saw the family doctor. The doctor performed a complete examination, but no x-rays were taken. The doctor concluded that there was no internal damage and that there was no need to prescribe any medication or to impose any restrictions on Kurilla. At the time of the altercation, Kurilla was 5'8" or 9" tall, and

weighed between 175-180 pounds. Kurilla's father claimed that his son now suffered from anxiety, but he had not taken him to any doctors, aside from the one visit to the family doctor discussed above. Moreover, Kurilla had no plans to seek further treatment in the future. Callahan was subsequently tried and convicted of the summary offence of harassment of Kurilla. Callahan was also convicted of harassment of two other students in separate incidents, one occurring before the matter involving Kurilla and one occurring 2 days after the Kurilla incident. Callahan appealed his guilty verdict to the Pennsylvania Superior Court, which dismissed his appeal. Kurilla filed this action on February 6, 1997, asserting claims under § 1983 and state law. A motion for summary judgment was filed by the defendant, Mid-Valley School District, on February 2, 1998. The School District argued that Kurilla failed to adduce evidence demonstrating the School District had a policy or custom of tolerating its teachers' violent behavior towards students, or that the School District created a danger to students. On January 15, 1999, a motion for partial summary judgment was filed by Callahan. Callahan sought dismissal of Kurilla's § 1983 claim, asserting that Callahan's conduct was not sufficient to impose liability under § 1983. On January 25, 1999, Kurilla filed a motion for partial summary judgment with respect to liability on his civil rights claim, alleging that Callahan's unreasonable conduct violated Kurilla's Fourth and Fourteenth Amendment rights. Magistrate Judge Blewitt, to whom this matter had been assigned for pretrial management, concluded that the School District and Callahan were entitled to summary judgment. With respect to the School District, Magistrate Judge Blewitt reasoned that the plaintiffs failed to present competent evidence sufficient to warrant a trial on the questions of whether the School District had a policy or custom of tolerating violent behavior by its teachers towards students, or whether it acted in willful disregard for the safety of Kurilla. As to Callahan, Blewitt rejected Kurilla's assertion

that Fourth Amendment principles were applicable. Instead, Blewitt found that Kurilla's claims were properly evaluated under the substantive due process component of the Fourteenth Amendment and its "shock the conscience" standard. Concluding that Kurilla's claim failed to "shock the conscience," Blewitt recommended that Callahan's motion for partial summary judgment be denied and that supplemental jurisdiction over the pendent state law claims be declined. The matter was brought before the Court on Kurilla's objections.

Issue: At issue was whether a student's civil rights were violated when a teacher used physical force in reaction to a disruptive and unruly situation.

Holding: The District Court held that (1) the momentary use of physical force by a teacher in reaction to a disruptive or unruly student did not shock the judicial conscience in violation of substantive due process, and (2) the fact issue existed as to whether the school district had a policy or custom to tolerate or be deliberately indifferent to excessive use of force by teachers.

Reasoning: The threshold inquiry in addressing Kurilla's § 1983 excessive force claim involves "identifying the specific constitutional right allegedly infringed." Identification of the specific constitutional right allegedly infringed is essential because the standard against which the defendant's conduct was to be assessed depended upon the right that was purportedly violated. Kurilla argued that the Fourth Amendment "reasonableness" standard should be applied in this case. The premise of this argument was that he was subjected to a "seizure" when Callahan grabbed his shirt and punched him in the chest. Pointing out that the Court in *Graham* (1989) said that a "seizure" occurs when a government actor "by means of physical force or show of authority, in some way restrains the liberty of a citizen," Kurilla asserted that Callahan's conduct must be regarded as a Fourth Amendment seizure. Based upon the Pennsylvania state

court's finding in connection with the harassment charge that Callahan's use of force was not justifiable under the circumstances, Kurilla maintained that he was entitled to a finding in his favor on Callahan's § 1983 liability. Contrary to Kurilla's assertion, *Graham* (1989) did not mandate application of Fourth Amendment principles to all claims of excessive force by all government actors. Factually, *Graham* was limited to claims against law enforcement officers engaged in law enforcement activities. In *County of Sacramento v. Lewis* (1998), the Court specifically disclaimed any intent to have all constitutional claims relating to physically abusive government conduct analyzed under the Fourth or Eighth Amendments. As the Court explained,

Graham simply requires that if a constitutional claim is covered by a specific constitutional provision, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process. Thus, substantive due process analysis remains appropriate if the plaintiff's claim is not "covered by" the Fourth Amendment. Fourth Amendment jurisprudence dealing with "seizures" generally focuses on "the initial deprivation of liberty.

A teacher's use of physical force is more properly regarded as a condition of the school environment in which liberty is necessarily already curtailed. Thus, the factual context presented in this case was not "covered by" the Fourth Amendment. In short, the momentary use of physical force by a teacher in reaction to a disruptive or unruly student does not effect a "seizure" of the student under the Fourth Amendment. Because Kurilla's claim is not governed by the Fourth Amendment, substantive due process principles were applied to determine whether there was a triable excessive force claim here. Substantive due process has been described as "the right to be free from state intrusions into realms of personal privacy and bodily security through means so brutal, demeaning, and harmful as literally to 'shock the conscience' of the court" (*Lillard v. Shelby County Board of Education*, 1996). The pertinent inquiry was "whether the force applied caused injuries so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it

amounted to a brutal and inhumane abuse of official power literally shocking to the conscience” (*Jones v. Witinski*, 1996). In this case, Callahan’s punching of Kurilla in the chest caused a bruise and some red marks. While Kurilla sought medical care, there is no evidence that medical attention was reasonably necessary. Thus, Kurilla’s injuries could hardly be described as “severe.” Callahan’s striking of a blow to Kurilla’s chest is akin to the slap across the student’s face considered in *Lillard v. Shelby County Board of Education* (1996). This rationale applied with equal force here. Callahan was reacting to a disruptive student. While Callahan’s reaction could be categorized as overzealous, and may be actionable under state tort law, it does not amount “to a brutal and inhumane abuse of official power literally shocking to the conscience” (*Jones v. Witinski*, 1996). In summary, while Callahan’s conduct violated state laws that balance the justification for use of force against a teacher’s right to use force to maintain discipline, and may be actionable under tort law, it was not so brutal or inhumane as to shock the conscience. Accordingly, Callahan’s summary judgment motion was granted and Kurilla’s summary judgment motion was denied. That Callahan’s conduct did not shock the conscience does not necessarily relieve Mid-Valley School District of liability, however. Application of force by a teacher implicates liberty interests protected by the Fourteenth Amendment. Mid-Valley School District may be held liable if it had a custom or policy condoning use of excessive force by teachers that evidenced a deliberate indifference to the student’s constitutional rights in bodily integrity protected by the Due Process Clause of the Fourteenth Amendment. With respect to policies and customs, a “plaintiff must show that an official who has the power to make policy is responsible for either the affirmative proclamation of a policy or acquiescence in a well-settled custom.” In addition to proving that a policy or custom exists, the plaintiff must prove that the alleged policy or custom was the proximate cause of the plaintiff’s harm. Thus, to establish

liability on the part of the School District under § 1983, Kurilla must establish that officials at a policymaking or supervisory level (1) had actual or constructive knowledge that Callahan had violent propensities and was a threat to students, (2) followed a policy or custom of tolerating or ignoring the risk Callahn or other violent teachers posed, and (3) exhibited indifference to the safety of students who were likely to be harmed by violent teachers. Kurilla claimed that “the School District had a policy or custom of permitting Callahan to assault students without fear of action being taken against him. This policy or custom also extended to attempting to appease the parents of assaulted students in order to assure that Callahan’s assaults would not be made public. The policy or custom also included creating a paper record of willingness to supervise or train Callahan, but in reality refusing to do so.” In this case, there were three incidents involving Callahan in less than 1 year. There was no evidence of any independent investigation by the School District of any of these incidents. No disciplinary action was taken against Callahan. Even following Callahan’s convictions of the summary offense of harassment in connection with his physical abuse of a student, no disciplinary action was taken against Callahan. While Callahan’s assault on Kurilla was proceeded by only one incident, the failure to take any disciplinary action against Callahan following the three incidents in the span of less than 1 year is probative of the question of whether the School District had a policy or custom to tolerate or be deliberately indifferent to excessive use of force by teachers. Accordingly, Mid-Valley School District’s motion for summary judgment was denied.

Disposition: Callahan’s motion for partial summary judgment was granted, Kurilla’s motion for partial summary judgment was denied, and the School District’s motion was denied. In light of this disposition, the court retained pendent jurisdiction over Kurilla’s state law claims against Callahan.

2000

Citation: *Covington v. Knox County School System*, 205 F.3d 912 (6th Cir. 2000).

Key Facts: David Jason Covington was born on March 8, 1978, and was a special education student at the Knoxville Adaptive Education Center (KAEC) from 1990 until he graduated with a special education diploma in May 1996. He suffered from multiple mental and emotional disabilities. Burma Covington, mother of the student, alleged that, on several occasions between 1990 and 1994, Jason was locked in a “timeout room” that could not be unlocked from the outside. Covington claimed that Jason was repeatedly locked in the timeout room for several hours at a time without supervision and was often not allowed to leave the room for lunch. On at least one occasion, Jason was allegedly made to disrobe before being locked into the timeout room. On at least one other occasion, she alleged that because of the long duration of his confinement, Jason was forced to relieve himself on the concrete floor of the room and to remain there with his excrement for a period of time. As a result of these incidents, Covington filed an administrative complaint with the Tennessee Department of Education. They referred the complaint to the Knox County School System, which denied the allegations and offered no relief. Covington subsequently requested a due process hearing. Over the next 3 years, this hearing was repeatedly rescheduled and evidence suggests that Covington was largely responsible for the delays. Although no due process hearing had yet taken place, Covington filed a complaint in federal district court. Finding that Covington had not exhausted her administrative remedies and that she had failed to demonstrate that such exhaustion would be futile, the district court granted the defendant’s summary judgment motion and dismissed the case without prejudice. Covington filed a motion to alter or amend the judgment and the district court denied that motion. The appellant then filed a timely notice of appeal.

Issue: At issue was whether a school and its officials violated a disabled student's substantive due process rights.

Holding: The Court of Appeals held that exhaustion would be futile, and thus would be excused, where the injured child had already graduated from the special education school and money damages were the only remedy that could make him whole.

Reasoning: The IDEA provides that plaintiffs must exhaust their administrative remedies before bringing suit in federal court to obtain relief that is also available under IDEA. Covington argued that her claim does not arise under the IDEA and therefore that exhaustion is not required in her case. Rather, she urged, her complaint concerns abusive behavior that constitutes an independent constitutional violation. Both the Supreme Court and this court have held that exhaustion is not required under the IDEA in certain circumstances. Exhaustion is not required if it would be futile or inadequate to protect the plaintiff's rights (see *Crocker I*, 1989; *Honig*, 1988; *Smith*, 1982). This court held that in the unique circumstances of this case--in which the injured child had already graduated from the special education school, his injuries were wholly in the past, and therefore money damages were the only remedy that can make him whole--proceeding through the state's administrative process would be futile and was not required before the plaintiff can file suit in federal court. In Jason's case, "the condition creating the damage has ceased" and there is no equitable relief that would make Jason whole. This court, therefore, held that while a claim for money damages did not automatically create an exception to the exhaustion requirement of the IDEA, in this case exhaustion would be futile because money damages, which are available through the administrative process, are the only remedy capable of redressing Jason's injuries.

Disposition: The Court of Appeals reversed the district court's grant of summary judgment and remanded for further proceedings.

Citation: *Widdoes v. Detroit Public Schools*, 242 Mich.App. 403, 619 N.W.2d 12 (Mich. App. Ct. 2000).

Key Facts: In February 1990, Paul Widdoes, a teacher for Detroit Public Schools, entered the gym and told students who were playing dodge ball to leave; evidence supports that students knew they were not allowed to be in the gym but were told by a custodian they could play. The student attempted to retrieve his shirt. Widdoes grabbed him by the arm and pulled him toward the door, telling him that he had to leave. The student tried to get away, called the teacher a name, threatened to hit him, and made an obscene gesture. The student later apologized to the teacher and testified that the teacher did not use "real bad force" or "hurt him in any way." In June 1990, the teacher received written charges of using excessive force. He was first suspended for 3 weeks without pay and later his employment was terminated. The teacher appealed the decision of the State Tenure Commission. The Wayne Circuit Court reversed. The city school board appealed. The Court of Appeals affirmed the circuit court, but remanded the matter for determination of whether the teacher had violated any policy prohibiting use of excessive force. On remand, the State Tenure Commission found the teacher had violated the excessive force policy. The teacher appealed, and the Wayne Circuit Court reversed. The city school board appealed by leave granted, and this appeal was filed.

Issue: At issue was whether a teacher's employment should be terminated after using force to remove a student from a gymnasium.

Holding: The Court of Appeals held that the teacher did not violate any policy against use of excessive force when, after asking students who were playing in gymnasium to leave so

that he could teach physical education class, the teacher grabbed by the arm one student who was attempting to retrieve a shirt and pulled the student toward door.

Reasoning: The court acknowledged that school boards have within their power the ability to define disciplinable acts and to sanction teachers when they violate a school board policy. However, the court also believed that school boards must apply their policies in a reasonable manner. The general rule allowing teachers to impose reasonable force on students predates the American Revolution (*Ingraham v. Wright*, 1977). Numerous are the forces that intrude on the classroom to disturb the learning environment, and teachers must be able to deal with such problems promptly and decisively. The mission of the public school system is to “impart to students committed to its educational care and supervision the learning necessary to enable them to lead useful and productive lives” (*Davis v. Ann Arbor Public Schools*, 1970). Rather than risk making the teachers of the state afraid to take appropriate action against students who fail to follow their direction, this court affirmed the trial court’s order reversing the State Tenure Commission’s decision.

Disposition: The Court of Appeals affirmed the judgment of Circuit Court.

Citation: *Bisignano v. Harrison Central School District*, 113 F.Supp.2d 591 (S.D. N.Y. 2000).

Key Facts: At the time of the events underlying the instant lawsuit, Amanda Bisignano was 13 years old and an eighth grade student at Louis M. Klein Middle School in Harrison, New York. Amanda took a gym class taught by defendant Vincent Nicita. On November 5, 1998, Amanda found a \$20 bill on the floor of the gymnasium. It was not money that she had dropped or lost. Amanda asked other students in class whether they had dropped the bill. Nicita told her it was his. Nicita told Amanda that if she gave him the money, he would buy her lunch. When

Amanda failed to hand over the money, Nicita said “then you’re going to have to like stay in the closet until you give me back my money.” Amanda said she did not give Nicita the money because she thought he was joking when he said that it was his. Nicita stated that he had a \$20 bill in his pocket in the morning, but when he checked his pocket after he saw Amanda pick up the money from the floor, he realized his pocket was empty. Amanda said that after Nicita dismissed the class, she ran out of the gymnasium and Nicita ran after her. Amanda testified that Nicita told her she could not leave until she returned the money to him and then gave her “a little push” into an equipment closet. Nicita testified that he did not push her into the closet, but that she ran into the closet herself. Amanda testified that the doors to the closet were completely closed and there was no light inside the closet. Amanda said she remained in the closet for slightly more than 30 seconds while Nicita held the doors shut from the other side. Amanda said she demanded to be released, but Nicita told her he would not release her until she gave him the money. According to Amanda, Nicita, who was laughing, then opened the door about a foot and she slipped out. Amanda testified that after she exited the closet, Nicita grabbed and twisted her left wrist, and yelled at her to give him back his \$20 dollars. She said she screamed for help. Then, when she reached into her pocket to retrieve the bill, Nicita grabbed her upper right arm. Amanda said she threw the bill, which fell to the floor. Nicita told her to pick up the bill and hand it to him “like a human being.” Amanda said she ran out of the room and went to the girls’ locker room where she showed her friends the red marks on her arms. She was crying. She then went to the nurse’s office, where the nurse put ice packs on her arms. The health assistant testified that Amanda’s arm was “slightly red” near the wrist. Nicita came to the nurse’s office and asked Amanda to take a walk with him. Amanda said they went to Nicita’s office and Nicita apologized and told her he did not mean to hurt her. Rosemary Brook, the principal of the

school, said that when Amanda came to her office following the incident, Amanda had marks on her upper arm and wrist. Brooke described Amanda's injuries as "slight." Brooke telephoned Amanda's parents and Amanda chose to spend the rest of the day in school rather than go home. Brooke testified that she reported the incident to the District superintendent. Subsequently, the principal and superintendent met with the plaintiffs and Nicita. Brooke testified that during her tenure as principal, the District provided teachers with a handbook and at times invited speakers to discuss "being sensitive to the kids" with faculty, but did not offer training focused on disciplining students or interpersonal skills.

Issue: At issue was whether a teacher violated a student's constitutional rights by forcibly confining her to a storage closet.

Holding: The District Court held that (1) the fact issue existed as to whether the teacher's forcible confinement of a student in a storage closet was unreasonable seizure, (2) the teacher did not violate the student's substantive or procedural due process rights, (3) the school district was not liable for the teacher's conduct, and (4) the fact issue existed as to whether the teacher was entitled to qualified immunity.

Reasoning: The plaintiffs claimed that Nicita violated Amanda's Fourth Amendment rights by forcibly confining her in a storage closet. The Supreme Court has determined that the Fourth Amendment applies to searches conducted by school authorities, but stated that the determination of the standard of reasonableness "depends on the context within which a search takes place" (*T.L.O.*, 1985). The *T.L.O.* Court did not address the specific question at issue here: whether the Fourth Amendment applies to the "seizure" of a student's person by a public schoolteacher. This court did not find any Second Circuit decisions on point with the facts of this case. However, several other circuits have held that the Fourth Amendment applies to such

situations, and have adopted the relaxed standard as articulated in *T.L.O.* to determine whether the seizure was lawful. The *T.L.O.* reasonableness test reflects a balancing of the need to guard against arbitrary invasions of a student's privacy and security with "the value of preserving the informality of the student-teacher relationship" and the necessity of maintaining order in our schools. In applying that test to the facts of this case, the court must first consider whether Nicita's alleged actions were "justified at their inception," and second, whether his actions were "reasonably related in scope to the circumstances which justified the interference in the first place." This court found that material issues of fact existed which preclude a grant of summary judgment for Nicita, on this claim. A teacher may be justified in demanding the return of money he lost if he reasonably believed it was his. However, a reasonable jury could find that the loss of a \$20 bill did not justify pushing a 13-year-old girl into an unlit closet and holding the doors closed from the other side, even if, as Amanda admitted in her deposition, she was running from the teacher at the time. Likewise, a reasonable jury could conclude that Nicita's alleged actions were not "reasonably related in scope to the circumstances" under which the incident arose. Therefore, defendant Nicita's motion for summary judgment as to the plaintiff's Fourth Amendment claim was denied. The plaintiffs claimed that Nicita's conduct toward Amanda violated her right to substantive due process. This claim had to be dismissed. Here, Nicita's actions do not "shock the conscience" of the Court. Amanda did not suffer the kind of "appreciable physical pain" that implicates the Fourteenth Amendment. At most, her physical injuries amounted to red marks on her arms, stomach upset, and headaches. These injuries were not so severe that substantive due process rights were implicated. Defendant Nicita's motion for summary judgment as to the plaintiffs' substantive due process claim is granted. The plaintiffs claimed that Amanda was deprived of procedural due process when Nicita "robbed her, both

figuratively and literally” of the opportunity to comply with state law provisions as to found money is without merit and was dismissed. The plaintiffs alleged that the District, “aware of Nicita’s violent and aggressive behavior, had deliberately and/or recklessly taken no remedial and/or no effective remedial action as a result of which Nicita’s said propensities have been encouraged, condoned, and/or ratified by the District.” The plaintiffs claimed that the District had a custom or policy of failing to take remedial action “with respect to reports of physically abusive behavior by Nicita toward students at the District’s Middle School” and that the District failed to train its employees and supervisors regarding appropriate conduct toward and discipline of students. The Second Circuit set forth the following three-part test for determining when a municipality’s failure to train or supervise rises to the level of “deliberate indifference.” First, the plaintiff must show that a policymaker knows “to a moral certainty” that her employees will confront a given situation. Second, the plaintiff must show that the situation either presents the employee with a difficult choice of the sort that training or supervision will make less difficult or that there is a history of employees mishandling the situation. Third, the plaintiff must show that the wrong choice by the city employee will frequently cause the deprivation of a citizen’s constitutional rights. In the instant case, the plaintiffs have offered three documented incidents other than that at bar in which Nicita behaved inappropriately with a student. The plaintiffs also offered evidence that the District did not provide teachers and staff training specifically targeted to disciplinary procedures and interpersonal skills. This evidence was insufficient to impose liability, vicariously or directly, upon the District for any constitutional deprivation. There was no evidence the District condoned the activity of which Nicita is accused, nor is there any evidence that the District specifically directed, supervised, participated, authorized, or even knowingly acquiesced in the incident upon which the claim for relief was based. The plaintiffs

had not demonstrated that the District knew “to a moral certainty” that the alleged incident was likely to take place. Defendant Nicita might have demonstrated questionable judgment on several occasions, but failure to address those events in a more comprehensive fashion did not lead the court to conclude that the District was deliberately indifferent to the constitutional rights of Nicita’s students. Accordingly, summary judgment is granted to the defendant District as to the plaintiffs’ federal law claims against it. The plaintiffs’ claims against the District arising under state law were dismissed without prejudice for lack of subject matter jurisdiction. Finally, the court held that material issues of fact precluded a grant of summary judgment to defendant Nicita on the issue of qualified immunity. No reasonable school official could have believed that the conduct Amanda described was lawful. Accordingly, the court denied defendant Nicita summary judgment on the issue of qualified immunity.

Disposition: The Court granted the defendant District’s motion for summary judgment as to the plaintiffs’ federal law claims and declined to exercise supplemental jurisdiction over the plaintiffs’ state law claims against the District. Defendant Nicita’s cross-claim against the District was dismissed without prejudice and may be refilled in the event that Nicita is adjudged liable. In addition, the Court granted Nicita’s motion for summary judgment as to the plaintiffs’ claim that Nicita violated Amanda’s substantive and procedural due process rights. In all other respects, Nicita’s motion for summary judgment was denied.

Citation: *Milligan v. City of Slidell*, 226 F.3d 652 (5th Cir. 2000).

Key Facts: On January 26, 1997, a fight occurred involving several of the plaintiffs, who attended Salmen High, and Louis Thompson’s two high school-aged sons, who attended Slidell High in Slidell, Louisiana. Two days later, a Salmen High student named David Gelis contacted Thompson and informed him that a retaliatory fight, possibly involving weapons, was to occur at

Slidell. Thompson contacted Emery the next morning about the possible fight, and, after discussing the issue with Salmen's football coach, the three men went to Salmen High to defuse the situation. Thompson had compiled a list of students alleged or known to have been involved. At the high school, Emery and Thompson requested that Vice Principal Smith call certain students from class for questioning. Vice Principal Smith did so. The officers first met with the coach and several football players, who confirmed that a fight involving baseball bats was going to occur later that day at Slidell High. The officers next met with the plaintiffs. The meeting lasted 10 to 15 minutes, as the officers questioned the students about the fight and warned them that their parents would be called if a fight should occur and an investigation connected them to it. Vice Principal Smith testified that the officers had no physical contact with the students and that the students appeared to want to tell their side of the story. Eric Milligan, the only plaintiff to testify, asserted that he felt physically intimidated and that he did not feel free to leave the meeting, as the assistant principal had called him into her office. The officers' intervention succeeded in warding off any fight. After a bench trial, the district court dismissed the claim against the city but held that the two officers had violated the plaintiff's Fourth Amendment rights and were not entitled to qualified immunity. Both sides appealed.

Issue: At issue was whether police officers violated the students' Fourth Amendment rights when they called them out of class and detained them for questioning.

Holding: The Court of Appeals held that detention of students for questioning did not violate their Fourth Amendment rights.

Reasoning: The district court held that officers Emery and Thompson violated the students' clearly established Fourth Amendment rights by detaining them in the Vice Principal's office without particularized suspicion that any of them had engaged in or was about the engage

in criminal misconduct. The district court settled on the *Terry* (1985) case as the closest Fourth Amendment analogy, thus concluding that the officers conducted an “investigative detention.” Under *Terry*, a detention requires reasonable suspicion of past or incipient criminal activity. Even if this analysis were generally correct for investigative activities of the sort the officers performed, it failed in this case because it neglected the all-important school context. Because this case involved the rights of students in a public school, a full bore *Terry* analysis is inappropriate. Rather, this court is directed by *Vernonia School District 47J v. Acton* (1995), where the Supreme Court considered the role of the Fourth Amendment in the school context. Turning to the students’ interests, it was not at all clear that they had some privacy right not to be summoned to and detained in a school official’s office for questioning on matters of school discipline. Consideration was next given to the nature and immediacy of the governmental concern as well as the efficacy of the means used to address it. In this case, the school sought to protect its students, to foster self-discipline, and to deter possibly violent misconduct. These are compelling governmental interests. The immediacy of the concerns is obvious because the retaliatory fight was due to happen that day. Furthermore, the means the officers chose to address the potential problem were effective. The officers proceeded through school channels by using the Vice Principal’s power to summon the plaintiffs for interrogation and admonishment. Nothing was done that school officials could not have done themselves. Conversely, no more was done than necessary to discourage the fight. From the facts, it should be clear that the privacy right asserted does not outweigh the school’s interests. Students in the school environment have a lesser expectation of privacy than the general population. Students at school have a significantly lesser expectation of privacy in regard to the temporary “seizure” of their persons than does the general population. That lesser expectation of privacy was in full force

here, where the Vice Principal had called the students into her office and attended the entire meeting. Considering the weakness of the claimed privacy right and the significance of the governmental concern, the officers' actions were reasonable and therefore constitutional.

Disposition: The Court of Appeals reversed the district court's decision and rendered judgment for the defendants.

Citation: *Neal v. Fulton County Board of Education*, 229 F.3d 1069 (11th Cir. 2000).

Key Facts: The plaintiff, Daurante Neal, a high school freshman and member of the varsity football team, appealed from the district court's dismissal of his complaint alleging that Tommy Ector, a high school teacher and football coach, violated his right under the Due Process Clause to be free from excessive corporal punishment. Ector allegedly struck the plaintiff with a metal weight lock, blinding him in one eye, as a form of punishment for the plaintiff's involvement in a fight with another student.

Issue: At issue was whether a coach violated a student football player's right under the due process clause to be free from excessive corporal punishment.

Holding: The Court of Appeals held that (1) the coach's alleged act of striking a student with a metal weight lock, resulting in student's loss of use of eye, was "corporal punishment;" and (2) the coach's alleged conduct supported a claim of substantive due process violation.

Reasoning: The court first addressed the question of whether Ector's conduct constituted corporal punishment. The answer to this question dictated the kind of analysis to be adopted for the claim. The touchstone of corporal punishment in schools appeared to be the application of physical force by a teacher to punish a student for some kind of school-related misconduct. Many corporal punishment cases involve spanking or paddling a disruptive student. Some corporal punishment cases may involve less traditional, more informally-administered, and more

severe punishments. In the circumstances of this case, Ector's conduct did amount to corporal punishment. Ector was spurred to act by the plaintiff's misconduct on school premises. Ector's intent to discipline the plaintiff for that act is evidenced by his statement to the plaintiff that "If you hit him with it, I'll hit you with it." And Ector ultimately did use physical force against the plaintiff. This case is not one where a teacher used reasonable force to restore order in the face of a school disturbance and merely shoved or grabbed fighting students to separate them. On the contrary, Ector never attempted to break up the fight between the plaintiff and Reyonte Griffin. The force allegedly used by Ector was related to the plaintiff's misconduct at school and was for the purpose of discipline. As such, it constituted corporal punishment. The defendants argued, and the district court agreed, that under the former Fifth Circuit's decision in *Ingraham* (1977), corporal punishment, regardless of its severity, may never give rise to a substantive due process claim, although the former Fifth Circuit's opinion was binding precedent, and this court did not agree with the district court's interpretation of that case. The former Fifth Circuit in *Ingraham* did not say that under no circumstances could corporal punishment rise to the level of a constitutional violation. Moreover, the facts on *Ingraham* are too different from the facts of this case for *Ingraham* to control. The material facts of this case are profoundly different from those found in *Ingraham* and present a substantially different question; thus, the former Fifth Circuit's opinion in *Ingraham* does not control this appeal. Having found that the former Fifth Circuit's decision in *Ingraham* does not itself preclude this claim, we still must determine whether the plaintiff had actually stated a cause of action. Almost all of the Courts of Appeals to address the issue squarely said that a plaintiff alleging excessive corporal punishment may in certain circumstances state a claim under the Substantive Due Process Clause. As the Fourth Circuit reasoned in *Hall* (1980), where an exercise of corporal punishment is "so brutal, demeaning and

harmful as literally to shock the conscience of the court,” a student’s substantive due process rights are implicated just as they would be in other settings. This court agreed and joined the vast majority of Circuits in confirming that excessive corporal punishment, at least where not administered in conformity with a valid school policy authorizing corporal punishment as in *Ingraham*, may be actionable under the Due Process Clause when it is tantamount to arbitrary, egregious, and conscience-shocking behavior. Several factors must be considered in determining whether a student-plaintiff’s allegations of excessive corporal punishment rise to the level of arbitrary and conscience shocking behavior. At minimum, the plaintiff must allege facts demonstrating that (1) a school official intentionally used an amount of force that was obviously excessive under the circumstances, and (2) the force used presented a reasonably foreseeable risk of serious bodily injury. In particular, these facts must be examined: (1) the need for the application of corporal punishment, (2) the relationship between the need and amount of punishment administered, and (3) the extent of the injury inflicted. The injury alleged by the plaintiff in this case--the utter destruction of an eye--clearly was serious. On the facts of this case, and consistent with the logic of almost all courts considering the subject, this court concludes that the plaintiff has stated a claim.

Disposition: Because the plaintiff adequately alleged a violation of his right under the Fourteenth Amendment to be free from excessive corporal punishment, the court vacated the district court’s judgment dismissing the case, and remanded for further proceedings.

Citation: *Brown v. Ramsey and Hart*, 121 F.Supp.2d 911 (E.D. Vir. 2000).

Key Facts: Daniel was a student in Ramsey’s first-grade special education class at Aberdeen Elementary School in Hampton, Virginia. Hart was Ramsey’s classroom assistant. Daniel suffers from Asperser’s Syndrome. As a special-education student, Daniel’s instructional

program at the school was governed in part by his Individualized Education Program (IEP). In an IEP dated November 2, 1995, and allegedly covering the period from November 29, 1995, to November 29, 1996, it stated that “off trust area and physical restraint may be used when necessary for the safety of the child and others.” The restraint authorized by the IEP is consistent with Virginia Code. Daniel alleged that Ramsey and Hart had physically abused him by placing him in a restraint hold that “suffocated” him or caused him to experience a choking sensation. The hold that Ramsey and Hart allegedly used is known as a “basket hold,” and the plaintiffs maintain that it was accomplished by clasping Daniel at the wrists, crossing his arms in front of his body, and pushing his head into his chest. According to the plaintiffs, Ramsey and Hart used the hold approximately 40 different times to restrain Daniel. Ramsey and Hart do not deny placing Daniel in a restraint hold; however, they dispute the plaintiffs’ version of the severity of the hold as well as the number of instances that Daniel was allegedly restrained. Ramsey stated that she used the restraint hold on Daniel 6 or 7 times all between September 1995 and January 1996. According to Ramsey, she would cross Daniel’s arms while holding his wrists and the hold would last between 5 seconds and 1 minute. She was taught this restraint hold during a 2-day nonviolent crisis intervention class sponsored by the Hampton City Schools in November 1990 and she, in turn, showed the technique to Hart.

Issue: At issue was whether two special education teachers violated a student’s substantive due process rights by using a restraint technique called a “basket hold.”

Holding: The District Court held that teachers’ restraint of a student, by placing him in a “basket hold,” did not violate his substantive due process rights.

Reasoning: Applying the test enunciated by the Fourth Circuit in *Hall* (*Hall v. Tawney*, 1980) to the facts of this case, the Court finds that *Hall*’s exacting analysis had not been met and

therefore the defendants' motion for summary judgment must be granted. First, *Hall* required a "severe" injury; Daniel's only injury appeared to be that he experienced some pain and suffering at the time of the alleged abuse. The abuse never manifested any physical injury and he was never taken to or treated by a medical doctor in connection with these alleged incidents. Second, *Hall* required that the plaintiffs show that the actions of Ramsey and Hart were disproportionate to the need presented. The plaintiffs cannot carry this burden, as Daniel's own testimony indicated that the alleged abuse was not administered arbitrarily but instead only occurred in connection with his being placed in timeout. Third, *Hall* required that Ramsey's and Hart's actions be "so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking the conscience." The facts presented regarding Ramsey's and Hart's actions do not support an inference of brutal or inhumane conduct shocking to the conscience.

Disposition: The defendants' motion for summary judgment was granted. The remaining counts of the plaintiff's Amended Complaint were dismissed with prejudice.

2001

Citation: *Johnson v. Newburgh Enlarged School District*, 239 F.3d 246 (2nd Cir. 2001).

Key Facts: The plaintiffs, Timothy Johnson Sr. and Luaine Sims, brought this action on behalf of their minor child, T.J., who at the time of the events in question was an eighth grade, African American student at South Junior High School in Newburgh, New York. They alleged that his gym teacher, Nicholas Bucci, assaulted T.J. at the school. On February 20, 1996, after T.J. and his classmates had finished playing dodge ball, Bucci asked T.J. to hand in the ball. T.J. threw the ball towards Bucci from a distance of about 20 feet. The ball landed near Bucci

without hitting him. In response, Bucci threw two balls back at T.J. and then yelled “you think that was funny!” as he walked over to T.J. Bucci grabbed T.J. by the throat, shouted “I’ll kick the shit out of you!,” lifted him off the ground by his neck and dragged him across the gym floor to the bleachers. Bucci then choked T.J. and slammed the back of T.J.’s head against the bleachers four times. Bucci also rammed T.J.’s forehead into a metal fuse box located on the gym wall and punched him in the face. During much of the attack, Bucci prevented T.J. from escaping by placing one of his arms across the boy’s chest. Bucci only stopped his assault after another student threatened to intervene. According to the complaint, this was Bucci’s fifth assault on students over a 10-year period and four of the five were African American. Each of these incidents was reported to school officials. The District Court denied individual defendants’ motion to dismiss based on qualified immunity, and they appealed.

Issue: At issue was whether a gym teacher violated a student’s constitutional rights when he assaulted him in school.

Holding: The Court of Appeals held that (1) the teacher was not entitled to qualified immunity, (2) the complaint sufficiently alleged personal involvement of school superintendents and principal, (3) the pendent appellate jurisdiction over the school district’s § 1983 appeal was lacking, and (4) the Court of Appeals lacked pendent appellate jurisdiction over the district court’s refusal to dismiss Title VI claim.

Reasoning: A government actor performing a discretionary task is entitled to immunity from § 1983 suits if either “(a) the defendant’s action did not violate clearly established law, or (b) it was objectively reasonable for the defendant to believe that his action did not violate such law” (*Salim v. Proulx*, 1996). In this action, the defendants asserted that no clearly established right was violated. “A right is clearly established if the contours of the right are sufficiently clear

in the context of the alleged violation such that a reasonable official would understand that what he is doing violates that right” (*LaBounty v. Coughlin*, 1998). Two principles guided the court’s analysis. First, in ascertaining whether the right was clearly established with respect to a given situation, a court must consider what a reasonable person in the government actor’s position should know about the appropriateness of his conduct under federal law. Second, the absence of legal precedent addressing an identical factual scenario does not necessarily yield a conclusion that the law is not clearly established. It stands to reason that in many instances, the absence of a reported case with similar facts demonstrates nothing more than widespread compliance with the well-recognized applications of the right at issue on the part of government actors. The Supreme Court has encouraged lower courts “to determine first whether the plaintiff has alleged a deprivation of a constitutional right at all” before reaching the question of whether the right was clearly established at the time. Accordingly, the court first addressed whether the facts plaintiffs alleged state a violation of the Constitution. Accepting the plaintiffs’ factual allegations as true, the court concluded that a violation of T.J.’s constitutional “right to be free from the use of excessive force” in the “non-seizure, non-prisoner context” occurred here. Factors to be considered in excessive force claims “in determining whether the constitutional line has been crossed” include “the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm” (*Metzger v. Osbeck*, 1988). Bucci’s alleged assault on T.J. was conscience shocking because it constituted conduct (1) maliciously and sadistically employed in the absence of a discernible government interest and (2) of a kind likely to produce substantial injury. Accordingly, the court easily found the alleged assault to be conscience shocking in

violation of T.J.'s substantive due process right to be free of excessive force. Satisfied that a constitutional violation was presented, the court turned to the essence of Bucci's appeal: whether substantive due process right violated was "clearly established" at the time of the assault. The right to be free from excessive force is an across-the-board constraint on all government officials, regardless of the particular position they hold. To the extent that no case applying this right in the educational setting has previously arisen in this circuit, the court viewed this unremarkable absence as a strong indication that the right to be free from excessive force is so well-recognized and widely observed by educators in public schools as to have eluded the necessity of judicial pronouncement. The school's former and current superintendents and the school principal, referred to as "the Supervisors," challenged the district court's denial of their qualified immunity defense. The Supervisors argued that the factual allegations in the complaint failed to establish that they were "personally involved" in the deprivation of T.J.'s substantive due process rights and that, as a result, they were entitled to qualified immunity because they did not violate T.J.'s right to be free of excessive force. If these factual allegations were true, a jury could find the Supervisors personally involved in the unconstitutional deprivation on the basis that they were either grossly negligent in supervising Bucci or that they exhibited deliberate indifference to the students' rights by failing to act on information that unconstitutional acts were occurring. As a result, the court cannot say at this stage of the case that the plaintiffs are incapable of establishing the Supervisors' lack of personal involvement was appropriately denied by the district court. The individual defendants and the school district both appealed the district court's refusal to dismiss the Title VI claim. This court lacked pendent appellate jurisdiction over this issue and so dismissed them.

Disposition: The judgment of the district court was affirmed as to the denial of qualified immunity to Bucci and the Supervisors. This court lacked appellate jurisdiction over the remaining issues and, as to them, dismissed the appeal.

Citation: *Stockton v. City of Freeport*, 147 F.Supp.2d 642 (S.D. Tex. 2001).

Key Facts: In the spring of 1999, the plaintiffs Jeremy Douglas Hill, Lucas Gallagher, and Courtney Cours attended Brazosport High School in Freeport, Texas. Each was a sophomore. None knew each other well. Then a series of events transpired that brought these three students together in this lawsuit. Three days after two students at Columbine High took the lives of 13 classmates, a threatening letter was found in the BHS computer room. The school suspected that a particular student had left the letter. This school knew that the suspect spent idle time at the same group of picnic tables at which the plaintiffs and the other arrested students often congregated. This knowledge, even with little or no further connection, allegedly triggered the actions that led to the raid and detention of which the plaintiffs now complained. On April 27, 1999, officers from the Freeport Police Department confronted 14 students at BHS. These students, including the plaintiffs, were frisked, handcuffed, and led out of the school building. The officers placed the plaintiffs in police cars and transported them to the Freeport municipal building. Neither officers nor school officials articulated any reasons for the detention. No students were actually placed in jail cells. Instead, the police ordered that the students remain in the courtroom of the municipal building, upon threat of 5-year prison terms for leaving. These confrontations and subsequent detentions each took place without a warrant. After spending more than 1 hour in the courtroom, the students were told to telephone their parents and tell them to come to the municipal building. Eventually, the students' parents arrived. The parents were told to sit and wait with their children in the courtroom. Ultimately, after all the parents had

arrived, the police and the school's principal lectured both the students and their parents, after which all departed.

Issue: At issue was whether school authorities violated the students' Fourth and Fourteenth Amendment rights when they were seized, handcuffed, transported, and detained at the municipal building.

Holding: The District Court held that the students' Fourth Amendment protections against unreasonable searches and seizures were not violated, given the magnitude of potential threat posed by the letter and school authorities' apparent belief that the students were associated with the suspected letter writer because they congregated in the same area of the school.

Reasoning: The central inquiry under the Fourth Amendment is whether a search or seizure is reasonable under all the circumstances of a particular governmental invasion of a person's personal security. Courts undertake this reasonableness assessment by balancing the interest of the government against the search or seizure's invasiveness. Therefore, both the magnitude of the threat involved and the quarters in which the threat may manifest stand on the governmental interest inquiry. Indisputably, the Fourth Amendment does apply, albeit with generally lesser force, in schools. The Court's inquiry focused upon whether the defendants had demonstrated as a matter of law that the plaintiff's strong interest in being free from seizure has been indisputably outweighed by a governmental interest. In this regard, the Court focused upon two issues: (1) the nature and immediacy of the governmental concern and (2) the efficacy of the means used to address the concern. It is difficult to conceive of a scenario in which a greater governmental interest is invoked than the threat of indiscriminate violence at school. Indeed, officials in the Columbine massacre were harshly criticized for failing to take action regarding prior signs of problems. Somewhat unclear here, however, is the immediacy of the school's

concerns. The plaintiffs argued that school officials found the threatening letter several days previously, and thus the urgency that might otherwise justify such a search or seizure was lacking here. The court found itself un-persuaded by this contention. Faced with a situation like this, a school always has latitude regarding how quickly to act. Investigations and subsequent remediations are incremental. Furthermore, it is both the nature and immediacy of a concern that give rise to a government's interest in preventing its occurrence. Even if one were to concede an utterly nominal level of immediacy, the nature alone of a violent threat advanced against a school provides ample government interest to support acting forcefully to stem even the possibility of violent conduct. The effectiveness of the school's and the police department's actions also cannot be questioned. No violent attack came to bear at BHS. The bottom line is that the rights asserted by the plaintiffs, although legitimate and substantial, do not outweigh the school's dramatically compelling interests in maintaining a safe place of learning. After examining the plaintiffs' allegations, the court is firmly convinced that no constitutional claim has been stated.

Disposition: The defendants' motions to dismiss were granted and judgment was entered for the defendants.

Citation: *Doe v. S & S Consolidated I.S.D.*, 149 F.Supp.2d 274 (E.D. Tex. 2001).

Key Facts: Jane Doe's first-grade teacher, Ms. Connie Mitchusson, recorded "difficulties" Jane Doe began to have in class at the start of the academic year. These incidents allegedly included Jane Doe's writing on furniture, making paper messes in the classroom and not cleaning them up, cutting her tongue with scissors, defying the teacher, shouting curse words at her teacher, exposing herself to her teacher and fellow students, refusing to do schoolwork, and accosting other students. After several dangerously disruptive incidents, a milestone incident in the case took place on December 1, 1998, when Mitchusson says she sent Jane Doe to

Principal Imbert's office. Imbert, in turn, escorted Jane Doe to the school counselor Tim Kemp's office. While in Kemp's office, Jane Doe reportedly began throwing things, yelling, and kicking. Kemp says he had to hold her after she picked up a paperclip and began to contort it such that he feared she would stab herself or someone else. When Imbert entered the room, she suggested that Jane Doe be "wrapped" in a sheet or blanket for her and others' safety. SS CISD claims that because Jane Doe repeatedly broke out of her wrap, school personnel found it necessary to at first safety pin and then duct tape the wrap around Doe. SS CISD admitted that Imbert tried to shut Jane Doe's mouth by taping gauze or placing bandages over it. Given Jane Doe's behavior, school officials, her mother, and others understandably convened to craft methods to manage such behavior and educate Jane Doe. The group developed an education plan as well as a behavior management plan. SS CISD pointed to notes from the meeting that indicated wrapping Jane Doe was discussed as a strategy to deal with Jane Doe. While it was not clear whether Mrs. Doe denied this, it does appear that she denied having approved of such a technique. Moreover, Mrs. Doe insisted, and other seemed to corroborate, that she certainly never knew or agreed that tape or other devices might be used with a wrap. Around January 19, 1999, several school personnel attended a professional training session of some sort on restraining children. Mrs. Doe presented evidence that Jane Doe was wrapped with tape on that date. SS CISD insisted that Jane Doe had to be wrapped again and noted that tape was used to secure the sheet. After being released, she locked herself in a bathroom and exposed herself to a janitor and "raged" again. Thus, the district insisted she had to be wrapped again. Imbert reported that she called Mrs. Doe to come and get Jane Doe but Mrs. Doe stated she could not come and acknowledged Imbert's statement to her that Jane Doe would have to be wrapped. This time she was fastened in her wrap to a cot with tape. SS CISD says the cot was introduced

for Jane Doe's safety--it was allegedly used so she could not move around and hurt herself. The January 20 incident promoted more meetings and concerns about Jane Doe's situation. In the January 20 meeting, school personnel decided they should not wrap Jane Doe anymore but instead place her in a timeout room. When placed in a timeout room, she became violent and a danger to herself, even including trying to electrocute herself. Unfortunately for all the parties concerned, Jane Doe had to be wrapped after the January 20 meeting. Once again SS CISD contended the use of a cot and tape was needed as a safety measure.

Issue: At issue was whether a school principal violated a student's Fourth and Fourteenth Amendment rights by wrapping the student in a blanket to prevent her from harming herself or others. (There are 3 other issues not briefed due to irrelevance to the study.)

Holding: The District Court held that the principal's actions did not violate clearly established Fourth Amendment rights, the principal's actions did not violate clearly established Fourteenth Amendment rights, and the superintendent was immune from all claims for same reasons as the principal.

Reasoning: For various reasons, the Court did not believe Jane Doe's Fourth Amendment rights were implicated here. Mrs. Doe obviously had to argue that Jane Doe's person had been unreasonably "seized." The Court did not believe that the amendment readily captured school officials restraining a "raging" child or placing her in a timeout room. This was especially so because the Court's own brief research on the Fourth Amendment's applicability turned up no Fourth Amendment law that suggested it should satisfy Mrs. Doe's burdens for her. Moreover, Mrs. Doe had not in any way undertaken the *Pierce* (1997) showing that Imbert's conduct violated "clearly established law"--whether as of the present or as of the time the conduct occurred. Indeed, not only was she not cited a Fourth Amendment case from any court

that would suggest the conduct alleged her runs afoul of the Fourth Amendment today or when a particular event happened, she had not ever argued about the Fourth Amendment. As a result, the Court did not believe it was necessary to undertake any detailed Fourth Amendment analysis. Mrs. Doe's claims regarding Jane Doe's liberty interests protected by the substantive due process component of the Fourteenth Amendment proved more serious but also ultimately floundered. The Court found Imbert was qualified immune, because Mrs. Doe had failed to meet the first prong of the *Siegert* (1991) test--alleging violation of a clearly established constitutional right. This is so, despite the Court's and the parties' recognition of a person's general rights to freedom from restraint or bodily integrity under the substantive due process component of the Fourteenth Amendment. For all of the reasons already noted and additional factors, the Court did not find Imbert's actions to be conscience-shocking such that Mrs. Doe's allegations, if proved, should be adjudged to amount to constitutional torts. The fluid and rapid circumstances Imbert and SS CISD found themselves in simply do not lend themselves to finding conscience-shocking. Mrs. Doe leveled the same constitutional charges at Wardell through §1983 that she does at Imbert; she failed for the same reasons. Wardell, like Imbert, had asserted qualified immunity. A detailed analysis in Wardell's case is not necessary, however, because the Court found Imbert qualified immune at the first stage of the *Siegert* analysis. That is to say, the Court did not find Imbert immune because Jane Doe's constitutional rights were not clearly established when the events at issue took place or because Imbert acted reasonably. Instead, the Court determined that under the totality of the circumstances of this case, Mrs. Doe had not alleged a violation of a clearly established constitutional right. Thus, if it was correct that Mrs. Doe had not alleged a violation of a constitutional right in the case of Imbert, it made sense for Wardell to be cloaked with immunity as well.

Disposition: The plaintiff's claims were dismissed without prejudice.

Citation: *M.H. v. Bristol Board of Education*, 169 F.Supp.2d 21 (2001).

Key Facts: The plaintiff, M.H., was a 14-year old student in the sixth grade at Memorial Boulevard Middle School in Bristol, Connecticut. M.H. had Down's syndrome and was severely mentally retarded. During the 1995-1996 school year, the defendant, Lisa Palangi, a special education teacher, and Betty Marchesi, a paraprofessional, were assigned to work with M.H. On or about May 7, 1996, Palangi spit water onto M.H.'s face and stated "this is spitting." On May 8, 1996, Elizabeth Knoblauch, a paraprofessional working at the school, overheard Marchesi talking about the incident. Knoblauch then reported the incident to the defendant, Katherin Bourgault, the supervisor of special education. On May 10, 1996, the defendant, Edward Maher, superintendent of schools, sent Palangi a letter advising her that she was being suspended without pay. On May 13, 1996, school officials conducted a meeting to discuss Palangi's employment. After the meeting, Mrs. H. learned that Palangi had often restrained M.H. in a chair during the school day as a means of controlling him when Marchesi was not present in the classroom. Palangi restrained M.H. with a belt around his waist which was then secured to a chair. Sometime thereafter, the defendant, Katie Wininger, a special education teacher, was assigned to M.H. as Palangi's replacement. On May 21, 1996, Mrs. H. visited the school and observed Wininger physically restraining M.H. Specifically, Wininger held both of M.H.'s arms from behind and forcibly restrained him. On June 24, 1996, Mr. and Mrs. H. met with school officials. Mr. and Mrs. H. objected to the portion of the behavior management plan that permitted the use of physical restraint. The school officials agreed to put those measures on hold. On June 25, 1996, Mr. and Mrs. H. requested a state administrative hearing. On August 9, 1996, a final decision and order was issued in the first state administrative hearing. On October

18, 1996, a final decision and order was issued in the second state administrative hearing. On May 14, 1998, the plaintiff, through his parents, initiated the instant action.

Issue: At issue was whether special education teachers violated IDEA and a student's due process rights by spitting water on the student and using physical restraint in the classroom.

Holding: The District Court held that (1) the fact issues precluded summary judgment whether substantive due process rights of student were violated when he was placed under physical restraints; (2) the complaining parents were accorded sufficient procedural due process; (3) the board of education was not liable to student, under IDEA, or for due process violations; (4) the superintendent, principal, and director of special education were not liable as supervisors, for alleged violations of IDEA or due process; (5) there were fact issues whether special education supervisor was liable; and (6) the school personnel having contact with student had sovereign immunity from state law claims of assault, intentional infliction of emotional distress, and negligence.

Reasoning: The court concluded that the plaintiff may bring a cause of action pursuant to § 1983 for the defendants' alleged violation of the IDEA. The defendants' motion for summary judgment was, therefore, denied with respect to the plaintiff's cause of action for damages based on alleged violations of the IDEA. The defendants argued that the single spitting incident, the alleged "inappropriate" use of seat restraint, and the two incidents of physical restraint of M.H. by Wininger were not so egregious as to "shock the conscience" and constitute a deprivation of M.H.'s rights. The plaintiff argued that he had a right to reasonable safety and freedom of restraint, which the defendants violated through their use of physical and mechanical restrains on M.H. The court concluded that the *Youngberg* (1982) test was the appropriate standard in this case for determining whether the defendants' violated M.H.'s substantive due process rights by

their use of physical and mechanical restraints. Thus, the court must determine whether the defendants had provided M.H. freedom from undue restraint “by ascertaining whether ‘professional judgment was the fact exercised.’” In this case, the parties did not dispute that M.H. was subjected to both physical and mechanical restraints. What the parties did dispute was whether the defendants who employed such restraints exercised professional judgment in doing so. Thus, while there was some evidence that the use of some type of restraint was necessary for M.H., the court concluded that there were material facts in dispute as to whether professional judgment was exercised in the development, maintenance, and implementation of the behavior plan. Drawing on the evidence, the court was unable to “make certain that professional judgment was in fact exercised,” to conclude that the defendants were entitled to judgment as a matter of law. The defendants’ motion for summary judgment was therefore denied with respect to the plaintiff’s substantive due process cause of action. The defendants next argued that they were entitled to summary judgment on the complaint that alleged that they deprived the plaintiff of his procedural due process rights. Here, the plaintiff had not alleged that he was deprived of his interests pursuant to a state procedure or regulation, but rather had alleged that the acts of the individual defendants, in violation of established law, deprived him of his interests. The plaintiff was thus entitled to some type of post-deprivation procedure. The plaintiff was afforded the post-deprivation remedy in the form of two administrative appeals. The plaintiff had not alleged that either of these appeals was procedurally defective. The court therefore concluded that the defendants afforded the plaintiff all the process that was due to him under the Due Process Clause. Based on the above, the court concluded that the board of education and the individual defendants were entitled to summary judgment for the plaintiff’s procedural due process causes of action. A plaintiff who seeks to impose liability on a municipality under § 1983 must identify

a “municipality ‘policy’ or ‘custom’ that caused the plaintiff’s injury.” Here, the plaintiff had not alleged that the board of education endorsed a formal policy or maintained a custom of physically restraining handicapped children in its charge or depriving handicapped children of their rights under IDEA. Instead, the plaintiff argued that his complaint “alleges that a policy existed under which the plaintiff was subject to physical and mechanical restraint, as well as other aversive actions” and that such a policy “is shown by the acts of those in the school system whose acts can fairly be said to represent official policy.” Here, the plaintiff had not alleged that any of the individual defendants who restrained M.H. or who violated his rights under the IDEA possessed “final policymaking authority” for the court to conclude that such defendant’s actions can be properly attributable to the board of education itself. The court concluded that the plaintiff has not alleged that any of the individual defendants who restrained M.H. or who violated his rights under IDEA possessed “final policymaking authority” for the court to conclude that such defendant’s actions can be properly attributable to the board of education itself. The court concluded that the plaintiff had not alleged sufficient facts to show that the board of education was liable for the alleged wrongdoings of the individual defendants. The board of education’s motion for summary judgment is therefore granted. The affidavits of the defendants, Maher, Wasta, and Ives, made clear that these defendants each learned of the spitting incident on May 10, 1996, and took prompt action to address Palangi’s actions. There was no evidence that these supervisors had any previous knowledge of similar incidents. Nor was there any evidence that any of these defendants were personally involved in developing M.H.’s behavior management plan, in planning his IEP, or in mechanically or physically restraining M.H. Accordingly, these defendants are entitled to judgment as a matter of law. The affidavit of the defendant, Bourgault, demonstrated that she was familiar with M.H.’s IEP as well as the

behavior management plan in place for M.H. Bourgault was in a position to know that the behavior plan for M.H. was not formally included in his IEP or consented to by Mr. and Mrs. H. Bourgault thus knew of the alleged IDEA procedural violation and the substantive due process violation and did nothing to remedy these wrongs. The court concluded that she is not entitled to judgment as a matter of law. Government officials performing discretionary functions are provided with qualified immunity. With respect to the plaintiff's cause of action for violation of M.H.'s substantive due process rights, the court concluded that the individual defendants were not entitled to qualified immunity at this time because it was uncertain whether they exercised professional judgment when restraining M.H. The court therefore concluded that the individual defendants were not entitled to qualified immunity for their actions at this time. The individual defendants first argued that they were not liable for the alleged torts committed upon the plaintiff based upon the doctrine of sovereign immunity. The court concluded that the torts allegedly committed by the defendants--assault, infliction of emotional distress, and negligence--stem from the defendants providing special education services pursuant to a delegated state responsibility. The defendants are therefore entitled to sovereign immunity from liability of these claims.

Disposition: The defendants' motion for summary judgment was granted in part and denied in part.

Citation: *Harris v. Robinson*, 273 F.3d 927 (10th Cir. 2001).

Key Facts: On January 10, 2000, Ms. Robinson followed some of her students out into the hall after the bell rang ending the class period. Ms. Robinson saw Ricky and two other boys go into the boys' bathroom and start laughing. When the boys came out, she asked what was going on. One of the boys told her that the toilet was stopped up and that Ricky had said he did it. Ms. Robinson took Ricky aside and asked him if he put paper in the toilet, and he said, "Yes."

Ms. Robinson asked if there was any reason he had put so much paper in the toilet, and Ricky said, “No.” Ms. Robinson then asked Ricky why he had done it, and he smiled and said, “I don’t know.” Ricky testified that he had used that toilet earlier that day and that he had used a lot of paper to clean himself. He flushed the toilet, but he did not think that all the paper had gone down. Ms. Robinson did not know this and thought he had intentionally clogged the toilet. Ms. Robinson told Ricky to go into the bathroom, get a trashcan, and pull the paper out of the toilet. Ricky was not provided with rubber gloves or a plunger. Ms. Robinson testified that she did not consider her actions to be a disciplinary measure; she intended only for Ricky to clean up his own mess. Ricky pulled the paper out of the toilet with his bare hands. The paper had stains on it, but he did not see any feces. The entire incident lasted approximately 5 minutes. Ricky washed his hands and returned to class; Ms. Robinson sent Ricky back to wash his hands with soap to be sure they were clean. Later, Ms. Robinson apologized to Ricky’s parents for the incident. Ms. Robinson received a formal, written admonishment reprimanding her for poor judgment. She was advised that if any other incident of a similar nature occurred, it could lead to her dismissal.

Issue: At issue was whether a teacher violated a student’s constitutional rights when she made him clean out a toilet with his bare hands.

Holding: The Court of Appeals held that (1) the student was not deprived of substantive due process rights when his homeroom teacher made him clean out a toilet with his bare hands, and (2) the teacher was entitled to qualified immunity.

Reasoning: In school discipline cases, the substantive due process inquiry is “whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than merely careless or unwise excess of zeal that it

amounted to a brutal and inhumane abuse of official power literally shocking the conscience” (*Garcia by Garcia v. Miera*, 1987). Ricky claimed that Ms. Robinson’s conduct “was so excessive, demeaning, and inhumane as to be a substantive violation of his Fourteenth Amendment Due Process rights.” However, Ricky’s injuries did not rise to the conscience shocking level. Ms. Robinson’s actions were not “inspired by malice or sadism.” At most, Ms. Robinson exercised poor judgment and was careless in having Ricky clean out the toilet without first inspecting it herself and failing to provide Ricky with the appropriate tools or gloves. Even if Ricky had a substantive due process claim, Ms. Robinson would still be entitled to qualified immunity. In determining claims of qualified immunity, the court first determines whether “the defendant’s actions violated a constitutional or statutory right” (*Albright v. Rodriguez*, 1995). Second, the court determined whether the right was so clearly established that a reasonable person would have known that her conduct violated that right. Ricky admitted confessing to Ms. Robinson, albeit mistakenly, to clogging a clean toilet with paper. Ms. Robinson reasonably believed that the paper and toilet were clean. At most, Ms. Robinson was negligent in not checking for herself before having Ricky clean the toilet. Ms. Robinson was entitled to qualified immunity because she did not violate a clearly established law of which a reasonable teacher should have known. The dismissal of the case against Wister School District is affirmed. There was no evidence that Ms. Robinson’s actions were consistent with an official policy or custom of the Wister School District. Furthermore, Ms. Robinson was given a formal, written admonishment concerning her actions after the principal and superintendent learned of her actions. She was also warned that additional incidents of this nature could lead to her dismissal.

Disposition: The decision of the district court was affirmed.

Citation: *Gottlieb v. Laurel Highlands School District*, 272 F.3d 168 (3rd Cir. 2001).

Key Facts: On February 9, 1996, Rhonda Gottlieb, then a junior at Laurel Highlands Public High School, entered school with the intention of confronting another female student about her relationship with Gottlieb's ex-boyfriend. Gottlieb was a disruptive student with a lengthy disciplinary record at the school. After Gottlieb went to the other girl's classroom and caused a disruption, the school security officer escorted her to the principal's office. Gottlieb stood in the doorway of assistant principal Michael Carbonara's office while he spoke with a teacher and another principal about her not being allowed in school until a parent conference took place. According to Gottlieb, Carbonara then told her to "shut up, because he didn't want to hear nothing she had to say" and pushed her shoulder with his hand, propelling her backwards into a door jam. As a result of this contact, Gottlieb's lower back struck the door jam. Gottlieb alleged that she suffered chronic back pain and cramping as a result of this impact. Furthermore, Carbonara was earlier involved in a physical altercation with an opposing football coach, and Gottlieb therefore argued that the school district was liable because of its failure to address the risk Carbonara posed to students. The District Court for the Western District of Pennsylvania granted summary judgment in favor of defendants on the § 1983 claims and remanded an assault and battery claim to state court. Gottlieb appealed.

Issue: At issue was whether an assistant principal's use of force violated a student's constitutional rights.

Holding: The Court of Appeals held that (1) the assistant principal's allegedly pushing a high school student who was brought to his office following an altercation did not amount to a "seizure," but was reviewable under the "shocks the conscience" standard of the substantive component of the Due Process Clause; (2) the assistant principal's actions did not rise to the level of substantive due process violation; and (3) the student failed to allege a direct causal

connection between any practice of the school district and her injury, for purposes of establishing liability of the school district under § 1983.

Reasoning: According to *Johnson* (2001), “in determining whether the constitutional line has been crossed,” the Court must consider “the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.” To avoid conflating the various elements of the shocks the conscience test into a vague impressionistic standard, the court analyzed its four elements in turn: (a) Was there a pedagogical justification for the use of force?; (b) Was the force utilized excessive to meet the legitimate objective in this situation?; (c) Was the force applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm?; and (d) Was there serious injury? Here it is unclear what pedagogical objective Carbonara’s alleged push might have served. Carbonara’s push could be found to be a rash, irrational, and a needless abuse of his authority. Consequently, it was inappropriate to presume in his favor on this point and in context of summary judgment. The second question was whether the force Carbonara utilized was excessive to accomplish the legitimate objective in this situation. Because the Court concluded that there was no need for Carbonara to use force at all, excessivity was simply not an issue. Carbonara’s use of force may not have been in service of any pedagogical objective, but rather could have been an unwarranted fit of “rage.” Thus, summary judgment was inappropriate on this prong of the test. The third question was whether the use of force applied by Carbonara “was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm” (*Metzger*, 1987, quoting *Glick*, 1973). Carbonara did nothing more than place his hand on

Gottlieb's shoulder and push her back inches to the door jam. The push itself was so minor that even if the injuries she alleges occurred, it cannot be inferred from the act itself that Carbonara intended to act maliciously and sadistically so as to constitute a constitutional violation. Also, in her disposition, Gottlieb explicitly stated that she believed that Carbonara did not intend to injure her. Thus, Carbonara's conduct does not give Gottlieb a constitutional cause of action.

Applying the summary judgment standard, the Court concluded that no reasonable jury could find that Carbonara intended to harm Gottlieb. Therefore, his actions did not rise to the level of a constitutional violation. With regard to Gottlieb's § 1983 claim against the school district, because Gottlieb had not alleged sufficient facts to establish causation, the Court did not need to consider whether the school district acted with deliberate indifference and established and maintained an unconstitutional policy, practice, or custom.

Disposition: The Court of Appeals concluded that there were no material issues of fact that would preclude granting summary judgment in favor of Carbonara, and that the District Court properly concluded that Gottlieb's pleading was insufficient to establish a cause of action against the School District. The Court affirmed the summary judgment in all respects.

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Citation: *M.H. v. Bristol Board of Education*, 2002 WL 33802431 (D. Conn. 2002).

Key Facts: M.H. was a 14-year-old student in the sixth grade at Memorial Boulevard Middle School in Bristol, Connecticut. M.H. had Down's syndrome and is severely mentally retarded. During the 1995-1996 school year, the defendants, Lisa Palangi, a special education teacher, and Betty Marchesi, a paraprofessional, were assigned to work with M.H. On or about May 7, 1996, Palangi spit water onto M.H.'s face and stated "this is spitting," in response to

M.H.'s acts of misbehavior. Marchesi was present in the classroom at the time and witnessed the spitting incident. Later, defendant Katie Winger, a special education teacher, was assigned to M.H. as Palangi's replacement. On May 21, 1996, Mrs. H. visited the school and observed Winger physically restraining M.H. Specially, Winger held both of M.H.'s arms from behind and forcibly restrained him while directing him to a specific task. On June 12, 1996, Winger sent home a note to Mr. and Mrs. H. advising them about an incident involving M.H. during a fire drill at the school. When the fire alarm sounded, M.H. became agitated and Winger and Marchesi had to physically remove him from the building. M.H. attempted to bite both women and his fingers became entangled in Winger's hair. In the altercation, both of M.H.'s arms were bruised.

Issue: At issue was whether the school employees violated a student's constitutional rights by physically restraining the student and spitting water on the student.

Holding: The District Court held that (1) the two incidents of physical restraint and the incident of spitting by a teacher do not rise to the level of constitutional violations, and (2) the defendants' use of a chair restraint on the plaintiff did not violate the plaintiff's substantive due process rights because the defendants exercised professional judgment.

Reasoning: The defendants first argued that their alleged behavior did not constitute "excessive force" and that they are therefore entitled to judgment as a matter of law. In *Johnson v. Newburgh Enlarged Sch. Dist* (2001), the second circuit set forth the factors that a court must consider in excessive force claims: the need for the application of force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, and whether force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm. Based on the evidence, the court concluded

that the facts of this case do not constitute a violation of M.H.'s right to be free from excessive force. There were no allegations that Palangi, Wininger, or Marchesi acted "maliciously and sadistically for the very purpose of causing harm." The single spitting incident, while inappropriate, simply does not constitute a "conscience-shocking" exercise of government power to rise to the level of a constitutional violation. As to the other incidents, the court concluded that the two incidents of physical restraint, one observed by Mrs. H. and the other during the fire drill, are not so "conscience-shocking" as to rise to the level of a constitutional violation. Even assuming that there were more effective or preferable ways of responding to M.H.'s behavior, such an assumption does not render the defendants' choice of actions unconstitutional. Neither Wininger's nor Marchesi's behavior can be reasonably described as malicious and sadistic. The court therefore concluded that the defendants were entitled to judgment as a matter of law because no reasonable jury could find that the defendants' actions constituted the use of excessive force under constitutional standards. The defendants next argued that they are entitled to judgment because they were professional decision makers acting within the scope of accepted professional practices. The Supreme Court has recognized that "the right to personal security constitutes a 'historic liberty interest' protected substantively by the Due Process Clause" (*Youngberg v. Romeo*, 1982). In *Youngberg*, the Supreme Court concluded that the physical restraint of mentally disabled patients implicated their liberty interests in freedom from bodily restraint under the Due Process Clause. In its previous decision, this court concluded that the test set forth in *Youngberg* was the appropriate standard in this case for determining whether the defendants violated M.H.'s substantive due process rights by their use of physical and mechanical restraints. The court concluded that it was unable to make certain that the defendants exercised professional judgment when they physically and mechanically restrained M.H. because

it was without facts concerning when restraint of M.H. was necessary and whether the individual defendants were competent, by training and experience, to employ restraint techniques. The individual defendants submitted supplemental affidavits that detailed their educational and vocational backgrounds as well as their experience in working with M.H. Having reviewed the defendants' supplemental affidavits and those of the plaintiff's expert, the court concluded that the individual defendants' actions "substantially met professionally accepted minimum standards" (*Society for Good Will to Retarded Children, Inc. v. Cuomo*, 1984). In addition, the supplemental affidavits show that the two specific incidents of physical restraint complained of involved immediate reactions by the defendants to M.H.'s acts of misbehavior. "Constitutional standards are met when the professional who made a decision exercised 'professional judgment' at the time the decision was made" (*Society for Good Will to Retarded Children, Inc. v. Cuomo*). The court therefore concluded that the defendants were entitled to summary judgment for the plaintiff's substantive due process causes of action.

Disposition: The defendants' motion for summary judgment is granted.

Citation: *Pineault*, 152 N.C.App. 196, 566 S.E.2d 854 (N.C. App. Ct. 2002).

Key Facts: Brandon Pineault was a student at Piney Grove Middle School. Christine Carlson was the teacher at the time. On February 6, 2001, Ms. Carlson was teaching mapping skills when she heard Pineault tell another student, "f__k you." Ms. Carlson escorted Pineault to the principal's office. On the way to the office, he said, "f__k you, b___h" to her. On the following day, February 7, 2001, Ms. Carlson heard Pineault arguing with another student. Ms. Carlson's teacher's assistant attempted to resolve the situation. At that time, Ms. Carlson heard Pineault say, "f__k off, bastard" to the other student. Ms. Carlson escorted Pineault to the principal's office. According to the testimony of Principal Roster Lee Tucker, Pineault was

detained in the first aid room because he was acting disorderly and the assistant principal and teachers were attempting to calm him down. Mr. Tucker instructed Pineault to enter his office and Pineault refused. Mr. Tucker then restrained him by holding him by his “trunk” and pinning his arms down to carry him into his office. While restrained, Pineault began kicking, and eventually kicked a door, pushing the doorstop through the wall.

Issue: At issue was whether to dismiss charges of a student who exhibited disorderly conduct at school and damaged school property.

Holding: The Court of Appeals held that (1) evidence was sufficient that the juvenile willfully and wantonly damaged real property; and (2) evidence was sufficient that the juvenile substantially interfered with school operations, as required for offense of disorderly conduct.

Reasoning: N.C. Gen.Stat. § 14-127 provides that “if any person shall willfully and wantonly damage, injure or destroy any real property whatsoever, either of a public or private nature, he shall be guilty of a Class 1 misdemeanor.” Pineault argued that there was no direct evidence of his intention to purposefully and deliberately kick the door. The State presented evidence that Pineault “was being very belligerent, uncooperative, and disruptive.” Pineault kicked “indiscriminately” down the hall while being restrained. He kicked the door with such force as to cause the doorstop to punch a hole in the wall. Damage to the wall was a natural and foreseeable consequence of him kicking wildly down the hall. The Court found there was sufficient evidence that respondent willfully and wantonly kicked the door, which caused the damage. Therefore, the Court concluded that Pineault’s motion to dismiss was properly denied. Pineault also argued that the trial court erred in finding the offenses of disorderly conduct had been proven beyond a reasonable doubt. Pineault was charged with two counts of disorderly conduct. The first count was based on his use of foul language in the classroom on February 6,

2001, and the second count stemmed from his behavior in the classroom and first aid room on February 7, 2001. N.C. Gen.Stat. § 14-288.4(a)(6) prohibits the following: (a) Disorderly conduct is a public disturbance intentionally caused by any person who: (6) Disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent thereto. The Court concluded that the evidence was sufficient to establish that Pineault's conduct substantially interfered with the operation of the school. The trial court did not err in determining that his behavior on both occasions constituted a violation of N.C. Gen.Stat. § 14-288.4(a)(6).

Disposition: The Court of Appeals affirmed the decision of the District Court.

Citation: *Nicol v. Auburn-Washburn USD 437*, 231 F.Supp.2d 1092 (D. Kan. 2002).

Key Facts: On the morning of September 30, 1998, at Washburn Rural, defendant Jerald Targett, a school security officer, was called to the school's commons area. In the common's area, Targett encountered two female ninth grade students, including the plaintiff. These female students had just been suspended from school for misbehavior. Targett followed the two students as they left the common's area to collect work from teachers. The two students used obscene language and told Targett to stop following them. Targett responded with obscene words and told the two girls to leave the school premises. At one point, Targett followed the girls into a classroom and placed his hands on the plaintiff. Targett grabbed the plaintiff's arm and, standing behind her, placed his forearm across her throat, shutting off her air supply. Targett then swung the plaintiff off the floor by her neck and dragged her into the school hallway. Targett then "drove" the plaintiff's face and head into a wall, which resulted in bruises to her face. He then "slammed" plaintiff into a drinking fountain. The plaintiff clung to the

drinking fountain to keep Targett from dragging her away. Targett wrenched her away from the drinking fountain with such force to her neck that she pulled the drinking fountain off the wall. The plaintiff's knee was injured when it struck the drinking fountain. With the assistance of another adult male security officer, Targett then physically forced the plaintiff into submission. The plaintiff was handcuffed, taken to Shawnee County juvenile book-in, and then released to her parents. Upon her release, the plaintiff's parents took her to a hospital for treatment. Later, the school board took no action against the employee. The plaintiff alleged she was too frightened due to this altercation to return to school where the defendant Targett was in a position of authority.

Issue: At issue was whether a school security officer violated a student's constitutional rights during a physical altercation. (There are 3 other issues not briefed because of irrelevance to the study.)

Holding: The District Court held that (1) the security officer's alleged conduct supported the student's § 1983 claim of Fourth Amendment violations; (2) the defendants were not entitled to qualified immunity on the student's Fourth Amendment claim; (3) the allegations were insufficient to state a procedural due process claim; (4) the allegations were sufficient to support the student's substantive due process claim; (5) the defendants were not entitled to qualified immunity on the student's substantive due process claim.

Reasoning: The defendants contended that defendant Targett's actions in detaining the plaintiff did not violate the Fourth Amendment because his actions were directed toward ensuring that the plaintiff leave the school premises to "prevent the plaintiff from continuing to disrupt classes, and from running through the school building in an attempt to evade the security guard." The central inquiry for the court was whether defendant Targett's detention of the

plaintiff was reasonable under all circumstances in the public school setting. The court must examine whether the defendants have demonstrated that the plaintiff's interest in being free from seizure has been indisputably outweighed by a governmental interest. The plaintiff's complaint contained facts that indicate the plaintiff was not able to leave the school building during the period of time she was involved in the altercation. Although the school has an interest in ensuring the cooperation of students to follow school orders in a non-disruptive fashion, the court must examine the seizure in light of all the circumstances. Targett's following the plaintiff while she obtained her school assignments was likely reasonable under the circumstances. However, on the facts presented, the court questions whether the violent nature of Targett's restraint of the plaintiff was a reasonable manner of detaining her. Although the plaintiff was engaged in combative dialogue with this school officer, the facts alleged do not indicate the plaintiff was physically violent toward Targett. Absent this, the court found that the manner in which the plaintiff was seized may not have been a reasonable one. Considering the facts alleged by the plaintiff, the court found the plaintiff has stated a § 1983 violation of her Fourth Amendment rights. Defendants' motion is denied on this basis. Having found the plaintiff stated a Fourth Amendment claim, the court next examined whether the constitutional right alleged was clearly established so that reasonable school officials would have understood that their conduct violated that right. The court found that it has long been established that the Fourth Amendment's restrictions against unreasonable seizure apply in the school context. Moreover, the court found that it has long been established that any seizure must be reasonable under all the circumstances. Under the facts alleged here, the court found that a reasonable officer in defendant Targett's position should have known that the use of excessive force in response to a student's noncompliant actions would violate well-known constitutional principles.

Accordingly, the court found the individual defendants against whom the plaintiff's Fourth Amendment claim was alleged were not qualified immune. The defendants' motion was denied on this basis. The defendants asserted that the plaintiff's sparse allegations failed to state a claim for violation of her rights to procedural due process. Therefore, the plaintiff's claim for procedural due process violation was dismissed in its entirety. The defendants' motion was granted on this basis. The defendants asserted that the plaintiff failed to state a substantive due process claim because she had not specified which actions constituted this violation. The plaintiff characterized the altercation between the plaintiff and defendant Targett as "punishment" for her behavior the day of the altercation and contended that, under substantive due process standards, she had sufficiently stated a claim. As set out by the Tenth Circuit,

in school discipline cases, the substantive due process inquiry is "whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience." (*Harris v. Robinson*, 2001)

To satisfy the "shock the conscience" standard, "the plaintiff must demonstrate a degree of outrageousness and a magnitude of potential or actual harm that is truly conscience shocking" (*Uhrig v. Harder*, 1995). In this case, the altercation was of such a force that the plaintiff endured physical injuries, school property was damaged, and the plaintiff suffered emotional injuries. Drawing all reasonable inferences in favor of the plaintiff, the court found these allegations of fact may rise to the "shock the conscience" standard set out by the Tenth Circuit. As such, the court found the plaintiff had stated a substantive due process claim. Having found the plaintiff stated a substantive due process claim, the court next examined whether the constitutional right alleged was clearly established so that reasonable school officials would have understood that their conduct violated that right. The court found that it has long been

established that the Fourteenth Amendment’s substantive due process protections are implicated “where public school authorities, acting under color of state law, deliberately punish a child for misconduct by restraint and infliction of appreciable physical pain” (*Ingraham v. Wright*, 1977). Moreover, it was clearly established that “freedom from bodily restraint and punishment is within the liberty interest in personal security that has historically been protected from state deprivation without due process of law.” Given this clearly established law, the court found that, upon the facts as alleged, that a reasonable officer in defendant Targett’s position should have known the amount of force he used in response to a student’s noncompliant actions would violate well-known constitutional principles. Accordingly, the court found the individual defendants against whom the plaintiff’s substantive due process claim was alleged were not qualifiedly immune. The defendants’ motion was denied on this basis.

Disposition: The defendants’ Motion to Dismiss was granted in part. The plaintiff’s claims of her complaint related to freedom of association, freedom of speech, right to equal education, right of equal protection, and procedural due process were dismissed. The plaintiff’s claim of her complaint for violations against the use of excessive force by officers was dismissed. The plaintiff’s claims remained as follows: Fourth Amendment claim for unreasonable seizure and Fourteenth Amendment claim for substantive due process.

Citation: *Nicol v. Auburn-Washburn USD 437*, 231 F.Supp.2d 1107 (D. Kan. 2002).

Key Facts: This case arose out of a physical altercation between the defendant, Jerald F. Targett, a school security officer at Washburn Rural High School in Topeka, Kansas, and Andrea N. Sanders Nicol, a student at Washburn Rural. On September 30, 1998, the plaintiff and some other students became loud and disruptive and were escorted to the office. There, Nicol continued to be disruptive and was unwilling to cooperate with school officials. She was asked

to leave the school. While getting her assignments to prepare to leave the school, she continued her disruption and was addressed by Targett. According to witnesses, Nicol engaged in vulgar language and antagonized Targett. The situation continued to escalate and Targett requested that she leave the school. The plaintiff denied being told she could leave the school. Officer Targett testified that he placed the plaintiff in a “hold on her wrists” in an attempt to control her.

Witnesses stated that Nicol was so out of control at this point that teachers made attempts to protect other students from her erratic behavior. Officer O’Shea of the Shawnee County Sheriff’s Department arrived on the scene and placed the plaintiff in handcuffs because of the disturbance she was causing. The plaintiff was eventually taken from the building, placed in a police car and taken to juvenile intake. Her parents also took the plaintiff to Saint Francis Hospital where her injuries were documented and photographed by a sheriff’s officer. The sheriff’s officer described the incident as battery.

Issue: At issue was whether a school security officer violated a student’s civil rights during a physical altercation.

Holding: On the defendant’s motion for summary judgment, the District Court held that (1) the student could maintain actions under both the Fourth and Fourteenth Amendments, (2) the genuine issue of material fact precluded summary judgment for the defendants on the student’s substantive due process claim, (3) the genuine issue of material fact precluded summary judgment for the defendants on the student’s Fourth Amendment claim, and (4) the genuine issues of material fact precluded summary judgment for the defendants on the student’s state law claim of intentional infliction of emotional distress.

Reasoning: In *Graham v. Connor* (1989), the Supreme Court determined that claims against law enforcement officials for the use of excessive force in the course of a seizure of a

free citizen should be analyzed under the Fourth Amendment's "objective reasonableness" standard. However, no Supreme Court case has examined whether this limitation on the availability of constitutional claims applies in the public school context where a school employee, rather than a law enforcement officer, "seizes" a public school student. Instead, the Supreme Court has recognized in the public school context, the application of the Fourth Amendment's substantive due process protections against the use of unreasonable punishment (*Harris v. Robinson*, 2001; *Vernonia Sch. Dist. 47J v. Acton*, 1995). Absent a finding from the Supreme Court or other precedential authority dictating a contrary conclusion, the court found that the plaintiff may maintain both causes of action where the evidence presented supports those claims. As set out by the Tenth Circuit,

in school discipline cases, the substantive due process inquiry is "whether the force applied caused injury so severe," was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking the conscience. (*Harris*, 273 F.3d at 930)

To satisfy the "shock the conscience" standard, "the plaintiff must demonstrate a degree of outrageous and a magnitude of potential or actual harm that is truly conscience shocking" (*Uhlrig v. Harder* 1995). When construing the facts, the court found that a reasonable jury could find that the conduct underlying the plaintiff's substantive due process claim rises to the level of "shock the conscience" standard and the defendants' motion was denied on this basis. The court found that the plaintiff has come forward with sufficient evidence to survive summary judgment on her Fourth Amendment claim. The evidence presented indicated that the plaintiff was not free to leave the school building during the physical struggle and that Targett's use of force may not have been reasonable under the circumstances. Although there was contradictory evidence, the court found that a reasonable jury could conclude that Targett's detention of the plaintiff was

not reasonable under all the circumstances in the public school setting and the defendant's motion was denied on this basis. The defendants asserted that "the individual defendants are entitled to qualified immunity" for the "discretionary acts undertaken in their capacities as government employees." The court found that the defendants had not demonstrated an entitlement to qualified immunity. With regard to intentional infliction of emotional distress, the court found that a reasonable fact finder could conclude that the plaintiff's mental condition was "sufficiently severe, genuine and extreme" (*Land, 2000*). Accordingly, the court denied the defendants' motion for summary judgment on this claim.

Disposition: The defendants' motion for summary judgment was granted in part and denied in part. The plaintiff's claims available to proceed to trial were as follows: Fourth Amendment claim for unreasonable seizure, Fourteenth Amendment claim for substantive due process, Title VII claim, Title VIII claim, Intentional Infliction of Emotional Distress, Assault, and Battery.

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Citation: *Knicurumah v. Albany City School District*, 241 F.Supp.2d 199 (N.D. N.Y. 2003).

Key Facts: Osei Knicurumah was a student at Albany City High School (ACHS). Taylor was a gym teacher and soccer coach at ACHS. Metallo was Principal of ACHS. Palmer was Superintendent of Albany City School District. On April 10, 2000, the plaintiff received a hall pass from the school nurse to allow him to locate his track coach. In such effort, the plaintiff was attempting to walk from one gymnasium to another. Teachers and hall monitors at the school circulate through the corridors of the building and ask students for hall passes if they

appear unauthorized. If the student is without a pass, he or she is referred to the appropriate administrator. Though it is unclear if this is a policy or rule, Metallo claimed he asked teachers to stop students and look at their passes. Taylor asked to see his hall pass. The plaintiff, without stopping, took a blue piece of paper out of his pocket and held it at face level for Taylor to see. Taylor grabbed the plaintiff from behind the shoulders, spun him around, and then forcefully pushed him into a nearby wall, which was made of brick. Despite protests from the plaintiff, Taylor continued to pin him against the brick wall and demanded a closer look at the hall pass.

Issue: At issue was whether a teacher violated a student's constitutional rights when he used excessive force to restrain a student.

Holding: The District Court held that (1) the district and school could not be held liable, under § 1983, for a teacher's alleged unconstitutional conduct; (2) the superintendent and principal, in their official capacities, could not be liable, for § 1983 claims; (3) the superintendent and principal were entitled to qualified immunity from § 1983 claims; (4) the fact questions as to whether the teacher grabbed the student, slammed him against brick wall, and held student there without provocation or justification, and as to whether such conduct would shock the conscience, precluded summary judgment on excessive force claim under the Fourteenth Amendment against teacher, as well as on issue of whether teacher was entitled to qualified immunity from claim; (5) the district, school, superintendent, and principal could not be liable for the teacher's actions based on the theory of negligent hiring, retention, supervision, or training of the teacher; (6) the superintendent and principal did not breach their general duty of care owed to student; (7) the defendants were not liable for prima facie tort; and (8) the fact questions precluded summary judgment on assault and battery claim against the teacher.

Reasoning: The plaintiff alleged that the lack of teacher training played a significant part in his being allegedly injured, but he offered no evidence to demonstrate that the training program in place, or lack thereof, amounted to a deliberate indifference to his rights. Further, the plaintiff offered no proof that Taylor, or any of the defendants, were the subject of severely insufficient training, or that Taylor or any other defendants were not subject to the same training every other employee was required to undertake. The plaintiff alleged that repeated complaints had been lodged against teachers by students for unnecessary or inappropriate use of force. There was no evidence to support this. Therefore, the municipal defendants' motion for summary judgment on the plaintiff's first cause of action must be granted. Palmer and Metallo are both considered municipal supervisors. A municipal supervisor may incur liability for a constitutional deprivation if he or she had personal involvement in said deprivation by (1) directly participating, (2) failing to remedy the deprivation after being made aware of it through a report and appeal, (3) creating or maintaining a custom or policy to continue after being made aware of it, (4) being grossly negligent in supervising employees who caused the deprivation, or (5) exhibiting deliberate indifference to persons' rights by failing to act on information demonstrating that deprivations were occurring (*Johnson v. Newburgh Enlarged School District*, 2001). The plaintiff admitted that Dr. Metallo's only involvement in the entire occurrence was receipt of the report. Receipt of an investigative report can hardly form a basis for liability. In addition, Metallo asked to be informed if anything further was discovered. The mere fact that nothing was subsequently discovered does not automatically signal that the investigation and actions of the school district officials were erroneous. The plaintiff also admitted that Mr. Palmer's first knowledge of the incident was the investigation report. The only acts attributable to Palmer after gaining knowledge of the report were the instruction given to Metallo to

cooperate and inform him if any new developments arose, and informing an attorney for the school of the incident. Without further proof from the plaintiff, these acts, as a matter of law, cannot form the basis for Palmer's liability. Metallo's and Palmer's motions for summary judgment on the plaintiff's first cause of action, as against them in their official and individual capacity, must be granted. Taylor, on the other hand, is not entitled to summary judgment on the plaintiff's second cause of action under § 1983, which is stated solely against him. It is clear that Taylor was personally involved in the alleged deprivation. Taking the facts alleged by the plaintiff as true, this conduct would shock the conscience (*Rodriquez v. Phillips*, 1995), and as such, constitute the requisite deprivation of the plaintiff's right to be free from use of such force. Taylor's liability must be decided by a jury, as it is inappropriate to make such a determination at this stage. Taking the facts as alleged by the plaintiff as true, however, it cannot be said that forcefully grabbing and shoving a student against a brick wall without reason or provocation is objectively reasonable (*Johnson*, 2001). Thus, the availability of any defenses Taylor had was a matter for the jury. It was well settled that the "defendants cannot be held liable for their alleged negligent hiring, training, supervision, or retention of an employee accused of wrongful conduct unless they had notice of said employee's propensity for the type of behavior causing plaintiff's harm" (*Paul J.H. v. Lum*, 2002). The plaintiff has admitted that no prior disciplinary action had been taken against Taylor, and nothing had been indicated to suggest that Taylor had a propensity to commit the kind of conduct the plaintiff alleged he committed. Thus, to the extent the plaintiff's third cause of action is based on a theory of negligent hiring, retention, supervision, or training of Taylor, it must be dismissed. The defendants moved for summary judgment on the plaintiff's prima facie tort claim. In order to recover under a claim of prima facie tort, a plaintiff must prove four elements: (1) intentional infliction of harm, (2) causing

special damages, (3) without excuse or justification, and (4) by an act or series of acts that would otherwise be lawful (*T.S. Haulers, Inc. v. Town of Riverhead*, 2002). With respect to the first element that the defendant acts with the intent to harm the plaintiff cannot recover unless the defendant's conduct was not only harmful but done with the sole intent to harm. Matello and Palmer's actions, and therefore the municipal defendants' actions, cannot be said to be done with the sole intent to harm plaintiff. In fact, their actions were meant to help plaintiff and ensure full complicity with any law that needed to be followed. The same is true with respect to Taylor. Even if one of Taylor's intents was to harm, it was also plainly evident that another of his intents was to determine if he was properly in the gymnasium. Taylor stopped the plaintiff in furtherance of the goal of not having students without passes roaming the school. The existence of this other intent was enough to defeat the plaintiff's prima facie tort claim against Taylor. Summary judgment was granted to all named defendants in the plaintiff's third cause of action. The plaintiff's fourth cause of action asserted a claim for assault and battery against Taylor. "An assault is an intentional placing of another person in fear of imminent harmful or offensive contact" and "a battery is an intentional wrongful physical contact with another person without consent" (*T.S. Haulers, Inc. v. Town of Riverhead*, 2002). Taking the plaintiff's account of the incident as true, it was clear that Taylor cannot be granted summary judgment on this claim.

Disposition: The defendants, Albany City School District, Albany City High School, Lonnie Palmer, and John Metallo's, motion for summary judgment was granted and the first (failure to train and supervise) and third (prima facie tort claim) causes of action were dismissed. The defendant Stuart Taylor's motion for summary judgment was granted in part; and the third (prima facie tort claim) cause of action was dismissed. The defendant Stuart Taylor's motion for

summary judgment on plaintiff's second (liability) and fourth (assault and battery) cause of action was denied.

Citation: *CJN v. Minneapolis Public Schools*, 323 F.3d 630 (8th Cir. 2003).

Key Facts: CJN is an 11-year-old boy with lesions in his brain and a long history of psychiatric illness. He was a special education student in Minneapolis Public Schools, beginning in Kindergarten. CJN consistently had behavioral difficulties while nonetheless progressing academically at an average rate. CJN was placed in a special education classroom at Keewaydin Elementary and assigned to Elana Schroeder's SPEN classroom because it provided more structure and because her students functioned at a higher academic level. In light of CJN's educational needs, Ms. Schroeder offered him reduced homework assignments, more time to complete assignments, positive reinforcement for meeting minimal requirements, and a so-called token economy system for reinforcing good behavior. CJN nevertheless misbehaved in Ms. Schroeder's classroom many times, leading him to being given "timeouts" and even to being physically restrained. Most episodes of restraint were less than a minute, but there were 6 days on which CJN was restrained for 5 or more minutes. Restraint was used in situations when CJN began kicking others, hitting staff with pencils, or banging his head against the wall. On one occasion in December, a behavioral outburst led to police intervention and a period of hospitalization for CJN. This was his last day at Keewaydin. CJN's IEP team convened in October, 2000 to discuss his evaluation results and misbehavior and again in November to discuss his behavioral goals and the procedures to be followed if CJN required restraint. After an episode occurred that required him to be taken to a local crisis center, the district and his mother agreed to instruction at home. A day after that instruction began, his mother unilaterally decided to enroll CJN in Calvin Academy, a private school that serves disabled and "at-risk"

students. CJN's mother then filed a complaint with the Minnesota Department of Children, Families, and Learning, seeking, among other things, a declaration that the district had not provided CJN with a FAPE and asking for reimbursement for his private school tuition. An independent hearing officer found that although CJN had received a FAPE through the second grade, he had not received one from September 2000 to February 2001, mainly because of the lack of sufficient positive behavioral interventions during the latter period and the amount of physical restraint that he was subjected to. On appeal, a state hearing review officer reversed the hearing officer's decision that CJN did not receive a FAPE from September 2000 to February 2001. The district court affirmed that decision. CJN's mother appealed.

Issue: At issue was whether a child was denied a FAPE when teachers used restraint and seclusion techniques as behavioral reinforcement. (There are 3 other issues not briefed because of irrelevance to the study.)

Holding: The Court of Appeals held that child was not denied a FAPE, based on a claim that more positive behavioral reinforcement could have been offered by the school district.

Reasoning: CJN maintained that the district court erred in holding that the district provided him with a FAPE in his third-grade year and pointed to the amount of physical restraint to which he was subjected and the high number of "time outs" imposed on him, arguing that they were fundamentally inconsistent with the existence of a FAPE. CJN maintained that Minnesota law required more positive behavioral reinforcement and more analysis of CJN's behavioral problems than CJN received before he can be said to have received a FAPE. The district responded by stating that CJN's IEPs needed to be analyzed at the time of their adoption. It asserted that his IEP team consistently focused on CJN's behavioral problems using the information that they had available, including a functional behavior assessment and an

occupational therapy evaluation. The district contended that CJN received positive behavioral interventions in the form of the token economy system and point rewards system as well as sufficient personalized services, such as the attention of a one-to-one paraprofessional. And it pointed to the fact that CJN was progressing at an average rate academically. The court regretted that CJN was subjected to an increased amount of restraint in his third-grade year, but that fact alone does not make his education inappropriate within the meaning of IDEA. Because the appropriate use of restraint may help prevent bad behavior from escalating to a level where a suspension is required, the court refused to make a rule prohibiting its use, even if its frequency is increasing. At the October IEP meeting, Ms. Schroeder had proposed a BIP that included both positive reinforcement mechanisms as well as what is called conditional procedures (i.e., timeouts and physical restraint). No BIP was adopted, however, because of CJN's mother's disagreement with the proposal. They discussed the matter again in November, at which time CJN's mother dismissed the team's suggestions as counterproductive. In January, CJN's teacher was in the process of developing a plan when CJN was withdrawn from her classroom. The court believed that all the alleged deficiencies to which CJN directs attention were immaterial to the decision to enroll CJN in private school. Accordingly, the district court did not err in determining that the District provided CJN with a FAPE in his third-grade year and in denying CJN's mother's request for tuition reimbursement.

Disposition: The court agreed with the district court's decision that CJN received a FAPE and agreed with its assessment of related issues; thus, the court affirmed.

Citation: *Golden v. William A. Anders*, 324 F.3d 650 (8th Cir. 2003).

Key Facts: High school principal William Anders forcefully restrained Timothy Balch, a sixth-grade student at Hampton Elementary School, who violently kicked a school vending

machine and resisted the efforts of a teacher who tried to get him settled down. Balch's mother subsequently filed a suit under 42 U.S.C. § 1983 in which she alleged that Anders violated her son's substantive due process rights. The District Court granted Anders's motion for summary judgment. This appeal followed.

Issue: At issue was whether a school principal violated a student's substantive due process rights when he forcefully restrained him after the student violently kicked a school vending machine and resisted the efforts of a teacher who tried to get him to settle down.

Holding: The Court of Appeals held that the school principal's action did not violate the student's substantive due-process rights.

Reasoning: Under *Lewis* (1998), the court cannot consider Anders's conduct to be conduct to be conscience-shocking unless he maliciously and sadistically injured Balch (see *Neal*, 217 F.3d at 958, citing *Lewis*, 523 U.S. at 853, 118 S.Ct. 1708, for proposition that liability for substantive due-process claim turns on whether the state actor applied force in good faith or maliciously and sadistically), and the record here would not support such a finding. Given that Anders acted quickly and decisively in responding to an incident of serious student misbehavior, the court did not find his conduct to be conscience-shocking. Consequently, the court believed the substantive due-process claim was without merit.

Disposition: The Court of Appeals held that because Anders's conduct did not amount to a violation of Balch's substantive due process rights, the judgment of The United States District Court for the Western District of Arkansas was affirmed.

Citation: *Doe v. State of Hawaii Department of Education*, 334 F.3d 906 (9th Cir. 2003).

Key Facts: The plaintiff, John Doe, was a second-grader at Pukalani Elementary School. Doe's teacher sent him to the defendant, Vice Principal David Keala, to be disciplined for

fighting, but Doe then refused to stand still against a wall for his timeout punishment. Keala followed through on his threat to take Doe outside and tape him to a nearby tree if he did not stand still. The vice principal used masking tape to tape Doe's head to the tree. The tape remained for about 5 minutes until a fifth-grade girl told Keala that she did not think he should be doing that. He instructed the girl to remove the tape, which she did. In January 2000, Doe filed action in the district court. The complaint alleged both state and federal claims. Keala moved for summary judgment, arguing that he was entitled to qualified immunity. Keala appealed the district court's order denying qualified immunity on the § 1983 claim.

Issue: At issue was the qualified immunity of a vice principal who taped a second grade student's head to a tree for disciplinary purposes.

Holding: The Court of Appeals held that (1) the Fourth Amendment, rather than Fourteenth Amendment, due process clause applied to action; (2) the student's allegations were sufficient to find a violation of his Fourth Amendment search and seizure rights, for purposes of analyzing the vice principal's qualified immunity claim; and (3) the student's right to be free of excessive physical punishment was a clearly established right at the time of incident, and thus the vice-principal was not entitled to qualified immunity.

Reasoning: The district court correctly denied the vice principal's motion for summary judgment on the basis of qualified immunity; *P.B. v. Koch* (1996) compelled that result. This court believed that Doe was entitled to proceed under the Fourth Amendment, in light of the Supreme Court's direction to analyze § 1983 claims under more specific constitutional provisions, when applicable, rather than generalized notions of due process (see *Graham v. Connor*, 1989). It was clear that the Fourth Amendment applies in the school environment (see *Vernonia Sch. Dist. 47J v. Acton*, 1995); *New Jersey v. T.L.O.*, 1985). Additionally, the Fifth,

Seventh, and Tenth Circuits all recognized that the Fourth Amendment governs a teacher's seizure of a student (see *Edwards v. Rees*, 1989; *Hassan v. Lubbock Indep. Sch. Dist.*, 1995; *Wallace*, 1995). The court agreed that Doe's Fourth Amendment right to be free from an unreasonable seizure "extends to seizures by or at the direction of school officials" (*Hassan*). The court believes that Doe's claim is appropriately brought under the Fourth Amendment, not the Due Process Clause.

Disposition: The order of the district court denying qualified immunity was affirmed. The case was remanded for further proceedings on the plaintiff's Fourth Amendment claim.

Citation: *Samuels v. Independent School District 279*, 2003 WL 23109698 (D. Minn. 2003).

Key Facts: R.J., a ninth grade student at North View Junior High School in Brooklyn Park, Minnesota, became involved in a dispute with another student in class and his teacher issued a distress call. Defendant Lorenzo Bronson, whose duties as Administrative Assistant include handling discipline referrals at the school, responded to the call. When he arrived at the classroom, he found R.J. still standing, breathing heavily, and visibly agitated, but R.J. did not indicate that he wanted to fight or continue the argument. Bronson escorted R.J. from the classroom to the office of defendant Officer William Barritt, the school liaison officer. Bronson requested that Barritt handcuff R.J. Barritt did so. According to Barritt, based on Bronson's statement that there had been an altercation, R.J.'s demeanor, and the situation in the hallway, he independently decided to handcuff R.J. because he considered R.J.'s behavior indicative of a person "who did something wrong" or is about to "go off." Bronson testified that he wanted to have R.J. handcuffed in order to teach him a lesson about the possible consequences of getting into fights at school. Bronson and Barritt agreed that once Barritt realized that Bronson's

intention regarding the handcuffs was to teach R.J. a lesson, he removed the handcuffs and subsequently told Bronson that he could not handcuff students for that purpose. The student was handcuffed for approximately 30-40 seconds.

Issue: At issue was whether a school official and school liaison officer violated a student's Fourth Amendment rights when they detained and handcuffed him.

Holding: The District Court held that defendants', Independent School District 279's and Lorenzo Bronson's, motion for summary judgment was denied and that the defendants', City of Brooklyn Park's and William Barritt's, motion for summary judgment was granted.

Reasoning: The plaintiff alleged that Bronson and Barritt violated R.J.'s Fourth Amendment right to be free from unreasonable seizure by either detaining or *de facto* arresting him without reasonable justification and solely for the purpose of teaching R.J. a lesson. To establish a seizure in violation of the Fourth Amendment, a plaintiff must prove that (1) his or her person was seized, and (2) the seizure was unreasonable (*Katz v. United States*, 1967). A seizure in the constitutional sense occurs when a government actor has in some way restrained the liberty of a person to a degree that a reasonable person would not feel free to leave. R.J. was taken into a police officer's office by a school administrative assistant in charge of discipline and, behind a closed door, was handcuffed. During this incident, R.J. was not free to leave the office. The Court found that Bronson and Barritt seized R.J. for purposes of the Fourth Amendment. In the public school context, the reasonableness inquiry must take into account the school's "custodial and tutelary responsibility for children" (*Vernonia*, 1995). Reasonableness is thus determined by balancing the student's Fourth Amendment interests such as the need to guard against arbitrary invasions of a student's privacy and security against legitimate government interests. The Court also considers the nature of the intrusion in the reasonableness

inquiry. In *T.L.O.* (1985), the Supreme Court determined that a search of a student by a school official is reasonable if it is (1) “justified at its inception” and (2) “was reasonably related in scope to the circumstance which justified the interference in the first place” (*T.L.O.*, 1985). The plaintiff did not seem to challenge Bronson’s right to remove R.J. from class or to take R.J. either to Bronson’s own office or to Barritt’s office for disciplinary purposes. The plaintiff did, however, challenge Bronson’s request for and Barritt’s application of the handcuffs. The Court examined separately the circumstances involving each of the defendants. The Court found that R.J.’s reported misbehavior did not rise to a level so as to justify handcuffing him. Thus, the Court found that, for the purpose of summary judgment, Bronson violated R.J.’s Fourth Amendment right to be free from unreasonable seizures. Barritt was in a different position. He handcuffed R.J. in response to Bronson’s direct request that he do so. Barritt testified that the school frequently had instances of violence, and that he believed that Bronson would not bring a student to his office unexpectedly and request that he be handcuffed unless there was a problem. Based on his relationship with Bronson, his assessment of the situation, and his observation of R.J.’s demeanor, Barritt decided to handcuff R.J. while he investigated and controlled the situation. The Court found that these circumstances were sufficient to justify Barritt’s application of the handcuffs. The fact that Barritt immediately removed the handcuffs upon discovering that there was no call for them, after 30-40 seconds, indicated that Barritt’s actions were reasonably related in scope to the situation. Therefore, the Court found that Barritt did not violate R.J.’s Fourth Amendment right to be free from unreasonable seizure and the Court granted Barritt’s summary judgment motion on the plaintiff’s fourth amendment unreasonable detention claim. In examining a claim of qualified immunity, a court must first determine whether the facts allege the violation of a clearly established constitutional right (*Siegert v.*

Gilley, 1991). The court then inquires whether the defendant's conduct was objectively reasonable in light of the legal rules clearly established at the time of the incident at issue. At the time of the incident in question, it was well-established that the Fourth Amendment right to be free from unreasonable seizure extended, albeit in a relaxed manner, "to seizures by or at the direction of school officials" (*Hassan*, 1995; *T.L.O.*, 1985). Additionally, it has long been established that any seizure must be reasonable under all the circumstances (*Terry v. Ohio*, 1968). Under the facts alleged here, the court found that a reasonable official in Bronson's position should have known that the use of handcuffs in response to R.J.'s actions would violate well-known constitutional principles. Accordingly, Bronson was not entitled to immunity and summary judgment was not granted in his favor on this claim. It is also well established that police officers are regularly called on to make quick decisions, which may properly include a brief detention, in order to assess and control the situation in which they find themselves. This is what Barritt did in this case. Thus, even if Barritt's brief detention of R.J. had been unreasonable and thus unlawful, it would nevertheless be protected by qualified immunity because a reasonable officer could have believed that his actions were lawful under the circumstances. The tort of false imprisonment protects the personal interest in freedom from restraint of movement (*Lundeen v. Renteria*, 1974). In the context of a seizure, the essential elements of a claim are (1) a seizure performed by the defendant, and (2) the unlawfulness of that seizure. If the seizure is unlawful, it constitutes false imprisonment. The Court determined that even if Barritt's seizure of R.J. had been unreasonable, it was nevertheless protected by qualified immunity. The plaintiff had not presented any evidence to the contrary. This precluded a finding of malice, and Barritt was therefore entitled to official immunity as to the plaintiff's claims of false imprisonment. The Court also determined that Bronson's actions under the circumstances were not lawful and

therefore Bronson was not entitled to official immunity with respect to the plaintiff's claim of false imprisonment. As Barritt was entitled to summary judgment and official immunity with respect to the plaintiff's false imprisonment claim, the defendant Brooklyn Park was also entitled to such protection. However, because the Court found that Bronson would not be granted official immunity with respect to the false imprisonment claim, neither would the defendant Independent School District 279.

Disposition: Defendants William Barritt and the City of Brooklyn Park's motion for summary judgment was granted. All claims against the defendants William Barritt and the City of Brooklyn Park were dismissed with prejudice. The defendants Lorenzo Bronson and Independent School District 279's motion for summary judgment was denied.

2004

Citation: *Valentino v. School District of Philadelphia*, 2004 WL 225038 (E.D. Penn. 2004).

Key Facts: During the 1998-1999 school year, Valentino was a special education student enrolled in the eighth grade at Julio De Burgos Bilingual Middle School. During the spring of 1999, Valentino was assigned to the homeroom of an apprentice teacher, Jay W. Lane. On April 28, 1999, Valentino approached Lane's desk and searched through papers on the desk. Lane approached the desk and ordered Valentino to stop. According to the defendants, Valentino picked up a desk and moved toward Lane, as if to strike him. In his affidavit, Valentino stated that he picked up a chair, not a desk, because he was frightened of Lane. Both left the classroom and went to the school's main office. In accordance with School District policy, the police were called and Valentino was arrested. That afternoon, Lane filed a police incident report

complaining that Valentino assaulted him by picking up the desk and threatening him with it. At the police district headquarters, Valentino was placed in a holding cell, where he allegedly remained for 21 hours. Lane never pressed charges and Valentino returned to school the next day. No charges were brought against Valentino. A second incident occurred on June 8, 1999. In this incident, school security Officer Cross struck Valentino while he was standing in the hallway of his school. According to Valentino, he was standing in the main office when Cross came up behind him and struck him in the back of his head. Valentino and his parents filed suit on May 16, 2001. On June 23, 2003, this court granted the defendants' motion for summary judgment for alleged violations under § 1983 and denied, with leave to renew, the defendants' motion for summary judgment as to the plaintiffs' state law claims.

Issue: At issue was whether a teacher and school security officer were guilty of false imprisonment, assault, and battery based on how they responded to two school-related incidents. (There are 4 other issues not briefed because of irrelevance to the study.)

Holding: The District Court held that (1) the defendants Jay W. Lane and Andrea Cross's motion for summary judgment was granted as to the false imprisonment claim; (2) the defendants Jay W. Lane and Andrea Cross's motion for summary judgment was granted as to the plaintiffs' battery and assault claims based on the April 28, 1999, incident; and (3) the defendant Cross's motion for summary judgment was denied as to the plaintiff's battery and assault claims based on the June 8, 1999 incident.

Reasoning: The plaintiffs' state law claims arose solely from the April 29, 1999, and June 8, 1999, incidents. The plaintiffs brought claims of false imprisonment, intentional infliction of emotional distress, and negligent infliction of emotional distress against the School District. The plaintiffs brought all of those claims and additional claims for battery and assault

against the individual defendants, Jay Lane and Andrea Cross, in their official and individual capacities. In this case, Lane and Cross, as school officials, summoned the police in response to Valentino's actions in the classroom on April 28, 1999. Regardless of why Valentino picked up the chair or desk, the defendants faced an ambiguous situation to which the reasonable response would be to call the police. School district policy also required that any alleged assault by a student with a weapon on a school official be reported to the police. Accordingly, the Court found the plaintiffs failed to demonstrate that Lane and Cross engaged in "willful misconduct" and the motion for summary judgment was granted in favor of the defendants as to the false imprisonment claim, and to the extent the plaintiffs' battery and assault claims were based on the April 1999 events. The Court also determined that, as to the events on June 9, 1999, there was a question of material fact regarding whether the actions of Cross constituted assault and battery against Valentino. On that day, Cross allegedly struck Valentino on the back of the head without provocation. The defendants had not submitted any evidence to counter these allegations. Thus, to the extent the plaintiffs' assault and battery claims are based on the June 8, 1999 events, defendant Cross's motion for summary judgment was denied.

Disposition: The defendants' motion for summary judgment was granted in part and denied in part.

Citation: *Roe v. The State of Nevada*, 332 F.Supp.2d 1331 (D. Nev. 2004).

Key Facts: Preschooler II, in the 2002-2003 school year, was a 4-year-old, non-verbal, autistic child. Based on Preschooler II's diagnosis, he was eligible for special education services through IDEA. As such, Clark County School District (CCSD) first convened an IEP meeting regarding Preschooler II on March 21, 2002. During the 2002-2003 school year, two additional meetings were held. The plaintiff, Jane Roe, was present at all of the IEP meetings. The

educational program provided for Preschooler II by CCSD consisted of two components, the school component and the home component. Defendant LiSanti was the one teacher staffed in the home component of the program. In spring 2003, plaintiff Roe was contacted by the principal, defendant Darryl Wyatt, regarding an investigation of defendant LiSanti based upon allegations of mistreatment of Preschooler II. Defendant LiSanti was placed on administrative leave. The allegations contained in the complaint that were relevant to this action included (1) that Preschooler II was made to walk from the bus to the classroom without shoes on four occasions, (2) that Preschooler II was slapped by Defendant LiSanti, or taken by the hands and forced to slap himself, and (3) that Preschooler II was “slammed” in a chair by Defendant LiSanti. Additionally, the Complaint contains allegations of bruises found on Preschooler II.

Issue: At issue was whether a teacher violated a preschool-aged student’s constitutional rights through use of force. (There are 3 other issues not briefed because of irrelevance to the study.)

Holding: The District Court held that a parent could bring excessive force claim under both the Fourth and Fourteenth Amendments; a parent stated excessive force claim under the Fourth Amendment; the danger creation exception applied to the Fourteenth Amendment due process claim; and the individuals were not entitled to qualified immunity.

Reasoning: In *P.B. v. Koch* (1996), the Ninth Circuit declined to resolve whether a student’s claim of excessive force by a school official was more appropriately brought under the Fourth Amendment, rather than under substantive due process standards inherent in the Fourteenth Amendment. The Ninth Circuit, however, suggested in a footnote that it might agree with the Seventh Circuit’s decision that the Fourth Amendment analysis generally applies in the

school context. This suggestion was later confirmed by the Ninth Circuit's opinion in *Doe v. State of Hawaii Dept. of Educ.*, 2003).

The Ninth Circuit also noted that it may be possible for a school official to use excessive force against a student without seizing or searching the student, and that the Fourth Amendment would not apply to such conduct. Therefore, the Ninth Circuit has not foreclosed the possibility that under some circumstances, a student's excessive force claim against a school official might be more appropriately analyzed under the Due Process Clause of the Fourteenth Amendment than under the Fourth Amendment. Therefore, the Court found it appropriate that the plaintiffs bring their § 1983 action under both the Fourth and Fourteenth Amendment. The defendants contended that the plaintiffs failed to allege facts that meet the definition of a seizure. A constitutional seizure occurs when there is a restraint on liberty to the degree that a reasonable person would not feel free to leave. The plaintiffs made several allegations of abuse that Preschooler II endured at the hands of his teacher, defendant LiSanti. The defendants attempted to downplay these allegations, arguing that the alleged facts did not amount to a "seizure" but rather a tort, if anything. The Court disagreed. If the child were abused at the hands of his teacher, at such a young age, it is reasonable to find that he did not feel free to leave, thus, constituting a seizure. The defendants final argument was that even if the allegations were considered a seizure, the administrative record is rife with testimony regarding the educational objectives associated with the alleged events. A motion to dismiss was limited to the pleadings. To go beyond the pleadings and consider the testimony the defendants alluded to would make this a motion for summary judgment. The Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees citizens the right to be free from "state-imposed violations of bodily integrity." Generally, however, "state actors may only be held liable under

§ 1983 for their own acts, and not for the acts of third parties.” The following are the only exceptions to this rule: (1) the “special-relationship” exception, and (2) the “danger-creation” exception. The first exception does not apply here; however, the second exception applies when the state affirmatively places an individual in a dangerous situation. To prevail under this theory, the plaintiffs had to show that the defendants “participated in creating a dangerous situation, and acted with deliberate indifference to the known or obvious danger in subjecting plaintiff to it.” Evidence of gross negligence was not sufficient. The nature of the plaintiffs’ allegations fall within the parameters of the Fourteenth Amendment and was not dismissed. The defendants’ final arguments regarding the plaintiffs § 1983 claim was that the individual defendants were entitled to qualified immunity as a matter of law. Public school officials are entitled to assert qualified immunity defense. This standard requires a two-step analysis: (1) Was the law governing the official’s conduct clearly established, and (2) Under that law, could a reasonable officer have believed the conduct was lawful? The defendants argued that plaintiffs’ facts cannot support claim for constitutional deprivation under the Fourth and Fourteenth Amendment, nor are the alleged violated rights “clearly established” so that the individual defendants here would have known and understood that the alleged actions were constitutional violations. The Court disagreed. The Court found that the plaintiffs had alleged the necessary facts to support a claim for constitutional deprivation under the Fourth and Fourteenth Amendment. The Court also found that the plaintiffs’ allegations that the defendants violated a constitutional right are sufficient at this time to defeat the argument that the individual defendants were entitled to qualified immunity. Accordingly, the individual defendants were not dismissed.

Disposition: The Court ordered that the defendants’ motion to dismiss was denied.

Citation: *Flores v. School Board of DeSoto Parish*, 116 Fed.Appx. 504, 2004 WL 2604225 (5th Cir. 2004).

Key Facts: While serving detention for allegedly disobeying a teacher, Kevin Flores, a 15-year-old special education student at DeSoto High School, was released temporarily to attend a school assembly. After the assembly, Kevin visited the restroom before returning to detention. On Kevin's return, a teacher/coach, Clinton Wysinger, accused him of trying to skip detention, which Kevin denied. Wysinger then ordered Kevin to eat his lunch in the detention room. Kevin questioned Wysinger's order, but denied that he did so in a disruptive or unruly manner. Kevin's questioning of the order angered Wysinger. After ordering the other students out of the room, Wysinger took off his tie, rolled up his sleeves, and physically threatened Kevin. When Kevin refused to fight Wysinger, he ordered Kevin to stand up, threw him against the wall, placed his hands around his neck, and began to choke him while threatening further bodily harm. After several seconds, Wysinger momentarily released Kevin to sit down again; Wysinger put on his tie, buttoned his sleeves, and instructed Kevin not to tell anyone about the incident because "no one would believe a sorry sack of shit." According to Kevin, Wysinger's use of force was neither in response to any disruptive behavior by Kevin nor in furtherance of any pedagogical purpose, but was inflicted maliciously with intent to cause harm solely because Kevin had questioned the order to eat his lunch in the detention room. When the other students returned to the room, they noticed that Kevin's face was red and that he was having trouble breathing. Kevin requested permission to go to the principal's office, but Wysinger refused. Some of Kevin's classmates used their cell phones to call Kevin's mother, who, in turn, called 911 and Kevin's father. Doctors found a bruise on Kevin's shoulder but no harm to his throat. Principal Diane Troquille convened a parent/teacher conference to address Kevin's accusations against

Wysinger. Troquille warned Kevin to forget about the incident, told him that he had a week to think it over, and volunteered that Wysinger could bench press 400 pounds. When Kevin refused to retract his charges, the principal recommended that he be expelled. Ronnie Land, the school's Director of Child Welfare and Attendance, presided over Kevin's expulsion hearing. Land would not allow Kevin to present witnesses on his own behalf. Land ruled that Kevin must choose between being expelled or attending the Mansfield Alternative School for a minimum of 18 weeks. Kevin chose the alternative school, and this litigation ensued. The United States District Court of Western District of Louisiana granted the defendants' motion to dismiss and denied the plaintiff's motions for costs and attorney fees, leave to file second amended complaint, pre-trial schedule conference, and Rule 11 sanctions against defense counsel. The plaintiff appealed.

Issue: At issue was whether a teacher violated a student's Fourth or Fourteenth Amendment rights by use of force and threat of bodily harm.

Holding: The Court of Appeals held that (1) allegations failed to state claims under Fourth and Fourteenth Amendment, and (2) administrative remedies were not exhausted as required to bring IDEA claims in federal court.

Reasoning: The plaintiff appealed the dismissal of her § 1983 claims for use of excessive force, procedural due process, slander, false arrest, failure to train, and substantive due process violations. Only the plaintiff's excessive force claim merited discussion. The plaintiff insisted that Wysinger's acts should not be characterized as corporal punishment but rather as an excessive force violation of her son's Fourth Amendment rights and substantive due process interest in his bodily integrity. The magistrate judge nevertheless proceeded on the assumption that Wysinger's acts did constitute corporal punishment--an assumption that the plaintiff

strenuously contested--and determined that, even if this circuit permitted such claims under Fourth and Fourteenth Amendments, the plaintiff's claim could not survive. The court addressed the plaintiff's Fourth Amendment claim first because, if it succeeded, she would be precluded from maintaining a Fourteenth Amendment claim grounded in the same conduct. The Supreme Court and this circuit likewise recognized that preservation of order in the schools allows for closer supervision and control of school children than would otherwise be permitted under the Fourth Amendment. Given the fact that the momentary "seizure" complained of in this case was not the type of detention or physical restraint normally associated with Fourth Amendment claims, the court declined to recognize the plaintiff's claim under the Fourth Amendment. Characterized as corporal punishment, Wysinger's alleged acts do not support a substantive due process claim. The plaintiff asserted that Coach Wysinger acted "maliciously and sadistically in order to cause harm and not for the purposes of restoring order or maintaining discipline." The facts alleged by the plaintiff, however, also show that Kevin was tardy returning to detention and that Wysinger believed that Kevin had been purposefully delaying or avoiding his return to the detention room. Thus, even if Kevin's allegations about Wysinger's inappropriate, abusive behavior are true, Wysinger's acts apparently were meant to punish Kevin and did not constitute a random, malicious, and unprovoked attack. The court would never condone the kind of conduct of which Wysinger was accused, but his alleged actions were properly characterized as corporal punishment. The court therefore held that the plaintiff had not stated a substantive due process claim. If she was entitled to a remedy for Wysinger's conduct, it must be under Louisiana state law and not under the Constitution of the United States. The plaintiff contested the district court's dismissal without prejudice of her claims advanced under the IDEA for her failure to exhaust administrative remedies. She did not deny that these claims required

exhaustion but argued that exhaustion would have been inadequate and futile in this instance. The plaintiff does not, though, supply support for these arguments. In the instant case, the plaintiff had not advanced any reason why the appeal would be futile or inadequate. She had failed to show that she should not be required to exhaust administrative remedies before bringing suit in federal court.

Disposition: All rulings, orders, and judgments of the magistrate judge and district court were, in all respects, affirmed.

Citation: *Wofford v. Botetourt County School Board*, 390 F.3d 318 (4th Cir. 2004).

Key Facts: On the Wednesday before Thanksgiving in 2001, several students at Colonial Elementary School reported to their teacher that M.D., a 10-year-old classmate, had brought a gun to school. The teacher reported this to Assistant Principal Rosa. Rosa immediately located the accused pupil and escorted her to the assistant principal's office. M.D. permitted Rosa to search her book bag and her classroom desk. Finding no weapon, Rosa escorted M.D. to the school bus that was waiting for her. On the Monday following Thanksgiving, Rosa was accompanied by Principal Evans, and they continued to investigate the incident based on a pupil's report that he had seen M.D. throw a black handgun into the woods adjoining the school. Rosa and Evans summoned M.D. to the office once more and renewed their inquiries about the weapon; they also contacted the police. In the presence of school officials, police detectives questioned M.D. about the allegation. Wofford and M.D. filed suit against Evans, Rosa, the Botetourt County School Board, and officers of the county sheriff's department. The district judge dismissed the due process claim. He permitted the Fourth Amendment claim to proceed but eventually dismissed it on summary judgment. Wofford and M.D. pressed both claims on appeal.

Issue: At issue was whether a student's constitutional rights were violated while detained for investigation into whether she had brought a gun to school.

Holding: The Court of Appeals held that (1) the court would decline to announce requirement of parental notification or ban on detentions of certain length; (2) the school's disciplinary procedures did not violate due process, which did not require school officials to contact the mother before the student's detention and interrogation; and (3) the Fourth Amendment was not violated by the student's seizure by school officials and police officers.

Reasoning: Wofford alleged that the school officials' failure to contact her infringed on her due process. She noted that the Supreme Court has recognized a parental interest in the "care, custody, and control of their children" (*Troxel v. Granville*, 2000). The Court also required the state to comply with the procedural strictures of the Due Process Clause when it interferes with this interest. The appellants found an interference with their liberty interests in the violations of school board policies and police regulations that they say occurred here. The Supreme Court cautioned, however, "the range of interests protected by procedural due process is not infinite" (*Bd. of Regents v. Roth*, 1972). The Constitution requires such protection "only when a decision of the State implicates an interest within the protection of the Fourteenth Amendment" (*Ingraham*, 1977). In this regard, the court held that violations of state law are insufficient by themselves to implicate the interests that trigger a due process claim. The court addressed the appellants' Fourth Amendment claim. Searches of students conducted by school officials need only be "justified at its inception" and "reasonably related in scope to the circumstances which justified the interference in the first place" (*T.L.O.*, 1985). This standard respects the interests that educators have in "maintaining security and order." The facts of *T.L.O.* involved only a search. But the policies underlying that decision easily support the

extension to seizures for students by school officials (see *Edwards v. Rees*, 1989; *Hassan v. Lubbock Indep. Sch. Dist.*, 1995; *Wallace v. Batavia Sch. Dist. 101*, 1995). This court thus addressed the appellants' claim of illegal seizure under the rubric announced in *T.L.O.* A school official may detain a student if there is a reasonable basis for believing that the pupil has violated the law or a school rule. The court has no reason to doubt the decision of school officials to credit pupils' claims. The seizure must also have been "reasonably related in scope to the circumstances which justified it in the first place." The disciplinary interest in addressing the potential violation of school rules and the need to ensure the physical safety of pupils and staff validated the seizure of M.D. on the day preceding Thanksgiving. Rosa had reason to believe that the student had brought a gun to school. The assistant principal held M.D. no longer than necessary to address this allegation and confirm that she had no gun on her person or in her schoolroom desk. The student's seizure on the day preceding Thanksgiving satisfied the second part of the *T.L.O.* test. M.D.'s detention on the day following Thanksgiving satisfied the first part of the *T.L.O.* test. Law enforcement officers, not school administrators, have a particular expertise in safely retrieving hidden weapons. It was eminently reasonable, therefore, for the school to contact the police department once it became plausible that a handgun had been secreted in the school's vicinity. And, since the safety of pupils and staff required the retrieval of any such weapon, it was also prudent for school administrators to hold M.D. until the police had completed their investigation. Holding the student until the police had determined that no weapon was present satisfied the second part of the *T.L.O.* test. Additionally, when the justification for the original detention includes a concern that also warrants police involvement, no violation of the Fourth Amendment occurs if the police detain the pupil while they dispel this concern. The officers detained M.D. only until they had satisfactorily determined that the

school's surrounding area contained no handgun. They did not, therefore, violate her rights under the Fourth Amendment.

Disposition: The court cannot find constitutional fault with the efforts of school officials to protect the lives and safety of children entrusted to their care. Weapons are a matter with which schools can take no chances. The actions here reflected the need to avert the greater tragedy and respected the reconciliation of rights and interests set forth in federal law. The judgment of the district court was affirmed.

2005

Citation: *Pigford v. Jackson Public School District*, 910 So.2d 575 (Miss. App. Ct. 2005).

Key Facts: Jacob Pigford was an exceptional education student in the Jackson Public School District (JPSD). Jacob was subject to unpredictable outbursts triggered by a variety of things, including sudden noises, unfamiliar surroundings, and unfamiliar persons. On most mornings, Jacob's primary teacher, Marshall Frazier, would escort Jacob and the other exceptional education students to their respective classrooms. On November 15, 1999, Frazier was in a meeting and could not supervise Jacob. Instead, Magill Jones, the teacher's aide escorted Jacob to his classroom. As was common, the ringing bell and rush of students caused Jacob to have an anxiety attack. Jones attempted to control Jacob by grabbing him and holding Jacob's arms in an effort to prevent Jacob from hurting himself or others. Jacob resisted Jones's attempts to restrain him; however Jones denies he used excessive force. Later, Jacob's parents noticed bruises on Jacob's arms. After a bench trial, the Circuit Court entered judgment in favor of the school district, and the parents appealed.

Issue: At issue was whether the Jackson Public School District provided a student with a reasonably safe school environment and whether his teachers were liable for bruises as a result of a teacher's aide's attempts to restrain a student during an anxiety attack.

Holding: The Court of Appeals held that the conduct of the school district, the teacher, and the teacher's aide did not constitute "willful or wanton conduct" so as to waive their sovereign immunity under Tort Claims Act.

Reasoning: The Mississippi Supreme Court has defined the wanton and willful standard in this way:

The usual meaning assigned to do [sic] terms is that the actor has intentionally done an act of unreasonable character and reckless disregard of the risks known to him, or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow. It usually is accompanied by a conscious indifference to consequences, amounting almost to a willingness that harm would follow.
(*Mandonado v. Kelly*, 2000)

The Mississippi Supreme Court has also stated that "wantonness is a failure or refusal to exercise any care, while negligence is a failure to exercise due care." The "excessive force" used by Jones falls short of the elements necessary to prove willful or wanton conduct. Moreover, the evidence shows that any injury to Jacob was unintended. The court was unable to find any abuse of discretion as to these findings and must affirm. During this particular anxiety attack, Jacob was running into walls and tables. For these reasons, Jones was required to act quickly in order to prevent Jacob from hurting himself or others. The court found, under these circumstances, Jones took reasonable steps to minimize the risk of harm to Jacob. Thus, the Pigford's assignment of error was without merit.

Disposition: The Court of Appeals of Mississippi affirmed the lower court's decision in finding that the Jackson Public School District provided Jacob with a reasonably safe school

environment and in applying the willful and wanton standard of care when it found that the defendants were not liable.

Citation: *Jones v. Hunt*, 410 F.3d 1221 (10th Cir. 2005).

Key Facts: Jones's mother and father are not married and have been estranged for some time. Jones had been living with her father for several years when, in the course of an argument, Jones's father and stepmother struck Jones, causing her to sustain cuts on her neck and collarbone and bruising on her face. She was 16 years old at the time. Because her father was a former police officer and her stepmother was a friend of the county sheriff, Jones was reluctant to report the incident. She did, however, meet with officials at Bernalillo High School to discuss emancipation and revealed the details of the argument during the course of her conversation. As a result of Jones's disclosure, Deputy R. Hunt, a law enforcement officer employed by the Sandoval County Sheriff's Office, was dispatched to the school. He took Jones to the sheriff's department to meet with social worker Haberman for an interview. At the conclusion of the interview, the two officials handed Jones over to the custody of her adult sister, where she remained until she moved in with her mother 2 months later. Based on the incident of violence, Jones's mother filed for a protective order on her daughter's behalf and obtained a Temporary Order of Protection and Order to Appear ("TRO") against Jones's father. On the same day that they received the TRO, Jones's father and stepmother met with Deputy Hunt to seek his assistance. Hunt then left that meeting and took social worker Haberman with him to the high school. The two officials confronted Jones and told her, contrary to the terms of the TRO, that she could not live with her mother. They insisted that she either choose to live with her father or move into a shelter. Having made these demands, the officials left Jones at the high school, at which point she went, panic-stricken, to a school resource officer and stated that if she could not

live with her mother she would kill herself. Consequently, the resource officer referred Jones to a school counselor and she promptly reported to his office. After conducting a risk assessment, the counselor determined that Jones presented low risk of suicide. Meanwhile, Hunt and Haberman returned to the high school and, upon finding her in the counselor's office, proceeded to threaten and harass her in the presences of the counselor for over 2 hours. The counselor then left, and the two officials--Hunt in uniform--proceeded to tell Jones for an additional "hour or two" that if she did not return to her father's house Hunt would arrest her and that her "life would be hell." Jones cried throughout the encounter, and alleged that she was "terrified of Hunt and Haberman" and "did not even think of challenging" them. By prearrangement with Hunt and Haberman, Jones's father and stepmother were waiting at the school. Jones emerged from the counselor's office and, complying with Hunt and Haberman's demands, went to her father's house. The United States District Court granted social worker's motion to dismiss, and the student appealed.

Issue: At issue was whether a state social worker and county sheriff's deputy violated a student's constitutional rights by seizing her at school.

Holding: The Court of Appeals held that (1) "seizure" occurred under the Fourth Amendment since the defendants allegedly threatened the student with arrest if she did not reside with her father, (2) the seizure was unreasonable given the temporary restraining order against the father, and (3) the social worker was not entitled to qualified immunity.

Reasoning: A seizure occurs for Fourth Amendment purposes when "a reasonable person would have believed that he was not free to leave." The court bases the Fourth Amendment analysis on the "totality of the circumstances." When viewing the totality of the circumstances, it may be that the strong presence of two or three factors demonstrated that a reasonable person

would have believed that he was not free to terminate an encounter with government officials. The court must view Jones's encounter with Haberman and Hunt through the eyes of a reasonable 16 year old. Seen from such a perspective, the court was inexorably driven to the conclusion that a reasonable 16 year old would not have felt free to terminate the encounter with Hunt and Haberman. The district court concluded that the threats of arrest did not contribute to the seizure, because "any compliance Haberman demanded concerned Jones's future living arrangements and did not concern an alleged inability to leave the counselor's office at that moment." Construing the facts in the light most favorable to Jones, the district court's conclusion is incorrect. Jones was living with her mother at the time of the encounter. A reasonable 16 year old would have interpreted Hunt and Haberman's threats to mean that if she did not agree to go home with her father--who was waiting at the school to receive her following her encounter with Hunt and Haberman--then she would be arrested. Jones reasonably believed that leaving the office and thus refusing to go home with her father would result in her arrest. The court's conclusion that the alleged encounter constituted a seizure is but the first part of the constitutional analysis. The court must also determine if the seizure was reasonable, an inquiry that depends on the context in which it took place. Because Haberman and Hunt's seizure of Jones took place on public school property, the district court erroneously concluded that the relaxed Fourth Amendment standard announced in *T.L.O.* (1985) should apply to this case. Because the case before us does not involve efforts by school administrators to preserve order on school property, it does not implicate the policy concerns addressed in *T.L.O.* and therefore does not merit application of the *T.L.O.* standard. It is ultimately unnecessary for the court to decide what Fourth Amendment test is most appropriate in this case "because the conduct alleged in this case would violate the most minimal standard of which we can conceive." Even applying the

Terry standard--that a seizure must be “justified at its inception” and “reasonably related in scope to the circumstances which justified the interference in the first place”--Haberman violated Jones’ Fourth Amendment rights. Viewing the totality of the circumstances as alleged in the complaint in the light most favorable to Jones, the court concluded that she has alleged sufficient facts to demonstrate that she was unreasonably seized within the meaning of the Fourth Amendment. Although the alleged actions, if true, violated Jones’ Fourth Amendment rights, Haberman nonetheless gains qualified immunity if his “actions did not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Without doubt, it was clearly established by January 2003 that a seizure must be reasonable. Therefore, by January 10, 2003, Haberman was on notice that the Fourth Amendment’s requirements applied to him, that a seizure would occur within the meaning of that Amendment if at any point the person believed that she was not free to terminate an encounter with him, that the “free to leave” determination would be informed by the *Hill* (1999) factors, and that any seizure of a child at a public school must be justified at its inception. Because Haberman’s conduct as alleged constituted a seizure under *Hill* and was unreasonable under *Terry* (1985), Haberman violated a clearly established constitutional right of which a reasonable person would have known. The court concluded that the Fourth Amendment violation as alleged in this case was both obvious and outrageous, and that “it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” A social worker who lacks any legitimate justification for seizing a child, but nonetheless seizes the child and demands, in direct contravention of a court order, that she enter the custody of her abusive father, would clearly know that his conduct was unconstitutional.

Disposition: The Court of Appeals reversed the district court's order granting Haberman's motion to dismiss on the basis of qualified immunity and remanded for further proceedings.

Citation: *Alex G. v. Board of Trustees of Davis Joint Unified School District*, 387 F.Supp.2d 1119 (E.D. Cal. 2005).

Key Facts: Alex was a third-grader with autism. Upon his transfer to Valley Oak Elementary School, the District developed an Individuated Education Plan (IEP) and Behavior Intervention Plan (BIP) to address Alex's history of aggressive outbursts and violent tendencies. As a part of Alex's BIP, the District established an emergency plan that allowed the use of physical restraints when necessary to protect others students or staff from physical harm. Alex's parents initially consented to implementation of the BIP and the use of physical restraints. However, in June 2002, just prior to Alex starting the second grade, Alex's parents withdrew their consent. Alex's behavior problems continued in the second grade. During two incidents, special education teachers used emergency physical restraints to bring Alex under control. The physical restraints used were in accordance with the District's plan for emergency interventions.

Issue: At issue was whether a school district discriminated against a student under the Rehabilitation Act by placing him in restraints. (There are 4 other issues not briefed because of irrelevance to the study.)

Holding: The District Court held that the school did not discriminate against the student by placing him in restraints.

Reasoning: To establish a prima facie case of discrimination under Section 504, the plaintiffs must show that (1) Alex is disabled, (2) he is otherwise qualified to participate in the District's program, (3) he has been subject to discrimination by the defendants solely because of

his disability, and (4) the defendants are recipients of federal funding (*Wong v. Regents of Univ. of Cal.*, 1999). Additionally, the plaintiffs brought Section 504 claims in the special education context and had to show that the educational decisions related to the student were so inappropriate as to constitute either bad faith or gross misjudgment. The actions/omissions the plaintiffs identified did not suggest bad faith, gross misjudgment, or deliberate indifference on the part of the District. The plaintiffs alleged that defendants wrongfully used physical restraints on Alex on two occasions in October, despite the explicit withdrawal of consent to such restraints by Alex's parents. The plaintiffs suggested that these actions demonstrate bad faith or gross misjudgment because the withdrawal of the consent was explicit. As an initial matter, it was unclear that the District's actions violated any law, given that state law explicitly allows school officials to physically restrain students when the student poses an immediate danger to himself or others. Alex was restrained because he was jumping across wet tabletops. The teachers could reasonably have determined that Alex posed an immediate physical danger to himself. Moreover, the teachers used physical restraints approved by the District as part of the District's emergency intervention plan. Furthermore, even if the use of physical restraints did violate IDEA, there is no evidence that the defendants acted with bad faith, gross misjudgment, or deliberate indifference in doing so. Rather, the evidence suggested that the teachers believed they were acting within their discretion to protect Alex from immediate harm to himself. Alex presented no evidence calling into question their good-faith belief. Accordingly, the plaintiff's argument regarding the physical restraints is unpersuasive.

Disposition: The Court granted the defendants' motion to dismiss the plaintiff's retaliation and discrimination claims brought under Section 504 of the Rehabilitation Act as against all defendants.

Citation: *Shuman v. Penn Manor School District*, 422 F.3d 141 (3rd Cir. 2005).

Key Facts: On December 7, 2001, an incident of sexual misconduct took place between Shuman and Olivia Becker, a female student at the Penn Manor High School, during their agricultural science class. On December 10, 2001, Becker spoke with Assistant Principal Phillip B. Gale and relayed her version of events, reporting that Shuman had touched her in a sexual manner without her consent 3 days earlier. Gale then called Shuman to his office at approximately 10:15 a.m. where he was questioned for 10 to 15 minutes regarding the incident. Shuman denied forcibly touching Becker and instead claimed that the incident was consensual. Following this meeting, Gale instructed Shuman to sit in a small conference room across the hallway from Gale's office. Shuman stayed in the conference room and did schoolwork for the next several hours. During this time, Gale spoke with Becker again along with some witnesses to the incident. Shuman was allowed to eat lunch and get a drink of water during his detainment. At 1:15 p.m., Gale informed Shuman that he was going to be suspended as punishment for the "inappropriate conduct." Sometime after, Gale telephoned Shuman's mother and informed her of the incident and of the resulting 4-day suspension; she also requested he be picked up from school. Shuman's mother arrived at the school around 2:00 p.m. After the suspension, Shuman filed a Complaint in the United States District Court for the Eastern District of Pennsylvania, alleging a series of federal constitutional and state law claims. The District Court granted summary judgment in favor of the defendants. The student appealed.

Issue: At issue was whether a high school student's constitutional due process and equal protection rights were violated during the course of an investigation into alleged misconduct.

Holding: The Court of Appeals held that (1) the student was "seized" within meaning of the Fourth Amendment when he was detained in the conference room for several hours following

questioning by the assistant principal, (2) the seizure was reasonable under the circumstances, (3) the student had legitimate claim of entitlement to public education that was protected by due process, (4) the student was afforded all the process he was due, and (5) the student was not subjected to differential treatment because of his gender, in violation of equal protection.

Reasoning: A seizure occurs for Fourth Amendment purposes when “a reasonable person would have believed that he was not free to leave” (*Michigan v. Chesternut*, 1988). Based upon Shuman’s uncontroverted testimony, he was told to remain in the conference room under Gale’s direction for several hours and was not free to leave. He thus appears to have been “seized” within the meaning of the Fourth Amendment (see *Doe v. State of Hawaii. Dept. of Educ.*, 2003). It must still be determined whether the seizure constituted a violation of his Fourth Amendment rights. Relying upon *T.L.O.* (1985), other courts of appeals that considered the issue have concluded that reasonableness is the appropriate benchmark to determine whether a seizure in the public school context survives the Fourth Amendment scrutiny. These courts of appeals have largely rested their decisions upon their recognition of the unique responsibilities public schools bear, particularly with regard to disciplinary matters. This court joined these courts of appeals in finding seizures in the public school context to be governed by the reasonableness standard, giving special consideration to the goals and responsibilities of our public schools. We thus turn to the question of whether the school’s seizure of Shuman was reasonable in light of the circumstances. The purpose of Shuman’s detainment was for the school to investigate the incident of sexual misconduct, including Becker’s accusations, and to determine an appropriate punishment. In light of the serious nature of Becker’s accusations, or at a minimum, the misconduct that Shuman admitted to, it was reasonable for the school to detain Shuman to investigate this behavior. Shuman additionally claimed a violation of his Fourteenth

Amendment due process rights, on account of the school's alleged failure to give him notice and an opportunity to present his side of the story prior to his 4-day suspension. In *Goss* (1975), the Supreme Court laid down the minimum process required with respect to a suspension of 10 days or less of a public school student.

In connection with a suspension of 10 days or less . . . the student must be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. (*Goss*, at 581, 95 S.Ct. 729)

Based upon Shuman's own admissions of the notice and process provided, the minimum protections established by the Supreme Court in *Goss* were satisfied. Thus, by Shuman's own declarations, Gale orally gave Shuman notice of the allegations and an opportunity to present his side of the story. Procedural due process in this context required nothing more. Shuman also claimed that he was denied equal protection because the school chose to ignore evidence proving that the sexual misconduct involving Becker was consensual and instead chose only to discipline him. The basis for Shuman's claim was that he was subjected to this alleged differential treatment because of his gender. The threshold question thus becomes whether Shuman and Becker, though perhaps treated differently, were in fact similarly situated in the first place. The court answered this question in the negative. First, Shuman admitted to some form of misconduct; Becker did not. Additionally, Becker accused Shuman of wrongdoing; Becker herself was not accused of any wrongdoing, other than Shuman's charge that Becker willingly took part in the sexual misconduct at issue. The school's investigation of Shuman and subsequent punishment were a direct result of these factors. Because Shuman and Becker were not similarly situated, Shuman's equal protection claim must fail.

Disposition: The Court of Appeals found no violation of Shuman's Fourth or Fourteenth Amendment rights and affirmed the judgment of the District Court.

Citation: *McKinley v. Lott*, 2005 WL 2811878 (E.D. Tenn 2005.).

Key Facts: In August 2002, McKinley was a 16-year-old child who attended Brainerd High School. Officer Suttles was employed by the City of Chattanooga Police Department as a school resource officer (SRO) assigned to Brainerd High School. On August 13, 2002, a teacher called McKinley out of his class to question him about whether he had been using marijuana. McKinley denied that he had. The teacher asked Suttles to retrieve McKinley from his class and escort him to the office of the principal, Dr. Marvin Lott. School officials questioned Mr. McKinley and other students about whether they had been using marijuana that morning. Dr. Lott noticed a heavy smell of marijuana on each of the students. McKinley responded yes to a question of whether he had been smoking. However, he believed that Dr. Lott was asking him whether he had ever smoked marijuana in the past and not whether he had smoked marijuana that morning before school. Dr. Lott and Officer Suttles both understood McKinley to acknowledge and admit that he had smoked marijuana that morning. Suttles contacted an assistant district attorney to discuss the charges that could be made against the student. Suttles called for backup support to arrest and transport the students to Hamilton County Juvenile Court for booking on charges of being on school property while under the influence of marijuana. McKinley was then informed he was being arrested, and he alleged that Suttles handcuffed one of his hands to another student. Suttles and another officer transported the students to Juvenile Hall. Suttles participated in the search of McKinley when he arrived at Juvenile Hall and placed him in a holding cell. He was released that afternoon and ultimately did not face any criminal charges related to this incident.

Issue: At issue was whether a school resource officer violated a student's Fourth, Fifth, and Fourteenth Amendment rights when he arrested the student and transported him from the school.

Holding: The District Court held that Officer Suttles' motion for summary judgment was well taken and would be granted and that the plaintiffs' claims against Officer Suttles would be dismissed with prejudice.

Reasoning: To establish a claim pursuant to § 1983, plaintiffs must demonstrate two elements: (1) the defendants deprived the plaintiffs of a right, privilege, or immunity secured to them by the United States Constitution or other federal law; and (2) the defendants caused the deprivation while acting under color of state law. Only the first prong of the test was relevant in this action because Suttles did not dispute that he was acting under color of state law as an SRO. Municipalities are only liable under § 1983 if they have an established policy or custom that causes the alleged injury. The plaintiffs presented no evidence of any policy or custom on the part of the City of Chattanooga relating to the alleged violation of McKinley's constitutional rights. Federal courts have acknowledged that "the seizure of a student by a public school official implicates the Fourth Amendment, but 'only when the restriction of liberty is unreasonable under the circumstances then existing and apparent'" (*Bisignano v. Harrison Central Sch. Dist.*, 2000). The test developed by the U.S. Supreme Court in *New Jersey v. T.L.O.* (1985) determines whether a search or seizure is reasonable. The Fourth Amendment also requires that an arrest be made upon probable cause. In light of *T.L.O.*'s requirement that a search and seizure be justified at its inception and reasonably related in scope to the circumstances, the Court concluded that Suttles' seizure, search, and arrest of McKinley were reasonable. The Court therefore dismissed McKinley's Fourth Amendment claim against

Suttles. It is unclear from the record what actions McKinley alleged Suttles took that violated his Fourteenth Amendment rights. In addition, this Court has previously noted that in the context of arrest, “the Due Process Clause of the Fourteenth Amendment does not require any additional procedures beyond those mandated by the Fourth Amendment” (*Henderson v. Reyda*, 2005). With respect to McKinley’s substantive due process claim, this Court noted “in the school discipline context ‘a substantive due process claim will succeed only in the ‘rare case’ where there is ‘no rational relationship’ between the punishment and the offense” (*Seal v. Morgan*, 2000)). In the instant action, McKinley did not allege that Suttles used excessive force in arresting him. Suttles’ actions in questioning and arresting McKinley were reasonable under the circumstances. The Court concluded that based on the record, McKinley failed to state a genuine issue of material fact regarding whether Suttles violated his substantive or procedural due process rights. McKinley’s complaint also alleged a violation of his equal protection rights under the Fourteenth Amendment. McKinley failed to demonstrate any evidence that he was treated differently than any similarly situated individuals outside of an alleged protected class. For these reasons, the Court dismissed McKinley’s Fourteenth Amendment claim against Suttles. Federal courts have determined that a violation of the Fifth Amendment privilege against self-incrimination only occurs when an incriminatory statement that is obtained unlawfully is introduced at trial. No unlawfully obtained statement of McKinley’s was ever introduced at trial, and McKinley did not suffer a violation of his Fifth Amendment right against self-incrimination. For this reason, the Court dismissed McKinley’s Fifth Amendment claim against Suttles. Finally, the Court concluded that Ms. Love lacked standing to bring her own claim for alleged violations of McKinley’s constitutional rights.

Disposition: The Court concluded that no genuine issue of material fact existed regarding the plaintiffs' claims against Officer Suttles, individually or in his official capacity. These claims were dismissed with prejudice. The Court concluded that the plaintiff, Avis Love, lacked standing to bring her claims. Her claims against Officer Suttles were also dismissed with prejudice. The defendants' motion for summary judgment was granted.

Citation: *Bravo v. Hsu*, 404 F.Supp.2d 1195 (C.D. Cal. 2005).

Key Facts: On November 1, 2001, Sierra Vista Restroom Attendant Bonnie Minjares told Assistant Principal Steven Behar that she had cleared the eighth grade girls' restroom because of rowdy behavior and overcrowding. Approximately 10 minutes later, Assistant Principal Behar was approached by a female student who said the commotion in the eighth grade girls' restroom was due to the fact that Jennyfer possessed and possibly was using drugs that day. Based on the statements of Behar and Minjares, Principal Aguilar decided Jennyfer should be searched for Jennyfer's protection and that of the other students. Upon finding no drugs on Jennyfer, Aguilar released her and allowed her to return to class. Throughout the day, numerous other students told school officials that they had seen Jennyfer possessing and possibly using drugs in the girls' restroom. Based on this information, Aguilar again summoned Jennyfer to her office. Jennyfer admitted that she had received a "baggie" from another student and that she had told another student about it, and that another student had taken it away from her. Jennyfer was detained in Aguilar's office for approximately 3 hours and was not allowed to return to class. Jennyfer's mother, Martha Ramirez, was called to the school and told what had happened, and arrived there to meet with her daughter and Principal Aguilar.

Issue: At issue was whether school officials violated a student's Fourth Amendment rights with a search and detention.

Holding: The District Court held that (1) a search of the student's backpack, pockets and shoes for drugs was reasonable under the Fourth Amendment; (2) officials did not commit an unconstitutional seizure by detaining the student in the principal's office for 3 hours; and (3) the search and detention did not fall below a standard of ordinary care or constitute extreme or outrageous behavior.

Reasoning: If school officials are to educate their students, they must maintain a safe and positive learning environment. Drug use severely compromises this goal. School officials have a duty to enforce regulations prohibiting illegal drug possession and use on campus. To perform that duty, school officials have the authority reasonably to search and detain a student that they suspect may be possessing drugs. The authority granted to school officials in this regard, however, is not limitless. The Fourth Amendment's requirement that searches and seizures be "reasonable" applies to searches of students by school officials. A search comports with the Fourth Amendment where it is (1) justified in its inception, and (2) reasonably related in scope to the circumstances which justified the search in the first place (*T.L.O.*, 1985). The Court analyzed the search and detention of Jennyfer separately under this legal standard. The search of Jennyfer's backpack, pockets, and shoes was justified in its inception. It was reasonable for them to suspect that Jennyfer might have illegal drugs and that an immediate and limited search of Jennyfer was appropriate. The search was not excessively intrusive in light of Jennyfer's age and sex. The entire search took less than 5 minutes to complete. In short, the search was well within the bounds of the Fourth Amendment. Nor did Sierra Vista officials commit an unconstitutional seizure by detaining Jennyfer in Principal Aguilar's office for 3 hours after numerous students reported that she had possessed and used drugs that day. The constitutionality of seizures of students by school officials is determined in light of all the

circumstances, and in light of the educational objectives the school officials are trying to achieve (*Hassan v. Lubbock Indep. Sch. Dist.*, 1995). As with searches, seizures of students by school officials must be reasonably related to their purpose, and must be “excessively intrusive in light of the age and sex of the student and the nature of the infraction” (*State of Hawaii*, 2003). The detention of Jennyfer was justified by the need to maintain order, prevent disruption of other students’ educational experience, and impose discipline. The detention of Jennyfer in Principal Aguilar’s office was also reasonable in scope. She was detained only as long as was necessary to question her and keep her safe and out of class until school officials could confer with her and her mother. Jennyfer and Ms. Ramirez also asserted claims of negligence and negligent and intentional infliction of emotional distress under state law. These claims also failed; there was no evidence that the defendants’ conduct fell below a standard of ordinary care or constituted extreme or outrageous behavior. Far from negligent, the school officials’ search and detention of Jennyfer were perfectly in line with what competent school officials would do upon receiving reports that a 12-year-old student was in possession of illegal drugs.

Disposition: The defendants’ motion for summary judgment was granted.

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Citation: *Gorthy v. Clovis Unified School District*, 2006 WL 236939 (E.D. Cal. 2006).

Key Facts: The plaintiff, Jacob Gorthy, attended Clovis West High School where he played for the high school football team. Clovis West is part of Clovis Unified School District. On August 16, 2004, Jacob was 14 years old. Jacob reported to football practice at approximately 4:30 p.m. The temperature at the time was in excess of 95 degrees. Unbeknownst to Jacob, the starting time for practice had been changed from 5:00pm to 4:00pm.

Consequently, he was late for practice. When he arrived, he was instructed to perform “bear crawls.” This required that he drop to his hands and crawl, using his toes and hands for balance. The defendants instructed Jacob to perform the drill on a stretch of asphalt, which had reached an extreme temperature. The plaintiff attempted to explain his reasons for being late. The defendant, Assistant Football Coach Rodney Michaels, ordered Jacob to continue the bear crawls. The plaintiffs alleged that the defendants each forced Jacob to continue the drill. As he continued the drill, Jacob’s palms and fingertips burned and he suffered blisters. Ultimately, Jacob was instructed to cease the bear crawls. Afterward, the defendant Trina Smith, the athletic trainer, placed gauze and athletic tape over both hands. The coaching staff forced Jacob to complete practice. Following practice, Ms. Gorthy arrived to pick up her son. She immediately took him to the emergency room. The plaintiff was diagnosed with second- and third-degree burns as a result of the bear crawls.

Issue: At issue was whether the football coaches violated a student’s constitutional rights by forcing him to do “bear crawls” as punishment for being late to practice. (There are 3 other issues not briefed because of irrelevance to the study).

Holding: The District Court held that the defendants’ motion to dismiss the plaintiffs’ claims for relief under the Fourth Amendment was denied; the defendants’ motion to dismiss the plaintiffs’ Fourteenth Amendment claims was denied; and that the limitation of the Eighth Amendment’s scope to criminal punishments was inflexible.

Reasoning: The defendants urged the Court to dismiss the plaintiffs’ first claim for relief to the extent it seeks to recover for Fourth Amendment violations because none of the allegations in the FAC established that the plaintiffs faced unreasonable search and seizure or excessive force at the hands of any state official. The Fourth Amendment applied in the school

environment. Specifically, the Fourth Amendment governs a teacher's seizure of a student. A school official's action that restrains a student's liberty is a seizure if a reasonable person in that situation would not feel free to leave. Viewing the allegations of the FAC in a light most favorable to the plaintiffs, the defendants' actions amounted to a seizure of Jacob Gorthy. The defendants allegedly "harshly ordered Jacob to perform the bear crawls." The defendants also "forced Jacob to continue with the drill" despite his protests to be free from unreasonable seizure. The plaintiffs' allegations established that a reasonable person in Jacob's position might not feel free to leave the asphalt until he was "instructed to cease the bear crawls." The plaintiffs successfully alleged that the defendants' actions gave Jacob the impression that he had no choice but to remain on the asphalt and to continue the "bear crawl" drill. Accordingly, the defendants' motion to dismiss the plaintiffs' claims for relief under the Fourth Amendment was denied. The defendants claimed that the plaintiffs cannot state a claim for a violation of the Fourteenth Amendment because the FAC does not allege that the defendants discriminated against Jacob Gorthy based on his membership in a protected class. It appeared that the defendants presumed that the plaintiffs sought to recover under only the Equal Protection Amendment. It did not appear that the plaintiffs attempted to allege an Equal Protection clause violation, at all. Rather, the plaintiffs' claim appeared to derive from the Due Process Clause of the Fourteenth Amendment, which "prohibits any state deprivation of life, liberty, or property without due process of law." This provision gives individuals the right to be free from "state-imposed violations of bodily integrity." Excessive physical abuse by school employees violates this right. The plaintiffs alleged that the wrongful acts of the defendants inflicted "severe and serious injury to his person." Consequently, he succeeded in alleging the defendants harmed his "liberty interest in avoiding corporal punishment." The defendants did not contend that the plaintiffs

failed to state a claim for violation of Jacob’s rights under the Due Process Clause. Accordingly, the defendants’ motion to dismiss the plaintiffs’ Fourteenth Amendment claims was denied. The defendants claimed that the plaintiffs’ Second Cause of Action failed because the Eighth Amendment’s protections against cruel and unusual punishment apply only to prisoners, not citizens in general. The Supreme Court has held that the Eighth Amendment is inapplicable to corporal punishment that public school teachers or administrators impose. The Court held that though “evolving standards of decency” determine whether punishments are “cruel and unusual,” the limitation of the Eighth Amendment’s scope to criminal punishments is inflexible. Jacob Gorthy was not a convicted criminal when the defendants allegedly cruelly and unusually punished him. The Eighth Amendment does not proscribe the defendants’ alleged conduct. The plaintiffs did not come forward with any other basis supporting their Second Cause of Action. The Court found that the absence of a legal basis for this theory makes any attempts to amend this claim futile. Accordingly, the plaintiffs’ Second Cause of Action was dismissed with prejudice.

Disposition: The District Court granted in part and denied in part the defendants’ motion to dismiss.

Citation: *Autism Society of Michigan v. Fuller*, 2006 WL 1519966 (W.D. Mich. 2006).

Key Facts: M.R.L., a 15-year-old boy with autism, was enrolled as a student of the Kalamazoo Regional Education Service Agency with placement in the autism intervention room located at Parchment High School (PHS). On August 25, 2003, M.R.L., while attending a general education choir class at PHS, “engaged in activities described as having a seizure.” The plaintiffs alleged that, in response to M.R.L.’s seizure, school employees began to physically restrain him. School employees placed M.R.L. on his stomach in the prone position, held his

shoulders and legs down, held his hands behind his back, and at least one employee placed his knees in M.R.L.'s lower back. After being restrained for approximately 45 minutes, a school employee noticed that M.R.L. had become non-responsive. Nonetheless, M.R.L. was not released until approximately 15 minutes later when Phyllis Wall, an emergency contact for M.R.L., arrived and found that M.R.L. was not breathing. Ten minutes later, emergency personnel arrived at the school and transported M.R.L. to the hospital. Less than 1 hour later, M.R.L. was pronounced dead. The coroner determined the cause of M.R.L.'s death to be "prolonged physical restraint in the prone position associated with extreme mental and motor agitation." Plaintiff ASM is a non-profit organization, incorporated under the laws of Michigan, which "serves a membership of 1,075 to assure full participation and self-determination for individuals with autism spectrum disorder." ASM asserted that it represents members whose children could attend PHS. ASM asserted that Bruce Mills, who resided in Kalamazoo and had a son with autism, "is concerned that without a clearly stated policy and training plan regarding the use of restraints in schools, individuals with autism remain at risk in public schools." Another member of ASM, Ann Yurcek, who also resided in Kalamazoo, had a 15-year-old daughter "who has been diagnosed with various medical conditions that render her entitled to special education services." Yurcek's daughter has been restrained in school. Yurcek has not agreed to her placement in an autism intervention room because, for high school students in the Kalamazoo School District, the autism intervention room is located at PHS. Yurcek did not feel comfortable placing her daughter at PHS because she believed that the school district does not provide adequate training for its staff and does not have an adequate policy regarding the use of restraints.

Issue: At issue was whether school officials deprived students of their liberty interests in the past or will in the future by permitting students to be personally restrained.

Holding: The District Court held that the plaintiffs' allegations failed to establish that they have standing either as representatives of their members or constituents or, with respect to ASM.

Reasoning: An organization or association may establish standing to bring an action in federal court in either one of two ways. First, an organization may allege standing as a representative of its members. An organization may also assert standing "on its own behalf because it has suffered a palpable injury as a result of the defendant's actions." ASM first asserted that it had standing to maintain this claim as representative of its members, Bruce Mills and Ann Yurcek, whom, it claimed, would have standing in their own right to bring this action against the defendants. The plaintiffs argued that these members face a real and immediate threat of injury by the possibility that their children could be personally restrained at Parchment if they were to attend Parchment. In this case, even assuming, as the plaintiffs alleged, that the possibility that a student might be restrained at Parchment alleges a "real and immediate" threat of injury, ASM has failed to allege that any of its members either attend or have any concrete plans to attend Parchment. More significantly, however, ASM's claim that it has representational standing to bring this claim failed; for, even if it had identified a member's child who attended Parchment, the possibility that the student may be restrained there does not demonstrate a real and immediate threat of injury sufficient to establish standing. ASM has not alleged and could not allege that in every encounter between a student and an employee at PHS, the student is unlawfully restrained.

Disposition: The Court granted the defendants' motion to dismiss the plaintiffs' complaint for lack of standing.

Citation: *Alexander v. Bostic*, 458 F.3d 1295 (11th Cir. 2006).

Key Facts: Coach Lattuce Greer Williams believed that Laquarius Gray, a 9-year-old student in his physical education class, was not doing "jumping jacks" along with the rest of the class. Coach Williams told Gray she needed to do her exercises. When Gray failed to comply, Coach Williams told Gray to "come to the wall" of the gym. Gray told him she would "punch him" or "hit him in the face." A nearby teacher, Coach Tara Horton, witnessed the disagreement. After hearing Gray's threat to Coach Williams, Coach Horton instructed Gray to come over to her. Coach Williams then turned his attention back to his class. Deputy Antonio Bostic also witnessed the exchange between Gray and Coach Williams. Deputy Bostic was employed as a Tuscaloosa County Sheriff's Deputy and served as a school resource officer (SRO) for several schools, including Holt Elementary. Before Gray reached Coach Horton, Deputy Bostic intervened and told Coach Horton that he would talk to Gray. Coach Horton insisted that she would handle the matter. However, Deputy Bostic insisted that he would handle Gray and escorted Gray out the gym door into a lobby area. Deputy Bostic told Gray to turn around, pulled her hands behind her back, and put Gray in handcuffs. Deputy Bostic tightened the handcuffs to the point that they caused Gray pain. Gray stood with the handcuffs on for not less than 5 minutes, with Deputy Bostic standing behind her. After Deputy Bostic took the handcuffs off, Gray went to the Coaches' Office until her next class. Neither Coach Horton nor Coach Williams was afraid of Gray or believed that Gray would actually carry out her threat. Coach Horton testified that she would not have been required to write Gray up, give Gray detention, or send her to the principal's office "because it wasn't that major." Gray filed suit

against Deputy Bostic and Tuscaloosa County Sheriff, Edmund Sexton, in their official and individual capacities. This is the second appeal involving the detention and handcuffing of Gray. The first time, this court reversed the district court's dismissal of the § 1983 action. Following discovery, the defendants moved for summary judgment based on qualified immunity. The district court denied the motion, prompting this interlocutory appeal.

Issue: At issue was whether a school resource officer violated a student's Fourth Amendment rights when he detained and handcuffed her during a physical education class.

Holding: The Court of Appeals held that (1) the deputy sheriff, acting as SRO, was acting within scope of his discretionary authority when he detained and handcuffed the student; (2) the deputy acted reasonably in stopping the student to question her about her allegedly threatening conduct toward a teacher; (3) the deputy's handcuffing of the student violated her Fourth Amendment rights; (4) the right violated by the deputy was clearly established, so he was not entitled to qualified immunity; and (5) the sheriff could not be held personally liable for the deputy's violation of the student's Fourth Amendment rights.

Reasoning: To be entitled to qualified immunity, the defendant must prove that he was acting within the scope of his discretionary authority. The Supreme Court has established a two-part test to evaluate whether an official is entitled to qualified immunity. First, as a threshold inquiry, the court addresses whether the facts presented, taken in a light most favorable to the non-moving party, establish a constitutional violation. If the answer is affirmative, then the court should "ask whether the right was clearly established" (*Saucier v. Katz*, 2001). Deputy Bostic, as a SRO, was charged with the responsibility to investigate criminal activity that might be taking place at Holt Elementary School. As part of that responsibility, Deputy Bostic's duties included, under the right circumstances, detaining and questioning students and possibly

arresting and handcuffing them. The fact that the right circumstances may not have been presented in this case is irrelevant to the court's inquiry. It is clear from Deputy Bostic's interrogatory responses that he believed Gray had committed a misdemeanor when she threatened her teacher and that Deputy Bostic detained her to discuss the incident with her. Therefore, the court concluded that Deputy Bostic's actions were within his discretionary duties and turned to whether his actions were unconstitutional. The court applies the reasonableness standard articulated in *New Jersey v. T.L.O.*, (1985), to school seizures by law enforcement officers. Under *T.L.O.*'s first prong, the court examined whether Deputy Bostic had a reasonable basis for calling Gray over to him and asking her questions. It is undisputed that Deputy Bostic witnessed Gray threaten to do something physically to her teacher. Given his having witnessed Gray's threat in a school setting, Deputy Bostic's stopping Gray to question her about her conduct was reasonable. Turning to *T.L.O.*'s second prong, the court must consider whether Deputy Bostic's subsequent handcuffing of Gray "was reasonably related to the scope of the circumstances which justified the interference in the first place." The question under the second prong was whether the handcuffing of 9-year-old Gray was reasonably related to the scope of the circumstances that justified Deputy Bostic's initial interference and was not excessively intrusive. The problem in this case for Deputy Bostic is that, at the time Deputy Bostic handcuffed Gray, there was no indication of a potential threat to anyone's safety. Thus, Deputy Bostic's handcuffing Gray was not reasonably related to the scope of the circumstances that justified the initial investigatory stop. Rather, the handcuffing was excessively intrusive given Gray's young age and the fact that it was not done to protect anyone's safety. Therefore, the handcuffing of Gray violated Gray's Fourth Amendment rights. The court concluded that Deputy Bostic's conduct in handcuffing Gray, a compliant, 9-year-old girl for the sole purpose of

punishing her was an obvious violation of Gray's Fourth Amendment rights. Every reasonable officer would have known that handcuffing a compliant 9-year-old child for purely punitive purposes is unreasonable. Therefore, Deputy Bostic was not entitled to qualified immunity and the district court properly denied summary judgment in his favor. Gray alleged that Sheriff Sexton failed to train and supervise adequately Deputy Bostic on the proper use of force in this elementary school setting. The district court dismissed Gray's official capacity claim against Sheriff Sexton without challenge. Thus, all that remained was her individual capacity claim against Sheriff Sexton as Deputy Bostic's supervisor. Deputy Bostic received training at both the police academy and the Tuscaloosa County Sheriff's Department on the proper use of force and the principles of probable cause. The failure to provide specific training regarding the detention of students, in addition to general training regarding use of force during detention and arrest, was not "so likely" to result in the violation of the student's Fourth Amendment rights that Sheriff Sexton reasonably can be said to have been deliberately indifferent to the need for this particularized training without any prior notice. Accordingly, Sheriff Sexton was entitled to summary judgment in his individual capacity. The defendants also argued that the district court erred in failing to grant summary judgment on Gray's claim for injunctive relief against Sheriff Sexton. Specifically, Gray's injunctive relief claim sought a declaration that Sheriff Sexton's custom or policy of failing to train deputies on the detention of students was unconstitutional and sought to enjoin Sheriff Sexton from continuing to implement that custom or policy. However, there was no evidence of an unconstitutional policy or custom implemented by Sheriff Sexton. Therefore, Gray's claim for injunctive relief against Sheriff Sexton also necessarily failed. Accordingly, Sheriff Sexton was entitled to summary judgment on Gray's claim for injunctive relief.

Disposition: The Court of Appeals affirmed the district court's denial of summary judgment on Gray's illegal seizure claim against Deputy Bostic in his individual capacity, reversed the district court's denial of summary judgment on Gray's claims against Sheriff Sexton and on her separate excessive force claim against Deputy Bostic, and remanded for further proceedings consistent with this opinion.

2007

Citation: *Mislin v. City of Tonawanda*, 2007 WL 952048 (W.D. N.Y. 2007).

Key Facts: Theodore Mislin, Jr., a Caucasian male, was a senior at Tonawanda High School (THS) during the 2000-2001 school year. Green was the Superintendent of the School District. Patrick J. Slavin was the Principal and Larry Badgley was the Vice-Principal. Racial tension at THS began to rise during a pep rally held before the Tonawanda-North Tonawanda football game in October of 2000. Mislin was a "star athlete" and starter on the football team. It is tradition at THS for the football players who are seniors to give the varsity cheerleaders a rose during the pep rally. The football players also traditionally pick one cheerleader to tease, usually one of the captains of the squad. At the pep rally in October 2000, however, the football players allegedly yelled "don't give the nigger a rose," referring to the only African American cheerleader. In November 2000, another racially charged incident occurred at a home game for Tonawanda against Lackawanna. During the game, THS players directed racial slurs at the visiting team. After the football game, THS issued "deportments" (written reprimands) to Mislin and several other football players based on their behavior during the game. No suspensions or other discipline was imposed. Also in November, Francesca Boykins, an African American student in her senior year, complained to Slavin and Badgley that Mislin racially harassed her.

Mislin was issued a department instructing him not to make racial comments in school. Boykins continued to feel harassed and perceived that Badgley and Slavin were too lenient with Mislin; she sent a formal complaint to the Board. Upon receiving Boykins' complaint, Greene, on behalf of the Board, hired Freedman to conduct an investigation. Freedman is an attorney employed by Norton, Radin and Freedman, a law firm that represents a number of school districts in the Western New York area. On December 6, 2000, Freedman went to THS and interviewed Boykins. On December 15, 2000, Freedman returned to THS and interviewed several of Boykins' friends. He did eventually interview Mislin for 20 minutes on January 16, 2001, and also interviewed others. During the interview, Mislin never asked to leave the room, did not ask to call his parents, and did not become emotionally upset or cry. Later, Slavin issued Mislin a 2-day out-of-school suspension for insubordination because he violated Freedman's directive to refrain from discussing the investigation. The plaintiffs and Mislin repeatedly requested that the School District remove the written department from Mislin's student record, but the School District refused. The plaintiffs wanted the department removed so that Mislin could join the United States Marines after graduation. The plaintiffs appealed the School District's refusal to remove the written department and requested an Education Law Hearing. A hearing was scheduled for June 18, 2001, but it never took place. On June 12, 2001, 6 days before the scheduled hearing, Mislin took his own life. He shot himself at home. Mislin did not attend any classes on the day of his death, nor was he ever on school grounds. Mislin's suicide note stated, "I'm sorry for all the shit I've put you through."

Issue: At issue was whether the superintendent and an attorney, hired on behalf of the Board, violated a student's Fourth or Fourteenth Amendment rights.

Holding: The District Court held that Mislin’s Fourth Amendment right to be free from unreasonable seizure was not violated; that the plaintiffs’ “class of one” equal protection claim failed for lack of a “similarly situated” comparator; and that Greene and/or Freedman were both protected by qualified immunity.

Reasoning: There is no dispute that the § 1983 claims against Greene and Freedman are grounded in the Fourth and Fourteenth Amendments. However, Greene maintained that she was entitled to summary judgment because she was not personally involved in the alleged constitutional deprivations. In addition, Freedman argued that he was entitled to summary judgment because, as an independent attorney retained to conduct the investigation, he was not a state actor for § 1983 purposes. Further, both Greene and Freedman argued that summary judgment in their favor was warranted because no constitutional violations occurred. Finally, Greene and Freedman argued that even assuming the existence of a constitutional violation, they were shielded from liability by the doctrine of qualified immunity. Greene and Freedman’s assertion of the qualified immunity defense triggered a two-step analysis. The Court must first determine whether a constitutional right had been violated, and then determine whether that right was “clearly established” at the time of the alleged violation. The Fourth Amendment to the United States Constitution is applicable to the States through the Fourteenth Amendment. It protects “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” Without question, the Fourth Amendment protection extends to students attending public schools. The nature and scope of the students’ constitutional rights, however, are concomitant with their status as children in school. In *T.L.O.* (1985), the United States Supreme Court determined that the Fourth Amendment applies to searches of students and their belongings, and directed that the reasonableness of such searches be assessed

with consideration of the context in which the search takes place. *T.L.O.*, however, does not address whether the Fourth Amendment applies to the seizure of a student by school officials. The parties recognize that the Second Circuit has likewise not squarely addressed this issue, but they urge this Court to apply the two-part *T.L.O.* test in this case. In light of the persuasive authority from other courts of appeals and the application of the *T.L.O.* standard by district courts of this circuit, this Court evaluated the reasonableness of the seizure in this case using the *T.L.O.* framework. A student is considered “seized” within the meaning of the Fourth Amendment if a reasonable person under like circumstances would not feel free to leave. Here, it is not contested that Mislin was seized for the purposes of the Fourth Amendment when, on January 16, 2001, he was removed from his class during the school day and required to sit for a 20-minute, closed-door, recorded interview with Freedman. The question is whether this seizure was reasonable “under the circumstances then existing and apparent” (*Wallace*, 1995). The test from *T.L.O.* first required examination of whether the seizure was “justified at its inception,” and second, whether it was “reasonably related in scope to the circumstances which justified the interference in the first place.” In this context, the seizure of a student by school officials for purposes of conducting an interview is “justified at its inception” if there are reasonable grounds for suspecting that it will assist the officials in gathering evidence or information concerning whether there has been a violation of the law or school rules. The scope of a seizure is permissible if it is reasonably related to the circumstances that justified the seizure of the student in the first place. This assessment must be based on only those facts known to school officials prior to the seizure. The plaintiffs were unable to establish that the Fourth Amendment requires the existence of exigent circumstances before a school official is authorized to question a student during the course of an internal investigation without his or her parents present. The plaintiffs’

argument that Freedman's closing of the door and recording of Mislin's interview makes the seizure unreasonable under the Fourth Amendment was unpersuasive. Almost every interview Freedman conducted during the course of the investigation was conducted in the very same manner as Mislin's. There was no evidence or suggestion in the record that the door was closed for any reason other than to keep the meeting private and confidential. Moreover, each student was aware that the interview was being recorded and the recording device was plainly visible on the table. The plaintiffs argued that Freedman's investigation was not reasonably related in scope because he impermissibly expanded the investigation to include incidents of anti-homosexual and anti-Semitic animus. This argument, however, was flatly contradicted by Boykin's complaint, which included allegations that Mislin and others shouted that "all the fags should be put in a camp and killed like the Jews," while standing at their lockers. Thus, from its inception, the subject matter of the complaint included incidents of anti-homosexual and anti-Semitic harassment. Moreover, Freedman's interview questions focused on the allegations in Boykins's complaint and the teachers' responses thereto without any impermissible straying. During the interview, Freedman did not raise his voice, did not discuss any possible criminal liability, and did not have any physical contact with Mislin. Mislin never asked to leave the room, did not ask to call his parents, and did not become emotionally upset or cry. Further, at no time did any school official have any physical interaction with Mislin or use physical force either to effectuate his seizure or during the interview. On these facts, the Court found without pause that the seizure in this case was justified at its inception and reasonably related to the substance of the investigation. Consequently, this court concluded that Greene and Freedman did not violate Mislin's Fourth Amendment right to be free from unreasonable seizure. Their motions for summary judgment on this claim were therefore granted. The Equal Protection Clause on the

Fourteenth Amendment commands that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” It is “essentially a direction that all persons similarly situated be treated alike.” To succeed on a “class of one” equal protection claim, the plaintiff must prove that (1) he has been intentionally treated differently from others who are similarly situated to him, and (2) that there is no rational basis for the difference in treatment. While the “similarly situated” question is ordinarily a factual issue to be reserved for the jury, a court can properly grant summary judgment where it is clear that no reasonable jury could find the similarly situated prong met. Based on the evidence of record, no reasonable jury could find that the plaintiffs identified a “similarly situated” individual who was treated differently than Mislin. Having drawn all inferences and resolved all ambiguities in the plaintiffs’ favor as required, this Court found that the plaintiffs’ “class of one” equal protection claim must fail for lack of a “similarly situated” comparator. Based on the record, no rational jury could conclude that there was a student “similarly situated” to Mislin who was treated differently. Consequently, the defendants’ motions for summary judgment on this claim were granted. Even if it was determined that Greene and/or Freedman violated Mislin’s constitutional rights, this Court found that both were protected by qualified immunity. This Court declined to exercise supplemental jurisdiction over the plaintiff’s state law claims and instead dismissed them without prejudice.

Disposition: The defendants’ motions for summary judgment were granted as to the federal claims. Further, this Court declined to exercise supplemental jurisdiction over the plaintiff’s remaining state law causes of action.

Citation: *John G. and Gloria G. v. Northeastern Educational Intermediate Unit 19*, 490 F.Supp.2d 565 (M.D. Penn. 2007).

Key Facts: Defendant Susan Comerford Wzorek was employed by the defendant Northeastern Educational Intermediate Unit 19 (NEIU) as an autistic support teacher. NEIU is part of the public school system of the Commonwealth of Pennsylvania and provides statutorily-mandated educational services to school districts in Lackawanna County who cannot provide these specialized services themselves. Minor-plaintiff, JMG, had been diagnosed as having autism, which is a complex developmental disability that impacts development in the areas of social interaction and communication skills. While JMG was under her supervision and care, Wzorek used aversive techniques to redirect his behavior. These techniques included, but were not limited to (a) squeezing JMG's ears, (b) stepping on the insteps of JMG's feet, (c) violently grabbing JMG's neck, (d) forcing JMG to the floor, (e) hitting JMG's legs and head with a tissue box, (f) pulling JMG's hair, and (g) verbally abusing JMG. Additionally, defendant Wzorek employed the use of restraints on her autistic students, the proper use of which is specifically reserved for instances where there is a clear and present immediate threat of danger or injury to self or to others. Shortly after the 2002-2003 school year began, the plaintiffs noted changes in their minor child JMG's behavior, specifically a trend of developmental regression.

Issue: At issue was whether an autistic support teacher and school officials violated a student's civil rights by using aversive techniques. (There are 3 other issues not briefed because of irrelevance to the study.)

Holding: The District Court held that denial of a free appropriate public education (FAPE) does not give rise to a substantive due process violation; the complaint stated equal protection claim; the teacher's alleged acts of corporal punishment against autistic student could reasonably be considered extreme and outrageous and having been performed intentionally so as to give rise to claim of intentional infliction of emotional distress; the complaint adequately

alleged that supervisory school officials committed acts of willful misconduct, thus forfeiting their official immunity.

Reasoning: The plaintiffs alleged that the defendants violated the minor-plaintiff JMG's rights under the Fourteenth Amendment's Due Process and Equal Protection Clauses. The procedural component of the Due Process Clause provides that certain substantive rights--life, liberty, and property--cannot be deprived except pursuant to constitutionally adequate procedures. The plaintiffs have not alleged any procedural inadequacies with respect to the provision of a FAPE to the minor-plaintiff. Accordingly, the Court granted the defendants' motions to dismiss the plaintiff's complaint to the extent it alleged a violation of procedural due process. The plaintiffs' substantive due process claims appeared to arise from (1) the defendants' failure to provide JMG with a FAPE and (2) the defendants' failure to protect JMG from bodily harm. The denial of FAPE does not give rise to a substantive due process violation because the substantive component of the Due Process Clause does not protect educational interests. Accordingly, the defendants' motions to dismiss the plaintiffs' substantive due process claim based on JMG's educational interests were granted for the plaintiffs' failure to identify a property interest that was protected by the Due Process Clause. The plaintiffs also claimed that the defendants' conduct toward the minor-plaintiff violated his substantive due process right to bodily integrity. Only state conduct that is "arbitrary, or conscience shocking, in a constitutional sense" rises to this level (*County of Sacramento v. Lewis*, 1998). The pertinent inquiry was "whether the force applied caused injuries so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience" (*Jones v. Witinski*, 1996). The defendants moved the Court to

dismiss the plaintiffs' substantive due process claim on the ground that defendant Wzorek's actions, even when viewed in the light most favorable to the plaintiffs, were not sufficiently severe as to "shock the conscience." While a single slap to the face (*Lillard v. Shelby County Bd. of Educ.*, 1996), or punch to the chest of a student (*Kurilla v. Callahan*, 1999) is conduct insufficient to "shock the conscience," the alleged repeated administration of injuries to JMG's person, as described in the complaint, are sufficiently shocking to the conscience, at this juncture, to survive the motions to dismiss the substantive due process claim. Accordingly, the defendants' motions to dismiss the plaintiffs' complaint to the extent it alleged a violation of substantive due process for a failure to protect JMG's bodily integrity were denied. The Equal Protection Clause requires that the law treat similarly situated people alike. The plaintiffs asserted that an equal protection violation resulted from the defendants' discrimination against JMG based on his handicap, which denied him an equal educational experience. The plaintiffs' equal protection claim was based on the same allegations of disability discrimination used to support their due process claim. Accordingly, the defendants' motions to dismiss the plaintiffs' complaint to the extent it alleged a violation of the Equal Protection Clause was denied. The plaintiffs sought to hold the School District, NEIU, and its employees liable under § 1983 for their actions, or inactions, with respect to the minor-plaintiff. To prevail on the § 1983 claim at trial, the plaintiffs needed to demonstrate that a School District or NEIU employee(s) violated JMG's federally protected rights while implementing an official policy, custom, or practice of the school district. At this stage, the allegations as set forth in the plaintiffs' complaint are sufficient to survive a motion to dismiss. Therefore, the Court denied the defendants' motions to dismiss the § 1983 claim. "To prove a claim of intentional infliction of emotional distress, the following elements must be established: (1) the conduct must be extreme and outrageous, (2) it

must be intentional or reckless, (3) it must cause emotional distress, and (4) that distress must be severe” (*Hoy v Angelone*, 1997). Defendant Wzorek’s alleged acts of corporal punishment against the minor-plaintiff JMG could reasonably be considered extreme and outrageous and having been performed intentionally. Further, the plaintiffs averred that the minor-plaintiff suffered severe emotional distress, including but not limited to post-traumatic stress disorder, fear, and developmental delays as a result of Defendant Wzorek’s alleged acts. Accordingly, dismissal of this Count was inappropriate at this stage. The plaintiffs argued that the supervisor defendants forfeited their official immunity by committing acts of willful misconduct. “Willful misconduct” is more than mere negligence or even gross negligence. The plaintiffs’ complaint has adequately set forth facts from which it may reasonably be inferred that the supervisor defendants committed acts of willful misconduct, thus forfeiting their official immunity. The plaintiffs have alleged that the supervisor defendants knew, and failed to act upon the knowledge, that Defendant Wzorek had committed abusive acts towards the minor-plaintiff and other autistic students, and that this conduct was likely to occur again. Thus, they are not entitled to official immunity under the PSTCA. Additionally, the supervisor defendants argued that they enjoy qualified immunity. With regard to the federal claims, public officials generally enjoy qualified immunity for their actions unless those actions violate clearly established constitutional rights of which a reasonable person would know. The defendants bear the burden of establishing that they enjoy qualified immunity. The supervisor defendants have not carried that burden. Any reasonable person would have known that acting in the alleged manner would violate the minor-plaintiff’s well-established rights to bodily integrity and equal protection of the laws. Accordingly, the supervisor defendants did not enjoy qualified immunity against the plaintiffs’ state law tort claims that were raised against them.

Disposition: The Court granted in part and denied in part the defendants' motions to dismiss.

Citation: *Joseph M. and Judith M. v. Northeastern Educational Intermediate Unit 19*, 516 F.Supp.2d 424 (M.D. Penn. 2007).

Key Facts: Defendant Susan Comerford Wzorek was employed by Defendant Northeastern Educational Intermediate Unit 19 (NEIU) as an autistic support teacher. NEIU is part of the public school system of the Commonwealth of Pennsylvania and provides statutorily-mandated educational services to school districts in Lackawanna County who cannot provide these specialized services themselves. Minor-plaintiff, BM, has been diagnosed as having autism, which is a complex developmental disability that impacts development in the areas of social interaction and communication skills. While BM was under her supervision and care, Wzorek used aversive techniques to redirect his behavior. These techniques included, but were not limited to (a) strapping BM to a Rifton Chair with silver duct tape around his legs, rendering him unable to move; (b) punishing BM by depriving him of his "Picture Exchange System," which served as BM's main means of communicating his basic needs and necessities, including, but not limited to bathroom use and hunger; (c) backhanding BM in the face, causing blood to gush from his nose and lips; (d) pinching BM, leaving finger-mark bruising on his arms; (e) hitting BM, leaving cuts on his face, legs, back, and pelvis; and (f) stepping on BM's insteps, causing bruising to the tops of his feet. Additionally, Defendant Wzorek employed the use of restraints on her autistic students, the proper use of which is specifically reserved for instances where there is a clear and present immediate threat of danger of injury to self or to others. Shortly after the 2001-2002 school year began, the plaintiffs noticed pronounced changes in their

son's behavior, and, specifically, that a trend of regression as to his development was taking place.

Issue: At issue was whether an autistic support teacher and school officials violated a student's civil rights by using aversive techniques. (There are 2 other issues not briefed because of irrelevance to the study.)

Holding: The District Court held that alleged repeated administration of injuries to the autistic student's person, as described in the complaint against the teacher, were sufficiently shocking to the conscience to state a substantive due process claim; an assault claim was stated against the teacher; the school district and intermediate unit that provided special education services were immune from state law tort claims and punitive damages; and the school administrators' alleged failure to take appropriate action after being put on notice of teacher's alleged abuse of students amounted to "willful misconduct" for which they are not entitled to official immunity.

Reasoning: The plaintiffs alleged that the defendants violated the minor-plaintiff BM's rights under the Fourteenth Amendment's Due Process and Equal Protection Clauses. The procedural component of the Due Process Clause provided that certain substantive rights--life, liberty, and property--cannot be deprived except pursuant to constitutionally adequate procedures. The plaintiffs in this action did not allege any procedural inadequacies with respect to the provision of a FAPE to the minor-plaintiff. Accordingly, the Court granted the defendants' motions to dismiss the plaintiffs' complaint to the extent it alleged a violation of procedural due process. The plaintiffs' substantive due process claims appeared to rise from (1) the defendants' failure to provide BM with a FAPE and (2) the defendants' failure to protect BM from bodily harm. The denial of FAPE does not give rise to a substantive due process violation

because the substantive component of the Due Process Clause does not protect educational interests. The plaintiffs also claimed that the defendants' conduct toward BM violated his substantive due process right to bodily integrity. Only state conduct that is "arbitrary, or conscience shocking, in a constitutional sense" rises to this level. The pertinent inquiry was "whether the force applied caused injuries so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience" (*Jones v. Witinski*, 1996). The defendants moved the Court to dismiss the plaintiffs' substantive due process claim on the ground that defendant Wzorek's actions, even when viewed in the light most favorable to the plaintiffs, were not sufficiently severe as to "shock the conscience." While a single slap to the face (*Lillard v. Shelby County Bd. Of Educ.*, 1996), or punch to the chest of a student (*Kurilla v. Callahan*, 1999) is conduct insufficient to "shock the conscience," the alleged repeated administration of injuries to BM's person, as described in the complaint, are sufficiently shocking to the conscience, at this juncture, to survive the motions to dismiss the substantive due process claim. Accordingly, the defendants' motions to dismiss the plaintiffs' complaint to the extent it alleged a violation of substantive due process for a failure to protect BM's bodily integrity were denied. The Equal Protection Clause requires that the law treat similarly situated people alike. The plaintiffs asserted that an equal protection violation resulted from the defendants' discrimination against BM based on his handicap, which denied him an equal educational experience. The plaintiffs' equal protection claim was based on the same allegations of disability discrimination used to support their due process claim. The plaintiffs have alleged that defendant Wzorek repeatedly discriminated against the minor-plaintiff and other autistic students in her class by inflicting

physical and emotional abuse upon them, but did not so to discriminate against her other special education students. Accordingly, the defendants' motions to dismiss the plaintiffs' complaint to the extent it alleged a violation of the Equal Protection Clause were denied. The plaintiffs sought to hold the School District, NEIU, and its employees liable under § 1983 for their actions, or inactions, with respect to the minor-plaintiff. To prevail on the § 1983 claim at trial, the plaintiffs needed to demonstrate that a School District or NEIU employee(s) violated BM's federally protected rights while implementing an official policy, custom, or practice of the School District. At this stage, the allegations as set forth in the plaintiffs' complaint were sufficient to survive a motion to dismiss. Therefore, the Court denied the defendants' motions to dismiss the § 1983 claim. In Pennsylvania, the common law torts of assault and battery are consolidated under the term "assault," and a person is guilty of assault if he either "attempts to cause or intentionally, knowingly, or recklessly causes bodily injury to another" or "attempts by physical menace to put another in fear of imminent serious bodily injury." Certainly, defendant Wzorek's alleged acts of corporal punishment against the minor-plaintiff constituted acts that, when viewed in the light most favorable to the plaintiffs, make dismissal of this Count inappropriate. The plaintiffs argued that the supervisor defendants forfeited their official immunity by committing acts of willful misconduct. "Willful misconduct" is more than mere negligence or even gross negligence. The plaintiffs' complaint adequately set forth facts from which it may reasonably be inferred that the supervisor defendants committed acts of willful misconduct, thus forfeiting their official immunity. The plaintiffs alleged that the supervisor defendants knew, and failed to act upon the knowledge, that Defendant Wzorek had committed abusive acts towards the minor-plaintiff and other autistic students, and that this conduct was likely to occur again. At this stage of the proceedings, the supervisory defendants' failure to take

appropriate action after being put on notice of Defendant Wzorek's alleged abuse of students amounted to "willful misconduct" for which they are not entitled to official immunity under the PSTCA. Additionally, the supervisor defendants argued that they enjoy qualified immunity. With regard to the federal claims, public officials generally enjoy qualified immunity for their actions unless those actions violate clearly established constitutional rights of which a reasonable person would know. Defendants bear the burden of establishing that they enjoy qualified immunity. The supervisor defendants have not carried that burden. Any reasonable person would have known that acting in the alleged manner would violate the minor-plaintiff's well-established rights to bodily integrity and equal protection of the laws.

Disposition: The Court granted in part and denied in part the defendants' motions to dismiss.

Citation: *Vicky M. and Darin M. v. Northeastern Educational Intermediate Unit 19*, 486 F.Supp.2d 437 (M.D. Penn. 2007).

Key Facts: Defendant Susan Comerford Wzorek was employed by Defendant Northeastern Educational Intermediate Unit 19 (NEIU) as an autistic support teacher. NEIU is part of the public school system of the Commonwealth of Pennsylvania and provides statutorily-mandated educational services to school districts in Lackawanna County who cannot provide these specialized services themselves. Minor-plaintiff, AJM, had been diagnosed as having autism, which impacts him in the areas of social interaction and communication skills. While AJM was under her supervision and care, Wzorek used aversive techniques to redirect his behavior. These techniques included, but were not limited to (a) striking AJM on the legs and arms, causing bruising; (b) screaming in AJM's face; (c) squeezing and crushing AJM's arms, causing bruising; and (d) stomping on AJM's insteps. Additionally, Wzorek employed the use of

restraints on her autistic students. Shortly after the 2002-2003 school year began, the plaintiffs noted changes in AJM's behavior, specifically a trend of developmental regression and he developed bruises and swelling and became increasingly afraid of Wzorek.

Issue: At issue was whether an autistic support teacher failed to protect a student's bodily integrity and whether the teacher's actions constitute assault and battery, intentional infliction of emotional distress, breach of fiduciary duty, and negligence. (There are 9 other issues not briefed because of irrelevance to the study.)

Holding: The District Court held that the complaint stated substantive due process claim to the extent it alleged violation for failure to protect student's bodily integrity and complaint stated claims against autistic support teacher under Pennsylvania law for common law torts of assault and battery, intentional infliction of emotional distress, and breach of fiduciary duty, but not for negligence.

Reasoning: The substantive component of the Due Process Clause "protects individual liberty against certain government actions regardless of the fairness of the procedures used to implement them." From *County of Sacramento v. Lewis* (1998), we learn that only state conduct that is "arbitrary, or conscience shocking, in a constitutional sense" rises to this level. The defendants moved the Court to dismiss the plaintiff's substantive due process claim on the ground that Defendant Wzorek's actions were not sufficiently severe as to "shock the conscience." While a single slap to the face (see *Lillard v. Shelby County Bd. Of Educ.*, 1996), or a punch to the chest of a student (see *Kurilla v. Callahan*, 1999) is conduct insufficient to "shock the conscience," the alleged repeated administration of injuries to AJM's person are sufficiently shocking to the conscience to survive the motions to dismiss the substantive due process claim. Defendant Wzorek's alleged acts of striking AJM on the legs and arms,

screaming in his face, squeezing and crushing his arms, and stomping on the minor-plaintiff's insteps constitute acts that meet Pennsylvania's definition of assault. The definition, from *Commonwealth v. Jackson* (2006), is as follows: "attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another." To prove a claim of intentional infliction of emotional distress, the following elements must be established: (1) the conduct must be extreme and outrageous, (2) it must be intentional or reckless, (3) it must cause emotional distress, and (4) that distress must be severe (see *Hoy v. Angelone*, 1997). Defendant Wzorek's alleged acts could reasonably be considered extreme and outrageous and having been performed intentionally. Further, the plaintiffs have averred that the minor-plaintiff suffered severe emotional distress, including but not limited to post-traumatic stress disorder, fear, and developmental delays as a result of the alleged acts. Thus, dismissal was inappropriate.

Concerning the breach of fiduciary duty, the basic duties that arise from the teacher-student relationship are a duty to supervise, a duty to exercise good judgment, and a duty to instruct as to correct procedures (see *Bottorf v. Waltz*, 1976). Also, a fiduciary relationship, according to *In re Estate of Clark* (1976), will be found to exist "when the circumstances make it certain the parties do not deal on equal terms, but, on the one side there is an overmastering influence, or on the other, weakness, dependence, or trust, justifiably reposed; in both an unfair advantage is possible." Certainly, defendant Wzorek, as the special education teacher in charge of the instruction of AJM was in an overmastering position in this relationship and was trusted and depended upon by AJM to exercise sound judgment in handling his care and instruction. Consequently, the motion to dismiss had to be denied. Finally, because the conduct defendant Wzorek was accused of was intentional, not negligent, the motion to dismiss the count related to negligence was granted.

Disposition: The Court granted in part and denied in part the defendants' motions to dismiss. The Court denied the defendant's motion to dismiss the Substantive Due Process claim as it related to the defendant's failure to protect the minor-plaintiff's bodily integrity. The Court also denied the defendant's motion to dismiss the plaintiffs' Tort Claims related to assault and battery, intentional infliction of emotional distress, and breach of fiduciary duty. The Court granted the defendant's motion related to negligence.

Citation: *DeFelice v. Warner*, 511 F.Supp.2d 241 (D. Conn. 2007).

Key Facts: At the time of the incident, the plaintiff was a 15-year-old freshman at the Sound School, a New Haven public high school, and the defendant was a school security aide employed by the New Haven Board of Education and assigned to the Sound School. After a report of rumors of the possible purchase of illegal drugs and allegations of a possible altercation, three female students joined the plaintiff and the defendant in the office for a meeting. The plaintiff claimed that the defendant told her she could go back to class at the end of the questioning. The security aide who accompanied the defendant kept his hand on the doorknob for the duration of the meeting, which lasted from 20-30 minutes. The plaintiff, who never asked if she could leave the room, claimed that the meeting concerned topics including rumors and the reputation of others; the plaintiff contended that the defendant consistently supported the views of the other students during the meeting. While the plaintiff was given permission to return to class at the end of the meeting, she had her mother take her home instead. The plaintiff claimed she was nervous and cried after the meeting and vomited. Soon after the incident, the plaintiff approached the head of security for the New Haven Board of Education, who apologized to the plaintiff for the defendant's behavior and characterized the defendant's conduct as unprofessional. The head of security also suggested that the plaintiff report the

incident to the New Haven Police Department. The plaintiff claimed she lost trust in the school officials and was emotionally unstable to return to the Sound School.

Issue: At issue was whether a school security aide violated a student's constitutional rights by detaining her for questioning.

Holding: The District Court held that the aide's alleged seizure of the student, if proven, did not violate the clearly established constitutional right of which a reasonable person would have known, and, thus, the security aide was qualified immune.

Reasoning: "A seizure triggering the Fourth Amendment's protections occurs only when government actors have by means of physical force or show of authority . . . in some way restrained the liberty of a citizen . . ." (*Graham v. Connor*, 1989). In this case, the plaintiff was seized as a result of the defendant's show of his authority as a security aide. The next question was whether the seizure was unreasonable. "The touchstone of the Fourth Amendment is reasonableness. Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances" (*Ohio v. Robinette*, 1996). Neither the Second Circuit nor the Supreme Court has defined the standard by which to measure the more limited intrusion that occurs when a school official detains a student (see *Bisignano v. Harrison Central School Dist.*, 2000). Although the Supreme Court has decided several cases involving searches of students, it has not addressed seizures of students. Regarding seizures of students, therefore, the court is only guided by the Supreme Court's general statements about the relationship between Fourth Amendment rights and the school setting. The Supreme Court has stated the "Fourth Amendment rights . . . are different in public schools than elsewhere and that the 'reasonableness' inquiry cannot disregard the school's custodial and tutelary responsibility for children" (*Vernonia School Dist. 47J v. Acton*, 1995). "In *New Jersey v. T.L.O.* (1985), the

Supreme Court reaffirmed that the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings” (*Bethel School Dist. No. 403 v. Fraser*, 1986). The Supreme Court also stated that *T.L.O.* emphasized that the nature of the “State’s power over schoolchildren . . . permits a degree of supervision and control that could not be exercised over free adults” (*Vernonia*, 1995, citing *T.L.O.*, 1985). The circuit courts that have dealt with seizures in the school setting have concluded that the reasonableness standard, set forth by the Supreme Court in *T.L.O.*, applies equally to seizures of a student’s person (see *Shuman v. Penn Manor School Dist.*, 2005). If the plaintiff’s version of the facts is adopted, a reasonable jury could find that the defendant unreasonably seized the plaintiff’s person and thus violated her Fourth Amendment rights. However, in view of the state of the law at the time of the incident, the court concluded that such conduct on the part of the defendant would not have violated a clearly established constitutional right of the plaintiff of which a reasonable person would have known. What is required is not fair warning to the defendant that his conduct was wrong or inappropriate, but fair warning that it was unconstitutional (see *Hope v. Pelzer*, 2002). Therefore, the defendant’s motion for summary judgment on the § 1983 claim on the basis of qualified immunity was granted.

Disposition: The defendant’s motion for summary judgment was granted.

2008

Citation: *Couture v. Board of Education of the Albuquerque Public Schools*, 535 F.3d 1243 (10th Cir. 2008).

Key Facts: Following a difficult start to public school, the Albuquerque Public School system determined that M.C. was “emotionally disturbed” and therefore eligible for special

educational services. To address these concerns and to “help M.C. receive an appropriate education,” a team formulated a “Behavior Intervention Plan” IEP targeted toward improving M.C.’s behavior, social skills, and academics. The teachers were to establish “clear rules with consistent implementation of consequences, home/school communication, supervised timeout, and therapeutic de-escalation techniques by trained personnel.” The teachers also agreed to report home to Ms. Couture daily. Ms. Couture signed that she “agreed with the recommendations of the IEP Team and gave permission for her child to receive the recommended services.” On October 28, 2002, M.C. was placed in Ms. Jacqueline Brady’s special education classroom. The classroom had no more than eight students in it at a time, but M.C. still received special, one-on-one attention from educational assistant Wendy Orr. Ms. Brady used timeouts to help M.C. calm down. When M.C.’s behavior became disruptive, Ms. Brady or Ms. Orr would ask him whether he needed a timeout at his desk, in the timeout chair, or in the timeout room. These strategies sometimes worked. Self-timeouts were not always effective, however, and the teachers often had to force M.C. into the timeout room if he “became violent, a threat to himself or others,” or if he demonstrated “aggressive behavior either to himself or aggressiveness toward other children.” To be released from the timeout room, M.C. had to remain calm and silent for 5 minutes. Sometimes M.C. immediately calmed down, but often his behavior grew worse in the timeout room, and he would scream and kick or throw himself against the door. The teachers often had to hold the door shut. Ms. Couture received daily reports documenting M.C.’s day; these reports contained some, but not all, of the factual details of the timeouts. Ms. Couture eventually saw the timeout room while visiting the classroom. She described it as “very small” with

carpeting, but no padding on the walls. Nothing in it. Just carpet on the floor. It had a very dim light. There was black construction paper over the window, completely

covering the window. You could not see in there unless you either moved the paper or took it off the window.

On November 19, 2004, Ms. Couture initiated an administrative action pursuant to the IDEA against the Albuquerque Public Schools and the defendants in both their official and individual capacities. The Due Process Hearing Officer held a 3-day hearing. He found no evidence of inadequate instruction or a denial of a FAPE, and no evidence of discrimination or exclusion from participation in the educational process. Ms. Couture appealed this decision to the Federal District Court of New Mexico. The District Court denied officials' motion for summary judgment on qualified immunity grounds. Officials filed interlocutory appeal.

Issue: At issue was whether school officials violated the student's Fourth and Fourteenth Amendment rights by repeatedly placing him in a timeout room.

Holding: The Court of Appeals held that (1) the repeated use of a timeout room as punishment for the student's disruptive behavior did not violate the Fourth Amendment, (2) the student's placement in the timeout room for refusing to do his school work was justified at its inception, (3) lengthy timeouts were reasonably related to the school's objective of behavior modifications, and (4) placement in the timeout room did not implicate procedural due process requirements.

Reasoning: Ms. Couture argued that the defendants violated M.C.'s Fourth Amendment rights when they repeatedly placed him in the timeout room. The first step in the court's analysis was to determine whether there was a seizure under the Fourth Amendment. A seizure occurs when "a reasonable person would have believed that he was not free to leave." To qualify as a seizure in the school context, the limitation on the student's freedom of movement must significantly exceed that inherent in everyday, compulsory attendance. M.C. was certainly subject to greater restrictions than are most students. As the district court found, M.C. was at

times physically carried into the timeout room, where teachers shut and barricaded the door. His requests for release from the room were consistently denied. On the other hand, the defendants maintained that the timeouts cannot legally be regarded as seizures for purposes of the Fourth Amendment because they are employed as educational techniques and were consented to as part of M.C.'s IEP. The court did not resolve this issue because, even assuming the timeouts were seizures, they were not unreasonable. The court evaluated whether the educators transgressed constitutional limits on their treatment of M.C., not whether their action comported with proper educational policy. The court is sympathetic to Ms. Couture's concern over the repeated use of the timeout rooms, but cannot find that there was a Fourth Amendment violation. The educators were confronted with an almost impossible behavioral problem, which was only eventually ameliorated with medication. M.C.'s behavior was disruptive and dangerous. Temporarily removing M.C., given the threat he often posed to the emotional, psychological, and physical safety of the students and teachers, was eminently reasonable. The educators' response was particularly reasonable given that the timeouts were expressly prescribed by M.C.'s IEP as a mechanism to teach him behavioral control. The court therefore found that there was no Fourth Amendment violation here, and that the three individual defendants were entitled to qualified immunity on this claim. Ms. Couture claimed that the defendants violated M.C.'s Fourteenth Amendment procedural due process rights by excluding him from the classroom without a hearing. When complete deprivation of education occurs, such as when a student is removed from the school for a lengthy time period, the Court ruled that the student at minimum is entitled to "notice and some kind of hearing." The district court found that the timeouts were designed both to punish M.C., and to educate him. Under either rationale, there had been no constitutional violation. Timeouts, unlike suspensions or expulsions, are intended to settle down a child while

keeping him within close proximity to the classroom; this way, he can resume his education as soon as he has calmed down. This method balances the need for punishment and discipline with the important goal of preserving access to public education. As shown by the prescription of timeouts in his IEP, these sessions were not an interruption of his education, they were part of his education. Even assuming that the timeouts were ineffective, or even counterproductive, they cannot be treated as equivalent to denying him the education to which he is legally entitled.

Disposition: This Court reversed the district court's denial of qualified immunity on Ms. Couture's Fourth and Fourteenth Amendment Procedural Due Process Claims against the individual educators, and remanded to the district court for further proceedings in accordance with this opinion.

Citation: *C.N. through J.N. v. Willmar Public Schools*, 2008 WL 3896205 (D. Minn. 2008).

Key Facts: This action arose from plaintiff C.N.'s tenure at Lincoln Elementary School in Willmar, Minnesota. In a pre-kindergarten assessment in 2003, C.N. was designated as developmentally delayed with speech and language impairment. C.N. began school at Jefferson Kindergarten in fall 2003 with a special education Individualized Education Program (IEP) created collaboratively by the local education agency, parents, teachers, and behavioral service providers. The behavior intervention plan (BIP) included in C.N.'s IEP permitted controlled procedures--such as restraint positions and seclusion--when necessary. After several months of behavioral problems and disruptions, it was determined that C.N. should be reevaluated. A outside evaluator, Tim Ardoff from Southern Minnesota Community Support Services, conducted the functional behavioral assessment of C.N. Based on Ardoff's findings, the District transferred C.N. to Lincoln--another school within the Willmar system. The IEP team also

revised C.N.'s IEP and BIP based, in part, on Ardoff's suggestions. Over J.N.'s alleged objections, the BIP continued to allow for restraints and seclusion. The IEP team revised C.N.'s IEP annually, adjusting its focus to language development but retaining a BIP that included seclusion and restraint procedures to be employed when C.N. was a danger to herself or others. During her first through third grade years at Lincoln, C.N. worked with defendant Lisa Van Der Heiden, one of the school's special education teachers. When C.N.'s behavior became problematic, Van Der Heiden used the seclusion and restraint methods set forth in the BIP. Van Der Heiden documented the use of such techniques in daily behavioral and communications logs, which she kept for every child in her care. The plaintiffs maintained that Van Der Heiden improperly and overzealously used seclusion and restraint techniques on C.N. The plaintiffs claimed that Van Der Heiden developed a "thinking desk" for C.N., in which she required C.N. to hold a physical posture in excess of 30 minutes or else face restraint; shouted and yelled at C.N.; pulled C.N.'s hair; made sarcastic remarks to C.N. and belittled her; and, on one occasion, denied C.N. the use of bathroom facilities, resulting in an accident. Based on the reports from the classroom paraprofessionals, the Minnesota Department of Education (MDE) conducted an investigation of Van Der Heiden. The District's examination of Van Der Heiden--its third in 2 years--confirmed that she had denied bathroom access to C.N. but concluded that the incident was a lapse in judgment. Ultimately, the District dismissed the maltreatment allegations against Van Der Heiden. The plaintiffs claimed that the defendants violated the due process and equal protection clauses of the Fourteenth Amendment and the right against unreasonable seizures guaranteed by the Fourth Amendment.

Issue: At issue was whether a special education teacher violated a student's constitutional rights by using seclusion and restraint methods. (There are 4 other issues not briefed because of irrelevance to the study).

Holding: The District Court held that (1) the restraint and seclusion procedures used were not seizures because they were used as educational techniques consented to in the student's IEP; however, even if the methods were seizures, they were reasonable; (2) the plaintiffs offered no facts to uphold an equal protection claim; and (3) the defendants' behavior was reasonable and therefore did not violate the plaintiffs' substantive due process rights.

Reasoning: The Fourth Amendment protects an individual's right to be free from "unreasonable searches and seizures." To sustain a successful § 1983 action based on a Fourth Amendment violation, a plaintiff must show that a seizure occurred and that it was unreasonable. In this case, the plaintiffs argued that Van Der Heiden seized C.N. by employing restraint techniques, a "thinking desk," and a seclusion room and that school officials failed to stop such seizures. The defendants maintained that such procedures are not seizures because they were used as educational techniques consented to as part of C.N.'s IEP. The court need not decide the issue, however, because such actions, if seizures, were reasonable. As noted, the IEP allowed the use of restraint holds and seclusion. Van Der Heiden, therefore, was not substantially departing from accepted professional judgment when she used such methods. Accordingly, the plaintiffs did not set forth facts establishing a cognizable Fourth Amendment violation, and the individual defendants were entitled to qualified immunity on this claim. The Fourteenth Amendment provides that no state "shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." To state an equal protection claim, a plaintiff must establish that she was treated

differently than others similarly situated to her. The plaintiffs alleged that no “non-disabled student who attended in the District was subjected to unreasonable and punitive seizures, restraint and seclusion of their persons.” The court had already determined, however, that the alleged restraint techniques and seclusions C.N. experienced were reasonable. Moreover, aside from the bare assertion of disparate treatment, the plaintiffs offered no facts by which to compare C.N.’s treatment with that of other disabled and nondisabled students at Lincoln or in the District. Accordingly, the plaintiffs did not allege a right to relief above the speculative level, and the defendants were entitled to qualified immunity on that claim. The Fourteenth Amendment guarantees substantive due process that prevents the government from participating in conduct that either shocks the conscience or interferes with the rights consistent with liberty. The plaintiffs contended that the defendants violated C.N.’s right to substantive due process by denying her a FAPE and engaging in behavior that “shocks the conscience of reasonable persons and is intolerable in a civilized society.” Again, however, the plaintiffs made a bald accusation without linking specific facts to their claim. Moreover, having already determined that allegations related to the provision of C.N.’s FAPE are procedurally barred and that the defendants’ behavior was reasonable, the court cannot find that the defendants’ alleged conduct violated the plaintiffs’ substantive due process rights. Qualified immunity was therefore warranted on this claim.

Disposition: The plaintiffs’ constitutional claims were dismissed with prejudice.

Citation: *Jordan v. Blackwell*, 2008 WL 4449576 (M.D. Ga. 2008).

Key Facts: After a 13-year-old middle school student, T.S., started a fight in the school cafeteria, a school resource officer (SRO), Nason Blackwell, forcibly removed her to the principal’s office. In the process, T.S. allegedly sustained a shoulder injury. Blackwell, an

Upson County Sheriff's Deputy, has been working as a SRO at Upson-Lee Middle School in Upson County, Georgia. As the SRO, Blackwell's duties were part law enforcement and part academic. In the course of his work, he counseled students but he was also responsible for maintaining discipline at the school. Although he worked at the school, he was employed and supervised by the Upson County Sheriff's Department and received his pay from the Sheriff's Department. When an incident, such as a fight, occurred at the school, Blackwell may be involved in breaking up the fight, but the ultimate decision as to how to discipline the students involved was left to the school. On September 8, 2005, Blackwell was in the cafeteria in his regular capacity as SRO, when T.S. started a fight with another female student, C.C. T.S. acknowledged that she hit C.C. at least 10 times with almost no return punches from C.C. Blackwell did not know how many times T.S. hit C.C. before he was able to reach them, but he knew that T.S. was still in the process of hitting C.C. when he reached them and moved to separate them. Blackwell stopped T.S. from continuing to hit C.C. by throwing his right arm across the front of her body and wrapping his arm around her. Blackwell denied using a choke hold. However, several witnesses say it appeared to them that he used a choke hold. T.S. contended Blackwell had her in a choke hold and she could not breathe. The parties also disagreed as to whether T.S. was resisting or yelling. T.S. says she was unable to speak and walked away without resistance. Blackwell says she told him to take his hands off her and screamed for him to let go, and also would have continued swinging had he not been holding her tight. Other witnesses contended, however, that she made no sound and no movement after Blackwell restrained her. It was Blackwell's intent to restrain T.S. in such a manner as to prevent her from being able to strike C.C. or anyone else. Blackwell walked T.S. approximately 100' from the cafeteria to the principal's office while holding her in the same position.

Blackwell believed the amount of force he used at first was necessary to maintain control of T.S. After the incidents, both girls denied having any injury. The day after the incident, T.S. complained of pain in her right shoulder. On the Saturday after the incident, she sought medical treatment for the pain in her right shoulder. She was told that her shoulder was fractured. T.S. wore a shoulder harness strap for 4 to 6 weeks after the incident.

Issue: At issue was whether the school resource officer violated a student's rights under the Fourth and Fourteenth Amendments. (There are 6 other issues not briefed because of irrelevance to the study.)

Holding: The District Court held that the defendant's motion for summary judgment was denied and the Court sought judgment as a matter of law on the issue of qualified immunity.

Reasoning: The plaintiff brought claims against defendant Blackwell in his individual capacity. Blackwell maintained that he was entitled to qualified immunity as to any § 1983 claims brought against him in his individual capacity. The first step in analyzing a § 1983 claim "is to identify the exact contours of the underlying right said to have been violated." Here, the plaintiff alleged that Blackwell's act of placing her in a choke hold violated her Fourth Amendment right to be free from unreasonable and excessive force and her substantive due process rights under the Fourteenth Amendment. However, Blackwell could not be liable for the same conduct under both constitutional provisions. Thus, before the Court undertook to analyze the case under the Fourteenth Amendment, it first had to determine whether the plaintiff's claim was covered under the Fourth Amendment. In this case, it was undisputed that a governmental actor, Blackwell, acted to terminate, or at least severely limit, T.S.'s freedom of movement through means intentionally applied. Even the plaintiff's own expert agreed that at the point at which Blackwell placed T.S. under his physical control he was acting in his role as a law

enforcement officer to terminate her movement. Therefore, it appeared to the Court that the Fourth Amendment provides an explicit textual source of constitutional protection and that this case need not be analyzed under the more generalized Fourteenth Amendment substantive due process standard. The Supreme Court noted that a test for reasonableness must be applied under the Fourth Amendment. The evidence in this case, when viewed in the light favorable to T.S. as the nonmoving party, permits a finding that when Blackwell first perceived C.C. she appeared to be unable to defend herself while T.S. punched her at least four times, so that Blackwell's belief that T.S. posed an immediate threat to C.C. and perhaps others was reasonable, and justified his initial seizure of T.S. However, the disparity in size between T.S. and Blackwell and the disagreements among the witnesses with respect to the amount of force that Blackwell applied and where he applied it raise jury questions as to whether the degree of force was reasonable when first applied. Questions also remain as to how much force Blackwell continued to apply as he led T.S. to the principal's office. Additionally, jury questions remain with respect to the degree of injury T.S. sustained and the cause of that injury. The extent of the injury inflicted is a factor in determining whether an officer's use of force was objectively reasonable. When considering the totality of the circumstances, the Court found that the question of whether Blackwell's use of force was objectively reasonable was for a jury to decide. Moreover, should a jury credit T.S.'s testimony, along with that of her other witnesses, it could find Blackwell's use of force was excessive. Having concluded that a jury could find that Blackwell violated T.S.'s Fourth Amendment right, the Court next had to decide whether Blackwell was entitled to qualified immunity. In the face of disputed material facts as to the degree of force applied and the conduct of T.S., the Court could not make the necessarily fact-specific legal finding as to the reasonableness of Blackwell's actions. As a result, this Court could not make a determination as

to whether Blackwell was entitled to the qualified immunity defense as to the claims against him in his individual capacity. Insofar as the defendant's motion for summary judgment sought judgment as a matter of law for Blackwell on the issue of qualified immunity, and as to the federal claims against Blackwell in his individual capacity, the motion was denied.

Disposition: With respect to the defendants' motion for summary judgment the Court directed that the motion be denied as to the plaintiff's § 1983 claims against defendant Blackwell in his individual capacity.

2009

Citation: *Wilson v. School Board of Seminole County*, 2009 WL 1140101 (M.D. Fla. 2009).

Key Facts: T.W. was enrolled as a special education student at South Seminole Middle School and spent approximately 4 months in Garrett's class. T.W. was diagnosed with Pervasive Developmental Disorder--Not Otherwise Specified (PDD-NOS) at the time he enrolled at South Seminole. During his enrollment, T.W. exhibited significant behavioral problems while in Garrett's classroom. He would become agitated and aggressive when told to complete a task which he did not wish to do, causing him to throw things and punch tables. This behavior would continue until he was placed in the cool down room, where he would throw furniture around until he calmed down. T.W. would get into trouble weekly and call Garrett names during class, often referring to her as a "bitch." Wilson, T.W.'s mother, alleges that he was subjected to physical and emotional abuse at the hands of Garrett, resulting in long-term emotional and psychological harm. Teacher's aides, Mort and Rodriguez, described Garrett's use of profanity and detailed several incidences during T.W.'s time at South Seminole where they felt that Garrett

either inappropriately restrained or physically abused T.W. Wilson asserted that Garrett verbally abused T.W. offering the disposition testimony of Mort and Rodriguez as evidence of this abuse. In addition, Wilson alleged that T.W. was physically abused during his time at South Seminole. In one incident in response to T.W.'s refusal to go to the cool down room, Garrett restrained T.W. by taking him down to the ground, straddling his buttocks and legs, and pulling his arms behind his back. Garrett then informed T.W. that she would release him when he agreed to follow her commands in the classroom. The entire incident lasted less than 5 minutes and T.W. suffered no physical injury as a result of the restraint. In another incident, Garrett told T.W. to stop scratching himself and return to his work, but instead he continued this behavior. Because T.W. had a history of scratching himself until he bled, Garrett approached T.W. and pushed his arms down to stop his scratching, causing T.W. to begin screaming, hollering, and cussing. Garrett then "picked him up out of the chair and laid him across the table and laid down over him to stop him from scratching." Garrett then escorted him to the cool down room and told T.W. that when he calmed down he could return to his seat. A third incident occurred when T.W. left his desk after being told by Garrett to do his work. Garrett restrained T.W. on the floor by grabbing his right ankle and pulling it up to the back of his left leg, a method of restraint deemed inappropriate by Mort. Garrett held him in this manner for approximately 2 to 3 minutes until he calmed down, at which point she released T.W. and he returned to work at his desk. Wilson alleged that T.W. suffered bruises on his arms on two occasions. However, Wilson never sought medical treatment for T.W. concerning the bruising. Wilson also contended that Garrett's actions caused behavioral changes in T.W. and attributed these behavioral changes to the events that occurred in Garrett's classroom.

Issue: At issue was whether a teacher's actions used to restrain a student deprived him of his constitutional rights.

Holding: The District Court held that (1) the injuries did not shock the conscience nor did they amount to a deprivation of T.W.'s constitutional rights, (2) the School Board was not liable, (3) the plaintiff offered no evidence to support a claim that T.W. was intentionally discriminated against, and (4) the Court declined to exercise supplemental jurisdiction over the state law claim.

Reasoning: Substantive due process reflects "the right to be free of state intrusion into realms of . . . bodily security through means so brutal, demeaning, and harmful as literally to shock the conscience in court" (*Hall v. Tawney*, 1980). To succeed in establishing a § 1983 claim, T.W. must demonstrate an injury amounting to a deprivation of his constitutional rights; it must be an injury that literally shocks the conscience of the Court. Though the Court did not condone the verbal abuse directed at T.W., Garrett cannot be subjected to § 1983 liability for such acts. Simply put, "verbal abuse is normally not a constitutional violation" (*Doe v. Gooden*, 2000). Physical abuse, however, may rise to the level of a deprivation of a constitutional right. In order to determine whether the amount of force used was obviously excessive, a court considered the totality of the circumstances, paying particular attention to the following factors: (1) the need for the application of corporal punishment, (2) the relationship between the need and amount of punishment administered, and (3) the extent to the injury inflicted. When conducting this analysis, the Court remained mindful of T.W.'s developmental disabilities. The incidents of physical restraint used on T.W. by Garrett did not result in an injury arising to the conscience shocking level. The restraints were, at least in part, in response to T.W.'s own behavior, and thus arguably either for disciplinary or safety purposes. The Court next examined the

relationship between the need for the use of force and the amount of force administered.

Evidence showed that Garrett would release T.W. from restraints when he stopped the behavior that instigated the need for restraint in the first place, often lasting less than 5 minutes in total.

At no time did T.W. seek medical attention as a result of the force used during these incidences.

The Court next looked to the extent of the injury inflicted. In this case, the physical injuries were minimal at best. The plaintiff argued that T.W. suffered emotional and psychological damage as a result of Garrett's abuse. However, while psychological abuse alone may rise to the level of a constitutional deprivation, no court has ever found a psychological injury to meet § 1983's high threshold. Given the minimal physical injuries inflicted upon T.W., the Court could not find an injury that literally shocked the conscience and amounted to a deprivation of T.W.'s

constitutional rights. As the Court found that T.W.'s constitutional rights had not been violated, it was unnecessary to determine whether the law was clearly established at the time of the alleged injury in order to determine the merits of Garrett's qualified immunity defense.

Accordingly, Garrett's motion for summary judgment was granted. Because the Court had already concluded that T.W. has failed to establish a constitutional violation, any attempt to impose § 1983 liability on the School Board must be denied. Thus, the defendant Seminole County School Board's motion for summary judgment was granted. The plaintiff's Section 504 claim failed for the same reason as did the § 1983 substantive due process claim. The plaintiff had offered no evidence to support a claim that T.W. was intentionally discriminated against on the basis of disability and the plaintiff is not permitted to rest on mere allegations and speculation when faced with a properly supported motion for summary judgment. Again, the defendant Seminole County School Board's motion for summary judgment was granted. Having dismissed

T.W.'s federal claims, the Court declined to exercise supplemental jurisdiction over the state law claim. Accordingly, T.W.'s state law claim was dismissed without prejudice.

Disposition: Defendant Garrett's motion for summary judgment was granted. Defendant Seminole County School Board's motion for summary judgment was granted in part and denied in part. The Court declined to exercise supplemental jurisdiction over the state law claims; accordingly, the claim was dismissed without prejudice.

Citation: *Cosco v. School Board of Seminole County*, 639 F.Supp.2d 1295 (M.D. Fla. 2009).

Key Facts: During the 2001-2002 and 2002-2003 school years, G.C. was a special education student in Garrett's class at South Seminole Middle School. The plaintiff alleged that Garrett subjected G.C. to various acts of physical, emotional, and psychological abuse and that he witnessed the severe conduct that Garrett directed toward his fellow classmates, resulting in emotional and psychological trauma. The plaintiff claimed that Garrett physically and emotionally abused G.C. in many ways, including routinely striking G.C. on the knees, leaving bruises; physically grabbing him and forcing him to face a brick wall while ordering him to lick it; and routinely cursing at him. G.C. contended that the School Board had actual or constructive knowledge of Garrett's propensity to use excessive force because there were complaints of abuse against her at the school she taught in before being transferred to South Seminole. Thus, G.C. contended that the School Board was on notice of the risk that Garrett posed to students, the disregard of which equates to reckless and deliberate indifference to G.C.'s substantive due process rights.

Issue: At issue was whether a teacher violated a student's constitutional rights when using physical restraint.

Holding: The District Court held that (1) limited incidents of physical restraint use on the student by the teacher did not result in an injury which rose to a level which shocked the conscience so as to establish § 1983 substantive due process claim, and (2) the student's alleged psychological and emotional injuries from witnessing the teacher's alleged abusive treatment of his classmates did not rise to the exacting "shock the conscience" standard required to assert § 1983 substantive due process claim.

Reasoning: The Fourteenth Amendment's substantive due process right protects persons from the arbitrary exercise of governmental power. Substantive due process reflects "the right to be free of state intrusion into realms of . . . bodily security through means so brutal, demeaning, and harmful as literally to shock the conscience of a court" (*Hall v. Tawney*, 1980). In this case, the Court can infer some injury inflicted on G.C., but "some injury" is insufficient. To succeed in establishing a § 1983 claim, G.C. must demonstrate an injury amounting to a deprivation of his constitutional rights; it must be an injury that literally shocks the conscience of the Court. The Court does not condone verbal abuse directed at any child; however, verbal abuse is normally not a constitutional violation (*Doe v. Gooden*, 2000). Physical abuse, however, may rise to the level of a deprivation of a constitutional right. A plaintiff must prove at a minimum that (1) a school official intentionally used an amount of force that was obviously excessive under the circumstances, and (2) the force used presented a reasonably foreseeable risk of serious bodily injury. In order to determine whether the amount of force used was obviously excessive, a court considers the totality of the circumstances, paying particular attention to the following factors: (1) the need for the application of corporal punishment, (2) the relationship between the need and amount of punishment administered, and (3) the extent of the injury inflicted. The evidence here established that the limited incidents of physical restraint used on G.C. by Garrett

did not result in an injury that rises to a level that shocks the Court's conscience. The amount of force used to restrain G.C. was not "obviously excessive," nor did it present a reasonably foreseeable risk of bodily injury. No injury, much less a severe injury, occurred as a result of this conduct; G.C. never sought medical attention. In fact, the only physical injuries alleged to have been suffered at the hands of Garrett were the bruised knees, and the plaintiff had not submitted any evidence establishing that these bruises were in any manner associated with Garrett's conduct. The plaintiff also argued that in addition to the bruises, G.C. suffered emotional and psychological damage as a result of Garrett's direct abuse. However, while psychological abuse alone may rise to the level of a constitutional deprivation, no court has ever found a psychological injury to meet § 1983's high threshold. Accordingly, the Court could not find an injury that literally shocked the conscience and amounted to a deprivation of G.C.'s constitutional rights. The plaintiff also alleged that G.C. suffered emotional and psychological abuse due to his witnessing Garrett's abuse of his classmates. Given the total absence of evidence of neglect, the minimal physical abuse, if any, regarding G.C., and the lack of evidence that G.C. witnessed any abuse directed at his classmates, this Court found that G.C.'s alleged psychological and emotional injuries from witnessing Garrett's treatment of other students does not rise to the exacting "shocks the conscience" standard required by the Eleventh Circuit in § 1983 claims. As the Court found that G.C.'s constitutional rights had not been violated, it was unnecessary to determine whether the law was clearly established at the time of the alleged injury in order to determine the merits of Garrett's qualified immunity defense. Accordingly, Garrett's motion for summary judgment was granted. "To impose a § 1983 liability on a municipality, a plaintiff must show (1) that his constitutional rights were violated, (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional

right, and (3) that the policy or custom caused the violation” (*McDowell v. Brown*, 2004). A prerequisite to municipal liability is that the plaintiff must have suffered a constitutional violation at the hands of a government actor. Because the Court has already concluded that G.C. has failed to establish a constitutional violation, any attempt to impose a § 1983 liability on the School Board must be rejected. As to Count 1, the defendant Seminole County School Board’s motion for summary judgment must be granted. Having dismissed G.C.’s federal claims, the Court declined to exercise supplemental jurisdiction over the state law claim. Accordingly, G.C.’s state law claim (Count III) was dismissed without prejudice.

Disposition: Defendant Garrett’s motion for summary judgment was granted. Defendant Seminole County School Board’s motion for summary judgment was granted in part and denied in part. Summary judgment was granted as to Count I and denied without prejudice as to Count III. The Court declined to exercise supplemental jurisdiction over the remaining state law claim in Count III. Accordingly, the claim was dismissed without prejudice to refile it in state court. All other pending motions were denied as moot.

Citation: *H.F. v. Moffett and Minguzzi*, 335 Fed.Appx. 306, 2009 WL 1931203 (4th Cir. 2009).

Key Facts: H.H. is a severely disabled kindergarten student who was born with cerebral palsy and a neurological condition known as polymicrogyria, a seizure-causing disorder. Because she could not yet walk on her own, she was transported by a wheelchair equipped with a safety strap that prevented her from falling out. However, she was mobile; could crawl; could engage in activities such as looking at books, playing with musical instruments/toys, playing on computer, swinging, and being with other children. H.H. was assigned to Wanda Moffett’s multi-aged class of students with severe disabilities at Chesterfield County’s O.B. Gates

Elementary School. Ann Minguzzi was Moffett's teacher's aide that year. H.H.'s mother, H.F., became suspicious about the kind of treatment H.H. was receiving so she placed a small recording device on H.H.'s wheelchair from April 18-20, 2006. According to H.F., the recordings established that H.H. spent most of her time confined in the wheelchair; received almost no educational services; and the recording captured adult voices telling H.H. that she is "gross," "coddled," and "has a face only a mother could love," and on one occasion responding to H.H. with "HEY! Shut the f___ up!" The recordings also suggested that the appellants may have been planning to sabotage an upcoming IEP meeting so that H.H. would not be offered extended school year services. The United States District Court for the Eastern District of Virginia entered an order holding the defendants' motion for summary judgment in abeyance so that student could conduct discovery, and defendants appealed.

Issue: At issue was the qualified immunity of a special education teacher and teaching assistant who restrained the student in her wheelchair for extended periods of time.

Holding: The Court of Appeals, Gregory, Circuit Judge, held that the defendants were not entitled to qualified immunity.

Reasoning: Because restraint cases require us to balance an individual's liberty interest against a state interest in using the restraint, "the question . . . is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint . . . is such as to violate due process" (*Youngberg v. Romeo*, 1982). In this case, conceivable legitimate justifications existed for keeping H.H. strapped into her wheelchair. However, the appellees suggested that the appellants made the decision to keep H.H. restrained "for long periods of time . . . with malice . . . and with callous and deliberate indifference toward the rights of H.H." The appellees had supported these allegations with evidence. Where the use of restraint was "so

inspired by malice . . . that it amounts to a brutal and inhumane abuse of official power literally shocking to the conscience,” the court could not but find that it violates an individual’s substantive due process rights (*Hall v. Tawney*, 1980). The appellees’ facts made this an unusual case and the court’s opinion is one that no reasonable teacher who errs in judgment ought to fear. Qualified immunity is intended to protect officials who make reasonable mistakes about the law (*Saucier v. Katz*, 2001). But the immunity simply does not extend protection to an official motivated by the kind of bad faith alleged here.

Disposition: The United States Court of Appeals, Fourth Circuit found the appellants are not entitled to qualified immunity as a matter of law, and because the appellants had raised no other question of error on the part of the district court, they affirmed and remanded the district court for further proceedings consistent with the opinion.

Citation: *Vicky M. and Darin M. v. Northeastern Educational Intermediate Unit 19*, 689 F.Supp.2d 721 (M.D. Penn. 2009).

Key Facts: Defendant Susan Comerford Wzorek was employed by the defendant Northeastern Educational Intermediate Unit (NEIU) as an autistic support teacher. NEIU is part of the public school system of the Commonwealth of Pennsylvania and provides statutorily-mandated educational services to school districts in Lackawanna County who cannot provide these specialized services themselves. The minor-plaintiff, AJM, had been diagnosed as having autism, which impacted him in the areas of social interaction and communication skills. While AJM was under her supervision and care, Wzorek used aversive techniques to redirect his behavior. These techniques included, but were not limited to the following: (a) striking AJM on the legs and arms, causing bruising; (b) screaming in AJM’s face; (c) squeezing and crushing AJM’s arms, causing bruising; and (d) stomping on AJM’s insteps. Additionally, Wzorek

employed the use of restraints on her autistic students. Shortly after the 2002-2003 school year began, the plaintiffs noted changes in AJM's behavior, specifically a trend of developmental regression and he developed bruises and swelling and became increasingly afraid of Wzorek.

Issue: At issue was whether an autistic support teacher violated IDEA and whether the teacher's actions constituted assault and battery, intentional infliction of emotional distress, and breach of fiduciary duty.

Holding: The District Court held that (1) summary judgment in favor of the teacher on the substantive due process claim was precluded on qualified immunity grounds, (2) summary judgment in favor of school district and education agency was precluded on Rehabilitation Act claims, (3) the teacher was not entitled to immunity for intentional torts under Pennsylvania's Political Subdivision Tort Claims Act (PSTCA), and (4) the supervisory defendants were immune from tort claims under PSTCA.

Reasoning: The plaintiffs' substantive due process claims were based upon the allegations that the defendants failed to respect the minor-plaintiffs substantive due process right to bodily integrity. Only state conduct that is "arbitrary, or conscience shocking, in a constitutional sense" rises to this level. The pertinent inquiry is "whether the force applied caused injuries so severe, and was so inspired by malice or sadism rather than merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience" (*Jones v. Witinski*, 1996). Wzorek asserted qualified immunity against the plaintiffs' claims. An official is entitled to qualified immunity if a reasonable official in their position at all relevant times could have believed, in light of clearly established law, that their conduct comported with established legal standards. In answering the question of whether a particular defendant is entitled to qualified immunity, the court must first determine whether a

constitutional violation has occurred. The first question is whether the conduct alleged by the plaintiffs violated the substantive due process rights of the plaintiffs because the conduct “shocks the conscience.” In the context of determining whether force used by school personnel toward a student “shocks the conscience,” the Third Circuit Court of Appeals looked to the following factors: (1) the need for the application of force, (2) the relationship between the need and the amount of force used, (3) the extent of the injury inflicted; and (4) whether the force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm. The evidence of continuous abuse over a 2-year period could reasonably satisfy the standard of “shocking the conscience.” Assuming that a constitutional violation is supported by evidence, the second step in the qualified immunity inquiry is to determine whether the violated right was clearly established at the time of the conduct. There can be no question that at the time of the conduct there was a clearly established substantive due process right to bodily integrity, which includes the right to be free from abuse. Wzorek asserted that subjectively there was no intent to abuse, but this argument was misplaced. The relevant inquiry was objectively whether a reasonable actor would have known of the right which was violated. Because the right was clearly established, the claim for qualified immunity failed. The individual NEIU defendants were entitled to qualified immunity if a reasonable official in their position could have believed, in light of clearly established law that their conduct comported with established legal standards. As previously stated, there can be no question that at the time of the conduct it was a clearly established right for the students to be free from physical abuse. The issue of qualified immunity therefore turns on whether the actions of the NEIU defendants were “shocking to the conscience.” The plaintiffs provided sufficient evidence to support a claim of deliberate or reckless indifference by the NEIU defendants. There was evidence that

there were several warnings provided to Rosetti and Lamanna about abuse in Wzorek's classroom. As a weighting of credibility was appropriate at this juncture, this evidence was sufficient to create a genuine issue of material fact. There was also evidence that NEIU officials did not treat the allegations seriously. A jury could reasonably find that the culture of encouraging silence and the failure to react to the warnings of the parents, particularly in light of the vulnerability of these students, "shocks the conscience." This type of violation defeated the asserted qualified immunity and provided a basis for liability for Lamanna and Rosetti under § 1983. The motion for summary judgment by the NEIU defendants will be denied. The same standard that applied to the NEIU defendants also applied to the AHSD defendants. Unlike the NEIU defendants, however, there is no evidence of direct warnings to AHSD officials about the abuse until after July 28, 2003, when Wzorek was removed. Similarly, there was a lack of evidence demonstrating the "code of silence" was a custom encouraged at the highest AHSD policy makers, namely the school board of AHSD. There were insufficient questions of material fact against the AHSD Defendants to establish liability, therefore their motion for summary judgment was granted. The Equal Protection Clause required that the law treat similarly situated people alike. The plaintiffs needed to demonstrate that a state actor had intent to disadvantage all members of a class that included the minor-plaintiffs. A party making an equal protection claim "must show intentional discrimination against him because of his membership in a particular class, not merely that he was treated unfairly as an individual" (*Handley v. Phillips*, 1989). As the plaintiffs failed to provide sufficient evidence to create a question of material fact as to intent, the defendants' motions for summary judgment on this issue were granted. The plaintiffs' claims alleged violations of the IDEA against all defendants, and alleged violations of Section 504 of the Rehabilitation Act, against NEIU and AHSD. Each of the defendants'

motions asked for summary judgment against these claims. Several courts in the Middle District of Pennsylvania have held that compensatory damages are not available under IDEA, except as reimbursement for private educational placement and compensatory education. Because there was nothing in the present case that would invite this Court to reconsider this issue, compensatory and punitive damages were not available under the IDEA. The defendants' motions for summary judgment were granted and the plaintiffs' motions for summary judgment were denied. To prevail on a claim pursuant to Section 504 of the Rehabilitation Act, a plaintiff must show that she was discriminated against because of her disability. The critical question is whether they were denied benefits provided by the school to other students. In the present case there are several issues of material fact remaining with respect to the Section 504 claim: (1) whether the alleged abuse actually occurred, (2) the extent of such abuse and the harm caused as it pertains to the issue of compensatory damages, and (3) whether there was inappropriate training and oversight with respect to NEIU and AHSD. These genuine questions of material fact made summary judgment for either the plaintiffs or the defendants inappropriate at this time. Because there were genuine questions of material fact with respect to the denial of benefits under Section 504, granting summary judgment was inappropriate at this time. All parties' motions for summary judgment were denied. The plaintiffs' claims alleged various state-law tort claims against defendant Wzorek. Defendant Wzorek's motion requested summary judgment against each of these claims. There was sufficient evidence to create a question of material fact as to the intentional, reckless, malicious, or outrageous nature of the conduct of Wzorek. Defendant Wzorek's motion for summary judgment was denied. The plaintiffs' claims alleged various state-law tort claims against individual defendants Lamanna, Rosetti, Sluko, McNulty, and Arnold. The defendants' respective motions requested summary judgment against each of these

claims. While the conduct of the NEIU defendants potentially rose to the level of deliberate indifference, even this type of conduct was immunized under the PSTCA. As a result, the defendants' motions for summary judgment were granted.

Disposition: The court granted in part and denied in part the motions for summary judgment of the defendants. The court denied the motion for summary judgment by the plaintiffs.

Citation: *King v. Pioneer Regional Educational Service Agency*, 201 Ga.App. 547, 688 S.E.2d 7 (Ga. App. Ct. 2009).

Key Facts: Alpine Psychoeducational Program is a school for students with severe emotional behavior disorders. In order to manage the behavioral issues endemic to many of the students who attend Alpine, the school uses a variety of intervention strategies, including sending a misbehaving student to what is known as a timeout room. The timeout room at Alpine is an approximately 8' by 8' room without furniture and with only one entrance. The door to the room could be locked from the outside and had a small glass window, which was protected by a metal grate. Students were sent to the timeout room when all other intervention strategies had failed or when the student's behavior posed immediate physical harm to himself or others. Alpine's procedures regarding use of timeout rooms required that a staff member remain just outside the door for the entire time that a student was in the timeout room to monitor the student. The procedures also required the monitor to visually check on the student every 15 minutes and to document the student's behavior on a timeout log. Before sending a student to the timeout room, the monitor was required to take from the student any items that could be used to injure himself or to damage the room. Jonathan King first enrolled at Alpine in the fall of 2002, at the age of 11; over the next 2 years, he attended the school intermittently during periods when he

was not attending the local public school. On several occasions during his enrollment at Alpine, he had made suicidal comments to a few of the school's staff members. However, when pursuant to school policy Alpine's school psychologist tried to discuss these threats with Jonathan, he would respond that he was only kidding and that he did not have a true intent to commit suicide. In addition, Jonathan's mother was aware of his suicidal comments but believed that he made these threats to harm himself as a means to manipulate her. On November 15, 2004, Jonathan came to school in the morning wearing pants that were too loose around his waist. Because he did not have a belt with him, Jonathan asked his teacher if he could go to the classroom next door to ask Doug Jackson, a paraprofessional who had worked with Jonathan the previous year, if he had anything that could be used as a makeshift belt. His teacher agreed, and Jackson gave Jonathan a length of macramé from the classroom's art supplies to use as a belt. Later that morning, Jonathan and some other students were being disruptive while eating breakfast in the cafeteria. Consequently, his teacher asked substitute paraprofessional Kenneth Trotter to take Jonathan and the other students back to the classroom. Shortly after they returned, Jonathan began picking a fight with one of the other students. Despite Trotter's reprimands, Jonathan continued taunting the other student and eventually climbed over his study carrel in an attempt to attack him. After physically restraining Jonathan, Trotter took him into the hallway and asked Jackson to assist him in taking Jonathan to the timeout room. Upon entering the timeout room, Jonathan removed his shoes and tossed them into the hallway. Jackson then asked him if his macramé belt was going to be a problem, and Jonathan responded that it would not. Thereafter, Jackson returned to his classroom and Trotter began to monitor Jonathan's behavior in the timeout room through the window on the door. During the first 15 minutes, Jonathan cursed, asked to be let out, and repeatedly hit the door. A few minutes later,

he became quiet, and thus Trotter decided to let him out of the room. However, as Trotter started to push the door open, he realized that all of Jonathan's weight was leaning against it. After quickly forcing the door open, Trotter discovered that Jonathan was unconscious, having hanged himself from the metal grate on the door's window with his macramé belt. Trotter immediately called for help, and within seconds a teacher arrived and began administering CPR. EMTs arrived several minutes later, but they were unable to revive Jonathan, and he was pronounced dead at the hospital. Subsequently, Donald and Tim King, as Jonathan's parents, filed a wrongful death action against Pioneer RESA, Alpine, and DOE. In their complaint, they alleged that Pioneer RESA deprived Jonathan of his substantive due process rights under the Fourteenth Amendment by failing to implement adequate policies and training regarding the use of the timeout rooms and prevention of suicide. Following the grant of both Pioneer RESA's motion for summary judgment and DOE's motion to dismiss, the Kings appealed arguing that questions of material fact remained as to whether Pioneer RESA violated Jonathan's substantive due process rights and further arguing that their claims against DOE were not barred by sovereign immunity.

Issue: At issue was whether school employees violated a student's substantive due process rights by putting him in a timeout room on the day he committed suicide. (There are 3 other issues not briefed because of irrelevance to the study.)

Holding: The Court of Appeals held that there was no evidence that school employees responsible for putting student in the timeout room on day of his suicide acted with deliberate indifference, and therefore the employees did not violate the student's substantive due process rights and the school system could not be liable under § 1983 for allegedly inadequate policies and training, in the absences of an underlying violation of student's constitutional rights.

Reasoning: In order to state a claim against Pioneer RESA under § 1983, the Kings must have alleged that a Pioneer RESA policymaker's acts or omissions, done under color of state law, resulted in the deprivation of a right, privilege, or immunity protected by the United States Constitution or the laws of the United States. The Supreme Court has held that a "proper analysis requires a court to separate two different issues when a § 1983 claim is asserted against a municipality: (1) whether plaintiff's harm was caused by a constitutional violation, and (2) if so, whether the municipality is responsible for that violation" (*Collins v. City of Harker Heights*, 1991). The Kings contended that Pioneer RESA had an affirmative duty, under the due process clause of the Fourteenth Amendment, to prevent Jonathan's suicide. The court concluded that compulsory school attendance laws did not create a constitutional duty for Pioneer RESA to protect Jonathan from harming himself. The Kings argued that confining Jonathan to a timeout room constituted a restraint on his liberty that was more analogous to that of an incarcerated inmate or an involuntarily-committed mental patient, and therefore Pioneer RESA had a duty to protect him. However, even if the premise was accepted that sending Jonathan to the timeout room created a situation that was more analogous to that of an incarcerated inmate than to a middle-school student, the King's argument that Pioneer RESA deprived Jonathan of his right to substantive due process still failed. "To establish liability for a prisoner's suicide under § 1983, the plaintiff must show that the jail official displayed 'deliberate indifference' to the prisoner's taking of his own life" (*Gish v. Thomas*, 2008). There was no evidence that the two Alpine employees who were responsible for putting Jonathan in the timeout room on the day he committed suicide acted with deliberate indifference. Thus, Jonathan's suicide was not caused by a deprivation of his substantive due process rights. The Kings also contended that Pioneer RESA's conduct, policies, and employee training procedures demonstrated a deliberate

indifference to its duty to protect Jonathan from harming himself. This contention was without merit. As discussed, the Kings failed to show that Jonathan was deprived of his right to substantive due process by any school officials. Without an underlying violation of Jonathan's constitutional rights, Pioneer RESA cannot be liable on the ground that its conduct, policies, or training procedures caused a constitutional violation. Therefore, Pioneer RESA was not responsible for Jonathan's suicide.

Disposition: The Court of Appeals affirmed the lower court's decision granting summary judgment to the school system and granting DOE's motion to dismiss.

Citation: *Greene v. Camreta*, 588 F.3d 1011 (9th Cir. 2009).

Key Facts: Bob Camerta, a caseworker with DHS, learned that Nimrod had been released and was having unsupervised contact with his daughters. Camerta was assigned to assess the girls' safety. Three days after hearing of Nimrod's release, Camerta visited S.G.'s elementary school to interview her. According to Camerta, "interviews of this nature on school premises are a regular part of child protective services practice and are consistent with DHS rules and training." Sarah was not informed of, nor did she consent to, the interview of her daughter. Camerta also did not obtain a warrant or other court order before the interview. Throughout the interview Camerta was accompanied by Deputy Sheriff Alford. Upon arriving at the school, Camerta told school officials that he and Alford were there to interview S.G. and requested use of a private office. Terry Friesen, a counselor at the elementary school, visited S.G. in her classroom and told the child that someone was there to talk with her. Friesen took S.G. to the room where Camerta and Alford were waiting and left. Camerta interviewed S.G. for 2 hours in Alford's presence. Alford, who had a visible firearm, did not ask any questions during the interview. Based on the interview and other information he had gathered, Camerta believed that

Nimrod had sexually abused S.G. As a result, Camreta and Alford visited the Greenes' home and spoke with Sara and Nimrod. Both parents denied any sexual abuse but agreed to a safety plan whereby, pending an investigation, Nimrod would not have unsupervised contact with his two daughters, S.G. and K.G.

Issue: At issue was whether a child protective services caseworker and deputy sheriff violated a student's constitutional rights through an in-school seizure. (There are 3 other issues not briefed because of irrelevance to the study.)

Holding: The Court of Appeals held that as a matter of apparent first impression, the decision to seize and interrogate the daughter, at school, in the absence of warrant, court order, exigent circumstances, or parental consent violated the Fourth Amendment; and the caseworker and deputy sheriff were entitled to qualified immunity with respect to claims that they violated the daughter's Fourth Amendment rights.

Reasoning: Ultimately, the question in this case is whether the individual defendants may be held liable in damages to the Greenes. The defendants maintained that even if they violated the Greenes' constitutional rights, they were entitled to qualified immunity and so not liable in damages. The court considered the relatively straightforward question whether an in-school seizure and interrogation of a suspected child abuse victim is always permissible under the Fourth Amendment without probable cause and a warrant or the equivalent of a warrant, as defendants maintained. The court therefore addressed both prongs of the qualified immunity inquiry in this case, to provide guidance to those charged with the difficult task of protecting child welfare within the confines of the Fourth Amendment. The court proceeded to consider whether, as the Greenes' argued, the warrantless, in-school interview of S.G. violated S.G.'s Fourth Amendment rights. Camreta and Alford did not contest to the district court's holding that

the 2-hour interview with S.G. at her school was a seizure. The question before the court was whether that seizure was “unreasonable.” This court had yet to address the principles governing the in-school seizure of a suspected child abuse victim. It had, however, previously held that the warrantless, non-emergency search and seizure of an alleged victim of child sexual abuse at her home violated the Fourth Amendment. *Calabretta* (1999) does not resolve the Fourth Amendment issue in this case but goes a fair way toward doing so. The defendants insisted that *Calabretta* and *Wallis* (2000) have nothing to do with this case because S.G. was seized at school rather than at home. Citing the Supreme Court’s decision in *New Jersey v. T.L.O.I* (1985), the defendants argued that searches and seizures in public schools are subjected to a special standard of reasonableness, whereby a search or seizure is “reasonable” if it was “justified at its inception” and “reasonably related in scope to the circumstances which justified the interference in the first place.” The defendants urged us to conclude that while seizing S.G. and interviewing her at home for 2 hours would have been unreasonable, absent probable cause and a warrant or exigent circumstances, it was reasonable to do a similarly lengthy interrogation in the same way at S.G.’s school. The court declined to adopt this distinction. The Court, in *T.L.O.*, expressly noted that it was addressing only searches “by a teacher or other school official,” explaining that “by focusing attention on the question of reasonableness, the standard will spare teachers and administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense.” The Court further clarified that it was considering “only searches carried out by school authorities acting alone and on their own authority,” expressing “no opinion” on “the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies.” S.G. was seized and interrogated by a social services

caseworker and a deputy sheriff. Neither of these individuals qualified as a “school official.” Thus, by its own terms, *T.L.O.* does not control the court’s resolution of S.G.’s Fourth Amendment claim. The court therefore cannot rely on the balancing of interests in *T.L.O.* to assess the reasonableness of the defendants’ decision to seize S.G. Applying the traditional Fourth Amendment requirements, the decision to seize and interrogate S.G. in the absence of a warrant, a court order, exigent circumstances, or parental consent was unconstitutional. The court therefore reversed the district court to the extent that it held that Alford and Camreta had not violated S.G.’s right to be free from an unconstitutional seizure. Because this court’s precedent did not clearly establish that the in-school seizure of a student suspected of being the victim of child sexual abuse can be subject to traditional Fourth Amendment protections, and because, applying the lesser *T.L.O.* standard, the defendants’ actions were not so clearly invalid as to strip them of immunity, the court affirmed the district court’s ruling that the defendants are entitled to qualified immunity on the Greenes’ Fourth Amendment claim.

Disposition: The Court of Appeals affirmed in part and reversed in part, and remanded.

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Citation: *C.N. through J.N. v. Willmar Public Schools*, 591 F.3d 624 (8th Cir. 2010).

Key Facts: This action concerned events that allegedly occurred while C.N. was enrolled at Lincoln Elementary School within the District of Willmar, Minnesota, where C.N. attended school from midway through kindergarten to midway through her third grade year. C.N. was designated as developmentally delayed with a speech and language impairment. Thus, during kindergarten at Jefferson Elementary, C.N. had an IEP geared toward addressing her special needs. C.N.’s IEP included a behavior intervention plan (BIP), which authorized the use of restraint holds and seclusion when C.N. exhibited various target behaviors. Throughout C.N.’s

time at Lincoln, the IEP team continually adjusted her IEP, and at all relevant times, the IEP authorized controlled procedures. While attending Lincoln, C.N. worked with Defendant Lisa Van Der Heiden, a special education teacher. Van Der Heiden sometimes used the controlled procedures authorized in C.N.'s BIP, and recorded the incidents in behavioral and communication logs she kept for her students. The complaint alleged that during C.N.'s time under her care, Van Der Heiden used those techniques improperly and excessively and also mistreated C.N. J.N. withdrew her daughter from Lincoln and enrolled her at St. John's, a private school in Atwater, Minnesota, for the remainder of her third grade year. J.N. enrolled C.N. in the Atwater public school district for the 2007-2008 school year. On October 17, 2007, C.N., by and through J.N., requested an administrative hearing and filed a complaint with the MDE, challenging the adequacy of the educational services provided by the District. The Administrative Law Judge granted the District's motion to dismiss the hearing request for lack of jurisdiction because C.N. was no longer enrolled in the District and had transferred to Atwater without requesting a hearing against the District. C.N. appealed that ruling to the district court. The district court concluded C.N.'s IDEA claim failed as a matter of law because she did not request a hearing on her claims against the District until after leaving the District. The court also dismissed C.N.'s remaining federal claims for failure to state a claim and declined to exercise jurisdiction over her state law claims. This appeal followed.

Issue: At issues was whether a special education teacher violated a student's constitutional rights by using seclusion and restraint methods.

Holding: The Court of Appeals held that (1) the student's failure to exhaust administrative remedies by requesting a due process hearing before transferring to another school district precluded IDEA claim, (2) the special education teacher's alleged use of restraints and

seclusion did not violate student's Fourth Amendment right to be free from unreasonable seizures, and (3) the allegations did not state substantive due process violation.

Reasoning: The court first addressed C.N.'s challenge to the dismissal of her IDEA claim against the District. Like in ALJ, the district court concluded C.N.'s IDEA claim failed under *Thompson* (1998) because she did not request a hearing to challenge the education provided by the District until after leaving the District. This court was likewise bound to affirm dismissal of C.N.'s IDEA claim. C.N. also challenged the dismissal of her § 1983 claims for Fourth and Fourteenth Amendment violations. The district court dismissed those claims as to the District after concluding the complaint failed to identify an unconstitutional District policy or custom that caused the alleged injuries. The court further concluded the individual defendants were entitled to qualified immunity because C.N. failed to allege either a Fourth Amendment or a substantive due process violation. Finding no error, this court affirmed.

Disposition: The Court of Appeals affirmed the dismissal of C.N.'s federal claims.

Citation: *Alleyne v. New York State Education Department*, 691 F.Supp.2d 322 (N.D. N.Y. 2010).

Key Facts: The plaintiffs were a group of approximately 40 New York students with severe behavioral problems who attended Judge Rotenberg Educational Center (JRC), and their parents and guardians. Located in Massachusetts, JRC is a not-for-profit school that provides residential, special education, and behavioral services for individuals who suffer severe behavioral disorders. In addressing the students' problematic behaviors, JRC first employs positive intervention methods such as rewards and token fines. If unsuccessful, JRC may employ aversive interventions. Aversive methods include contingent food programs, the use of helmets on some children, mechanical restraints, and the application of electric skin shocks through a graduated electronic decelerator. Before aversive methods are used on a student, such use must be

approved by the supervising personnel, the student's parents or guardian, two committees, the school district, an independent board certified physician, and a Massachusetts probate court judge. As of June 23, 2006, most of the students were receiving aversive methods for aggressive, destructive, health dangerous, major disruptive, and non-compliant behaviors. In early 2006, a parent of a former JRC student sued NYSED, claiming that JRC mistreated the student. Shortly thereafter, NYSED proposed a complete ban on the use of aversive techniques, and decided to conduct another review of JRC due to the lawsuit, despite having reviewed JRC in Fall 2005. Upon NYSED's recommendation, NYSBR adopted "emergency" regulations in June 2006 that limited the use of aversive techniques, effective June 23, 2006. The defendants contended that the regulations were the product of considerable research and review. The emergency regulations prohibited the use of aversive interventions to reduce or eliminate maladaptive behaviors, except as provided through a child-specific exception that applied when the child's CSE developed an IEP that included aversive techniques. Under the finalized regulations adopted in January 2007, the use of aversive methods was only permitted for students who had aversive methods on their IEP as of June 30, 2009, and who obtained a child-specific exception from a committee appointed by the Commissioner or his designee. The use of aversive methods under this exception was limited to self-injurious behaviors and/or aggressive behaviors. The United States Department of Education reviewed the final regulations and found that they "can be implemented consistent with the IDEA."

Issue: At issue was whether school officials violated students with disabilities' constitutional rights through the use of aversive treatment.

Holding: The District Court held that (1) the regulation did not facially violate IDEA; (2) the academic progress of students was not the sole factor in determining whether students

received free appropriate public education (FAPE); (3) the regulations did not violate the Rehabilitation Act; regulations did not violate due process; (4) the regulations did not violate equal protection; and (5) the state was not entitled to vacatur of injunction against the regulation.

Reasoning: The court found that the regulations represented an informed, rational choice between two opposing schools of thought on the use of aversives. Whether it was the best choice, or one that the court would have made, was irrelevant. The court, with its limited educational expertise, was not the final arbiter in the realm of behavioral modification. As the regulations were neither arbitrary nor capricious, and were consistent with the purposes of the IDEA, the plaintiffs' factual attack must be rejected. Academic progress was not the sole measure of a FAPE. Thus, the court must reject the defendants' contention that so long as "a student is making academic progress, related services that address a student's social and/or behavioral issues may be denied even if problematic behaviors continue." Beyond this mistaken premise, the defendants have not addressed the substance of plaintiffs' FAPE claims with sufficient specificity to render a ruling on such claims appropriate here. As such, further administrative proceedings or hearings may be necessary. Thus, for these reasons, the defendants' motion for summary judgment on these claims was denied. Next, the defendants contended that the plaintiffs' claim under the Rehabilitation Act failed against Commissioner Mills because Section 504 does not allow for a state official to be sued in his personal capacity. It was also asserted that this claim must fail on the merits. But because Commissioner Mills is not being sued in his personal capacity, the court focused on the defendants' later argument. Here, the court's finding that the regulations represented a permissible educational policy choice by the defendants precludes any finding that such regulations were enacted in bad faith or with gross misjudgment. Even was this not the case, the plaintiffs' arguments in support of their

Rehabilitation Act claim lack merit. The plaintiffs contended that the defendants improperly accepted allegations of mistreatment by JRC as fact in early 2006 without investigating their merits. With their next breath, however, the plaintiffs objected to such an investigation, asserting that the defendants' "re-reviewed" JRC to avoid negative media attention arising from the 2006 allegations. Clearly, the plaintiffs cannot have it both ways, and their attempt to do so was rejected. To the extent it was asserted that the defendants failed to support their criticism of JRC's use of aversives, and distorted scientific literature to support the regulations, the court found the plaintiffs' arguments without merit. The court cannot find that the regulations were enacted in bad faith or with gross misjudgment, and therefore, the plaintiffs' Rehabilitation Act claims were dismissed. Finally, the defendants sought dismissal of the plaintiffs' equal protection, procedural due process, and substantive due process claims under the New York and United States Constitutions, on grounds that such claims were barred by sovereign immunity and were without merit. The court construed the plaintiffs' federal constitutional claims to arise under §1983, despite the plaintiffs' protestation, as no other statutory vehicle for such claims was proffered. Because the state and its agencies were immune from suit under § 1983, the plaintiffs' federal constitutional claims were dismissed as against NYSED and NYSBR. However, to the extent the plaintiffs sought prospective injunctive and declaratory relief from ongoing violations of federal law against Commissioner Mills in his official capacity, the federal constitutional claims were not barred by sovereign immunity. As such, the court turns to the merits of these claims. Despite the defendants' inexplicable failure to address the relation between the regulations and a government interest, the plaintiffs' substantive due process claim failed. "Education is unquestionably a legitimate state interest" (*Immediato*, 1996). This interest clearly extended to the academic, emotional, and physical well being of students in the educational

setting. Furthermore, the regulations' limitation and ultimate prohibition of aversives was rationally related to these state interests, as the defendants could have reasonably concluded that the potential harm of aversives in education outweighed their potential benefits. As such, the plaintiffs' substantive due process claim was dismissed. Analysis of a procedural due process claim is composed of two prongs. First, the court must discern "whether the plaintiff has a property or liberty interest protected by the Constitution." If such an interest exists, "the court must then consider whether the government deprived the plaintiff of that interest without due process." Here, the plaintiffs contended that they were deprived of their interest in education without due process because the regulations limiting aversives were passed on an emergency basis, and public hearings were only held subsequently. The court cannot agree. While both New York law and the IDEA create a property interest in education, it is far from clear that this interest extended to aversives. Assuming it did, the court noted that a post-deprivation hearing is sufficient to satisfy due process where a valid governmental interest militates toward immediate action. Here, the defendants were faced with allegations of abuse at JRC, and a report which gave concern about JRC's use of aversives. As such, it was certainly reasonable to assume that immediate action was necessary at the time the emergency regulations were enacted. Additionally, in the months following the passage of the emergency regulations, notices were provided, public hearings were held, comments were accepted, and an assessment of public comment was published--all in compliance with New York's Administrative Procedure Act. These subsequent procedures actually resulted in final regulations that were more restrictive regarding the use of aversives than the emergency regulations were. As such, it would appear that additional procedures prior to the promulgation of the emergency regulations would have been of little value to the plaintiffs. Accordingly, the plaintiffs' procedural due process claim

was dismissed. In order to adequately present an equal protection claim under the Fourteenth Amendment, the plaintiffs must prove that compared with others similarly situated, they were selectively treated; and that such selective treatment was based on impermissible considerations such as race, religion, disability, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith intent to injure a person. The plaintiffs failed to satisfy either prong of this analysis. Accordingly, the plaintiffs' equal protection claims were dismissed. The court had already rejected the contention that the plaintiffs' academic progress established beyond reproach that the regulations had not denied the plaintiffs a FAPE. Further, while the incident in August 2007 was unfortunate, there was no evidence that similar episodes occurred before or since. JRC continued to be approved by Massachusetts agencies and NYSED, and had taken remedial measures to preclude the recurrence of such incidents. As such, the court declined to dissolve the preliminary injunction.

Disposition: Motion for summary judgment was granted in part and denied in part, and motion to dissolve injunction was denied.

Citation: *D.D. Ex Rel. Davis v. Chilton County Board of Education*, 701 F.Supp.2d 1236 (M.D. Ala. 2010).

Key Facts: D.D. was a 4-year-old enrolled at Clanton Elementary School, operated by Chilton County Board of Education, during the 2008-2009 school year. D.D. was receiving educational services pursuant to an Individualized Education Program (IEP). D.D. hit and kicked his teacher, teacher's aide, and classmates during the fall of 2008. His teacher, Alford, explained that she had tried to help D.D. end these behaviors by offering him choices and positive reinforcements. Alford stated that D.D. needed space to calm down and that he liked to sit in the toddler chair in her classroom when he was upset. The chair at issue is a toddler chair

made by the Rifton company; it has various uses, which are generally therapeutic. On November 5, 2008, D.D. was being very disruptive and kicked several students and teachers including Alford. Alford gave D.D. the choice to read a book, but he refused. Alford then offered D.D. the option of sitting in a chair or asked him to sit in the Rifton chair, and D.D. sat in the Rifton chair without force. Although he calmed down after sitting in the chair, he still called Alford, the teacher's aide, and some children stupid and told them to shut up. Alford wanted to calm D.D. further before he left for the day so she attached the Rifton chair's lap belt around D.D. so that he would not fall and moved him into the hallway. She placed him facing the wall and sat beside him at arm's length as they awaited his mother. Alford stepped into the classroom to get D.D.'s book bag. D.D. was in the chair a total time of less than 10 minutes. When Davis arrived, Alford undid the strap, returned his shoes, and D.D. began to hit and kick Alford. When Davis arrived, she claims she found D.D. strapped at the waist and feet to a chair in the hallway with the classroom door closed, crying, and alone. Davis had requested a behavioral plan as part of his IEP, but no plan was developed or implemented until after the chair incident at issue. Davis stated she had not been notified that D.D. was strapped in the Rifton chair on November 5, 2008, nor was she informed that the use of a Rifton chair had been authorized as a consequence for inappropriate behavior. After seeing D.D. in the chair, Davis requested D.D. be removed from the school; however, later she requested that D.D. not be transferred to a different school but only to a different teacher. D.D. was assigned to a different preschool teacher. Alford was never disciplined as a result of the incident in question; it was determined that she followed all policies, procedures, and practices of the Chilton Board of Education.

Issue: At issue was whether a teacher was in violation of a student's procedural due process and substantive due process rights to liberty and bodily integrity, violation of the Individuals with Disabilities Act (IDEA), assault and battery, and outrageous conduct.

Holding: The United States District Court held that the teacher's alleged conduct in sitting the student in a toddler chair did not rise to level of a violation of the student's substantive due process rights; the teacher's alleged conduct did not violate the student's right to procedural due process; the plaintiffs failed to refer to the IDEA claim; and the exercise of supplemental jurisdiction over the plaintiffs' state law claims was not warranted.

Reasoning: Using *G.C. v. School Bd. Of Seminole Co.* (2009), this court applied the factors applicable in the corporal punishment context to this case, where the state interest was in classroom control and safety and that the facts, viewed in light most favorable to the non-movant, did not shock the conscience in a constitutional sense. Using *McKinney v. Pate* (1994), stating "only when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under § 1983 arise," summary judgment was due to be granted on the theory that D.D. was not provided procedural process because Alford failed to follow Board policy. Alford's actions to restrain D.D. were similar to those in *Hassan v. Lubbock Indep. Sch. Dist.* (1995) and are considered actions taken to maintain order and are not sufficient deprivation of liberty or bodily integrity so as to require advance notice and a hearing. In summary, the facts of this case did not shock the conscience in a constitutional sense, and therefore did not establish a deprivation of the substantive due process rights of liberty or bodily integrity. This conclusion was consistent with "the Supreme Court's mandate to remain vigilant in policing the boundaries separating tort laws from constitutional law" (*Nix v.*

Franklin County School Dist., 2002). The teacher's actions also did not rise to a level such that procedural due process rights were implicated.

Disposition: The motion for summary judgment is granted as to the federal claims, and the court declines to exercise supplemental jurisdiction over the state law claims, dismissing them without prejudice.

Citation: *T.W. v. School Board of Seminole County*, 610 F.3d 588 (11th Cir. 2010).

Key Facts: T.W. exhibited developmental and behavioral problems at an early age. T.W. was aggressive, threw temper tantrums, and was extremely sensitive to touch and noise. As a student with a disability, T.W. was eligible for and received special education services at the public schools he attended. T.W. exhibited several behavioral problems at the schools he attended. T.W. struggled to obey rules, participate in class activities, and complete his work. He was aggressive toward himself and others; pushed, growled, and bit; threatened to blow up the school and to report false allegations of staff abuse; cursed; climbed on objects inappropriately; and scratched his head excessively. Crisis intervention staff at the middle school T.W. attended physically restrained him and removed him from the classroom on several occasions. T.W. enrolled in the seventh grade at South Seminole Middle School in May 2004. T.W. was in Garrett's autism class from May 2004 until the end of that school year, and he returned to Garrett's class for the eighth grade in August 2004. T.W. was in Garrett's classroom in the afternoons; he spent the mornings in another teacher's classroom. Garrett used physical force against T.W. on five separate occasions. T.W. was slightly over 5' tall and weighed about 150 pounds when these incidents occurred. Garrett was nearly 6' tall and weighed about 300 pounds. Garrett had completed two courses on physical restraint techniques and was certified in crisis prevention intervention. T.W.'s mother, Tracy Wilson, observed bruises on T.W.'s lower arms

on two occasions. When she asked T.W. what caused the bruises, T.W. said that Garrett had hurt him. Wilson never sought medical treatment for the bruises, never confronted Garrett about the bruises, and never asked to observe Garrett's class. Police arrested Garrett on charges of child abuse on November 10, 2004. Garrett resigned her teaching position 2 days later. Garrett was charged in a Florida court with five counts of child abuse based on allegations that Garrett abused four of T.W.'s classmates, but the state dropped one count at trial. The jury deliberated on two counts and returned a verdict of guilty on one count, but the court withheld adjudication.

Issue: At issue was whether a teacher violated a student's due process rights by the use of physical restraint and corporal punishment.

Holding: The Court of Appeals held that (1) the teacher's restraining of student only after he refused to go to cool down room, called teacher names, and threatened to have her arrested was capable of being construed as attempt to restore order, maintain discipline, or protect student from self-injurious behavior; (2) the teacher's use of force in various incidents had been related to the student's disruptive or self-injurious conduct was for purpose of discipline, and thus was "corporal punishment;" (3) the teacher's tripping student and causing student to stumble, without more, did not violate the student's substantive due process rights; (4) the teacher's restraining of student after he refused to follow her instructions and swung his hands at her was capable of being construed as attempt to restore order, maintain discipline, or protect student from self-injurious behavior; (5) the teacher's restraining of student after he refused to stop scratching insect bite that was "red and raw looking" was capable of being construed as an attempt to restore order, maintain discipline, or protect student from self-injurious behavior; (6) the teacher's inappropriate restraint of student was not totally unrelated to

need for use of corporal punishment; and (7) the teacher's use of corporal punishment on the student was not overly excessive.

Reasoning: The Due Process Clause protects individuals against arbitrary exercises of government power, but “only the most egregious official conduct can be said to be ‘arbitrary in the constitutional sense’” (*County of Sacramento v. Lewis*, 1998). To be arbitrary in the constitutional sense, an executive abuse of power must “shock the conscience.” Excessive corporal punishment may be actionable under the Due Process Clause when it is tantamount to arbitrary, egregious, and conscience-shocking behavior (*Neal*, 2000). The key inquiry was not what form the use of force took but whether the use of force was related to the student's misconduct at school and for the purpose of discipline. The evidence overwhelmingly established that Garrett's use of force during the first four incidents was related to T.W.'s disruptive or self-injurious conduct and was for the purpose of discipline. With respect to the fifth incident, when Garrett tripped T.W. as he left the cool down room, the evidence supported a reasonable inference that Garrett's use of force was unrelated to T.W.'s disruptive behavior and lacked a disciplinary purpose. Under any analysis, it was inconceivable that tripping a student and causing the student to stumble, without more, violates the Constitution. “A range of teacher conduct exists that is neither corporal punishment nor so conscience-shocking as to trigger a substantive due process violation” (*Peterson*, 2007). The tripping incident fell within that range. The court next considered whether Garrett's use of force during the first four incidents violated T.W.'s right to be free from excessive corporal punishment. To determine whether a use of force is “obviously excessive,” the court considers the totality of the circumstances. Three factors are particularly relevant: (1) the need for the application of corporal punishment, (2) the relationship between the need and amount of punishment administered, and (3) the extent of the injury

inflicted. The evidence established that Garret's use of force against T.W. was capable of being construed as an attempt to restore order, maintain discipline, or protect T.W. from self-injurious behavior. Evidence did not support a reasonable inference that Garrett provoked T.W. to misbehave so that she could restrain him. Evidence as to Garrett's subjective intent did not affect the determination of whether, viewed objectively, the circumstances provided Garrett with a reason to use force. The court concluded that during each of the four incidents when Garrett restrained T.W. there was at least some reason for Garrett's use of force. The court next considered the relationship between the need for the use of force and the amount of force administered. With respect to the four incidents involving restraints, the evidence established that Garrett restrained T.W. inappropriately. On the other hand, the evidence also established that Garrett restrained T.W. only until he calmed down or agreed to comply with her instructions, and each incident lasted, at most, several minutes. Although T.W. presented evidence that Garrett could have restrained T.W. in a less harmful manner, the amount of force at issue here was not totally unrelated to the need for the use of force. Finally, the court considered the extent of T.W.'s injuries. T.W. suffered only minor physical injuries. T.W. never received medical treatment for any physical injuries. The court concluded that Garrett's conduct was not so arbitrary and egregious as to support a complaint of a violation of substantive due process. No reasonable jury could conclude that Garrett's use of force was obviously excessive in the constitutional sense. Because Garrett's use of force was not obviously excessive, the court need not consider whether the force Garrett used presented a reasonable foreseeable risk of serious bodily injury. The only issue on appeal was whether the School Board subjected T.W. to discrimination. To succeed on his discrimination claim under Section 504, T.W. must prove, by a preponderance of the evidence, "that the School Board intended to discriminate against him on

the basis of his disability” (*Berg v. Fla. Dep’t of Labor & Employment Sec.*, 1998)). T.W. advanced two distinct theories of liability under Section 504. First, he asserted that the School Board itself intentionally discriminated against him when it “placed a teacher with a proclivity toward abuse with students who would not complain.” Second, he asserted that Garrett intentionally discriminated against him and the School Board was liable for Garrett’s misconduct under the theory of respondeat superior. The court addressed each theory of liability in turn, and concluded that T.W.’s claim under the Rehabilitation Act failed as a matter of law under either theory. First, no reasonable jury could conclude that the School Board itself intentionally discriminated against T.W. on the basis of his disability. Second, the court considered whether the School Board was liable for Garrett’s misconduct under a theory of respondeat superior. Although this court had yet to decide whether the Rehabilitation Act permitted respondeat superior liability, it held that its companion statute, the Americans with Disabilities Act, permits an employer to be held liable for the actions of its agents. Even assuming that the Rehabilitation Act, like the Americans with Disabilities Act, permits the School Board to be held vicariously liable for Garrett’s actions, T.W.’s claim failed because no reasonable jury could conclude that Garrett intentionally discriminated against T.W. solely by reason of his disability.

Disposition: This court affirmed the summary judgment in favor of Garrett and the School Board.

Citation: *Sterner v. Titusville Area School District*, 737 F.Supp.2d 449 (W.D. Penn. 2010).

Key Facts: Plaintiff JGS was an autistic student with an identifiable disability that made him eligible for special education services. JGS was enrolled in first grade in the Titusville Area School District. Defendant Corklin was the special education teacher assigned to his classroom

and Defendant Nosko assisted Corklin as a teacher's aide. JGS frequently engaged in verbal and physical outbursts that included loud and profane screaming, threats of force and violence, and suggestions of his intent to physically harm other students and personnel. In an incident on February 16, 2006, he abruptly stood up and began screaming obscenities at other students. The plaintiffs' contended that, in response to JGS's outburst, Nosko placed some liquid hand sanitizer in her hand, held it over JGS's mouth, and forced him to ingest it. Nosko denied ever forcing JGS or any other student to swallow liquid hand sanitizer. According to Nosko, she initially attempted to verbally dissuade JGS by instructing him to stop yelling and encouraging him to return to his prior activity. When that failed, Nosko stated that she gently placed her hand over his mouth for one or two seconds and instructed him to "be quiet." Nosko denied that she applied any degree of force or that she held JGS's mouth opened or closed or forced him to ingest anything. She acknowledged using liquid hand sanitizer on her hands throughout the work day for routine sanitation purposes, but denied having placed any within JGS's mouth. Sterner conceded that JGS did not suffer any physical injury as a result of the alleged incident. However, he contended that JGS had experienced various psychological injuries.

Issue: At issue was whether a teacher and teacher's aide violated a first grade student's Fourteenth Amendment substantive due process rights by forcing him to ingest liquid hand sanitizer when placing hands over student's mouth.

Holding: The District Court held that (1) the aide did not cause serious physical injury, (2) the aide had pedagogical objective, and (3) the aide did not act for the very purpose of causing harm.

Reasoning: In order to establish a constitutional violation in a school corporal punishment case, the conduct alleged must "properly be characterized as arbitrary, or conscience

shocking” (*County of Sacramento v. Lewis*, 1998). The Court in *Gottlieb* (2001) identified the following factors as relevant to a determination as to whether corporal punishment by the state actor violates substantive due process: (a) Was there a pedagogical justification for the use of force? (b) Was the force utilized excessive to meet the legitimate objective in the situation? (c) Was the force applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm? and (d) Was there a serious injury? Here, the plaintiffs conceded that JGS did not suffer any physical injury as a result of the hand sanitizer incident. Therefore, the plaintiffs’ substantive due process claim failed on the basis of the undisputed lack of any physical injury, much less a serious one. Although the lack of any injury is dispositive, a brief analysis of the other *Gottlieb* factors lends further support for the conclusion that the incident was not properly viewed as “conscience shocking” for substantive due process purposes. The first prong of the *Gottlieb* analysis requires the Court to determine whether there is a “pedagogical justification” for the use of force. The record in this case conclusively established that there was a pedagogical justification for the use of the alleged force. The fourth factor of the *Gottlieb* test asked whether the force utilized “was applied in a good faith effort to maintain or restore discipline or maliciously . . . for the purpose of causing harm.” The record did not support a reasonable inference that the defendants’ action was taken for “the very purpose of causing harm.” Nosko’s affidavit stated that she placed her hand over JGS’s mouth in an attempt to restore order and discipline at a time when JGS was loudly screaming obscenities and otherwise “acting out” during class time. The plaintiffs’ also raised a claim for supervisory liability against Corklin based upon the allegation that she had supervisory authority over Nosko and was present at the time of the alleged unlawful misconduct. Given the court’s conclusion that the plaintiffs’ constitutional claim against Nosko lacked merit, summary

judgment was also appropriate to the plaintiffs' supervisory liability claim against Corklin.

Placing liquid hand sanitizer in a child's mouth in an attempt to discipline and/or maintain order is a completely inappropriate and unjustifiable response on the part of a teacher. However, the alleged conduct was insufficient to support a claim based upon a violation of JGS's substantive due process rights.

Disposition: The Court granted the defendants' motion for summary judgment and dismissed the action.

Citation: *W.A. v. Patterson Joint Unified School District*, 2010 WL 4746175 (E.D. Cal. 2010).

Key Facts: The student was a minor child who was eligible for special education and related services because he had autism. The plaintiffs alleged that the student was harmed by the use of improper restraints by his teacher Carli Briones and another District employee. Ms. Briones was student's teacher during the 2007-2008 school year. At the beginning of the school year, the student engaged in a 30-minute aggressive episode in which he followed Briones around the classroom while hitting and kicking her. At the time, Briones was not trained in restraint techniques and the classroom aide, Yoland Ledezma, was not trained in Applied Behavioral Analysis (ABA) techniques. A behavior support plan (BSP) was developed for W.A. on August 8, 2007, following the 30-minute aggressive episode. The BSP was not approved or provided to W.A.s parents until the due process hearings held in February and March 2010. S.A., the student's mother, expressed her concerns that W.A. did not have a behavior intervention plan (BIP) to the District's director of special education, Dave Hoge, in an October 19, 2007 email. In November 2007, instead of performing a functional assessment analysis (FAA) to determine the reason behind W.A.'s behaviors and provide a BIP, the District

developed a second BSP that allowed the use of District-approved restraints as a consequence to W.A.'s aggressive behaviors. When the BSP was presented to S.A., the District did not explain what types of restraints would be used, nor did the District explain that the parents were waiving their son's rights under the Hughes Bill to certain procedural safeguards, including the filing of behavior emergency reports (BERs) and holding an IEP meeting with parents and staff within 2 days of restraint to discuss whether any modifications were necessary to the IEP and, if so, whether an FAA would be conducted. S.A. agreed to the proposed BSP. Briones and another District employee performed restraints on W.A. on December 17, 2007, January 8-10, 2008, January 15-18, 2008, and January 21, 2008. In April 2008, W.A. was restrained twice while he was a student at Sierra Vista, a non-public school the District contracted with and placed him in pursuant to an IEP. The plaintiffs alleged that during the 2007-2008, 2008-2009, and 2009-2010 school years, the District failed to offer W.A. an appropriate placement, support and services, failed to conduct appropriate assessments, failed to comply with all of the IDEA's procedural requirements, and failed to comply with the Hughes Bill. The plaintiffs filed a request for due process with the California Office of Administrative Hearings (OAH) on November 4, 2009. This followed a request for due process filed by the District on November 2, 2009.

Issue: At issue was whether a teacher violated a student's constitutional rights by using physical restraint techniques.

Holding: The District Court held that this Court lacked jurisdiction to consider the plaintiffs' cause of action based on their disability discrimination claims, because the plaintiffs failed to raise the issue in the administrative proceeding; the plaintiffs satisfied the exhaustion requirement as to the allegations of improper restraint brought against the defendants pursuant to

§ 1983; due to lack of details, this Court cannot grant the defendants' motion to dismiss based on qualified immunity.

Reasoning: The plaintiffs had to exhaust their administrative remedies before bringing federal claims regarding a denial of publicly funded special education. The IDEA provides an administrative appeal procedure to be pursued before seeking judicial review. This Court lacks subject matter jurisdiction over federal claims the plaintiff failed to raise in the relevant administrative procedure. The plaintiffs based their ADA and Section 504 claims on alleged disability discrimination, a claim not raised in the administrative proceeding. In their second cause of action, the plaintiffs alleged that the defendants' conduct "violated the ADA in that plaintiff W.A., who is a student with a qualified disability, was either not provided programs, services and activities that were provided to non-disabled students, or was provided programs, services, and activities that were not equal to, and were inferior to the services provide to students who are not disabled. The plaintiffs contended that W.A. "was physically and emotionally harmed" by the District's employees who used "unnecessary and harmful restraint techniques, which amounts to disability discrimination." Although the plaintiffs raised nearly 30 detailed sub-issues in the administrative proceeding, the plaintiffs failed to raise the issue of disability discrimination. As such, this Court lacked jurisdiction to consider the plaintiffs' cause of action based on their disability discrimination claims. The plaintiffs' Fourth Amendment cause of action was asserted against Briones and Hodge individually. The plaintiffs alleged that the acts and omissions of these defendants, "under color of state law deprived the plaintiff of his rights under the United States Constitution." Specifically, the plaintiffs alleged that the defendants deprived W.A, of his "constitutional right to be free from unreasonable government seizures by repeatedly using physical restraints on W.A. when they were not necessary or

approved.” The plaintiffs’ Fourth Amendment claim was based, in part, on the defendants’ alleged failure to “adhere to the Hughes Bill requirements for use of restraints.” The plaintiffs challenged the defendants’ use of restraints and alleged failure to comply with the Hughes Bill related to the use of restraints in the administrative proceeding. Because the plaintiffs raised the issue at the administrative level, they satisfied the exhaustion requirement as to the allegations of improper restraint. The plaintiffs exhausted their administrative remedies as to the allegations on which they based their Fourth Amendment claim, brought against defendants pursuant to § 1983. Accordingly, the defendants’ motion to dismiss this cause of action for lack of jurisdiction was denied. To survive a motion to dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” A court “will dismiss any claim that, even when construed in the light most favorable to the plaintiff, fails to plead sufficiently all required elements of a cause of action.” The defendants argued that the plaintiffs’ Fourth Amendment must be dismissed because they enjoy qualified immunity. Qualified immunity protects § 1983 defendants “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Because the plaintiffs alleged that he was a victim of excessive force based on the repeated, unreasonable use of restraints, the allegations were based on a clearly established right. Accordingly, the plaintiffs’ complaint satisfied their prong. Next, the Court considered whether the conduct rose to the level of a violation of W.A.’s Fourth Amendment right to be free from unreasonable seizures by the school officials. Whether the use of force by a teacher is a constitutional violation is analyzed under the “reasonableness” rubric of the Fourth Amendment. The Court considered the reasonableness of the school official’s actions “in light of the age and sex of the student and the nature of the infraction.” Based on the allegations of the complaint, this Court could not

determine the reasonableness of the defendants' actions in light of the circumstances. The Court must look objectively at the specific circumstances of the school and the child. In the complaint, the plaintiffs alleged that the defendants "performed a two person prone restraint" on W.A. on the days in question. Assertions that the defendants performed physical restraints on W.A. do not establish a violation of W.A.'s constitutional right; however, "state law explicitly allows school officials to physically restrain students when the student poses an immediate danger to himself or others." This Court's reasonableness determination was made difficult by the lack of details, particularly in light of W.A.'s admitted history of violence in school. Accordingly, the performance of physical restraints may have been reasonable under the circumstances. Where, as here, defendants bear the burden to demonstrate reasonableness, and this Court must view the allegations in a light most favorable to the plaintiffs, however, this Court cannot grant the defendants' motion to dismiss based on qualified immunity. Accordingly, the defendants' motion to dismiss based on qualified immunity was denied without prejudice.

Disposition: This court granted in part and denied in part the defendants' motion to dismiss; and dismissed the plaintiffs second (ADA) and third (Section 504) causes of action.

2011

Citation: *Washington v. Chicago Public Schools and Soccomando*, 2011 WL 1002859 (N.D. Ill. 2011).

Key Facts: In 2007, the plaintiff Lemuel Washington was a junior at Von Steuben High School. On November 15 of that year Washington was in defendant Saccomando's environmental sciences class; on this day Washington caused an inappropriate disruption to her classroom. She directed Washington to step into the hallway and complete his work outside the

classroom. Later, she stepped into the hallway to discuss and resolve the conflict, but Washington refused the discussion. When he had finished his work, he reentered the classroom and Saccomando asked him to be seated in a small office/room that adjoined her classroom; the door was open. She again tried to discuss and resolve the behavior. During this attempt, according to Saccomando, Washington began mouthing words to his classmates and refused to resolve the conflict, but only worsened the situation. At that time, Saccomando walked out of the office, closing the door behind her. The small room where Washington remained has a thick door with a combination lock and no other doors or windows. The defendants asserted that the door was not capable of being locked; Washington believed he was locked inside but admitted that the combination lock may have been in some manner faulty or not operational. He insisted he was locked in the room for roughly 10 minutes.

Issue: At issue was whether a teacher violated a student's Fourth and Fourteenth Amendment rights and violated the Illinois School Code when she allegedly locked him in a small room.

Holding: The Court held that summary judgment was appropriate for the federal claims and dismissed the state law claims without prejudice.

Reasoning: In light of the Seventh Circuit's conclusion that a physical seizure in response to a student's disruptive behavior did not violate the Fourth Amendment, the court concluded that Saccomando was not on notice that a disciplinary measure that does not involve such physical contact would amount to a constitutional violation (see *Wallace*, 1995). Had Saccomando locked the plaintiff in the room indefinitely, without monitoring his safety, the plaintiff might well state a Fourth Amendment violation. Leaving a child captive and unattended in a small, windowless room may well be the type of "objectively unreasonable" seizure that

would defeat qualified immunity. However, the plaintiff's own testimony showed that the restriction on his liberty was brief and apparently unintentional. That said, it was clear that, for some period of time, the plaintiff was placed alone in a windowless room. Without finding that any "clearly established" right was violated, the court noted that such a measure may not be recommended. The Illinois School Code, in fact, prohibits the use of seclusion rooms "where the room contains anything that could be used by students to harm themselves" and "where the room prevents continuous visual monitoring of and communication with the student." Washington's unreasonable seizure claim was based on a violation of the Fourth Amendment and not on a violation of the administrative regulations of the Illinois School Code. He cannot rely upon the school code regulations as evidence of clearly established law. Because Saccomando did not violate clearly established law, the court granted summary judgment in her favor on the § 1983 claim. Washington also brought state claims against Saccomando for false imprisonment, intentional infliction of emotional distress, and corporal punishment and physical restraint in violation of the Illinois State Code. In general, a federal court should relinquish jurisdiction over state law claims if all federal claims are dismissed before trial. Having dismissed the plaintiff's federal claim, the court declined to exercise jurisdiction over his state claims.

Disposition: The defendants' motion for summary judgment was granted. The plaintiff's federal claims were dismissed with prejudice. The plaintiff's state law claims were dismissed without prejudice.

Citation: *Minnis v. Sumner County Board of Education*, 2011 WL 1196935 (M.D. Tenn. 2011).

Key Facts: Defendant Weindenbenner was employed by the Board as a special education teacher from 1991 until April 2009. In March 2009, two colleagues submitted letters of concern

about Weindenbenner's treatment of her students, including that she was improperly restraining children and force-feeding them. The principal perceived the incidents to be potentially abusive, so she made a report to DCS and to the school system's Human Resources Department.

Authorities began an investigation and Weindenbenner was removed from the classroom on April 1, 2009. She later resigned. She was indicted in August 2009 on three counts of child abuse. The plaintiff's minor child, John Doe, who was diagnosed as developmentally delayed and having an autism-spectrum disorder, was a student in Weindenbenner's classroom in 2006-2007. During this time, Jamie Minnis, Doe's mother, noticed bruises on her son's upper arms that looked like an adult handprint. She also had concerns about what she sometimes observed as she walked her son to his classroom. During the year, Doe became increasingly anxious about attending school. On April 10, 2007, Doe began crying and told his family that Weindenbenner had grabbed him and shook his head until it really hurt. Minnis contacted the school to set up a meeting with the principal. She and her husband left this meeting frustrated and not feeling that the situation was resolved. Doe continued in this classroom for the remainder of the year. After the abuse incidents became public in 2009, Doe again became upset and reported how Weindenbenner had hurt him when he was in her classroom.

Issue: At issue was whether school officials violated a preschool special-need child's substantive due process rights by being indifferent to a teacher's abuse.

Holding: The District Court held that the teacher's actions did not violate child substantive due process rights.

Reasoning: The defendants filed motions for summary judgment, asserting, among other arguments, that Weindenbenner's treatment of John Doe did not amount to a violation of his constitutional rights. The thrust of the plaintiffs' claims against the School Board was that the

Board was liable under § 1983 by virtue of a municipal policy, practice, or custom and a failure to train, supervise, enforce policies, or conduct adequate investigations of prior complaints, all of which led to a violation of their son's constitutional rights. Thus, the Board's liability was premised upon a threshold determination that defendant Weindenbenner's actions actually violated John Doe's constitutional rights. The Supreme Court had not reached the question of whether punishment inflicted in the educational context may implicate substantive due process rights, but the Sixth Circuit, along with most of the other Circuit Courts of Appeals, found that it can. The substantive due process inquiry in school corporal punishment cases must be whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience. In the present case, the only evidence of physical injury offered by the plaintiff was that on one occasion, Weindenbenner grabbed John Doe's head and shook it in the process of redirecting his attention, and on one other occasion, a year previously, she grabbed him by the arm hard enough to cause bruises to stop him from running wildly in the classroom. These injuries, which were clearly pedagogically oriented or disciplinary in nature, did not rise to the level of conscience-shocking injury and were not sufficient to give rise to a claim of constitutional violation. The plaintiffs' complaint and proof may also be construed as alleging that John Doe, though not seriously physically injured, was psychologically harmed as a result of his being forced to witness Weindenbenner's allegedly inappropriate treatment of other students, and that this psychological injury in and of itself is significant enough to give rise to a claim of a constitutional dimension. It appeared that courts have not yet recognized--but have not ruled out--the proposition that "psychological harm unaccompanied by serious physical injuries can be

sufficient to satisfy the injury requirement” for stating a claim for a substantive due process violation in the school context. However, at the very least, the degree of psychological harm would have to be severe to satisfy the injury requirement for a constitutional violation. In this case, the injuries simply did not rise to the level of a “conscience-shocking,” brutal, and inhumane abuse of authority. In short, the evidence was insufficient to establish that Weindenbenner violated John Doe’s substantive due process rights. Because a violation of those rights was a required element of the claims asserted against both the School Board and Weindenbenner individually under § 1983, those claims failed and the defendants were entitled to summary judgment in their favor.

Disposition: The defendants were entitled to summary judgment in their favor and dismissal of all claims asserted against them in this action.

Citation: *Schafer v. Hicksville Union Free School District*, 2011 WL 1322903 (E.D. N.Y. 2011).

Key Facts: Plaintiff Billy was a developmentally disabled male who resided within the defendant Hicksville, New York, Union Free School District. Billy had extensive neuro-developmental deficits and global impairments, and he functioned between a 3- and 5-year-old level. He had impaired language and communication skills. According to his parents, Billy was also claustrophobic. As a result of his disabilities, Billy had received special education services since he was 2 years old. Toward the end of Billy's first year at the Kennedy School, his CSE met to discuss his IEP and academic placement for the upcoming 2005-2006 school year. When the May 23 CSE meeting was finished, Billy's parents asked to see their son. They were escorted to Billy's classroom, but when they got there they were told that Billy had been taken to the timeout room. The parents asked to be taken to see Billy, and Dr. Curci escorted them to the

timeout room area. When they arrived, Dr. Curci asked defendant Paul Schaefer, the timeout room monitor, to open the door of a closet-like cubicle. Schaefer did so, and the parents found Billy crying inside the small space. The parents, shocked and furious at finding their son confined to the cubicle, took Billy home. Billy never returned to the Kennedy School. Classroom 506 of the Kennedy School was a designated “timeout area.” According to the plaintiffs, the timeout room was a small, dark room, approximately 4’ by 5’, with little or no lighting, and with blue gym matting on the walls and floor. The classroom windows were covered with cardboard. The door to the timeout room where Mr. Schafer found Billy might have had a window, but if it did the window was blocked. Further, the plaintiffs inferred that the timeout room was locked. It was undisputed that defendant Paul Schaefer was assigned to monitor the timeout room during the time Billy was enrolled at the Kennedy School. According to the plaintiffs, the defendants put Billy in the timeout room between 27 and 40 times between September 2004 and May 2005. There were 27 reported confinement incidents in Billy’s timeout log, but defendant Cohen told Mr. Schafer that she thought Billy had been sent to the timeout room 40 times. According to the log, Billy was sent to the timeout room for behavior such as “hitting” or “kicking” and also for infractions such as “refusing to work” and “cursing.” The defendants claimed that they prepared a Behavioral Intervention Plan (BIP) for Billy and discussed it with his parents. Billy’s parents sharply disputed that they ever had any knowledge of the BIP or the strategies it described. Billy’s parents maintained that they were completely unaware that the Kennedy School had a timeout room. Further, the plaintiffs claimed that, to the extent Dr. Curci may have mentioned that Billy had a “timeout,” Mr. Schafer assumed that to mean that Billy was told to sit quietly, not that Billy was locked in a closet. According to the plaintiffs, Billy was traumatized by the timeout room.

Issue: At issue was whether school officials violated a student's constitutional rights by confining him to a timeout room. (There are 2 other issues not briefed due to irrelevance to the study.)

Holding: The District Court held that Billy was the victim of an unreasonable seizure, that Billy's confinement did not rise to the level of a procedural due process violation, and that the defendants were entitled to summary judgment.

Reasoning: The plaintiffs' § 1983 claims alleged that all of the defendants violated Billy's constitutional rights by confining him in a dark, closet-sized timeout room without, among other things, adequate supervision and adequate safety measures for monitoring his physical and emotional health. To prevail on a claim under this statute, a plaintiff must establish (1) that the defendant acted under color of state law; and (2) that as a result of the defendant's actions, the plaintiff suffered a deprivation of his or her rights or privileges as secured by the Constitution or laws of the United States. The plaintiffs asserted that the defendants violated Billy's Fourth Amendment right to be free from unreasonable seizures and his Fourteenth Amendment rights to substantive and procedural due process. In the Court's view, the Fourth Amendment regulated the defendants' alleged conduct concerning the timeout room and thus it, not substantive due process, applied to this case. It was well-settled that the Fourth Amendment limits the circumstances under which school officials may search students. Case law addressing whether the Fourth Amendment similarly limits seizures in the schoolhouse context is relatively limited; however, especially in this Circuit. The Court was persuaded by the district courts in this Circuit that had analyzed school seizure claims under the framework set forth in *T.L.O.* (1985). In this case, the relevant Fourth Amendment inquiry was whether there was a seizure and, if so, whether that seizure was reasonable. In the schoolhouse, a seizure is reasonable if it

was (1) “justified at its inception” and (2) “reasonably related in scope to the circumstances which justified” the seizure in the first place. Based on the evidence in the summary judgment record, a jury could reasonably conclude that Billy was the victim of an unreasonable seizure. Here, the evidence was inconclusive as to how many times Billy was put in the timeout room, let alone the circumstances that prompted the confinement in each case. The plaintiffs also asserted a § 1983 claim that Billy’s confinement violated his Fourteenth Amendment procedural due process rights. Under certain circumstances, a due process violation may lie where a student has been excluded from the classroom without an opportunity to be heard. *De minimis* exclusions from the classroom, however, do not trigger due process protections. Precisely where to draw the line between meaningful and *de minimis* deprivations is not entirely clear but the Court was persuaded by *Couture* (2008), a recent timeout case. In *Couture*, the plaintiff was confined 21 times over 2.5 months for a total of approximately 12 hours. The court held these incidents did not amount to the level of deprivation that triggers due process protections. The Court reached the same conclusion in this case. Billy was sent to the timeout room between 27 and 40 times over the course of 9 months (September to May), each time for a period ranging from 5 minutes to, on one occasion, 1 hour. The Court found that this does not rise to the level of a procedural due process violation. Accordingly, the defendants were entitled to summary judgment on the plaintiffs’ timeout room procedural due process claim. Billy’s claim had to be dismissed against the Hicksville defendants because there was no evidence that the School District or the Hicksville individual defendants were responsible for Billy’s confinement. The BOCES Individuals were entitled to qualified immunity from the plaintiffs’ Fourth Amendment claim because, at the time of the alleged violation, there was no clearly established federal law such that the defendant had fair warning that their conduct amounted to a constitutional violation.

Disposition: The Hicksville Defendants’ and the BOCES Individuals’ motions for summary judgment were granted.

Citation: *K.W. through M.W. v. Independent School District No. 12*, 256 P.3d 79 (Ok. App. Ct. 2011).

Key Facts: The plaintiff alleged that she attended an elementary school within the defendant’s school district and that the defendant constructed at the school a “seclusion and restraint” room into which the defendant placed children with disabilities, but that such treatment of disabled children violated state law and administrative rules governing the use of restraints and seclusion for the mentally ill. The trial court granted the defendant’s motion to dismiss. The plaintiff appealed.

Issue: At issue was whether a school district violated state law and administrative rules governing the use of restraints and seclusion for the mentally ill by placing children with disabilities in a “seclusion and restraint” room.

Holding: The Court of Civil Appeals held that public schools were not subject to Mental Health Law.

Reasoning: The plaintiff argued that the defendant was a “school” rendering “care and treatment” to K.W., a mentally ill person, and that the defendant was accordingly subject to the provisions of OMHL. So, because OMHL expressly proscribed the use of restraints or seclusion for the treatment of the mentally ill, the defendant may not use the “timeout” room. The defendant argued it was not a “facility” rendering “care and treatment” to the mentally ill, and therefore the regulations do not apply. The plaintiff’s claim thus plainly stood or failed on the question of whether the provisions of Title 43A applied to the defendant. The court therefore examined the statutes to determine their reach. In 1953, the Oklahoma Legislature created the

Department of Mental Health, and placed all State institutions for the care and treatment of mentally ill and mentally retarded persons, under the control of the Department of Mental Health. Both the OMHL and the Oklahoma Administrative Code grant to the Department of Health control over “any and all state institutions established for the care of the mentally ill and drug--or alcohol--dependent person,” particularly, the “three State Institutions for the Mentally Retarded and more than 12 other community treatment facilities.” In this regard, the court was absolutely convinced the OMHL did not apply to the defendant school. The term, “school,” used in the OMHL’s definitions, plainly referred to the three state “schools” at Enid, Pauls Valley, and Sand Springs, which are charged with the in-patient care, custody, and treatment of the mentally ill. A public school is not charged with the in-patient care and treatment of mentally ill patients under the Oklahoma Mental Health Law.

Disposition: The order of the trial court granting the defendant’s motion to dismiss was affirmed.

Citation: *B.H. v. West Clermont Board of Education*, 788 F.Supp.2d 682 (S.D. Ohio 2011).

Key Facts: B was a 10-year-old child residing in the West Clermont Local School District. B had a variety of diagnoses including mental retardation, poorly controlled epilepsy, asthma, selective mutism, ADHD, explosive behavior disorder, Cushing’s Disease, pervasive developmental disorder, and post-traumatic stress disorder. B was qualified by West Clermont as a student with multiple disabilities in a 2006 Evaluation Team Report (ETR). B had significant behavior issues, which included aggression, noncompliance, and leaving the classroom and building without permission. B attended Holly Hill Elementary School from August 2007 through January 2009. B’s behaviors, while challenging, were manageable at the

beginning of the 2007-2008 school year, and she was spending most of her time in the regular education classroom. By December of 2007, B's practice of running out of the classroom had become enough of an issue to warrant the District completing a functional behavior assessment. Over the course of the spring of 2008, B's behavior became more difficult, resulting in episodes documented by the aide in daily notes. B had frequent "fits" and her behavior escalated and included hitting, kicking, spitting, and noncompliance. From the first day of the 2008-2009 school year, B was repeatedly physically restrained by staff at Holly Hill for her behaviors, sometimes multiple times per day. Mrs. H was not always notified when physical restraint was used, or why, even though she specifically requested that she be advised. The use of physical restraint was not indicated anywhere in B's IEP, and no prior written notice was provided to Mrs. H when it was used on a regular basis. In October 2008, Mrs. H wrote a letter to Mrs. Parks expressing concern about B's behavioral regression and requesting a meeting to discuss a behavior plan. On January 21, 2009, B was restrained 8 times in 1 day by Mr. Nacke. She came home bruised and hysterical and had to be hospitalized. The plaintiff thereafter refused to return B to West Clermont, as they could not promise they would not continue to restrain her. B was out of school until April when she was placed at The Wildey School, a program of the Clermont County Board of MRDD. The District did not, and still did not, think Wildey was an appropriate program. The plaintiff wanted B sent there because Wildey did not use physical restraint. While at Wildey, B exhibited the same behavior pattern she had while at West Clermont. However, the Wildey School was able to manage her without using any restraint. B was evaluated by Dr. Vanessa Jensen, a highly credentialed, licensed clinical psychologist in the behavioral pediatric psychology department at the Cleveland Clinic. Dr. Jensen stated that 3-4 years of remediation

could compensate B for the loss suffered as the result of the inappropriate programming from the District.

Issue: At issue was whether school officials denied free appropriate public education because of the district's improper behavior program, including use of physical restraints. (There are 3 other issues not briefed because of irrelevance to the study.)

Holding: The District Court held that the student was denied free appropriate public education (FAPE) because of the district's improper behavior program.

Reasoning: The plaintiff alleged that B was denied FAPE when the District did not consider the use of positive behavioral interventions and when it failed to address B's escalating behaviors, except through the use of restraint and punishment. The IDEA required that students with disabilities must derive "meaningful educational benefit" from their special education programs. The Impartial Hearing Officer (IHO) found that Mr. Nacke was unduly punitive with B, and was punishing her for behavior related to her disability. The IHO found it "striking" that the restraint was not necessary, especially after B was sent to another program, The Wildey School, where the same behaviors occurred but no physical restraint was necessary. The State Level Review Officer (SLRO) determined that the use of physical restraints in managing the behavior of a student must be shown to actually impact the educational opportunities available pursuant to the student's IEP. The SLRO noted that correcting behavioral problems were not educational goals where the behavior problems are the disability itself. The IDEA requires that the District address the student's behavior if it impedes their learning or that of others. The IDEA covers students with disabilities that are not per se educational, but require specially designed instruction. The SLRO failed to acknowledge the functional component of B's IEP and the defendant's failure to apply appropriate positive behavioral interventions to address B's

behavior/disability. Moreover, the SLRO admitted that B had “escalating behaviors” and that the district’s behavior “plans and interventions” were unsuccessful, and the defendant concluded that B’s behavior was an essential part of her program because it included behavior goals in each of the IEPs at issue. The Court found that the defendant failed to meet B’s behavioral needs where it neglected to implement appropriate positive behavioral expectations, and employed physical restraint, even where shown to be ineffective. Accordingly, the Court found that the IHO properly found that B’s behavior regressed from 2007-2009, while she was at Holy Hill and that the district’s failure to properly address her behavior constituted a denial of FAPE, especially where B’s behavior goals themselves graphically demonstrated this regression.

Disposition: Based on the evidence of record, the Court found that the plaintiff proved her case by the preponderance of the evidence, and established that B was denied a FAPE. Accordingly, the defendant’s motion for summary judgment was denied and the plaintiffs motion for summary judgment was granted.

Citation: *Ebonie S. v. Pueblo School District*, 2011 WL 1656455 (D. Colo. 2011).

Key Facts: Ebonie S. is a special needs child who has been diagnosed with disabilities that prevent her from controlling herself as a typical child would. During the 2005-2006 school year, Ebonie S. was enrolled at both Sunset Elementary and then Columbian Elementary, both located in Pueblo, Colorado, in a prekindergarten program. At Columbian, Ebonie S.’s adoptive mother, Mary S., first approved the use of a secure wrap-around desk with Ebonie S. The “secure wraparound desk” (“wrap-around desk”) consisted of a desk with a large surface area that wraps around the front and sides of the child sitting at it. The wrap-around desk is bolted to a floorboard, and there is an additional, removable, board that can be added to the back of the desk to restrain the child in the table. During the 2006-2007 school year, Ebonie S. was enrolled

in kindergarten at Bessemer Academy, also in Pueblo, Colorado, in defendant Golden's classroom; this classroom was designed for children with significantly limited intellectual capacity. During an IEP review meeting on December 14, 2006, Mary S. specifically approved the use of the restraining bar on the wrap-around desk in Golden's classroom "as a means to keep Ebonie in her seat." Five children, including Ebonie S., used the wrap-around desks in the classroom. Ebonie S. was placed in the wrap-around desk when she exhibited "out of control behavior" that Golden or the paraprofessional defendants were not able to de-escalate. In March 2007, Mary S. had a meeting with defendant Trujillo, principal at Bessemer, where she expressed concern about the use of the wrap-around desks with Ebonie S. However, neither Golden nor the paraprofessionals were ever told to discontinue use of the wrap-around desk with Ebonie S. In the Fall of 2007, after Ebonie S. had left Bessemer, members of the non-profit organization the Legal Center for People with Disabilities and Older People ("Legal Center") visited Bessemer to investigate use of the secure wrap-around tables. The Legal Center informed officials at Bessemer that use of the wrap-around desks did not comply with state law or Colorado Department of Education regulations. Despite receiving the initial warning from the Legal Center, Bessemer continued to use the wrap-around desks during a follow-up visit from the Legal Center in January 2008. This lawsuit followed.

Issue: At issue was whether a kindergarten teacher and paraprofessional violated a student's constitutional rights by using secure wrap-around table that included restraint bar in classroom.

Holding: The District Court held that (1) the school's use of the table did not violate the Fourth Amendment, (2) the use of the table did not violate the student's procedural due process

rights, and (3) the use of the table did not violate the student's equal protection rights. (There are 2 other issues not briefed because of irrelevance to the study.)

Reasoning: The plaintiff asserted a claim against the defendants for violation of her Fourth Amendment rights by alleging that while attending Bessemer, Ebonie S. was unconstitutionally seized and restrained on a regular basis by the School District staff. A seizure occurs, for Fourth Amendment purposes, when "a reasonable person would have believed that he was not free to leave." In *New Jersey v. T.L.O.* (1985), the Supreme Court applied a relaxed reasonableness standard to determine whether a school search was unreasonable. The Tenth Circuit has held this relaxed reasonableness standard applies in school seizure cases as well (*Jones*, 2005). Courts base their Fourth Amendment analysis on the totality of the circumstances. The plaintiff argued that the use of wrap-around desk when Ebonie S. was not in danger of harming herself or others was unjustified and unreasonable. The court found that the seizure was not unreasonable because the actions of the instructors were justified at their inception because the teachers had permission, through the IEP, to utilize the wrap-around desk for behavior modification. The actions were related in scope because Mary S. had approved the use of the wrap-around desk and because the teachers believed that the wrap-around desk would assist in teaching Ebonie S. to focus, stay on task, and not be disruptive. Accordingly, the defendants were entitled to judgment as a matter of law on the plaintiff's Fourth Amendment claim. The plaintiff also asserted a claim against the defendants for allegedly violating Ebonie S.'s procedural due process rights by instituting a policy of locking her in a wrap-around desk with a restraining bar without providing process. A plaintiff alleging a claim under procedural due process must show (1) that he possessed a constitutionally protected liberty or property interest, and (2) that he was not afforded an appropriate level of process. The School District's

policy of using the wrap-around desk did not remove Ebonie S. from the classroom or take her away from the learning process. Therefore, the Court found that any loss of a property right is *de minimis*. Defendants are therefore entitled to judgment as a matter of law on the plaintiff's procedural due process claim. The plaintiff asserted a claim against the defendants for allegedly violating Ebonie S.'s equal protection rights by utilizing wrap-around desks with restraint bars on her when the wrap-around desks were not also used on non-disabled children at Bessemer. As a threshold matter, the Tenth Circuit has stated that "an equal protection violation occurs when the government treats someone differently than another who is similarly situated" (*Penrod v. Zavaras*, 1996). The plaintiff's equal protection claim must be based on comparison of Ebonie S.'s peers in Golden's classroom--that is, the other disabled students. Because Mary S. admitted that she saw other students in similar wrap-around desks in the classroom at Bessemer, the Court concluded that Ebonie S. received the same treatment as her similarly situated peers. The plaintiff argued that the use of the wrap-around desk violated Ebonie S.'s fundamental right to be free from involuntary bodily restraint. However, the court found that the use of the wrap-around desk with Ebonie S. was reasonable because Mary S. specifically approved its use as a means to keep Ebonie S. in her seat. Therefore, the defendants were entitled to judgment as a matter of law on the plaintiff's equal protection claim.

Disposition: The District Court ordered that defendant Golden's motion for summary judgment be granted in whole. The school defendants' motion for summary judgment was granted in part and denied in part. (The only denied part was on an issue not briefed because of irrelevance to the study; it was regarding the school defendant's motion for summary judgment on the Rehabilitation Act and ADA claims against the School District.)

Citation: *Brinar v. Bethel School District No. 403*, 2011 WL 2144621 (W.D. Wash. 2011).

Key Facts: On March 27, 2008, an explosive device was detonated at Bethel High School. Pierce County Sheriff Deputy Ken Board was at the high school that day and he began an investigation into the incident. In a search of the school, a second, undetonated, explosive device was found in the area near where the first device exploded. The Sheriff's Deputies conducted all of the interviews of the students, including that of the plaintiff Jordan Brinar. Jordan Brinar did not hear a first announcement made by the principal about coming forward with any information related to the explosives, but he did hear a second announcement. Jordan did not respond to this request because he was "scared" and "freaked out at the whole situation." Jordan testified that he did not think that "anybody would actually do that on school grounds." Shortly following the announcement that Jordan heard, a school security officer came to Jordan in his classroom, asked him to come with him, and led him out into the hall at which time a police officer "tells me to get against the wall and then he arrests me." Following his arrest, Jordan was taken by the police officer to the office of Susan Mayne, the assistant principal. The officer left Jordan in the office handcuffed to a chair. Shortly after he was placed in Susan Mayne's office, another police officer came into the office and questioned Jordan for 25 to 30 minutes. Jordan was then transported to Remann Hall in a police vehicle. He was initially detained at Remann Hall but then was subsequently released to his parents on electronic home monitoring. Jordan Brinar admitted to providing Works toilet bowl cleaner, which was a component of what has been referred to as a Works bomb. He gave the cleaner to Jeffrey, a fellow student. Jordan asked Jeffrey to give it to Bryce. Instead, Jeffrey apparently put the Works bomb together, threw the bottle, and a couple minutes later it exploded. After the

explosion, Jordan left the scene and went to class “because I wanted no part of it.” During the time that he was being questioned by the police, Jordan asked to speak to his parents three times. He stated that he made this request in front of Susan Mayne as well as the police officer. His requests were denied.

Issue: At issue was whether school officials violated a student’s constitutional rights when he was detained and arrested by police officers at the school.

Holding: The District Court held that failure to provide parental notification did not violate the plaintiffs’ constitutional rights.

Reasoning: The plaintiffs asserted that their § 1983 civil rights were violated by the defendant school district. Specifically, they asserted that the District violated Jordan’s Fourth Amendment right to be free from unlawful seizure and the plaintiffs’ Fifth and Fourteenth Amendment due process rights by the failure of the District to contact Jordan’s parents prior to police questioning Jordan. In order to prevail on a claim under § 1983, the plaintiffs must prove (1) the action occurred “under color of state law” and (2) the action resulted in the deprivation of a constitutional right or federal statutory right. As to parental notification, the issue was whether the Constitution requires parental notification by school officials prior to police interrogation of a child, at school, regarding criminal activity that occurred on the school grounds. The undersigned finds that there is no such Constitutional requirement. In *Wofford v. Evans* (2004), the mother of a child who was detained and interrogated by law enforcement officers asserted that the child’s Fourth Amendment right and the mother’s due process rights under the Fourteenth Amendment were violated by the school’s failure to provide parental notification. The Court of Appeals affirmed the lower court’s dismissal of these claims. The Court in *Wofford* noted that “educators must be able to respond effectively to the disciplinary exigencies

of the moment. They must also be able to tailor these responses to the peculiar remedial needs that exist in particular schools. The Supreme Court has long recognized that educators are best situated to identify those needs and optimize their implementation.” This Court was in no position to criticize the actions taken by the school officials and law enforcement. In addition, no good reasons were advanced as to why this Court should decline to follow the conclusion of the *Wofford* court. This case presented the additional fact that Jordan Brinar was arrested by law enforcement outside his classroom and that he was, from that point forward, under the control of law enforcement. To create a Constitutional requirement of parental notification when, in the considered judgment of law enforcement such notification would hamper their investigation, would place school officials in an untenable position. The Court declined to do that. The Court therefore concluded that the failure to provide parental notification did not violate the plaintiffs’ constitutional rights under the Fourth, Fifth, or Fourteenth Amendments. The Court, therefore, granted the defendants’ motion to dismiss the plaintiffs’ claims asserting a Constitutional right to parental notification.

Disposition: The defendants were entitled to summary judgment dismissing all of the plaintiffs’ claims and their motion to dismiss was granted in its entirety.

Citation: *MG by LG and JG v. Caldwell-West Caldwell Board of Education*, 2011 WL 2607523 (D. N.J. 2011).

Key Facts: MG, a child diagnosed with Autism Spectrum Disorder with possible Asperger’s Disorder and Attention Deficit Hyperactivity Disorder, began attending school in the Caldwell-West Caldwell public school district in 2004. He was placed in a self-contained classroom where a special education teacher taught him alongside other special education students. MG’s behavior in school became unmanageable and disruptive. MG’s IEP included

behavioral goals and objectives, as well as goals related to math and reading, all of which were implemented by his teacher, DeMello. The IEP described certain strategies like planned ignoring and positive reinforcement. In March 2008, MG's behaviors escalated severely. On multiple occasions throughout the month, MG hit, bit, kicked, and pulled the hair of DeMello, his aide, and other students. Furthermore, he ran out of the classroom and occasionally ran out of the school. In response to escalating behaviors, DeMello used two additional techniques--she separated MG from the rest of the class when he ran around the classroom, threw things, or otherwise disrupted the class, and she used restraints when MG tried to hit someone or leave the classroom. Sometimes when separating MG from the class, DeMello placed him in his designated chair facing the window. Other times, she sent him to a room inside the classroom that was used for speech and small group instruction or to a small room next to the nurse's office. Whenever MG was separated, he was accompanied by either an aide or by DeMello herself. When restraining MG, DeMello initially used the "basket hold," which resembles a "hug maneuver from the back." Another restraint technique used involved either DeMello or an aide taking MG to his seat, placing his or her hands on MG's shoulders, explaining to MG that he would be expected to remain calm for 5 seconds, and counting to five. On March 31, MG's parents sent the school district a letter that revoked their signatures on the IEP; the letter stated that the parents disagreed with MG's "program and place" and requested an IEP meeting. MG's parents never filed a request for a due process hearing and never sought compensatory education for the time in the 2007-2008 school year during which his education was allegedly inadequate.

Issue: At issue was whether special education teachers violated a special education student's constitutional rights by using restraint techniques.

Holding: The District Court held that (1) the parents failed to satisfy futility exception to the exhaustion requirement under the Individuals with Disabilities Act (IDEA); (2) the parents could not pursue a § 1983 damages action to remedy the alleged violations of IDEA and Rehabilitation Act; (3) the teacher's conduct in holding child in a bear hug and putting her hands on his shoulders did not violate Fourth Amendment or substantive due process; and (4) the school policy of restraining and isolating autistic child, who was repeatedly endangering himself and other students by running around the room and hitting and biting, was rationally related to the legitimate purpose of protecting child and others, and therefore no equal protection violation occurred.

Reasoning: Because the plaintiffs had failed to exhaust their administrative remedies, summary judgment was warranted to the extent the plaintiffs' claim was viewed as arising directly under IDEA. To the extent that the plaintiffs brought a claim under the Rehabilitation Act, it recapitulated their IDEA claim and exhaustion was therefore required. The plaintiffs had not exhausted their administrative remedies, so summary judgment was warranted to the extent the plaintiffs claim was viewed as arising under the Rehabilitation Act. The plaintiffs sought relief under § 1983 on the grounds that the defendants "deprived MG of his right to free appropriate public education," a right guaranteed to him by the IDEA. The plaintiffs also asserted a § 1983 claim on the grounds that the defendants violated the Rehabilitation Act. Just as plaintiffs may not rest their § 1983 claims on an IDEA violation, they may not rest them on a violation of the Rehabilitation Act. The defendants are therefore entitled to summary judgment on the plaintiffs § 1983 claims that invoked the IDEA and Rehabilitation Act. The plaintiffs also sought relief under § 1983 for purported violations of MG's Fourth Amendment right to be free from unreasonable searches and seizures and his Fourteenth Amendment right to substantive due

process. The Third Circuit held that the Fourteenth Amendment substantive due process clause's "shocks the conscience" standard applies "to federal claims alleging the use of excessive force by public school officials." Thus, while the language excerpted demonstrates that the plaintiffs' claims for violations of the Fourth Amendment and substantive due process are based on the same conduct, because the conduct alleged is DeMello's use of excessive force, the Court applied the shocks the conscience standard. In *Gottlieb* (2001), the Third Circuit demarcated the four elements of the shocks the conscience standard: (1) Was there a pedagogical justification for the use of force? (2) Was the force utilized excessive to meet the legitimate objective in this situation? (3) Was the force applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm? and (4) Was there a serious injury? In examining these factors and the proofs at hand, the Court concluded that no reasonable jury could find that the restraints used on MG shocked the conscience. Likewise, no reasonable jury could find that DeMello's actions rose to a constitutional violation. The defendants are therefore entitled to summary judgment on the plaintiffs' Fourth Amendment/substantive due process claim. The plaintiffs also asserted a claim under §1983 for a violation of the equal protection clause of the Fourteenth Amendment. They contended that while defendants used similar physical restraints on both MG and another student in DeMello's class who exhibited aggressive behaviors, the defendants had permission from the other student's parents to use restraints, but did not have permission from MG's parents. On this basis, the plaintiffs contended that the defendants treated MG differently from the other student and thereby violated MG's right to equal protection. Because viewing the facts in light most favorable to the plaintiff, the record established that the defendants' policy of restraining and isolating MG was rationally related to the legitimate purpose of protecting MG and others, no equal protection violation

occurred. Because no equal protection violation occurred, neither the individual defendants nor the school district can be held liable. Therefore, the defendants were entitled to summary judgment on the plaintiffs' equal protection claim.

Disposition: Summary judgment was granted to the defendants on all of the plaintiffs' federal claims.

Citation: *W.A. v. Patterson Joint Unified School District*, 2011 WL 2925393 (E.D. Cal. 2011).

Key Facts: The student was a minor child who was eligible for special education and related services because he had autism. The plaintiffs alleged that the student was harmed by the use of improper restraints by his teacher Carli Briones and another District employee. Ms. Briones was the student's teacher during the 2007-2008 school year. At the beginning of the school year, the student engaged in a 30-minute aggressive episode in which he followed Briones around the classroom while hitting and kicking her. At the time, Briones was not trained in restraint techniques and the classroom aide, Yoland Ledezma, was not trained in Applied Behavioral Analysis (ABA) techniques. A behavior support plan (BSP) was developed for W.A. on August 8, 2007, following the 30-minute aggressive episode. The BSP was not approved or provided to W.A.'s parents until the due process hearing held in February and March 2010. S.A., the student's mother, expressed her concerns that W.A. did not have a behavior intervention plan (BIP), to the District's director of special education Dave Hoge in an October 19, 2007, email. In November 2007, instead of performing a functional assessment analysis (FAA) to determine the reason behind W.A.'s behaviors and provide a BIP, the District developed a second BSP that allowed the use of District-approved restraints as a consequence to W.A.'s aggressive behaviors. When the BSP was presented to S.A., the District did not explain what types of restraints would

be used, nor did the District explain that the parents were waiving their son's rights under the Hughes Bill to certain procedural safeguards, including the filing of behavior emergency reports (BERs) and holding an IEP meeting with parents and staff within 2 days of restraint to discuss whether any modifications were necessary to the IEP and, if so, whether an FAA would be conducted. S.A. agreed to the proposed BSP. Briones and another District employee performed restraints on W.A. on December 17, 2007, January 8-10, 2008, January 15-18, 2008, and January 21, 2008. In April 2008, W.A. was restrained twice while he was a student at Sierra Vista, a non-public school the District contracted with and placed him in pursuant to an IEP. The plaintiffs alleged that during the 2007-2008, 2008-2009, and 2009-2010 school years, the District failed to offer W.A. an appropriate placement, support and services, failed to conduct appropriate assessments, failed to comply with all of the IDEA's procedural requirements, and failed to comply with the Hughes Bill. The plaintiffs filed a request for due process with the California Office of Administrative Hearings (OAH) on November 4, 2009.

Issue: At issue was whether a teacher violated a student's constitutional rights by using physical restraint techniques. (There is one other issue not briefed because of irrelevance to the study.)

Holding: The District Court held that the restraints used were reasonable under the circumstances and that the restraints used were based on specific restraint techniques, approved by the District, therefore the plaintiffs' Fourth Amendment claim was barred.

Reasoning: The plaintiffs' Fourth Amendment cause of action was asserted against Briones and Hodge individually. Specifically, the plaintiffs alleged that the defendants deprived W.A. of his "constitutional right to be free from unreasonable government seizures by repeatedly using physical restraints on W.A. when they were not necessary or approved." The plaintiffs'

Fourth Amendment claim was based, in part, on the defendants' alleged failure to "adhere to the Hughes Bill requirements for use of restraints." The defendants challenged the plaintiffs' Fourth Amendment claim on two grounds. First, the defendants argued that the plaintiffs failed to establish this claim as a matter of law, as there was no evidence to support a constitutional violation of the student's Fourth Amendment right. Second, the defendants contended that this claim was barred by the doctrine of qualified immunity. Because the defendants' second argument would bar this claim, if successful, the Court considered it first. Qualified immunity protects § 1983 defendants "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." In analyzing whether school officials are entitled to qualified immunity, the Court addresses two questions. First, the Court considers, "taken in a light most favorable to the party asserting the injury, the party has established a violation of a federal right." If this "threshold inquiry is satisfied," the Court next considers whether the school officials' conduct violated "clearly established statutory or constitutional rights of which a reasonable person would have known." "The right of a student to be free from excessive force at the hands of teachers employed by the state was clearly established as early as 1990" (*Doe v. State of Hawaii Dept. of Educ.*, 2003). Because of this clearly established federal right, this Court moved to the second prong of this inquiry. Next, the Court considered whether the conduct rose to the level of a violation of the student's Fourth Amendment right to be free from unreasonable seizures by the school officials. In the school context, the reasonableness of a seizure must be considered in light of the educational objectives trying to be achieved. Whether the use of force by a teacher is a constitutional violation is analyzed under the "reasonableness" rubric of the Fourth Amendment. The Court considered the reasonableness of the school official's actions "in light

of the age and sex of the student and the nature of the infraction.” To consider the reasonableness of the use of restraints, the Court considered the type of restraints used, the circumstances surrounding the use of restraints, and the specific circumstances of the school and child. The Court must consider the circumstances surrounding each restraint to determine whether the restraint was reasonable or a clear violation of W.A.’s right. The restraints used to de-escalate W.A.’s maladaptive behaviors of hitting, kicking, and swatting staff and students were reasonable under the circumstances. The defendants established that each time W.A. was restrained he was restrained because he posed a serious threat of harm to the safety of himself, staff, or other students. Moreover, the restraints used were based on specific restraint techniques, approved by the District. Under these circumstances, this Court found that the defendants were entitled to qualified immunity. Accordingly, the plaintiffs’ Fourth Amendment claim was barred.

Disposition: This Court denied the plaintiffs’ summary judgment motion and granted the defendants’ summary judgment motion.

Citation: *Savoy v. Charles County Public Schools*, 2011 WL 3111954 (D. Md. 2011).

Key Facts: Jonathan Savoy, who was 13 years old at the time, attended an alternative school within the CCPS system called the Robert D. Stethem Educational Center. The defendants, Justin Aglio and Robert Pascarella, were employed at Stethem Educational Center. Savoy’s testimony recounted several instances of physical contact: (1) Anglio hitting him on the back of the head to wake him up in the R & R room, (2) Aglio loosely gripping his arm to direct him toward Pascarella’s office, (3) Aglio pushing him forcefully into a wall, (4) Aglio and Pascarella carrying him from the hallway to Dr. Watson’s office and forcing him to sit in a chair, and (5) Aglio throwing Savoy onto the chair with sufficient force to break it.

Issue: At issue was whether two teachers' use of force during a series of disciplinary events violated a student's constitutional rights.

Holding: The District Court held that the teachers' use of force were good faith efforts to maintain and restore discipline.

Reasoning: The applicable test is "whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience" (*Hall v. Tawney*, 1980). The first, second, and fourth contacts clearly cannot serve as the foundation for a *Hall* claim. Regarding the incident in the R & R room, there may have been better ways of waking Savoy up than whacking him on the back of the head; however, the record unambiguously revealed that Aglio's motivation for waking Savoy up was a legitimate concern that he did not belong in school that day because of his suspension. Furthermore, Savoy conceded that the force used by Aglio was not very painful. Similarly, Savoy did not allege that he suffered any pain when Aglio gripped his arm to direct him toward Pascarella's office or when Aglio and Pascaarella carried him to Dr. Watson's office. It was apparent that both actions were motivated by a desire to maintain order in the classrooms and hallways of the school, not "malice or sadism" toward Savoy. The plaintiff had a somewhat stronger case for liability based on (3) and (5), but even those actions did not rise to the extreme level necessary to satisfy the stringent *Hall* test. The undisputed evidence suggested a clear rationale for each use of force and there can be no genuine dispute that Aglio and Pascarella's actions were "good faith efforts to maintain or restore discipline," not "maliciously and sadistically performed for the very purpose of causing harm." Consequently, Aglio and Pascarella were entitled to summary judgment on the remaining federal claims.

Because the Court granted summary judgment to the defendants on the only remaining federal claim, it was unnecessary to consider the merits of the state-law counts. Instead, the Court dismissed the plaintiff's battery and false-imprisonment claims without prejudice.

Disposition: The Court granted in part the defendants' motions for summary judgment, and dismissed the remaining state-law claims without prejudice.

Citation: *Ashford v. Edmond Public School District*, 822 F.Supp.2d 1189 (W.D. Ok. 2011).

Key Facts: N.A. has multiple disabilities and is disabled within the meaning of the Individuals with Disabilities Act (IDEA); Americans with Disabilities Act (ADA); and Rehabilitation Act of 1973. N.A. attended elementary school during 2007-2008 and 2008-2009 in the Edmond Public School District. The plaintiffs alleged that the teacher defendants repeatedly and forcibly placed N.A. in a "timeout" or "quiet" room during the school day and kept him there for extended time periods spanning more than 15 minutes. The plaintiffs alleged that this practice had no legitimate purpose or educational value, violated school policies and N.A.'s individualized education plan (IEP), and constituted child abuse. The plaintiffs further alleged that this practice was concealed from N.A.'s parents until his mother discovered it, and that the District and administrative defendants failed to investigate or respond appropriately when N.A.'s mother complained. Specifically, the plaintiffs alleged that "district personnel" falsely represented or withheld information about incidents involving N.A. and altered records after his mother complained.

Issue: At issue was whether school officials violated a student's constitutional rights and a child's individualized education program by placement of her in a "timeout" room during the school day.

Holding: The District Court held that (1) the mother failed to allege that the Individuals with Disabilities Education Act (IDEA) administrative process was inadequate or that utilizing the process would have been futile; (2) the mother's failure to exhaust IDEA's administrative remedies precluded her claims under ADA, the Rehabilitation Act, and § 1983; (3) repeated placement of the disabled student in the "timeout" room did not implicate substantive due process requirements; and (4) the allegations were insufficient to state a claim that the student's Fourth Amendment rights were violated.

Reasoning: The IDEA requires that parents turn first to the IDEA's administrative framework to resolve any conflicts they have with the school's educational services. The requirement of administrative exhaustion permits educational agencies to exercise discretion and expertise, allows the full development of technical issues and a factual record, prevents the circumvention of statutory procedures, and provides an opportunity for agencies to correct any error. If not resolved informally or through mediation, the complaint must be the subject of a due process hearing, and the hearing officer must issue a written decision. The decision is subject to appeal to the state educational agency, which must make an independent decision. A party may bring a civil action only after the state agency has issued its decision. In this case, the plaintiffs did not allege or otherwise contend that they requested a due process hearing or exhausted the administrative process provided by the IDEA. Instead, they asserted that exhaustion should be excused for various reasons. However, the plaintiff did not allege any factual circumstances to support a finding that the administrative process was inadequate or that utilizing it would have been futile. In light of the broad reach of the exhaustion requirement, it is clear that the plaintiffs' alleged injuries could have been addressed to some degree by the IDEA's administrative procedures and remedies at the time the injuries occurred. The plaintiffs

complained that N.A. suffered educational and psychological injuries in incidents involving inappropriate use of “timeout” rooms. Plainly, the plaintiffs were complaining of events, conditions, and consequences that could be redressed through the IDEA’s administrative procedures. Similar allegations of the inappropriate use of a timeout room and physical restraint of a disabled student were raised in *Couture v. Board of Education* (2008), and subjected to the administrative process. The court of appeals expressly held in *Hayes ex rel. Hayes v. Unified Sch. Dist. No. 377* (1989), that administrative exhaustion was required under IDEA’s predecessor statute for claims regarding the use of timeout rooms. Accordingly, the Court found that administrative exhaustion was not excused due to a lack of available relief. Thus, the plaintiffs’ action under the IDEA must be dismissed for lack of jurisdiction. Although the plaintiffs in this case asserted their § 1983 claims under the rubric of substantive due process and equal protection, the allegations presented in support of these legal theories consisted simply of conclusory statements that N.A.’s liberty interest was violated by conscience-shocking conduct and that N.A. was treated differently than non-disabled students. In fact, except for replacing statutory references with a reference to the Fourteenth Amendment, the allegations characterized as an equal protection claim are identical to those presented in support of a disability discrimination claim under the ADA and Rehabilitation Act. Under these circumstances, the Court found that the plaintiffs’ claims under the ADA, Rehabilitation Act, and § 1983 to obtain relief for the same conduct that allegedly violated the IDEA were precluded by the plaintiffs’ failure to allege the exhaustion of administrative remedies. Accordingly, all federal claims should be dismissed for lack of subject matter jurisdiction. To the extent the plaintiffs’ § 1983 claim alleging a denial of substantive due process was not barred by the lack of administrative exhaustion, the defendants contend that the plaintiffs failed to state a cognizable claim because

their factual allegations failed to show a constitutional violation, provided no basis for municipal liability, and failed to overcome the individual defendants' qualified immunity. In *Couture* (2008), the court of appeals concluded that the use of timeouts, unless used excessively to become the functional equivalent of a school suspension, did not implicate a constitutionally protected interest. Similarly here, the plaintiffs provided no factual allegations to suggest that the alleged use of a timeout room for N.A. implicated a liberty or property interest. School discipline also may implicate a child's due process right in instances of excessive cruelty or brutality. No such facts were alleged in this case. Therefore, the Court found that the plaintiffs failed to state a substantive due process violation. Further, the District may be held liable under § 1983 only if the plaintiffs allege facts to show that the purported constitutional deprivation was the result of an established policy, a longstanding practice or custom, or the conduct or decision of a final policymaker. The plaintiffs pointed to allegations that actions were "customary and widespread" and that they "exhibited a widespread custom and practice of failing to train and supervise any and all employees in the appropriate and proper implementation of school, local, state, and national policies and procedures." These vague, conclusory allegations failed to identify a custom and practice of the District on which its liability for any substantive due process violation could be based. The individual defendants asserted the defense of qualified immunity, which protects them from personal liability under § 1983 unless they violated a constitutional right that was clearly established at the time of their conduct under the circumstances of the case. The plaintiffs failed to respond to the individual defendants' qualified immunity defense with an argument showing that a student's right of substantive due process in this contest was "clearly established." The plaintiffs relied on state law. The state law or policy does not establish a federal constitutional right. Therefore, the individual defendants were

entitled to dismissal of the plaintiffs' substantive due process claim based on their defense of qualified immunity. The plaintiffs alleged that the defendants violated N.A.'s Fourth Amendment right to protection from an unreasonable search or seizure. To the extent this Fourth Amendment claim was part of the plaintiffs' challenge to the use of timeout rooms, it is subject to the same requirement of administrative exhaustion that governs the plaintiffs' other federal claims. Accordingly, the plaintiffs' claim of unreasonable search and seizure is subject to dismissal for this additional reason.

Disposition: The defendants' motions to dismiss are granted. All federal-law claims were dismissed without prejudice to refiling. All state-law claims asserted were remanded to the district court.

Citation: *A.B. v. Adams-Arapahoe 28J School District*, 831 F.Supp.2d 1226 (D. Col. 2011).

Key Facts: Plaintiff A.B. had been diagnosed with a seizure disorder and developmental delays. In April 2006, the Adams-Arapahoe 28J School District performed an evaluation on A.B. and determined that she was eligible for special education services. A.B. had significant behavioral difficulties. Therefore, early in the school year, Consultant Rice spent 2 days in the Life Skills classroom working one on one with A.B. After determining that A.B. was acting out to seek attention from the adults in the room, Rice developed a three-stage behavior modification plan. The staff was first to send A.B. to sit in a regular chair for a timeout. If A.B. would not comply and stay seated, the staff was to utilize a modified "basket hold," which involved the teacher sitting behind the chair and loosely holding A.B. down to help her try and stay still. If A.B. had not de-escalated her behavior in 5 minutes, the teachers were to place A.B. in a wooden high-backed chair (the "Restraint Chair") and strap A.B. to the chair. The staff was then to set a

timer so that A.B. would be in the Restraint Chair for no longer than 5 minutes. The purpose of the plan was to get A.B. to refocus on classroom activities. Rice did not intend for the Restraint Chair to be used punitively. Rice trained Lead Teacher Michaels on the plan; Michaels regarded the plan as “district policy.” Though A.B. had an IEP, the plan was not a part of the IEP. A.B.’s IEP talked about the use of “timeouts” but did not mention restraining A.B. or using a strap to hold her in a chair. Between early September and October 10, 2006, A.B. was strapped into the Restraint Chair on a daily basis. Michaels was almost always the person who put A.B. into the Restraint Chair. A.B. would be let out of the chair to go to “specials” such as art and physical education, which were about 30 to 45 minutes long. However, while A.B. was in the Life Skills classroom, she was strapped into the Restraint Chair from shortly after she arrived until about 5 minutes before her mother returned to pick her up. When A.B. was in the Restraint Chair, straps were placed around her waist and her chest. Lloyd, Hubbard, and Trowbridge were all troubled by Michaels’s use of the Restraint Chair. In response to complaints, Burke told the complainants that she would talk to Michaels about the use of the Restraint Chair. Burke did not investigate the complaints in any manner. Burke did not personally confront Michaels about the use of the Restraint Chair or ask her to stop using it. The paraprofessionals also spoke with Rice about the use of the Restraint Chair. Rice responded that she would meet with Michaels. Rice also said that the use of the Restraint Chair was “okay” because A.B.’s mother had consented. Upon learning of The Legal Center’s investigation, Burke instructed the Life Skills staff that it was not to use any kind of timeout chair that had a strap on it. In January 2007, Rice learned that the Life Skills staff was still using the Restraint Chair so she personally went and removed the straps from the classroom. She informed the staff that it was not to use straps to restrain any student

other than those that had issues with bodily control and for whom straps were a part of their therapy regiment.

Issue: At issue was whether the teacher and school district violated the student's Fourth Amendment rights by placing her in a restraint chair.

Holding: The District Court held that (1) fact issues precluded summary judgment on Fourth Amendment claims against teacher, behavior consultant, and school principal; (2) summary judgment was warranted on substantive due process claims; (3) fact issues precluded summary judgment on procedural due process claim against teacher; (4) student was not similarly situated to her classmates, precluding equal protection claim; (5) fact issues precluded summary judgment on Rehabilitation Act and ADA claims against district; (6) Colorado's Protection of Persons from Restraint Act (CPPRA) did not provide private cause of action; and (7) fact issues precluding common-law tort claims against teacher.

Reasoning: The plaintiffs alleged that the defendants violated A.B.'s Fourth Amendment right to be free from unlawful seizure by using the Restraint Chair. A seizure occurs for Fourth Amendment purposes when "a reasonable person would have believed that he was not free to leave" (*Michigan v. Chesternut*, 1988). There was no genuine dispute here that A.B. was seized when she was put into the Restraint Chair. The only issue relevant is whether that seizure was reasonable. In the school context, the traditional Fourth Amendment reasonableness standard is somewhat relaxed. The Tenth Circuit has held, "To balance the students' privacy rights with the schools' custodial and tutelary responsibility for children, a seizure need only be justified at its inception and reasonably related in scope to the circumstances which justified the interference in the first place" (*Couture v. Board of Educ. of the Albuquerque Public Schools*, 2008). Donna Trowbridge and/or Odessa Hubbard utilized a modified basket hold on A.B. nearly every day.

However, their involvement with the Restraint Chair was significantly less. At most, Trowbridge and Hubbard may have put A.B. in the restraint chair once or twice and only for a few minutes each time. The evidence showed that, prior to these incidents, A.B. had been running around the classroom causing a disruption and endangering the more fragile students, such as those with feeding tubes. Thus, the use of the Restraint Chair was justified at its inception. Moreover, the scope of the restraint imposed by Trowbridge and Hubbard was reasonable. For purposes of determining whether the seizures at issue here violated the Fourth Amendment, the key case in the Tenth Circuit is *Couture*. The *Couture* court held that the school's use of the timeout room did not constitute an unreasonable seizure. The seizures were held to be justified at their inception because "it was not unreasonable for the teachers to send the student to a 5-minute timeout in hope of obtaining his cooperation in the future." Further, the seizures were related in scope because the "timeouts were employed as a technique for behavioral modification, and the length of time was determined accordingly." Under *Couture*, the Court found that the seizures effected by Trowbridge and Hubbard were reasonable. Both the use of the basket hold and the short-term use of the Restraint Chair were authorized by the plan developed by Rice. There was no allegation that either Trowbridge or Hubbard used the Restraint Chair for any significant length of time or that they used it for a punitive or malicious purpose. Thus, the Court concluded that no reasonable jury could find that the seizures of A.B. effectuated by Trowbridge or Hubbard were unreasonable. Therefore, the plaintiffs failed to show a trial-worthy issue as to whether Trowbridge or Hubbard violated A.B.'s Fourth Amendment rights. Because there was no constitutional violation here, the Court need not examine whether A.B.'s right to be free from restraint was clearly established. Accordingly, the Motions for Summary Judgment filed by the defendants Trowbridge and Hubbard are granted in

so far as they seek judgment in their favor on the plaintiffs' Fourth Amendment claims. Between early September and October 10, 2006, Michaels strapped A.B. into the Restraint Chair nearly her entire school day every day. A.B. would often cry while strapped into the chair and Michaels would raise her voice and tell A.B. to "shut up." Lloyd could not recall any misbehavior that precipitated use of the restraint chair; Lloyd believed A.B. was restrained because Michaels "didn't like the child." A number of facts distinguish this case from *Couture*. Here, there was no mention of the Restraint Chair in A.B.'s IEP. Though her behavior modification plan called for use of the Restraint Chair, the plan called for use of the restraint chair only when all other options had been exhausted and for a maximum of 5 minutes at a time. Michaels's use of the Restraint Chair went far above and beyond that which had been outlined in the plan. Moreover, A.B.'s mother had not specifically consented to the use of the restraint chair. The length and frequency of the restraint imposed by Michaels in this case was far greater than in *Couture*. Here, it appeared A.B. was oftentimes restrained for at least 3 hours a day, every school day for approximately 6 weeks. A.B. was restrained approximately five times longer than the student in *Couture*, which has a significant impact on the reasonableness analysis. Finally, the evidence showed that A.B. was not always acting out when Michaels chose to restrain her. Given these facts and circumstances, a reasonable juror could find that the seizures effectuated by Michaels were not justified at their inception. A reasonable juror could also find that keeping a 5 year old restrained for such a long period of time exceeds the constitutionally permissible scope of the restraint. Therefore, the Court found that the plaintiffs had shown a trial-worthy issue as to whether Michaels violated A.B.'s Fourth Amendment rights. Because the plaintiffs had satisfied the first prong of the qualified immunity analysis, the Court had to determine whether the constitutional violation was clearly established at the time of Michaels's actions. Initially, the

Court noted that the unconstitutional restraint of A.B. occurred in fall 2006 and *Couture* was not decided until 2008. Thus, *Couture* is irrelevant for purposes of what the clearly established law was at the time of Michaels's actions. Having reviewed the Fourth Amendment case law at the time of the disputed events, the Court found that A.B.'s right to be free from unreasonable seizure was clearly established. Since at least 1985 with *T.L.O.*, it has been clear that students retain limited Fourth Amendment protections inside the school building. In 2005, the Tenth Circuit held that the seizure of a student is constitutionally permissible if it is "justified at its inception" and "reasonably related in scope to the circumstances that justified the interference in the first place" (*Jones*, 2005). The Court found that under this standard, a reasonable person in Michaels's position would have understood that her actions violated A.B.'s constitutional rights. Because the plaintiffs had shown a trial-worthy issue as to whether Michaels violated a clearly established constitutional right, Michaels was not entitled to qualified immunity against the plaintiffs' Fourth Amendment claim. Michaels's motion for summary judgment was therefore denied in so far as it pertained to the plaintiffs' Fourth Amendment claim. The plaintiffs alleged that Rice violated A.B.'s Fourth Amendment rights in three ways: (1) by personally restraining her, (2) by creating and implementing the behavioral plan that allowed A.B. to be strapped into the chair, and (3) by failing to adequately train and/or supervise Michaels. The evidence showed that Rice restrained A.B. in a modified basket hold at least once. A.B. was running around the room, hiding under desks and tables, and showing no regard for the medically fragile students in the classroom. There is no allegation that Rice ever personally strapped A.B. into the restraint chair. On these facts, under *Couture*, no reasonable juror could find that Rice violated A.B.'s Fourth Amendment rights. The decision to use the modified basket hold was justified by A.B.'s behavior and was a pedagogical judgment. There is no evidence that Rice's motivation in doing

so was malicious. Thus, the plaintiffs had not shown a trial-worthy issue as to whether Rice's use of the modified basket hold on A.B. violated her Fourth Amendment rights. It was undisputed that Rice created an escalating restraint plan to help Michaels deal with A.B.'s behavioral issues. The plaintiffs alleged that this policy violated A.B.'s constitutional rights. To succeed on their unconstitutional policy claim, the plaintiffs must show (1) that a municipal employee committed a constitutional violation, and (2) that a municipal policy or custom was the moving force behind the constitutional deprivation. The Court had already found that Michaels's use of the Restraint Chair violated A.B.'s Fourth Amendment rights. Thus, the only issue was whether Rice's behavior plan was the moving force behind that violation. The Court must "defer to a teacher's expertise about how to manage disciplinary problems or inculcate appropriate behavioral skills in his or her class" unless "the teacher's chosen method is patently unreasonable or blatantly not tailored to meeting the child's needs." This plan was created after Rice spent 2 days in the classroom observing A.B. and serving as her one-on-one paraprofessional. The Court found that, if properly implemented, the plan would have resulted in restraints that were reasonable and related to A.B.'s educational purposes. However, it is undisputed that Michaels did not follow the plan. The plan called for the use of the Restraint Chair only as a last resort and for a maximum of 5 minutes. Michaels used the Restraint Chair far more often and far longer than called for in the plan. The fact that Michaels violated A.B.'s Fourth Amendment rights after receiving training and instruction on the plan goes to whether Rice adequately supervised Michaels; it does not show that the plan itself was the moving force behind the constitutional violation. As a consequence, no reasonable juror could find that the plan--as designed by Rice--was the moving force behind Michaels's violation of A.B.'s Fourth Amendment rights. As such, the plaintiffs' have failed to show a trial-worthy issue as to their

unconstitutional policy claim against Rice. The plaintiffs also alleged that Rice violated A.B.'s Fourth Amendment rights by failing to adequately train and/or supervise the Life Skills staff. Failure to supervise and failure to train are treated the same in the Tenth Circuit. To succeed on their failure to train and/or supervise claim, the plaintiffs must demonstrate the supervisor's inaction was the result of deliberate indifference. Rice has acknowledged that she was responsible for supervising the programming in A.B.'s classroom and was also responsible, in conjunction with Burke, for supervising Michaels and the paraprofessionals on the Life Skills staff. Rice provided Michaels and the Life Skills paraprofessionals with training on how to use restraints on students, and particularly on how to implement the plan she devised for A.B. The defendants argued that Rice did not know that Michaels was using the Restraint Chair in a manner inconsistent with the behavior plan. However, the evidence would permit a reasonable juror to conclude otherwise. During the second week of school, Lloyd told Rice that A.B. was being strapped into the Restraint Chair for the whole time she was in the classroom. In November 2006, Hubbard submitted a written complaint to Rice about how Michaels would strap A.B. into the Restraint Chair. Thus, Rice knew about Michaels's misuse of the Restraint Chair since sometime in September 2006. It was undisputed that Rice did nothing to address the issue until the investigation was launched by The Legal Center in December 2006 or January 2007. Rice chose not to investigate the complaints because she assumed Michaels was using the chair in accordance with her instructions. On this record, the Court finds that the plaintiffs had shown a trial-worthy issue as to whether Rice was deliberately indifferent to the ongoing violation of A.B.'s Fourth Amendment rights and therefore liable under a failure to train and/or supervise theory. Because a reasonable juror could find that Rice's failure to adequately train and/or supervise Michaels resulted in the violation of A.B.'s constitutional rights, and the duty to

train and/or supervise was clearly established, Rice was not entitled to qualified immunity on this claim. The defendant Rice's motion for summary judgment was therefore denied as to the plaintiffs' Fourth Amendment claim against her. There was no allegation that Burke ever personally strapped A.B. into the Restraint Chair. Rather, the claim against Burke was that she was principal of Lansing Elementary when A.B. was subjected to the restraint and that she knew about the violation of A.B.'s right and failed to intervene. Thus, the plaintiffs' claims against Burke are brought in her supervisory capacity for failure to train and/or supervise. The defendants argued that, at most, Burke knew some paraprofessionals in A.B.'s classroom had concerns with the use of the Restraint Chair. The defendants claimed that "Burke's awareness that there were concerns does not amount to knowledge of a serious risk of constitutional harm to A.B. on which Burke should have taken different action." The evidence showed that Burke received a complaint about Michaels's use of the Restraint Chair from Lloyd early in the school year. On the second day that A.B. was strapped in the Restraint Chair, Lloyd had a personal meeting with Burke during which she told Burke about Michaels's use of the Restraint Chair on A.B. Burke promised to check out the situation. After that initial meeting, Lloyd had over a dozen face-to-face conversations with Burke about "what was going on in the classroom." Burke also had acknowledged receiving complaints from Trowbridge and Hubbard about Michaels and the use of the Restraint Chair. Burke did not investigate the complaints in any way. The Court found that the plaintiffs had shown a genuine issue of material fact as to whether Burke failed to adequately train and supervise Michaels. The plaintiffs had put forth sufficient evidence to show that Burke had knowledge of Michaels's misuse of the Restraint Chair and failed to act on those complaints. A reasonable juror could conclude that Burke was deliberately indifferent to the ongoing violation of A.B.'s rights and that such indifference

caused additional harm. Burke also asserted qualified immunity. Therefore, she was liable for these constitutional violations only if they were clearly established at the time they were committed. For the reasons discussed above, the Court found that they were. Because the plaintiffs showed a disputed factual issue with respect to a clearly established right, Burke was not entitled to qualified immunity from the plaintiffs' claim that Burke failed to adequately supervise and train Michaels and failed to adequately investigate the claims against Michaels. Burke's motion for summary judgment was therefore denied as to the plaintiffs' Fourth Amendment claim. In fall 2006, Munro was the Director of Diverse Learners and Rice's supervisor at the time she developed and implemented A.B.'s behavioral plan. Barry was Superintendent of the District. Therefore, to some degree, both had oversight of the Lansing Life Skills program. However, there was no evidence that Munro or Barry had any knowledge about the use of the Restraint Chair prior to The Legal Center's intervention. Accordingly, the plaintiffs failed to show a trial-worthy issue as to whether the defendants Munro and Barry were liable for a violation of A.B.'s Fourth Amendment right and their motion for summary judgment was granted with respect to this claim. To succeed on their Fourth Amendment claim against the District, the plaintiffs must show either (1) the person who inflicted the constitutional harm was acting pursuant to an official District policy, practice, or custom; (2) the constitutional tort-feasor had final decision-making authority for the District; or (3) the District failed to adequately train or supervise its employees. The plaintiffs argued that the District had an unconstitutional policy and that it failed to adequately train and supervise employees. The plaintiffs argued that the behavior plan devised by Rice on behalf of the District was unconstitutional. The Court disagreed. Had Michaels implemented the plan as Rice had instructed her, there would have been no constitutional violation. It was only Michaels's misuse of the Restraint Chair that

arguably resulted in a constitutional violation. Thus, the plaintiffs failed to show that the District had an unconstitutional policy, practice, or custom. The plaintiffs also failed to show that a final decision maker violated A.B.'s constitutional rights. There was no evidence that Michaels, Rice, or Burke were final decision makers. Although Burke was likely the decision maker for her school, she was not the decision maker for the District so as to subject the District to liability. There was also no evidence that any final policymaker knew about the ongoing use of the restraint chair. The plaintiffs failed to show a trial-worthy issue as to whether the District was liable for a violation of A.B.'s Fourth Amendment rights. Accordingly, the defendants' motion for summary judgment was granted in so far as it sought judgment in favor of the District and the Board on the plaintiffs' Fourth Amendment claims. The plaintiffs brought three causes of action that arise under the Fourteenth Amendment: (1) substantive due process, (2) procedural due process, and (3) equal protection. The plaintiffs alleged that the defendants violated A.B.'s constitutionally protected liberty interest in personal security, bodily integrity, and freedom from unjustified intrusions on personal security, including bodily restraint and punishment. The standard for judging a substantive due process claim is whether the challenged government action would "shock the conscience of federal judges." The Tenth Circuit has held that "the substantive due process inquiry in school corporal punishment cases must be whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience" (*Garcia v. Miera*, 1987). The Court conducted its own limited review of the case law as it existed in fall 2006 and found that the law was not clearly established with respect to the fact that strapping A.B. into the Restraint Chair on a daily basis violated her substantive due process

rights. Accordingly, the Court found that, in fall 2006, a reasonable person in Michaels's position would not have known that putting A.B. in the Restraint Chair for multiple hours each day violated A.B.'s substantive due process rights. Thus, Michaels was entitled to qualified immunity from the plaintiffs' substantive due process claim. Michaels's motion for summary judgment was therefore granted as to this claim. It is clear that the most egregious behavior in this case was Michaels's use of the Restraint Chair for multiple hours on a daily basis. The allegations against the other individual defendants pale in comparison to the allegations against Michaels. Thus, the remaining individual defendants were entitled to qualified immunity from the plaintiffs' substantive due process claims. Summary judgment was granted in favor of Barry, Munro, Rice, Burke, Trowbridge, and Hubbard on the plaintiffs' substantive due process claims. The plaintiffs argued that the plan designed by Rice was District policy and that this plan violated A.B.'s substantive due process rights. The Court found that the plan--as designed by Rice--did not shock the juridical conscience. Accordingly, the District's motion for summary judgment was granted as to the plaintiffs' substantive due process claim. A plaintiff alleging a claim under procedural due process must show the following: (1) that he possessed a constitutional protected liberty or property interest, and (2) that he was not afforded an appropriate level of process. Two or 3 days a week, Michaels would face the Restraint Chair toward a wall and put an obstruction behind and to the side of A.B. Thus, A.B. was deprived of her right to participate in educational activities for 2 or 3 days a week. This constitutes deprivation of her property right to a public education. The Court found that the plaintiffs had shown a trial-worthy issue as to whether Michaels denied A.B. her right to public education without due process. The Court further found that A.B.'s procedural due process rights were clearly established in fall of 2006. The Court found, therefore, that Michaels was not entitled to

qualified immunity on the plaintiffs' procedural due process claim. As a consequence, Michaels's motion for summary judgment was denied as to the plaintiffs' Fourteenth Amendment procedural due process claim. However, the plaintiffs failed to show that any of the remaining defendants violated her procedural due process rights. Accordingly, summary judgment was granted in favor of all defendants, other than Michaels, on the plaintiffs' procedural due process rights. The plaintiffs pursued an equal protection claim under the "case of one" theory. Under this theory, the plaintiffs must first establish that others "similarly situated in every material respect" were treated differently. The plaintiffs failed to meet their burden of showing that A.B. was similarly situated to any other students. The behavior plan devised by Rice was created specifically for A.B. after Rice worked with A.B. for 2 days. There was no evidence that other students had similar behavior issues or any behavior management plan in place. Because the plaintiffs failed to show that A.B. was treated differently than someone similarly situated to her, the defendants were entitled to summary judgment on the plaintiffs' equal protection claim. Summary judgment was granted in favor of all the defendants as to the plaintiffs' equal protection claim.

Disposition: The defendants' motions for summary judgment were granted in part and denied in part.

2012

Citation: *J.P.M. v. Palm Beach County School Board*, 2012 WL 2735327 (S.D. Fla. 2012).

Key Facts: C.M. was enrolled as a student in the Palm Beach County School District and was designated early on in his life by the School Board as being "educable mentally

handicapped.” C.M. suffered from a genetic disability called Cornelia de Lange Syndrome, which affects physical and mental development, as well as autism, obsessive compulsive disorder, social anxiety, sensory disorder, simple and complex motor and vocal tics, and gastrointestinal reflux. C.M. started exhibiting behavior issues in early elementary school. In the sixth grade, C.M. was having significant incidents of self-injurious behavior and physical aggression toward teachers, staff, and students. School records indicate that it was necessary to restrain C.M. to avoid injury to himself or others. Each time C.M. was restrained, it was due to a perceived crisis, rather than part of his behavioral management plan. At oral argument, it was stated by way of explanation that all instances of restraint consisted of someone holding C.M., for instance, either his hands and/or his feet, and no mechanical restraint was ever used on C.M. The School Board conceded that, over a 14-month period of time, there were 89 incidents of restraint with 27 prone restraints being documented. C.M. “started going downhill” in the middle of seventh grade. He did not want to go to school and was crying a lot. He regressed academically and behaviorally. He had sleep problems, phobias, and fears, and lost a lot of his communication skills. He started being aggressive at home. Actual restraint logs show that every restraint performed was in response to C.M.’s physical aggression, high magnitude disruption, and/or self-injury. School Board policy states, “interventions used in emergency situations to prevent a student from endangering self or others do not constitute management procedures and do not require parental consent.”

Issue: At issue was whether school officials violated an autistic middle school student’s constitutional rights by restraining him.

Holding: The District Court held that (1) the school board had the burden to produce evidence that individuals restraining the child did not intend to discriminate against the student,

(2) the conduct did not shock the conscience, (3) the release agreement did not preclude parents' § 1983 claim asserting violations of the IDEA, and (4) the failure to assert immunity under Florida law from tort liability for teachers or principals as an affirmative defense waived assertion of immunity.

Reasoning: Count I alleged violation of §504 of the Rehabilitation Act. The plaintiffs alleged that the School Board intentionally discriminated against C.M. by refusing to investigate his individual needs, excluding him from participating in educational activities with other non-disabled students, and purposefully provoking him to de-compensation by subjecting him to prolonged and unwarranted restraints. The School Board moved for summary judgment as to Count I stating that even if the Court completely accepted the plaintiffs' version of the facts, there was no evidence of intentional discrimination or deliberate indifference. If the School Board wished to prevail, it had to present evidence negating an essential element of the plaintiffs' claim or by pointing to specific portions of the record that demonstrate that the plaintiffs cannot meet their burden of proof at trial. The School Board did not produce any evidence whatsoever regarding whether the paraprofessionals or teachers who restrained C.M. intended to discriminate against him on the basis of his disability, or knew that it was substantially likely that a violation of his federally protected rights would occur. The School Board relied completely on the restraint logs and ABC records. These records show, for the most part, that C.M. was restrained due to his own aggressive or self-injurious behavior. What the records do not and cannot demonstrate is the intent or knowledge of each person who restrained C.M. As the moving party on a summary judgment motion, the School Board must support its argument with evidence showing an absence of intentional discrimination or deliberate indifference on its part. Having failed to meet its burden on summary judgment, the

motion on Count I alleging a violation of Section 504 of the Rehabilitation Act was denied.

Count II alleged that C.M. had a liberty interest in his bodily integrity that was protected under the Due Process Clause of the Fourteenth Amendment. The plaintiffs claimed that the School Board's acts of repeated physical restraints and acts of seclusion against C.M. violated that right. While the School Board acknowledged that C.M. was restrained a significant number of times, a substantive due process claim was not a valid attack on the defendant's conduct. As a matter of law, these facts do not rise to the requisite conscience shocking level. There is no record evidence to support the claim that the use of restraints was arbitrary, egregious, or excessive in the constitutional sense. As no reasonable jury could conclude that the School Board's use of restraints was arbitrary, egregious, or excessive in the constitutional sense, Count II failed as a matter of law and summary judgment was granted on Count II. Count IV alleged that the School Board conspired to deprive C.M. of his right to a free and appropriate public education under the IDEA by perpetuating and applying unlawful policy and practice of implementing violative restraints into C.M.'s BIP/IEP, and failing to conduct the necessary and proper assessments and evaluations to determine the necessary and proper accommodations and/or services required under IDEA to address his disabilities. The School Board did not attack this count on the basis of the plaintiff's lack of evidence, but relied on two other arguments: (1) it was not preserved by the parties' Settlement and Release Agreement; and (2) a § 1983 claim may not be brought for violations of the IDEA. This argument failed on both accounts. Having failed to meet their burden of persuasion as to Count IV, the plaintiffs may proceed at trial with this claim. Count VI alleged that the School Board violated the Americans with Disabilities Act by excluding C.M. from participation in or denying the benefits of services, programs, or activities of the School Board by reason of his disability, or subjecting him to discrimination by reason of his disability.

Summary judgment for this count was not appropriate because the School Board failed to support its motion with evidence negating an essential element of the plaintiffs' claim or by pointing to specific portions of the record that demonstrate that the plaintiffs could not meet their burden of proof at trial. Count VII alleged violation of the Florida Civil Rights Act. For the same reasons the Court rejected the School Board's earlier arguments on this issue, they were rejected here. The summary judgment was denied as to Count VII. Count VIII alleged Intentional Infliction of Emotional Distress. The School Board failed to show that there was no genuine issue of material fact as to this claim, and the motion for summary judgment was denied as to this count. Count IX alleged battery. The School Board did not show that there was genuine issue of material fact as to this claim, and the plaintiffs may proceed on this claim. Summary judgment was denied as to this count. Count X alleged negligence. Summary judgment was denied as to this count and the plaintiffs may proceed with it. Count XIII alleged false imprisonment. The plaintiffs responded that the defendant's reliance on § 1012.75 Fla. Stat. is waived because it was not pled as an affirmative defense. The Court agreed. Accordingly, summary judgment was denied to this count.

Disposition: The Board's motion for summary judgment was granted in part and denied in part.

Citation: *Thomas v. City of New Orleans*, 2012 WL 3150056 (E.D. La. 2012).

Key Facts: This litigation concerns a mother's challenge to allegedly excessive corporal punishment of her 7-year-old son, D.T., who was a third-grade special education student at Fannie C. Williams Charter School, located in New Orleans, by school administrators and school security, and city police officers. In particular, the boy and his mother charged that, in response to an unspecified behavioral issue, a school principal and vice principal tried to lock the boy in a

closet and, when he ran away, he was struck with a fly swatter, held down on the ground, and ultimately, handcuffed by responding police officers who then followed the boy and his aunt to the hospital so that he could undergo a psychological evaluation.

Issue: At issue was whether school officials violated a student's constitutional rights when he was physically detained and restrained. (There are 2 other issues not briefed because of irrelevance to the study.)

Holding: The District Court held that superintendent, principal, and vice principal were entitled to sovereign immunity and the complaint failed to state § 1983 claim against principal and vice principal for violation of student's substantive due process rights.

Reasoning: To state a § 1983 claim, a plaintiff must satisfy three elements: (1) deprivation of a right secured by the U.S. Constitution or federal law, (2) that occurred under color of state law, and (3) was caused by a state actor. Principal Batiste and Vice Principal Williams sought to dismiss the plaintiffs' individual capacity claims on the ground that they were entitled to qualified immunity. They contended that the plaintiffs' unexplained use of the phrase "unreasonable seizure" was insufficient to state a Fourth Amendment claim. Moreover, they contended that the plaintiffs' Fourteenth Amendment claim, that the defendants violated D.T.'s substantive due process right to bodily integrity, failed as a matter of law. The Court agreed. It is well established as a matter of law under Fifth Circuit precedent, that the conduct of which the plaintiffs complain is not a constitutional violation: the United States Court of Appeals for the Fifth Circuit does not permit public school students to bring claims for excessive corporal punishment as substantive due process violations under § 1983 if the state provides an otherwise adequate remedy. The plaintiffs simply failed to plead facts that, if true, would show that Batiste

and Williams violated D.T.'s constitutional rights. Accordingly, Batiste and Williams, individually, were entitled to immunity from suit from the plaintiffs' § 1983 claims.

Disposition: The defendants' motion to dismiss was granted.

Analysis of Cases

The purpose of this study was to examine how the courts have addressed the restraint, detainment, and seclusion of students in schools. Ranging in date from 1977 to 2012, 100 cases were analyzed in this study to identify emergent patterns in facts, holdings, and courts' reasoning over time and across multiple court jurisdictions, in order to develop a more comprehensive understanding of the topic.

Of the 100 cases included in the study, 3 of the cases were from the U.S. Supreme Court, 33 of the cases were from federal appeals courts, 10 cases were from state appeals courts, and 54 of the cases were from district courts. Of the 33 cases from federal appeals courts, 1 case was from the First Circuit, 1 was from the Second Circuit, 3 were from the Third Circuit, 3 were from the Fourth Circuit, 4 were from the Fifth Circuit, 3 were from the Sixth Circuit, 1 was from the Seventh Circuit, 5 were from the Eighth Circuit, 3 were from the Ninth Circuit, 6 were from the Tenth Circuit, and 3 were from the Eleventh Circuit. No cases came from the Twelfth or Thirteenth Circuits.

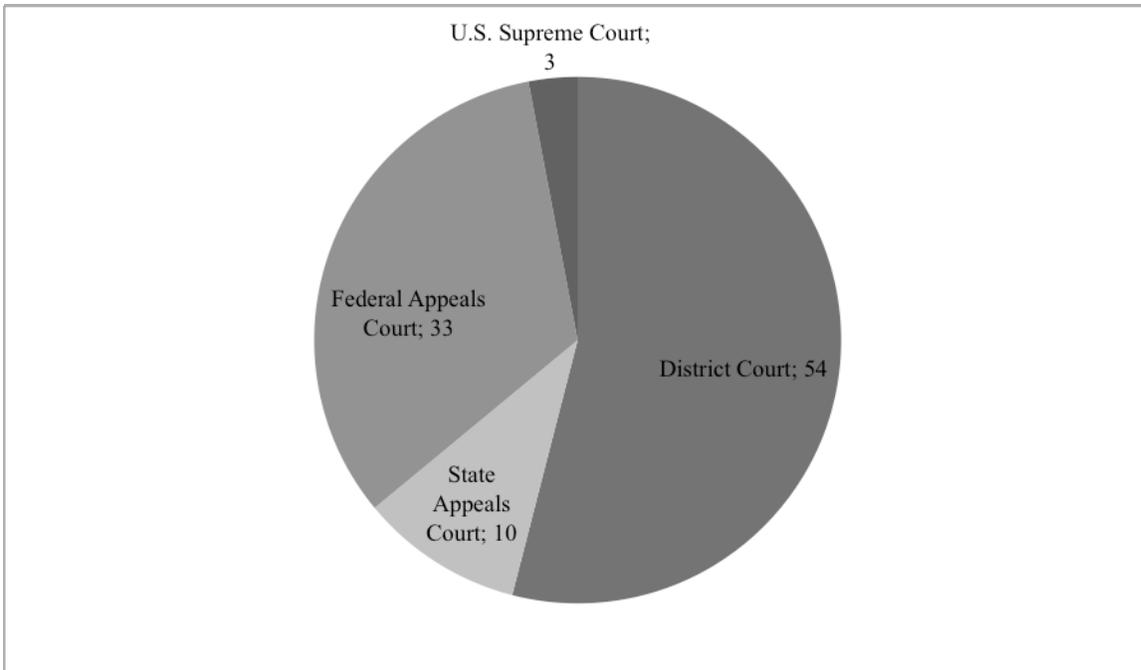


Figure 1. Cases by jurisdiction.

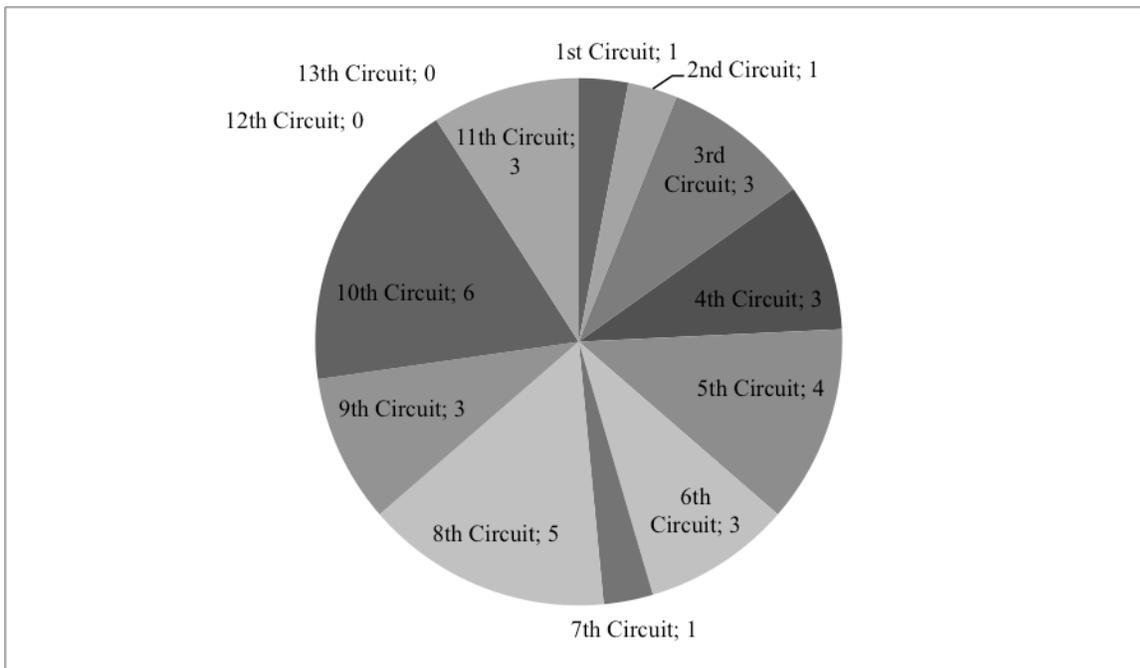


Figure 2. Federal appeals court cases by circuits.

The data produced one case, *Youngberg v. Romeo* (1982), which is not in an educational setting. In this case, the U.S. Supreme Court considered for the first time the substantive rights of involuntarily committed mentally retarded persons under the Fourteenth Amendment to the Constitution. The case was included in the study because it presents an important question considered in future school-related cases. It sets forth the standard that professional judgment must be exercised in the seizure of students. The case guides educators that constitutional standards are met when the professional who made a decision to restrain, detain, or seclude a student exercised professional judgment at the time the decision was made.

Two additional cases were in an educational setting; however, the litigation involved social workers and police officers rather than school officials. The social worker and officer were entitled to qualified immunity in *Green v. Camerta* (2009). However, in *Jones v. Hunt* (2005) the family prevailed because the court held that the social worker and officer violated the student's Fourth Amendment rights and they were not entitled to qualified immunity. These two cases are examples of situations where students were seized in a school setting, but not by school officials.

The data produced 97 cases in which educators or schools were involved in court litigation. The educators or school was the prevailing party in 62 of the cases. Students or families were successful in their claims against educators or schools in 31 of the cases. Of the 4 cases that involved teacher employment, the school district prevailed in 1, the Tenure Commission prevailed in 1, and a teacher was successful in 2 of the cases.

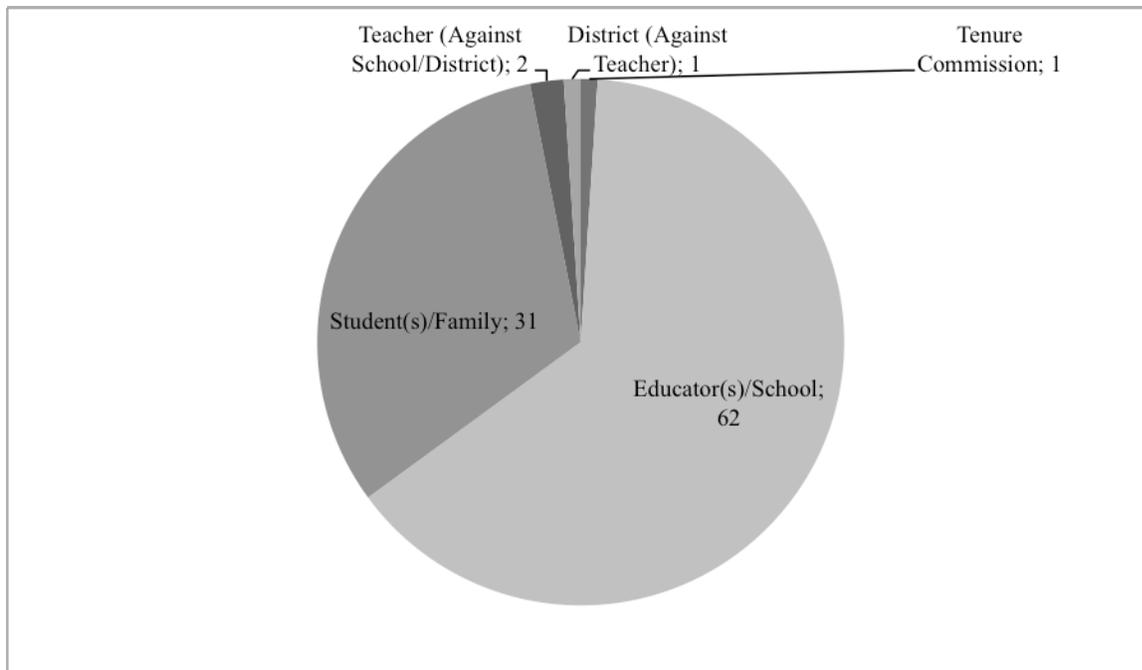


Figure 3. Cases by prevailing party.

In examining the 99 cases in the school setting, one case took place in a PK-12 school, 46 were set in an elementary school (Pre-Kindergarten through sixth grade), and 52 of the cases took place in a secondary school (seventh grade through twelfth grade).

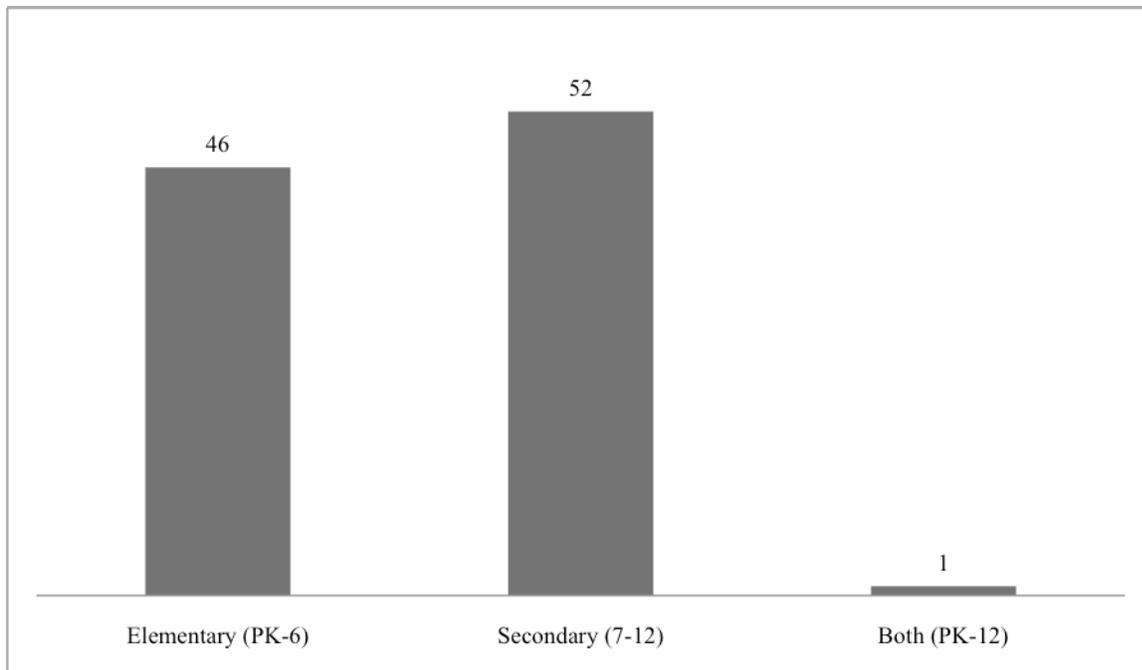


Figure 4. Cases by grade range.

When analyzing the cases by student population, 56 of the cases involved only general education students and 43 of the cases involved special education students. The case set in the PK-12 school environment involved a special education student. Of the 46 cases that took place in an elementary school, 32 of the cases involved special education students while only 14 cases involved general education students. In the 52 cases that took place in a secondary school, 11 of the cases involved special education students and the other 41 involved general education students.

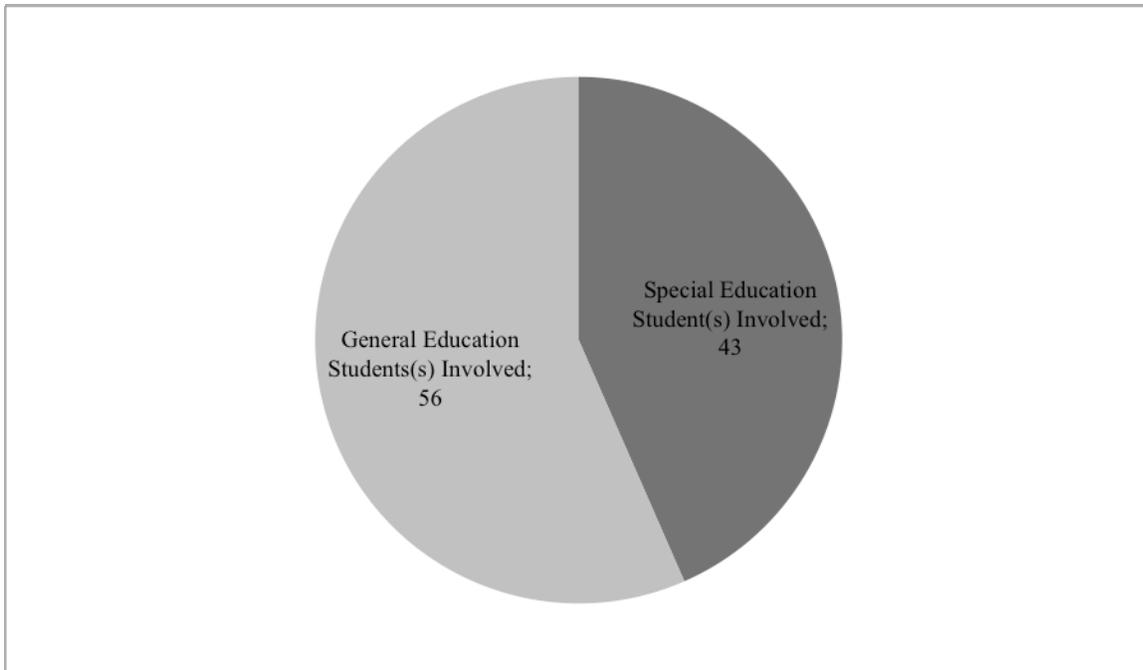


Figure 5. Cases by student population.

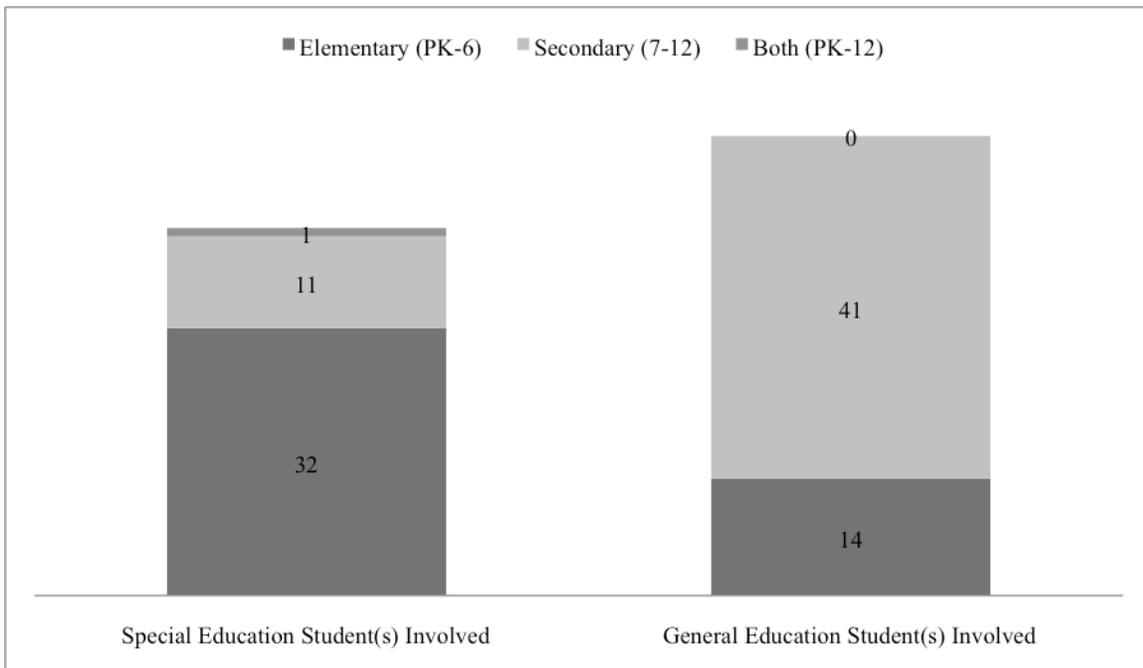


Figure 6. Cases by student population by grade range.

When analyzing the cases by claim, the 100 cases are clustered into four categories. Violation to Fourth Amendment rights is the claim in 12 of the cases. Violation to Fourteenth Amendment rights is the claim in 38 of the cases. Thirty-five cases bring claims under both the Fourth and Fourteenth Amendments. The remaining 15 cases are categorized as “other” because they do not bring a constitutional claim, but rather a claim of assault, battery, discrimination, disorderly conduct, false imprisonment, or violation of state law.

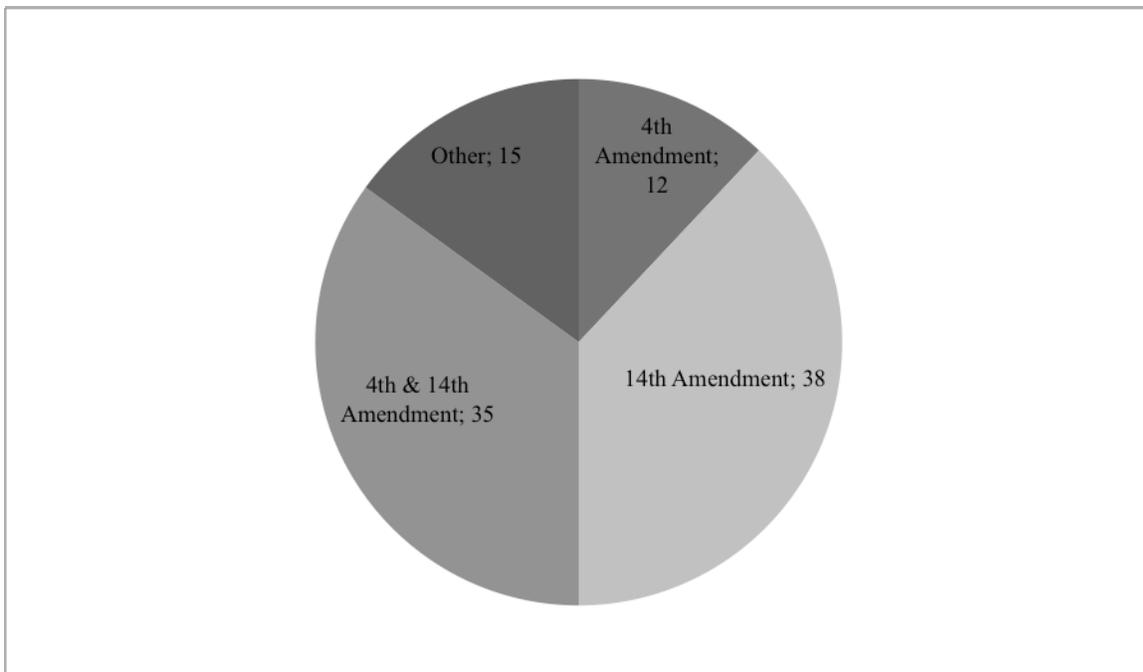


Figure 7. Cases by constitutional claim(s).

When analyzing the cases over time, the 100 cases are categorized into four periods of time. The time periods are 1977-1985; 1986-1994; 1995-2003; and 2004-2012.

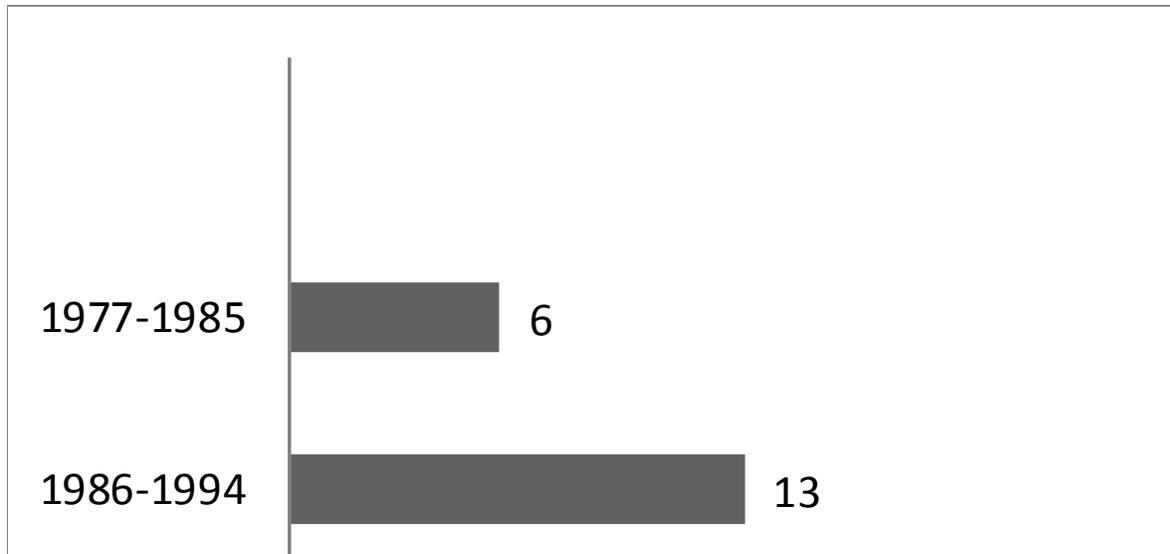


Figure 8. Cases by year.

Analysis of Cases by Year

1977-1985

During the time period 1977-1985, the data produced six cases. It begins with *Ingraham v. Wright* (1977) and ends with *Gaspersohn v. Harnet County Board of Education* (1985). Of the six cases in this time period, one of the cases, *Youngberg v. Romeo* (1982), was not set in a school situation, as mentioned above. Of the remaining five cases in this time period, two of them are in the elementary grade range and three of them are in the secondary grade range. All five cases involve only general education students. One of the cases brings a constitutional claim under the Fourth Amendment, four cases bring a constitutional claim under the Fourteenth Amendment, none of the cases bring claims under both the Fourth and Fourteenth Amendments, and one of the cases does not bring a constitutional claim. Claims that students' Eighth Amendment rights were violated are also presented in two of the cases. The school or school

officials prevailed in four of the five cases in this time period. Students were successful in their claims against the educators or school in one of the cases.

Three of the most relevant cases to the study fall within this time period. *Ingraham v. Wright* (1977) is the leading case in the area of the use of excessive force against students in public schools. It involved the paddling of two general education students in a junior high school. The issue is corporal punishment. Students claimed that their Eighth Amendment right to be free from cruel and unusual punishments and their Fourteenth Amendment right to due process were violated. In this case, the U.S. Supreme Court held that the cruel and unusual punishments clause of the Eighth Amendment did not apply to disciplinary corporal punishment in public schools and that the due process clause did not require notice and hearing prior to the imposition of corporal punishment in the public schools. The nature of the distinction between substantive and procedural due process claims is also illustrated in this case. The question of whether the conduct is violative of substantive due process rights is, at its core, a question of degree. A court must ask whether the force applied was so excessive in relation to the particular government interest as to offend the decency and fairness “implicit in the concept of ordered liberty.” In an extreme case, a court might properly conclude that no state remedy, be it pre-deprivation or post-deprivation, would “afford adequate process under the Fourteenth Amendment and that the conduct implicates substantive rather than procedural rights (*Metzger v. Osbeck*, 1987).

In 1980, in *Hall v. Tawney*, the Fourth Circuit became the first circuit court to recognize a claim under 42 U.S.C. § 1983 for a substantive-due-process violation when a school official abuses his or her official power through the unauthorized use of force on a public-school child. In this case, a student was “vehemently grasped” and “stricken repeatedly and violently by

Tawney with the rubber paddle under the supervision and approval of Claywell,” resulting in a 10-day hospital stay for traumatic injury. Adopting the standard used in police-brutality cases, the Fourth Circuit decided that,

the substantive due process inquiry in school corporal punishment cases must be whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience. (*Hall v. Tawney*, 1980)

Hall became an influential case in the corporal-punishment context. The study reflects that the Second, Third, Fourth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits evaluate public-school corporal-punishment cases under the substantive-due-process framework and have adopted Hall’s shock-the-conscience standard, or something very similar to it.

In *New Jersey v. T.L.O.* (1985), the U.S. Supreme Court set forth principles governing searches by public school authorities. The U.S. Supreme Court’s Fourth Amendment jurisprudence in the public-school arena recognizes that because the school setting requires some modification of the level of suspicion of illicit activity needed to justify a search, a standard of reasonableness is more appropriate than the typical probable-cause standard available in other contexts. *T.L.O.* counsels that in order to determine whether a school search is lawful, it must be justified at its inception, reasonably related to the scope of the circumstances that initially justified the search, and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

1986-1994

The second time period is 1986 to 1994. The data produced 13 cases during this time period. It begins with *Willoughby v. Lehrbass* (1986) and ends with *Wallace v. Batavia School*

District 101 (1994). Four of the cases are set in an elementary school and nine of the cases are set in a secondary school. Ten of the cases involve only general education students, while three of the cases involve students identified for special education services. Among the four cases set in an elementary setting, two involve only general education students and two involve special education students. Among the nine cases set in a secondary school setting, eight involve only general education students and one case involves a special education student. One of the cases brings a constitutional claim under the Fourth Amendment, six cases bring a constitutional claim under the Fourteenth Amendment, four of the cases bring claims under both the Fourth and Fourteenth Amendments, and two of the cases do not bring a constitutional claim. Claims that students' First, Fifth, Eighth, and Ninth Amendment rights were violated were also presented in five of these cases. The school or school officials prevailed in nine of the cases. Students were successful in their claims against the educators or school in four of the cases.

Edwards v. Rees (1989), which is considered the first school seizure case, is included in this time period. In this case, a high school student, Edwards, was accused of calling in a bomb threat at the local junior high school. The assistant principal, Rees, went to the nearby high school, had Edwards removed from class, and took him into a room for questioning about the threat. Edwards claimed that the 20-minute detainment was in violation of his Fourth Amendment right to be free from unreasonable seizures. The Tenth Circuit held that the same considerations which moved the U.S. Supreme Court to apply a relaxed Fourth Amendment standard in cases involving school searches, support applying the same standard in school seizure cases. Mr. Rees's conduct was justified at its inception by the statements made to him by two students, both of which implicated Edwards as the individual who called in the threat. Given the seriousness of the suspected offense, questioning Edwards in an office in the school building for

20 minutes was reasonably related in scope to determining whether he had indeed called in the bomb threat. Accordingly, the court held that Mr. Rees's actions were reasonable and lawful.

1995-2003

The third time period is 1995 to 2003. The data produced 34 cases during this time period. It begins with *Hassan v. Lubbock Independent School District* (1995) and ends with *Samuels v. Independent School District 279* (2003). Fourteen of the cases are set in an elementary school and 20 of the cases are set in a secondary school. Twenty-six of the cases involve only general education students, while 8 of the cases involve students identified for special education services. Among the 14 cases in an elementary setting, 7 involve only general education students and 7 involve special education students. Among the 20 cases in a secondary school setting, 26 involve only general education students and 8 involve special education students. Three of the cases bring a constitutional claim under the Fourth Amendment, 13 of the cases bring a constitutional claim under the Fourteenth Amendment, 12 of the cases bring claims under both the Fourth and Fourteenth Amendments, and 6 of the cases do not bring a constitutional claim. Claims that students' First and Eleventh Amendment rights were violated are also presented in 2 of the cases. The school or school officials prevailed in 18 of the cases in this time period. Students were successful in their claims against the educators or schools in 12 of the cases. Also, this time period included the 4 cases related to teacher employment. The school district was affirmed in suspending a teacher for unprofessional conduct related to a physical restraint in *Seattle School District v. Stokes* (1996). The Tenure Commission was affirmed in suspending a teacher due to the use of excessive force, after a formal reprimand about such conduct had previously been issued to the teacher, in *Lewandowski v. Ypsilanti*

School District Board of Education (1997). The teacher prevailed in both *Widdoes v. Detroit Public Schools* (1996) and *Widdoes v. Detroit Public Schools* (2000).

An influential case to the study takes place during this time period. In *Wallace v. Batavia School District 101* (1995), the Seventh Circuit was the first to apply the Fourth Amendment's protection to a teacher's use of force against a student. In this case, a teacher, James Cliffe, attempts to break up a fight between Wallace and another student; to maintain order, Cliffe grabbed Wallace by the wrist to speed her exit and when the student bent over a desk, he grasped her elbow to move her out of the classroom. Wallace sued the teacher and the school district, alleging injury to her elbow in violation of her Fourth Amendment right against unreasonable seizures and her Fourteenth Amendment right to substantive due process. The Seventh Circuit first noted that although the Fourth Amendment pertains primarily to the law-enforcement context, the U.S. Supreme Court had applied its protection to searches of public-school students by school officials in *New Jersey v. T.L.O.* (1985). The circuit court next noted that although *T.L.O.* involved the Fourth Amendment's protection against unreasonable searches, several circuits had applied *T.L.O.*'s holding to unreasonable seizures of public school students. As a result, *T.L.O.*'s reasoning was instructive--the Fourth Amendment seizure of a public school student should be examined under the reasonableness standard "evaluated in the context of the school environment, where restricting the liberty of students is a sine qua non of the educational process." In application, the reasonableness test is objective, determining "whether under the circumstances presented and known the seizure was objectively unreasonable." The court explained that the reasonableness standard provides an acceptable middle ground, enabling teachers to deal with disruptive students while protecting students against the potentially excessive use of state power. In applying this standard to the facts of *Wallace*, the Seventh

Circuit held that the plaintiff did not suffer a constitutional deprivation of her liberty interest. The teacher grabbing Wallace’s wrist and elbow was “hardly unreasonable” given its purpose was to prevent a fight. Turning to Wallace’s claim that her Fourteenth Amendment right to substantive due process was violated by use of excessive corporal punishment, the Seventh Circuit held that the Fourteenth Amendment’s Due Process Clause does not afford Wallace any greater protection than the Fourth Amendment from unwarranted discipline while in school. Excessive corporal punishment may be assessed under the Fourth Amendment “because a student is at least as much seized when a school official administers corporal punishment.” Thus both Wallace’s Fourth and Fourteenth Amendment claims were rejected.

2004-2012

The fourth and final time period is 2004 to 2012. The data produced 47 cases during this time period. It begins with *Valentino v. School District of Philadelphia* (2004) and ends with *Thomas v. City of New Orleans* (2012). Twenty-six of the cases in this time period take place in an elementary school, 20 of the cases take place in a secondary school, and 1 case takes place in a PK-12 setting. Fourteen of the cases involve only general education students, while 33 of the cases involve students identified for special education services. Among the 26 cases set in an elementary setting, 3 involve only general education students. Twenty-three of the cases set in an elementary school involve special education students. Among the 20 cases in a secondary school setting, 11 involve general education students. Nine of the cases set in a secondary school involve special education students. The case that takes place in the PK-12 school setting does involve a special education student. Seven of the cases bring a constitutional claim under the Fourth Amendment, 15 of the cases bring a constitutional claim under the Fourteenth

Amendment, 19 of the cases bring constitutional claims under both the Fourth and Fourteenth Amendments, and 6 of the cases do not bring a constitutional claim. Claims that students' Fifth and Eighth Amendment rights were violated are also presented in 3 of the cases. The school or school officials prevailed in 31 of the cases in this time period. Students were successful in their claims against the educators or schools in 14 of the cases. This time period includes the two cases set in an educational setting, but concerning the litigation of social workers and police officers rather than school officials. As mentioned above, the social worker and officer were entitled to qualified immunity in *Green v. Camerta* (2009); and, in *Jones v. Hunt* (2005), the student's family prevailed.

A significant case related to seclusion in schools took place during this time period. In *Couture v. Board of Education of the Albuquerque Public Schools* (2008), special education teachers often had to force a special education student into a timeout room when he "became violent, a threat to himself or others," or if he demonstrated "aggressive behavior either to himself or aggressiveness toward other children." Ms. Couture, the student's mother, argued that the teachers violated her child's Fourth and Fourteenth Amendment rights by repeatedly placing him in a timeout room. The United States Court of Appeals, Tenth Circuit, held that repeated use of the timeout room as punishment for the student's disruptive behavior did not violate the Fourth Amendment, that the student's placement in the timeout room for refusing to do his school work was justified at its inception, and that the lengthy timeouts were reasonably related to the school's objective of behavior modifications, particularly given that the timeouts were expressly prescribed in the student's IEP as a mechanism to teach him behavioral control. The court also held that placement in the timeout room did not implicate procedural due process requirements. The court's explanation was that timeouts, unlike suspensions or expulsions, are

intended to settle down a child while keeping him within close proximity to the classroom; this way, he can resume his education as soon as he is calmed. This method balances the need for punishment and discipline with the important goal of preserving access to public education, rather than denying him the education to which he is legally entitled.

Analysis of Cases by Type of Seizure

The next portion of the analysis involved an examination of the cases based on types of student seizures. When analyzing the cases by seizure type, the researcher found that key facts support that many times more than one type of seizure is present. Therefore, it was necessary to break the information into sub-categories. Three sub-categories exist under the main category of seizure type: primary type of seizure, secondary type of seizure, and tertiary type of seizure. The primary type is the chief type of seizure used in the cases; it is also the type of seizure that sets the incident into motion. For example, physical restraint set the incident in motion in the majority of the cases; then, if a student was handcuffed after the physical restraint occurred, mechanical restraint was cited as the secondary type of seizure. The researcher did not find any case where more than three types of seizures were present.

The researcher first analyzed cases by the totality of types of seizures used. Physical restraint was used in a total of 61 of the cases; in 58 cases it was the primary type of seizure, in 3 cases it was identified as the secondary type of seizure, and it was not identified as the tertiary type of seizure in any case. Mechanical restraint was used in a total of 18 of the cases; in 5 cases it was the primary type of seizure, in 11 cases it was identified as the secondary type of seizure, and it was identified as the tertiary type of seizure in 2 cases. Detainment was used in a total of 24 of the cases; in 15 cases it was the primary type of seizure, in 5 cases it was identified as the

secondary type of seizure, and it was identified as the tertiary type of seizure in 4 cases.

Seclusion was used in a total of 21 of the cases; in 13 cases it was the primary type of seizure, in 7 cases it was identified as the secondary type of seizure, and it was identified as the tertiary type of seizure in 1 case. The use of chemical restraint was not noted in any of the 100 cases. Nine of the cases presented key facts that did not support the definition of any of the types of seizure presented in this study. These cases are categorized as “other” for the purpose of analysis; the issues presented in these cases are more aligned with corporal punishment, use of force, or abuse.

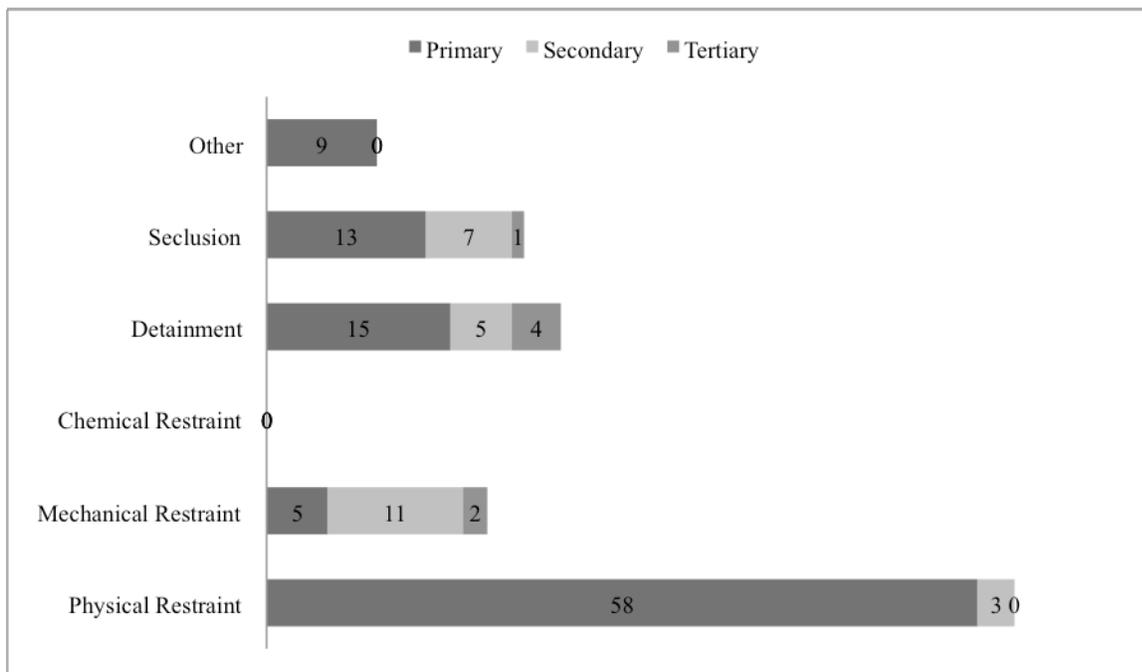


Figure 9. Cases by type of seizure.

In order to explore and discuss the data in a more comprehensive manner, the researcher then analyzed the cases based upon the primary types of seizure used. The main categories are physical restraint, mechanical restraint, detainment, seclusion, and other. As the categories were analyzed, selected cases were chosen to emphasize the themes brought out in each section.

Physical Restraint

Physical restraint restricts an individual's body movement. It typically involves a person using their body to restrict another individual's body movement. Physical restraint was identified as the primary type of seizure in 58 of the 100 cases. One of the cases, *Youngberg v. Romeo* (1982), was not set in a school situation. Of the remaining 57 cases, 29 of them took place in an elementary school, 27 of the cases took place in a secondary school, and 1 of the cases took place in a PK-12 school environment. Twenty-five of the cases involved only general education students and 32 of the cases involved students identified for special education services. Special education students were involved in 24 of the 32 cases set in an elementary school, while the other 5 cases only involved general education students. Special education students were involved in 7 of the 27 cases set in a secondary school, while the remaining 20 involved only general education students. Three of the cases brought a constitutional claim under the Fourth Amendment, 25 of the cases brought a claim under the Fourteenth Amendment, 17 of the cases brought claims under both the Fourth and Fourteenth Amendments, and 12 of the cases did not bring a constitutional claim. Claims that students' First, Fifth, Eighth, and Ninth Amendment rights were violated were also presented in 5 of the cases. The school or school officials prevailed in 32 of the 57 cases. Students were successful in their claims against educators or schools in 21 of the 57 cases. The school district was affirmed in suspending a teacher for unprofessional conduct related to a physical restraint in *Seattle School District v. Stokes* (1996). The Tenure Commission was affirmed in suspending a teacher due to the use of excessive force, after a formal reprimand about such conduct had previously been issued to the teacher, in *Lewandowski v. Ypsilanti School District Board of Education* (1997). In both *Widdoes v. Detroit Public Schools* (1996) and *Widdoes v. Detroit Public Schools* (2000), the teacher prevailed.

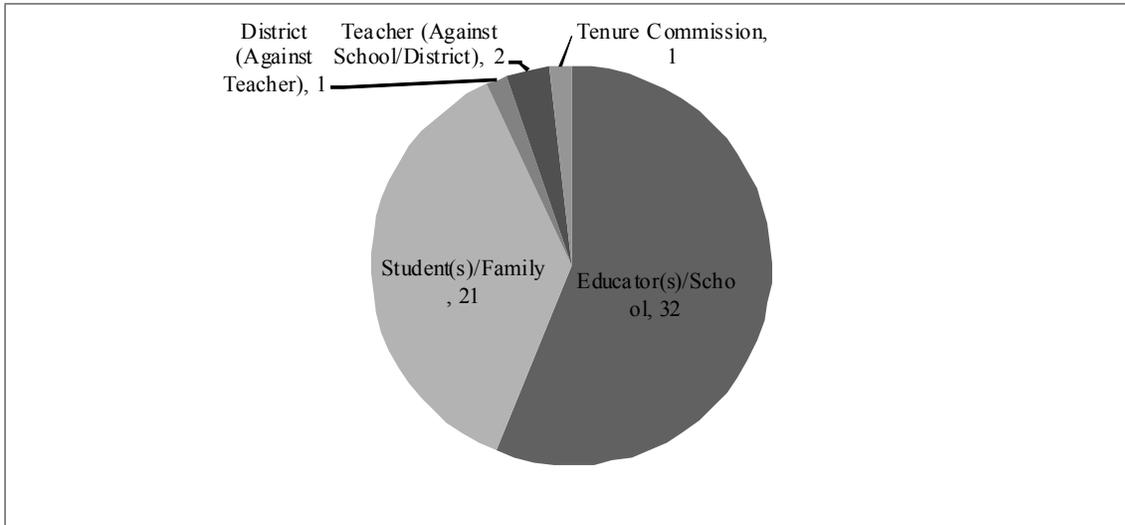


Figure 10. Physical restraint cases by prevailing party.

In *Metzger v. Osbeck* (1988), the suit alleged that the teacher put his arm around the neck and shoulders of a student while verbally correcting him over the use of foul language. The suit alleged that the student had to stand on his toes due to the pressure on his throat and that he lost consciousness and fell face down onto the pool deck. The student suffered significant facial injuries as a result of the fall. The teacher denied any ill intent, but the court ruled that the jury would have to decide. The court explained that even if physical reinforcement of a teacher’s verbal admonitions was pedagogically appropriate and condoned by school disciplinary policy, that a reasonable jury could find that the restraints employed by Osbeck, if responsible for the student’s loss of consciousness, exceeded the degree of force needed to correct Metzger’s alleged breach of discipline and the substantial injuries sustained by Metzger served no legitimate disciplinary purpose. If the jury was persuaded that Osbeck employed those restraints with the intent to cause harm, Osbeck would be subject to crossing the “constitutional line” separating a common law tort from a deprivation of substantive due process.

Heidenmann v. Rother (1996) held that the use of a blanket wrapping technique on a 9-year-old child with severe mental and physical disabilities was not an unreasonable bodily restraint that violated the student's constitutional rights to substantive and procedural due process. Likewise, since the employees implementing the technique were following recommendations of a licensed professional therapist, the defendants were all entitled to qualified immunity. Similarly, in *Brown v. Ramsey and Hart* (2000), teachers obtained summary judgment in their favor in a case involving the use of a "basket hold" on an elementary age student with Asperger's Syndrome. The court explained that there was nothing before the court to suggest that the alleged actions of Ramsey and Hart were anything other than a disciplinary measure within the sound discretion of the teacher.

Two cases involving the use of physical restraint by school resource officers (SRO) are *Campbell v. McAlister* (1998) and *Jordan v. Blackwell* (2008). *Campbell v. McAlister* (1998) involved an unruly kindergarten student. After the teacher felt she could no longer control the student in her classroom, she requested the assistance of an assistant principal and SRO. The SRO physically removed the student from the classroom and "dragged" him to the principal's office. The student suffered some bruising under the arm, but no other injury. The issue was whether the SRO's use of excessive force to remove the student from his classroom constituted an unreasonable seizure under the Fourth Amendment and a denial of substantive due process under the Fourteenth Amendment. The Fifth Circuit held that, under either Amendment, the SRO's use of force was not a constitutional violation. The court explained that the fact that less force could have been used, or that a more appropriate punishment may have been available, is not enough to establish that the punishment administered was unconstitutional. The Fourth Amendment's reasonableness standard must afford school officials with a relatively wide range

of acceptable action in dealing with disruptive students. However, in *Jordan v. Blackwell* (2008), the key facts and decision demonstrated a different outcome for school officials. After a 13-year-old middle school student, T.S., started a fight in the school cafeteria, the SRO, Nason Blackwell, forcibly removed her to the principal's office. In the process, T.S. allegedly sustained a shoulder injury. The plaintiff alleged Blackwell's act of placing her in a chokehold violated her Fourth Amendment right to be free from unreasonable and excessive force and her substantive due process rights under the Fourteenth Amendment. The court explained that Blackwell could not be liable for the same conduct under both constitutional provisions. The court decided that the Fourth Amendment provided an explicit textual source of constitutional protection and that this case need not be analyzed under the more generalized Fourteenth Amendment substantive due process standard. Using the reasonableness test as a guide, the court believed that the seizure may have been reasonable at its inception; however, given the amount of force used, the amount of time that the student was restrained, and the nature of the injuries sustained, that Blackwell's use of force was excessive. The court held that the defendant's motion for summary judgment was denied and the court sought judgment as a matter of law on the issue of qualified immunity.

Physical restraint is the most common type of seizure used in public schools. In some situations, physical restraint is referred to as therapeutic holding and used as a therapeutic technique. However, it is most commonly a measure used in dangerous and emergency situations. Its purpose is to re-establish behavioral control and is often used to promote or maintain safety for the student, his/her peers, and staff. The study demonstrates that lawsuits related to physical restraint in public schools have increased over time. This is likely because more students with difficult or severe behavioral needs are being served in general education

schools and classes and educators are responsible for ensuring a safe learning environment for all students. Generally, the reasonableness standard affords school officials with a relatively wide range of acceptable action in dealing with disruptive students as long as the restraint is reasonable at its inception and conducted in an appropriate manner. Courts generally consider the age and sex of the student and the nature of the infraction to determine the reasonableness of the restraint. Physical restraint is more likely to be considered reasonable if the restraint is stopped when the behavior that instigated the need for the restraint in the first place has stopped. The study suggests that the fact that less force could have been used or that a more appropriate action may have existed is not enough for a court to establish that the act of physical restraint is unconstitutional.

Mechanical Restraint

Mechanical restraint involves the use of an object or device, such as a harness or tape, to limit an individual's movement. The use of handcuffs is also considered a form of mechanical restraint. Mechanical restraint was identified as the primary type of seizure in 5 of the 100 cases. Two of the cases took place in an elementary school and 3 of the cases took place in a secondary school. Three of the cases involved only general education students and 2 of the cases involved students identified for special education services. A special education student was involved in 1 of the 2 cases set in an elementary school and a special education student was involved in 1 of the 3 cases set in a secondary school. Two of the cases brought a constitutional claim under the Fourth Amendment, 1 of the cases brought a constitutional claim under the Fourteenth Amendment, 1 of the cases brought claims under both the Fourth and Fourteenth Amendments, and 1 of the cases did not bring a constitutional claim. A claim that a student's Fifth

Amendment rights were violated was also presented in 1 of the cases. The school or school officials prevailed in 2 of the 5 cases. Students were successful in their claims against educators or schools in 3 of the cases.

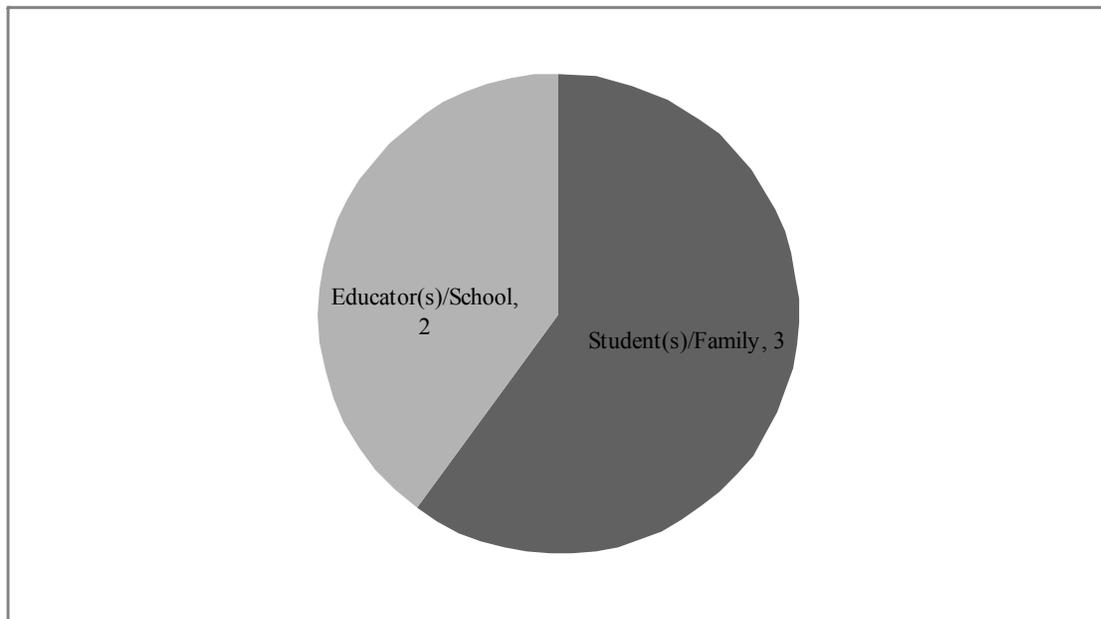


Figure 11. Mechanical restraint cases by prevailing party.

In *Doe v. State of Hawaii Department of Education* (2003), a second grade student, Doe, was sent to the assistant principal, Keala, to be disciplined for fighting, but Doe then refused to stand still against the wall for his timeout punishment. Keala followed through on his threat to take Doe outside and tape him to a tree if he did not stand still. Using masking tape, the assistant principal taped the student's head to a tree. The tape remained for about 5 minutes until a fifth-grade girl told Keala that she did not think he should be doing that. He instructed the girl to remove the tape, and she did. The court used the reasonableness standard set forth in *T.L.O.* (1985) to guide their decision. A seizure violates the Fourth Amendment if it is objectively

unreasonable under the circumstances. At the time Keala taped the student to a tree, Doe's only offense had been "horsing around" and refusing to stand still. There was no indication that Doe posed a danger to other students. Doe was 8 years old. Taping his head to a tree for 5 minutes was so intrusive that a fifth grader observed it was inappropriate. Thus, there was sufficient evidence to conclude that Keala's conduct was objectively unreasonable in violation of the Fourth Amendment. The United States Court of Appeals, Ninth Circuit, held that the Fourth Amendment, rather than the Fourteenth Amendment due process clause applied to the action; the student's allegations were sufficient to find a violation of his Fourth Amendment search and seizure rights; and the student's right to be free from excessive physical punishment was a clearly established right at the time of the incident, and thus the assistant principal was not entitled to qualified immunity.

Samuels v. Independent School District 279 (2003) is an example of mechanical restraint by handcuffs. After a verbal dispute and classroom disruption, R.J., a ninth-grade student, was escorted by an administrator, Bronson, to the school resource officer's office. Bronson requested that the school resource officer, Barritt, handcuff R.J. and he did. Bronson wanted to have R.J. handcuffed in order to "teach him a lesson" about the possible consequences of getting into fights at school. Once Barritt realized that the handcuffs were only to teach R.J. a lesson and not as a result of a violation worthy of handcuffs, he removed the handcuffs and subsequently told Bronson he could not handcuff students for that purpose. R.J. was handcuffed for approximately 30-40 seconds. The court took into account the reasonableness inquiry in the public school context; reasonableness is determined by balancing the student's Fourth Amendment interests against legitimate government interests. The court found that R.J.'s reported misbehavior did not rise to a level so as to justify handcuffing him and that Bronson violated R.J.'s Fourth

Amendment right to be free from unreasonable seizures. Barritt was in a different situation, however. He handcuffed R.J. in response to Bronson's direct request that he do so. Based on his relationship with Bronson, his assessment of the situation, and his observation of R.J.'s demeanor, Barritt decided to handcuff R.J. while he investigated and controlled the situation. The Court found that these circumstances were sufficient to justify Barritt's application of the handcuffs. The fact that Barritt immediately removed the handcuffs upon discovering that there was no call for them indicated that Barritt's actions were reasonably related in scope to the situation. Therefore, the court found that Barritt did not violate R.J.'s Fourth Amendment right to be free from unreasonable seizure and the court granted Barritt's summary judgment motion.

Brinar v. Bethel School District No. 403 (2011) was the latest case in the study related to mechanical restraint. After an explosive device was detonated at Bethel High School and a second, undetonated, explosive device was also found, police began to investigate the incident. The police officers conducted the interviews of students with the cooperation of school officials. Jordan Brinar was involved in the incident and did not come forward with information when asked by officials; therefore, he was arrested in the school hallway and, soon after, handcuffed to a chair in the assistant principal's office, where he was questioned for 25 to 30 minutes. Brinar claimed that the school district violated his Fourth Amendment right to be free from unlawful seizure and his Fifth and Fourteenth Amendment due process rights were violated because the district failed to contact his parents prior to police questioning. The court found that there is no constitutional requirement for parents to be notified by school officials prior to police interrogation, regarding criminal activity that occurred on school grounds. The court further noted that Brinar was arrested by law enforcement outside his classroom and that he was, from that point forward, under the control of law enforcement and to create a constitutional

requirement of parental notification when, in the considered judgment of law enforcement such notification would hamper their investigation, would place school officials in an untenable position. Accordingly, the court concluded that no constitutional rights under the Fourth, Fifth, or Fourteenth Amendments were violated and the school district and school officials were entitled to summary judgment on all the student's claims and the motion to dismiss was granted in its entirety.

The requirements for mechanical restraint within a school environment are the most demanding of school seizures. This is likely why mechanical restraint is the least commonly used type of seizure used in public schools. Mechanical restraint is typically only used by educators in extremely unsafe situations as a means to manage out-of-control behavior. When mechanical restraint was noted in the court cases, it often involved school resource officers or police officers who were assisting school officials with a dangerous or disruptive situation. Although the use of handcuffs was not the only type of mechanical restraint used in the court cases, it was the primary means by which students were restrained mechanically. The behavior of a student must rise to a substantial level in order to justify handcuffing a student at school. Typically, students must have broken a law or put another person in considerable danger in order for the courts to consider the use of handcuffs to be reasonable. Courts generally consider the age and sex of the student and the nature of the infraction to determine the reasonableness of the restraint. Mechanical restraint, like physical restraint, is more likely to be considered reasonable if the restraint is stopped when the behavior that instigated the need for the restraint in the first place has stopped. The current study suggests that school officials should use mechanical restraint as a last resort.

Detainment

Detainment is the act of detaining. Detainment generally does not require the use of force. In schools, detainment is often used for investigative purposes. Detainment was identified as the primary type of seizure in 15 of the 100 cases. Four of the cases took place in an elementary school and 11 of the cases took place in a secondary school. None of the 15 cases involved special education students; all of the students involved in the cases where detainment was identified as the primary type of seizure were general education students. Six of the cases brought a constitutional claim under the Fourth Amendment, 1 of the cases brought a constitutional claim under the Fourteenth Amendment, and 8 of the cases brought claims under both the Fourth and Fourteenth Amendments. Claims that students' First, Fifth, and Eighth Amendment rights were violated were also presented in 4 of the cases. The school or school officials prevailed in 11 of the cases. Students were successful in their claims against educators or schools in 2 of the cases. Both cases were set in an educational setting, but concerned the litigation of social workers and police officers, rather than school officials. As mentioned above, the social worker and officer were entitled to qualified immunity in *Green v. Camerta* (2009) and in *Jones v. Hunt* (2005), the student's family prevailed.

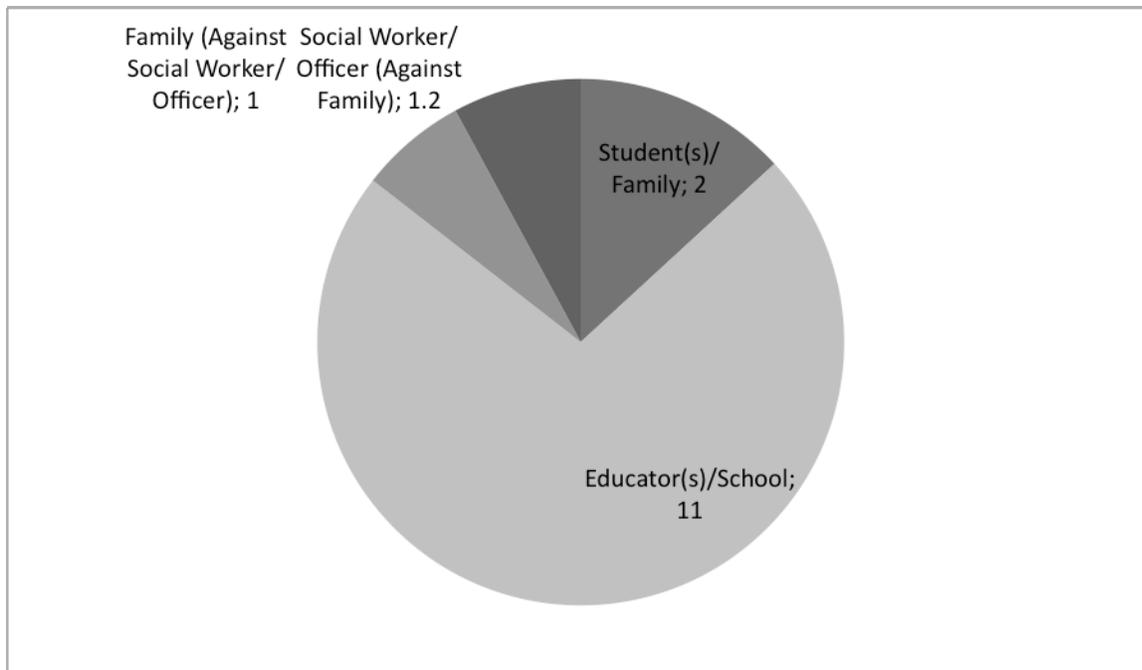


Figure 12. Detainment cases by prevailing party.

As mentioned, students were successful in their claims against educators or schools in 2 of the cases where detainment was noted as the primary type of seizure. One of those cases was *Gorthy v. Clovis Unified School District* (2006). In this case, the type of detainment was unique. Jacob Gorthy attended Clovis West High School where he played for the high school football team. On August 16, 2005, Jacob reported to football practice at approximately 4:30pm. The temperature at that time was in excess of 95 degrees. Unbeknownst to Jacob, the starting time for practice had been changed from 5:00 p.m. to 4:00 p.m.; consequently, he was late for practice. When he arrived, he was instructed to perform “bear crawls.” This required that he drop to his hands and crawl, using his toes and hands for balance. The defendants instructed Jacob to perform the drill on a stretch of asphalt, which had reached an extreme temperature. As a result, Jacob suffered second- and third-degree burns. The court explained that a school official’s action that restrains a student’s liberty is a seizure if a reasonable person in that

situation would not feel free to leave. The plaintiffs' allegations established that a reasonable person in Jacob's position might not feel free to leave the asphalt until he was instructed to stop the drill. The District Court held that the defendants' motion to dismiss the plaintiffs' claims for relief under the Fourth Amendment was denied; the defendants' motion to dismiss the plaintiffs' Fourteenth Amendment claims was denied; and that the limitation of the Eighth Amendment's scope to criminal punishments was inflexible. The other case where a student prevailed in a detainment situation was *Alexander v. Bostic* (2006). This case involved a 9-year-old student who was defiant to a teacher during physical education class. The disruption was witnessed by Bostic, a sheriff's deputy assigned to the school as a school resource officer. Deputy Bostic intervened in the situation and told teachers he would like to talk to the student, Gray. He detained the student outside the gymnasium in a lobby area. Then, Deputy Bostic told Gray to turn around, pulled her hands behind her back, and put Gray in handcuffs. Deputy Bostic tightened the handcuffs to the point that they caused Gray pain and left them on for not less than 5 minutes. The United States Court of Appeals, Eleventh Circuit, held that the deputy sheriff, acting as SRO, was acting within the scope of his discretionary authority when he detained the student and that he acted reasonably in stopping the student to question her about her allegedly threatening conduct toward a teacher. Thus, the primary type of seizure, detainment, was considered reasonable. However, the deputy's handcuffing of the student violated her Fourth Amendment rights and that right was clearly established so he was not entitled to qualified immunity. Thus, the student prevailed on the seizure related to mechanical restraint rather than detainment, so had the SRO stopped his seizure after detaining the student, this situation could have been lawful.

Educators are charged with maintaining a safe environment conducive for learning. Unfortunately, situations arise where they must detain students to investigate incidents that may jeopardize students' safety or hinder their learning. In *Wofford v. Botetourt County School Board* (2004), school officials were told that a 10-year-old student had brought a gun to school. Once this was reported to the assistant principal, Rosa, she immediately located the accused pupil, M.D., and escorted her to the office. Finding no weapon through a search, Rosa escorted M.D. to the school bus. Days later, students reported that they had seen M.D. throw a black handgun into the woods adjoining the school. Rosa and Principal Evans summoned M.D. to the office once more and renewed inquires about the weapon; they also contacted the police. In the presence of school officials, police detectives questioned M.D. about the allegation. Wofford, the student's mother, alleged that the school officials' failure to contact her infringed on her due process rights and that the student's Fourth Amendment rights were also violated through the seizure. The Court of Appeals, Fourth Circuit, held that the court would decline to announce requirement of parental notification or ban on detentions of certain lengths; that the school's disciplinary procedures did not violate due process, which did not require school officials to contact the mother before the student's detention and interrogation; and that the Fourth Amendment was not violated by the student's seizure by school officials and police officers. The court explained that they could not find fault with the efforts of school officials to protect the lives and safety of children entrusted to their care. Weapons are a matter with which schools can take no chances. The actions of this case reflected the need to avert the greater tragedy and respected the reconciliation of rights and interests set forth in federal law.

McKinley v. Lott (2005) is a case where school officials, Dr. Lott and Officer Suttles, had reason to believe that a student had used marijuana that morning before school. The student,

McKinley, responded “Yes” to a question of whether he had been smoking. However, he believed that Dr. Lott was asking him whether he had ever smoked marijuana in the past and not whether he had smoked marijuana that morning before school. Dr. Lott and Officer Suttles both understood McKinley to acknowledge and admit that he had smoked marijuana that morning. McKinley was informed he was being arrested, and he alleged that Suttles handcuffed one of his hands to another student and transported them to Juvenile Hall. The student claimed that school officials violated his Fourth, Fifth, and Fourteenth Amendment rights when they detained, arrested, and transported him from the school. In light of *T.L.O.*’s requirement that a search and seizure be justified at its inception and reasonably related in scope to the circumstances, the court concluded that the seizure, search, and arrest of McKinley were reasonable.

Detainment is the second leading type of seizure in public schools. The requirements for detaining a student on school grounds are the least demanding of school seizures. However, it is important for school officials to understand that any action that restrains a student’s liberty is a seizure if a reasonable person in that situation would not feel free to leave. The court cases demonstrated that, when detaining a student, educators should be mindful of their actions and demeanor so that a student does not feel threatened or unsafe in the situation. An investigative detention is a temporary seizure of a student for the purpose of determining if there is probable cause that a student is in violation of a law or school rule or if further investigation is needed in a school-related incident. Thus, it is considered reasonable for a school official to detain a student if there is a reasonable basis for believing that the student has violated the law or a school rule. The courts afford school officials the authority to reasonably detain a student as long as the purpose is to maintain a safe and positive learning environment. The courts are especially

tolerant of detentions related to a student who is suspected to be in possession of drugs or weapons.

Seclusion

Seclusion is the restriction of a person to a specific area, where the person is usually alone. Seclusion was identified as the primary type of seizure in 13 of the 100 cases. Eight of the cases took place in an elementary school and 5 of the cases take place in a secondary school. Four of the cases involved only general education students. The other 9 cases involved students identified for special education services. A special education student was involved in 6 of the 8 cases in an elementary school and a special education student was involved in 3 of the 5 cases set in a secondary school. None of the cases brought a constitutional claim under only the Fourth Amendment, 4 of the cases brought a constitutional claim under the Fourteenth Amendment, 8 of the cases brought claims under both the Fourth and Fourteenth Amendments, and 1 of the cases does not bring a constitutional claim. A claim that students' Eighth and Eleventh Amendment rights were violated was also present in 2 of the cases. The school or school officials prevailed in 11 of the 13 cases. Students were successful in their claims against educators or schools in 2 of the cases.

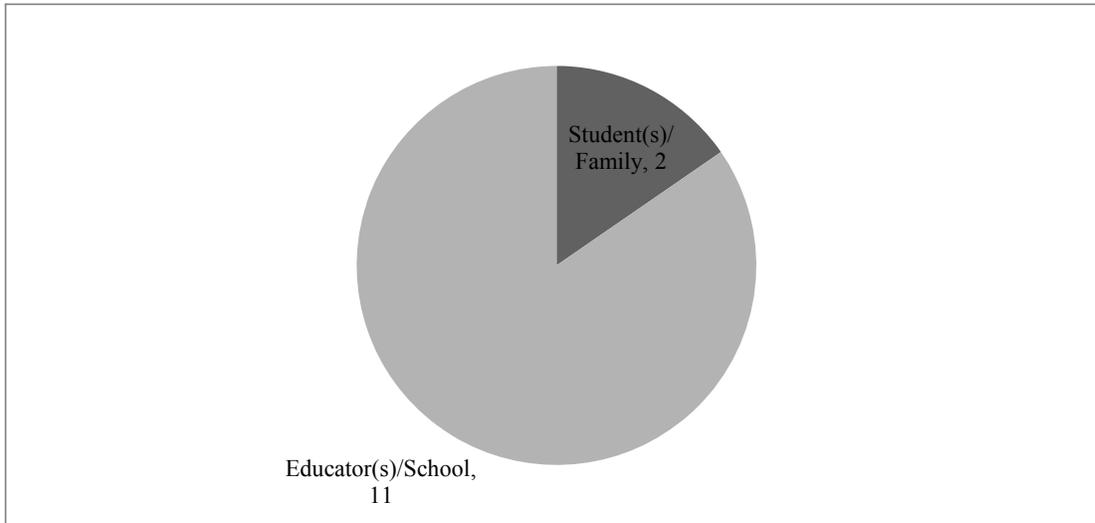


Figure 13. Seclusion cases by prevailing party.

Two of the earlier cases related to seclusion in schools were *Dickens v. Johnson County Board of Education* (1987) and *Hayes v. Unified School District* (1987). *Dickens v. Johnson County Board of Education* (1987) involved a sixth-grade, general education student who often misbehaved and disrupted class. After trying various disciplinary methods with limited success, Ms. Riggs, his teacher, decided to try an isolation technique known as “timeout.” Whenever Ronnie disrupted class, she placed him in a “timeout” area, which segregated him from the other students. Ms. Riggs used a cardboard, refrigerator carton, approximately 5’ tall and 7’ long to shield him from the other students. The student contended that school officials deprived him of his property interest in receiving a public education, as well as his liberty interest in remaining free from unlawful restraint, when they placed him in “timeout” without benefit of a due process hearing. Further, he claimed that this punishment was grossly disproportionate to his offense and thus violated his substantive due process rights under the Fourteenth Amendment. The District Court held that the student’s temporary isolation in “timeout” was a de minimus interference with his property and liberty interest and, moreover, the discipline was not unduly harsh; was not

grossly disproportionate to his offense; and was rationally related to a legitimate purpose. The court suggested that judicious use of behavioral modification techniques, such as “timeout,” should be favored over expulsion in disciplining disruptive students.

Hayes v. Unified School District (1987) involved the seclusion of two special education students, Dennis and Sally Hayes. The children’s father, Mr. Walter Hayes, after hearing that Dennis and Sally were being placed in an isolation area during the school day, took it upon himself to try to remove his children from that portion of the personal/social adjustment program. Finding that the Eighth Amendment is applicable only to convicted criminals, the court found that parents could not bring an Eighth Amendment challenge to the imposition of timeout and therefore the defendants’ motion for summary judgment was granted on that issue. The plaintiffs also alleged violation of their Fourteenth Amendment rights; the court found that the record did not establish that the plaintiffs were deprived of their property or liberty interests in education. The plaintiffs also alleged violation of Fourth Amendment rights against unreasonable seizure were violated. The court found that school officials’ conduct was reasonably related to their authority and ability to discipline the students and that such discipline, including placing students in the timeout room, was justified. Similarly in *Dickens v. Johnson County Board of Education* (1987), the court explained that while the use of the timeout room may not be the most effective or sensible disciplinary measure, the court could not find that it constituted a constitutional deprivation. Rather, the court found that the school’s use of the timeout room ensured that a student would not be deprived of their educational rights while on suspension.

In *Hassan v. Lubbock Independent School District* (1995), Hassan was a sixth-grade student on a field trip to a local juvenile detention center with his classmates. Due to persistent

misbehavior on the trip, school officials locked Hassan in a holding room for about 50 minutes. The room had a bed and a toilet but was otherwise bare, with a metal door and a glass partition. Hassan was monitored continuously by center employees and a teacher who returned to the area to check on him. At the conclusion of the tour, the other students walked by the room and were told to look at him. Once back at the school, Hassan was asked to tell the class about his behavior, the punishment, and what he had learned from the experience. The Fifth Circuit Court held that school officials were entitled to qualified immunity from personal liability; and, the court concluded that there was no constitutional violation. The court explained that Hassan's punishment was within the range of discretion afforded school officials and that punishment bore a rational relationship to the goal of providing a valuable and safe educational experience for the other 102 children. The court reminded that the fact that a better punishment may have been available does not establish that the punishment administered was unconstitutional.

One of the more tragic seclusion cases is *King v. Pioneer Regional Service Agency* (2009). This case presented a situation where a student committed suicide while being held in a seclusion or timeout room. Jonathan King was a student at Alpine Psychoeducational Program, a school for students with severe emotional behavior disorders. As was common for Jonathan, he was disruptive at school, began picking a fight with one of the other students, and climbed over his study carrel in an attempt to attack the other student. After physically restraining Jonathan, school officials placed him in the timeout room and monitored him from the outside. During the first 15 minutes, Jonathan cursed, asked to be let out, and repeatedly hit the door. A few minutes later, he became quiet, and thus a teacher decided to let him out of the room. However, as the teacher started to push the door open, he realized that all of Jonathan's weight was leaning against it. After quickly forcing the door open, the teacher discovered that Jonathan was

unconscious, having hanged himself from the metal grate on the door's window with his belt. He was later pronounced dead at the hospital. The Kings believed school officials had violated Jonathan's substantive due process rights during this incident. The court held that there was no evidence that the school employees responsible for putting Jonathan in the timeout room on the day of his suicide acted with deliberate indifference. Thus, Jonathan's suicide was not caused by deprivation of his substantive due process rights. And, therefore, the employees did not violate his substantive due process rights. The court held that the school system could not be held liable under § 1983 for allegedly having inadequate policies and training.

Seclusion is the third most common type of seizure used in public schools. Regardless of the intended purpose or the name applied to the procedure, any time a student is left involuntarily alone in a room and prevented from leaving is considered seclusion. This includes situations where the door is locked, blocked by an object, blocked by a person, or held closed. The requirements for secluding a student in a public school are demanding. The current study reveals that the use of seclusion can be dangerous to the student and should only be used when necessary. The use of seclusion not only limits a student's bodily integrity, but it also jeopardizes a student's right to least restrictive environment in education, because students are excluded from participation with their peers while in seclusion. Therefore, when placing a student in seclusion, it is recommended that the isolated student be able to participate in the educational process and that the student be able to leave the seclusion situation for appropriate reasons. If seclusion is a behavioral modification technique used with a special education student, the study demonstrates that courts consider seclusion more reasonable when the seclusionary technique is expressly prescribed by the student's IEP as a mechanism to teach behavioral control.

Other

As mentioned, nine of the cases presented key facts that did not support the definition of any of the types of seizure presented in this study. These cases are categorized as “other” for the purpose of analysis; the issues presented in these cases are more aligned with corporal punishment, use of force, or abuse. Three of the cases took place in an elementary school and six of the cases took place in a secondary school. Eight of the cases involved only general education students and only one of the cases involved a student identified for special education services. The case involving the special education student was set in an elementary school. One of the cases brought a constitutional claim under the Fourth Amendment, five of the cases brought a constitutional claim under the Fourteenth Amendment, two of the cases brought claims under both the Fourth and Fourteenth Amendments, and one of the cases did not bring a constitutional claim. A claim that a student’s Eighth Amendment rights were violated was also presented in one of the cases. The school or school officials prevailed in six of the nine cases. Students were successful in their claims against educators or schools in three of the cases.

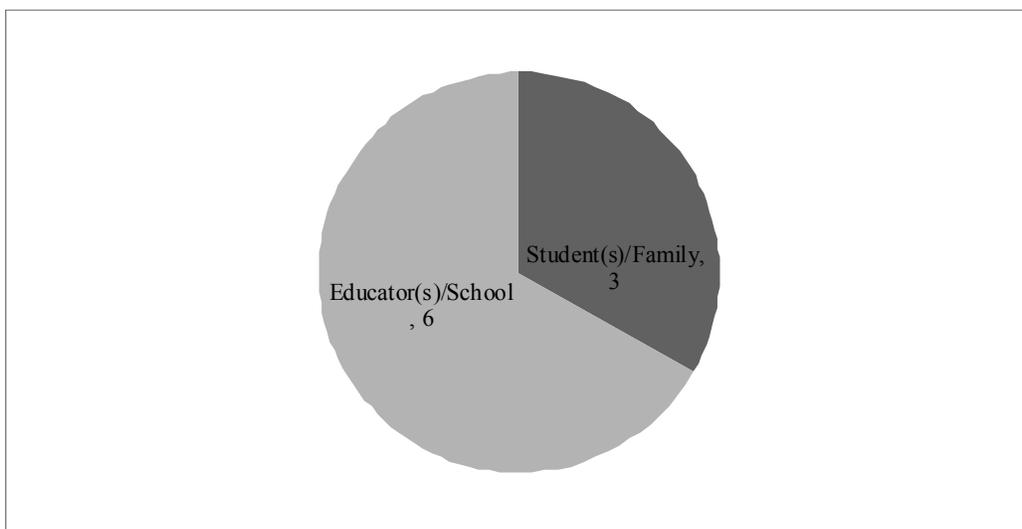


Figure 14. Other cases by prevailing party.

In *Garcia by Garcia v. Miera* (1987), a teacher held a student upside down by her ankles while the school principal struck her with a wooden paddle. This use of corporal punishment resulted in blood coming through the student's clothes and a 2" cut to the student's leg that left a permanent scar. The United States Court of Appeals, Tenth Circuit, held that corporal punishments that are inflicted on students and are so grossly excessive as to be shocking to the conscience violate the student's substantive due process rights. In *Webb v. McCullough* (1987), the Sixth Circuit found that summary judgment for the defendant principal was "inappropriate" when the principal, after discovering that the plaintiff and three roommates had violated the school rules on a trip, became "quite angry" at the plaintiff's refusal to let him into a locked bathroom. When forcing the door open, it knocked the plaintiff against the wall. Then, the principal thrust the door open again and it struck the plaintiff again, throwing her to the floor. The principal then grabbed the plaintiff from the floor, threw her against the wall, and slapped her. In addressing the plaintiff's substantive due process claim, the Sixth Circuit found that the alleged blows were a brutal and inhumane abuse of the principal's official power, literally shocking the conscience. Similarly in *Neal v. Fulton County Board of Education* (2000), Neal, a high school freshman and member of the varsity football team, appealed from the district court's dismissal of his complaint alleging that Tommy Ector, a high school teacher and football coach, violated his right under the due process clause to be free from excessive corporal punishment. Ector allegedly struck Neal with a metal weight lock, permanently blinding him in one eye, as a form of punishment for his involvement in a fight with another student. The Eleventh Circuit held that the coach's alleged act of striking the student with a metal weight lock, resulting in the student's loss of use of eye was "corporal punishment" and his conduct supported the claim of a substantive due process violation.

Corporal punishment and student seizure are often connected. Court cases in this study suggest that a student is at least as much seized when a school official administers corporal punishment. Although nine cases did not present key facts to support the definition of any of the types of seizure presented in this study, they are included because they demonstrate that educators must be mindful that any act of corporal punishment could be considered a student seizure. In both corporal punishment cases and student seizure cases, courts often consider students' rights under both the Fourth and Fourteenth Amendments.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of this study was to examine how the courts have addressed the restraint, detainment, and seclusion of students in schools. The time period between 1977 and 2012 was chosen in order to provide an adequate number of cases for comparison and trend determination. This chapter includes a summary of findings as they pertain to the established research questions. It also contains conclusions based upon the analysis of the court cases and recommendations for future studies. It is the researcher's goal that this information will provide sound principles to help educators make informed decisions related to the restraint, detainment, and seclusion of students.

Summary

The following research questions guided the data collection and analysis:

1. What are the fact patterns in court cases involving the restraint, detainment, and seclusion of students?

The researcher determined through analysis of case law that the following fact patterns have been addressed by the courts regarding student seizure: physical restraint, mechanical restraint, detainment, seclusion, corporal punishment, use of force, and violation of bodily integrity. In most instances, educators were faced with maintaining order and protecting the safety of students and staff. In these cases, the courts had to decide if the educators had

overstepped their authority or misused their power over students by restraining, detaining, or secluding them. In other instances, teachers used excessive force with students. At times, the use of excessive force was a reasonable action necessary to maintain order and protect the safety of students; other times, the courts had to determine whether the excessive use of force was reasonable or if it was malicious and served no educational purpose. An analysis of the data revealed guiding principles to aid educators in dealing with the issues related to student seizure.

2. What are the outcomes of court cases involving action against public school educators who restrain, detain, or seclude a student?

Outcomes involving action against public school educators who restrain, detain, or seclude a student are generally guided by three notable cases: *Ingraham v. Wright* (1977), *Hall v. Tawney* (1980), and *New Jersey v. T.L.O.* (1985). These three court cases helped set standards or tests for courts to use to measure teachers' actions in student seizure situations. *Ingraham v. Wright* (1977) is the leading case in the area of the use of excessive force against students in public schools. First, the U.S. Supreme Court explicitly stated that the Eighth Amendment is inapplicable in corporal punishment cases. It also directed public school teachers and administrators that they are privileged to inflict only such corporal punishment as is reasonably necessary for the proper education and discipline of a child. Any punishment going beyond that privilege may result in both civil and criminal liability. Where school authorities, acting under color of state law, deliberately decide to punish a child for misconduct by restraining the child and inflicting appreciable physical pain, the U.S. Supreme Court held that Fourteenth Amendment liberty interests are implicated.

In *Hall v. Tawney* (1980), the Fourth Circuit adopted the standard used in police-brutality cases as a guide for school corporal punishment cases. The substantive due process inquiry in

school corporal punishment cases is whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience. Later, the Third Circuit determined four key questions for the court to ask with regard to the shocks-the-conscience standard: (1) Was there a pedagogical justification for the use of force? (2) Was the force utilized excessive to meet the legitimate objective in the situation? (3) Was the force applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm? and (4) Was there serious injury? The current study reflects that the Second, Third, Fourth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits evaluate public-school corporal-punishment cases under the substantive-due-process framework and have adopted *Hall's* (1997) shock-the-conscience standard, or something similar to it. The shock-the-conscience standard was noted in 43 of the 100 cases in this study.

In *New Jersey v. T.L.O.* (1985), the U.S. Supreme Court set forth principles governing searches by public school authorities. In public schools, a warrant is not required, nor is the probable cause standard appropriate; instead, the courts use a reasonableness standard to govern all searches of students in a school setting. As noted, student seizures, like student searches, are a significant issue in public schools today. Although the U.S. Supreme Court did not specifically set a test for seizures in *New Jersey v. T.L.O.* (1985), several lower federal courts, including the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuit Courts of Appeals, have applied the Fourth Amendment in seizure cases. Thus, a majority of the federal appellate courts have directly embraced the application of the Fourth Amendment and its reasonableness standard to situations of seizure in public schools. Courts were challenged to

create a consistent Fourth Amendment framework for situations involving public school students. Determining whether a student seizure is reasonable under the Fourth Amendment requires a careful balance between the interest of the student's privacy and the interest of school safety. Determining the reasonableness of any search or seizure involves a determination of whether the search or seizure was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. The courts also consider the reasonableness of a school official's actions in light of the age and sex of the student and the nature of the infraction. Under ordinary circumstances, the search or seizure of a student by a school official will be justified at its inception where there are reasonable grounds for suspecting that the search or seizure will turn up evidence that the student has violated, or is violating, either the law or the rules of the school. Such a search or seizure will be permissible in scope when the measures adopted are reasonably related to the objectives of the search or seizure and not excessively intrusive. The reasonableness standard was noted in 35 of the 100 cases in this study.

Overall, the study included 97 cases in which educators or schools were involved in court litigation. The educators or school was the prevailing party in 62 of the cases. Students or families were successful in their claims against educators or schools in 31 of the cases. Of the four cases that involved teacher employment, the school district prevailed in one, the Tenure Commission prevailed in one, and a teacher was successful in two of the cases. An analysis of the data revealed guiding principles to aid educators in dealing with issues of student seizure. It is the researcher's goal that these guiding principles for educators may help educators protect the constitutional rights of students and avoid potential litigation.

An additional outcome of the data analysis was guiding principles for attorneys in dealing with litigation related to student seizure. If representing a student who has been restrained, detained, or secluded by an educator, an attorney may find it best to argue both the Fourth and Fourteenth Amendments. Although a person cannot be held liable for the same conduct under both the Fourth and Fourteenth Amendments, the court cases demonstrate that courts often analyze cases under both. Whether representing a student who has been seized or an educator accused of violating a student's constitutional rights, the lineage of cases for this study has revealed guiding principles that may assist attorneys.

Guiding Principles for Attorneys

1. The U.S. Supreme Court has explicitly stated that the Eighth Amendment protection against cruel and unusual punishment is not to be used to examine corporal punishment in public schools. The U.S. Supreme Court concluded that when public school teachers or administrators impose disciplinary corporal punishment, the Eighth Amendment is inapplicable (*Ingraham v. Wright*, 1977; *Thrasher v. General Casualty Company of Wisconsin*, 1990).

2. Where school authorities, acting under color of state law, deliberately decide to punish a child for misconduct by restraining the child and inflicting appreciable physical pain, the U.S. Supreme Court holds that Fourteenth Amendment liberty interests are implicated (*Ingraham v. Wright*, 1977).

3. There are three categories of corporal punishment. Punishments that do not exceed the traditional common law standard of reasonableness are not actionable; punishments that exceed the common law standard without adequate state remedies violate procedural due process rights; and, finally, punishments that are so grossly excessive as to be shocking to the conscience

violate substantive due process rights, without regard to the adequacy of state remedies (*Garcia by Garcia v. Miera*, 1987).

4. A plaintiff alleging a claim under procedural due process must show (1) that he possessed a constitutionally protected liberty or property interest, and (2) that he was not afforded an appropriate level of process (*Ebonie S. v. Pueblo School District*, 2011).

5. The question of whether conduct is violative of substantive due process rights is, at its core, a question of degree. A court must ask whether the force applied was so excessive in relation to the particular government interest as to offend the decency and fairness “implicit in the concept of ordered liberty.” In such an extreme case, a court might properly conclude that no state remedy, be it pre-deprivation or post-deprivation, would “afford adequate process under the Fourteenth Amendment” and that the conduct implicates substantive rather than procedural rights (*Metzger v. Osbeck*, 1987).

6. Far from an abuse of power, lack of due care suggests no more than a failure to measure up to the conduct of a reasonable person (*Metzger v. Osbeck*, 1987).

7. Cases of disciplinary corporal punishment have been scrutinized using a substantive due process analysis. Courts have recognized the right to substantive due process as the proper method by which to impose constitutional liability on a public school teacher for improper punishment of a school child (*Thrasher v. General Casualty Company of Wisconsin*, 1990).

8. A range of teacher conduct exists that is neither corporal punishment nor so conscience shocking as to trigger a substantive due process violation (*T.W. v. School Board of Seminole County*, 2010).

9. It is clear that the Fourth Amendment applies in the school environment (*Doe v. State of Hawaii Department of Education*, 2003; *New Jersey v. T.L.O.*, 1985).

10. The Fourth Amendment governs a teacher's seizure of a student (*Doe v. State of Hawaii*, 2003; *Edwards v. Rees*, 1989; *Hassan v. Lubbock Indep. Sch. Dist.*, 1995; *Wallace Batavia School District*, 1995).

11. In carrying out searches and other functions pursuant to disciplinary policies mandated by state statutes, school officials act as representatives of the State, not merely as surrogates for the parents and they cannot claim immunity from the Fourth Amendment's strictures. (*T.L.O. v. New Jersey*, 1985).

12. The same considerations that moved the Supreme Court to apply a relaxed Fourth Amendment standard in cases involving school searches, support applying the same standard in school seizure cases (*DeFelice v. Warner*, 2007; *Edwards v. Rees*, 1989; *Shuman v. Penn Manor School District*, 2005).

13. Students at school have a significantly lesser expectation of privacy in regard to the temporary "seizure" of their persons than does the general population (*Milligan v. City of Slidell*, 2000).

14. Striking the balance between schoolchildren's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches or seizures by public school authorities are ordinarily subject (*T.L.O. v. New Jersey*, 1985).

15. The U.S. Supreme Court expressly noted that it was addressing only searches and seizures "by a teacher or other school official," explaining that "by focusing attention on the question of reasonableness, the standard will spare teachers and administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense." The Court further clarified that it was

considering “only searches [or seizures] carried out by school authorities acting alone and on their own authority,” expressing “no opinion” on “the appropriate standard for assessing the legality of searches [or seizures] conducted by school officials in conjunction with or at the behest of law enforcement agencies” (*Greene v. Camreta*, 2009; *T.L.O. v. New Jersey*, 1985).

16. To establish a seizure in violation of the Fourth Amendment, a plaintiff must prove that (1) his or her person was seized; and (2) the seizure was unreasonable. A seizure in the constitutional sense occurs when a government actor has in some way restrained the liberty of a person to a degree that a reasonable person would not feel free to leave (*Gorthy v. Clovis Unified School District*, 2006; *Roe v. The State of Nevada*, 2004; *Samuels v. Independent School District 279*, 2003).

17. To qualify as a seizure in the school context, the limitation on the student’s freedom of movement must significantly exceed that inherent in everyday, compulsory attendance (*Couture v. Board of Education of the Albuquerque Public Schools*, 2008).

18. Administrative exhaustion was required under IDEA’s predecessor statute for claims regarding the use of timeout rooms (*Ashford v. Edmond Public School District*, 2011; *Hayes v. Unified Sch. Dist.*, 1989).

19. The rule that administrative remedies under the EHA must be exhausted before judicial review is sought, however, should not be applied inflexibly. For example, exhaustion of administrative remedies is not required if adequate relief is not reasonably available or pursuit of such relief would be futile (*Hayes v. Unified School District*, 1989).

20. Because a student is at least as much seized when a school official administers corporal punishment, corporal punishment may be evaluated under the Fourth Amendment standard (*Wallace v. Batavia School District 101*, 1995).

21. Because the appropriate use of restraint may help prevent bad behavior from escalating to a level where a suspension is required, the court refuses to make a rule prohibiting its use (*CJN v. Minneapolis Public Schools*, 2003).

22. Because restraint cases require us to balance an individual's liberty interest against a state interest in using the restraint, "the question . . . is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint . . . is such as to violate due process" (*H.F. v. Moffett and Minguzzi*, 2009; *Youngberg v. Romeo*, 1982).

23. The denial of FAPE does not give rise to a substantive due process violation because the substantive component of the Due Process Clause does not protect educational interests (*John G. and Gloria G. v. Northeastern Educational Intermediate Unit 19*, 2007).

24. A person cannot be held liable for the same conduct under both the Fourth and Fourteenth Amendment provisions. Thus, before a court undertakes to analyze a case under the Fourteenth amendment, it must first determine whether the plaintiff's claim is covered under the Fourth Amendment (*Jordan v. Blackwell*, 2008).

25. The Supreme Court has noted that a test for reasonableness must be applied under the Fourth Amendment (*Jordan v. Blackwell*, 2008).

26. Qualified immunity is intended to protect officials who make reasonable mistakes about the law (*H.F. v. Moffett and Minguzzi*, 2009).

27. The right of a student to be free from excessive force at the hands of teachers employed by the state was clearly established as early as 1990 (*Doe v. State of Hawaii Dept. of Educ.*, 2003; *W.A. v. Patterson Joint Unified School District*, 2011).

28. "Willful misconduct" is more than mere negligence or even gross negligence (*John G. and Gloria G. v. Northeastern Educational Intermediate Unit 19*, 2007).

29. To impose a § 1983 liability on a municipality, a plaintiff must show (1) that his constitutional rights were violated; (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation (*Cosco v. School Board of Seminole County*, 2009).

30. The Second Circuit set forth the following three-part test for determining when a municipality's failure to train or supervise rises to the level of "deliberate indifference." First, the plaintiff must show that a policymaker knows "to a moral certainty" how his employees will confront a given situation. Second, the plaintiff must show that the situation either presents the employee with a difficult choice of the sort that training or supervision will make less difficult or that there is a history of employees mishandling the situation. Third, the plaintiff must show that the wrong choice by the employee will frequently cause the deprivation of a person's constitutional rights (*Bisignano v. Harrison Central School District*, 2000).

31. A municipal supervisor may incur liability for a constitutional deprivation if he or she had personal involvement in said deprivation by (1) directly participating, (2) failing to remedy the deprivation after being made aware of it through a report and appeal, (3) creating or maintaining a custom or policy to continue after being made aware of it, (4) being grossly negligent in supervising employees who caused the deprivation,; or (5) exhibiting deliberate indifference to persons' rights by failing to act on information demonstrating that deprivations were occurring (*Johnson v. Newburgh Enlarged School District*, 2001; *Knicrumah v. Albany City School District*, 2003).

32. Administrators cannot be held liable for their alleged negligent hiring, training, supervision, or retention of an employee accused of wrongful conduct unless they had notice of

said employee's propensity for the type of behavior causing harm (*Knicrumah v. Albany City School District*, 2003).

33. A jury could reasonably find that the culture of encouraging silence and the failure to react to the warnings of the parents and teachers, particularly in light of the vulnerability of students, "shocks the conscience" (*Vicky M. and Darin M. v. Northeastern Educational Intermediate Unit 19*, 2009).

34. With respect to policies and customs, a "plaintiff must show that an official who has the power to make policy is responsible for either the affirmative proclamation of a policy or acquiescence in a well-settled custom." In addition to proving that a policy or custom exists, the plaintiff must prove that the alleged policy or custom was the proximate cause of the plaintiff's harm. Thus, to establish liability on the part of a school or school district under § 1983, a plaintiff must establish that officials at a policymaking or supervisory level (1) had actual or constructive knowledge that a teacher had violent propensities and was a threat to students, (2) followed a policy or custom of tolerating or ignoring the risk violent teachers posed, and (3) exhibited indifference to the safety of students who were likely to be harmed by violent teachers (*Kurilla v. Callahan*, 1999).

3. What are the trends of court cases involving the restraint, detainment, and seclusion of students?

Among the 99 cases in the school setting, 1 case took place in a PK-12 school, 46 were set in an elementary school, and 52 of the cases took place in a secondary school. This suggests that student seizure is equally an issue at both grade levels.

When analyzing the cases by student population, 56 of the cases involved only general education students and 43 of the cases involved special education students. The one case set in

the PK-12 school setting involved a special education student. This would suggest that student seizure is not overwhelmingly more of an issue with special education students than with general education students. However, of the 46 cases that took place in an elementary school, 32 of the cases involved special education students, while only 14 cases involved general education students. Therefore, with 70% of the elementary school cases involving special education students, it may be concluded that the issue of restraint, detainment, and seclusion is more of an issue with special education students at the elementary level. The opposite proved true at the secondary level. In the 52 cases that took place in a secondary school, only 11 of the cases involved special education students, while the other 41 involved only general education students. Therefore, with 79% of the secondary school cases involving general education students, it may be concluded that the issue of restraint, detainment, and seclusion is more of an issue with general education students at the secondary level.

The analysis of the cases by claim resulted in four categories. Violation to Fourth Amendment rights is the claim in 12 of the cases. Violation to Fourteenth Amendment rights is the claim in 38 of the cases. Thirty-five cases bring claims under both the Fourth and Fourteenth Amendments. The remaining 15 cases are categorized as “other” because they do not bring a constitutional claim. Accordingly, the issue of student seizure is as much, or more, an issue of protecting students’ Fourteenth Amendment rights as it is protecting students’ Fourth Amendment rights. It is important to note that both the Fourth and Fourteenth Amendments guide decisions in cases involving the restraint, detainment, and seclusion of public school students.

The analysis of cases over time proved the researcher’s theory that this is a rapidly growing issue in public schools. Six cases were noted from 1977-1985. The research produced

13 cases in the timeframe of 1986-1994. The research produced 34 cases in the timeframe of 1995-2003. The number of cases continued to increase in the final timeframe, 2004-2012, including a total of 47 cases. Thus, the research demonstrates that the trend of increase is likely to continue.

The researcher examined the cases based on the type of seizure used with students. Many cases involved more than one type of seizure; therefore, it was necessary to break the information into three sub-categories: primary type of seizure, secondary type of seizure, and tertiary type of seizure. The primary type is the chief type of seizure used in the case and often it is the type of seizure that sets the incident into motion. For example, physical restraint set the incident in motion in the majority of the cases; then, if a student was handcuffed after the physical restraint occurred, mechanical restraint was cited as the secondary type of seizure. The researcher did not find any case where more than three types of seizure were present. The researcher first analyzed cases by the totality of types of seizures used. Physical restraint was the type of seizure used in the majority of cases; 61% of the cases involved some type of physical restraint. Detainment was the type of seizure used in 24% of the cases. Seclusion was the type of seizure used in 21% of the cases. Mechanical restraint, including the use of handcuffs, was used in 18% of the cases. As the research suggested would be true of public schools, the use of chemical restraint was not noted in any of the 100 cases. Nine cases presented key facts that did not support the definition of any of the types of seizure presented in this study. These cases are categorized as “other” for the purpose of analysis; the issues presented in these cases are more aligned with corporal punishment, use of force, or abuse.

Physical restraint is the most common type of seizure used in public schools. In some situations, physical restraint is referred to as therapeutic holding and used as a therapeutic

technique. However, it is most commonly a measure used in dangerous and emergency situations. Its purpose is to re-establish behavioral control and is often used to promote or maintain safety for the student, his/her peers, and staff. The study demonstrates that lawsuits related to physical restraint in public schools have increased over time. This is likely because more students with difficult or severe behavioral needs are being served in general education schools and classes and educators are responsible for ensuring a safe learning environment for all students. Generally, the reasonableness standard affords school officials with a relatively wide range of acceptable action in dealing with disruptive students as long as the restraint is reasonable at its inception and conducted in an appropriate manner. Courts generally consider the age and sex of the student and the nature of the infraction to determine the reasonableness of the restraint. Physical restraint is more likely to be considered reasonable if the restraint is stopped when the behavior that instigated the need for the restraint in the first place has stopped. The study suggests that the fact that less force could have been used or that a more appropriate action may have existed is not enough for a court to establish that the act of physical restraint is unconstitutional.

The requirements for mechanical restraint within a school environment are the most demanding of school seizures. This is likely why mechanical restraint is the least commonly used type of seizure used in public schools. Mechanical restraint is typically only used by educators in extremely unsafe situations as a means to manage out-of-control behavior. When mechanical restraint was noted in the court cases, it often involved school resource officers or police officers who were assisting school officials with a dangerous or disruptive situation. Although the use of handcuffs was not the only type of mechanical restraint used in the court cases, it was the primary means by which students were restrained mechanically. The behavior

of a student must rise to a substantial level in order to justify handcuffing a student at school. Typically, students must have broken a law or put another person in considerable danger in order for courts to consider the use of handcuffs to be reasonable. Courts generally consider the age and sex of the student and the nature of the infraction to determine the reasonableness of the restraint. Mechanical restraint, like physical restraint, is more likely to be considered reasonable if the restraint is stopped when the behavior that instigated the need for the restraint in the first place has stopped. The study suggests that school officials should use mechanical restraint as a last resort.

Detainment is the second leading type of seizure in public schools. The requirements for detaining a student on school grounds are the least demanding of school seizures. However, it is important for school officials to understand that any action that restrains a student's liberty is a seizure if a reasonable person in that situation would not feel free to leave. The court cases demonstrate that, when detaining a student, educators should be mindful of their actions and demeanor so that a student does not feel threatened or unsafe in the situation. An investigative detention is a temporary seizure of a student for the purpose of determining whether there is probable cause that a student is in violation of a law or school rule or if further investigation is needed in a school-related incident. Thus, it is considered reasonable for a school official to detain a student if there is a reasonable basis for believing that the student has violated the law or a school rule. The courts afford school officials the authority to reasonably detain a student as long as the purpose is to maintain a safe and positive learning environment. The courts are especially tolerant of detentions related to a student who is suspected to be in possession of drugs or weapons.

Seclusion is the third most common type of seizure used in public schools. Regardless of the intended purpose or the name applied to the procedure, any time a student is left involuntarily alone in a room and prevented from leaving is considered seclusion. This includes situations where the door is locked, blocked by an object, blocked by a person, or held closed. The requirements for secluding a student in a public school are demanding. The study revealed that the use of seclusion can be dangerous to the student and should only be used when necessary. The use of seclusion not only limits a student's bodily integrity, but it also jeopardizes a student's right to least restrictive environment in education, because students are excluded from participation with their peers while in seclusion. Therefore, when placing a student in seclusion, it is recommended that the isolated student be able to participate in the educational process and that the student be able to leave the seclusion situation for appropriate reasons. If seclusion is a behavioral modification technique used with a special education student, the study demonstrates that courts consider seclusion more reasonable when the seclusionary technique is expressly prescribed by the student's IEP as a mechanism to teach behavioral control.

Corporal punishment and student seizure are often connected. Court cases in this study suggest that a student is at least as much seized when a school official administers corporal punishment. Although nine cases did not present key facts to support the definition of any of the types of seizure presented in this study, they are included because they demonstrate that educators must be mindful that any act of corporal punishment could be considered a student seizure. In both corporal punishment cases and student seizure cases, courts often consider students' rights under both the Fourth and Fourteenth Amendments.

4. What principles for public school educators may be discerned from court cases involving the restraint, detainment, and seclusion of students?

As dangerous and disruptive behavior problems continue to occur in public schools, the need to seize students continues. It is extremely important that public school teachers and administrators know and understand the issues related to the restraint, detainment, and seclusion of students. Moreover, it is essential to formulate a set of guidelines for educators to use in situations where the need for seizure may arise. The lineage of cases for this study revealed guiding principles that could possibly decrease an educator's chance of ending up in the courtroom. While the study demonstrates that educators do have an adequate amount of protection when faced with the need to seize a student, it is important to be proactive in avoiding possible situations where litigation could result and to address the necessary measures to protect students' constitutional rights in a public school setting.

The first set of guidelines is for all educators. Any person working in a public school should be mindful of these guidelines. The second set of guidelines is specific to school administrators. These guidelines will help administrators better protect their students and better guard their school from potential litigation.

Guiding Principles for All Educators

1. A teacher is liable if, in correcting or disciplining a student, he acts maliciously or inflicts a permanent injury (*Gaspersohn v. Harnet County Board of Education*, 1985).
2. A teacher has the right to administer corporal punishment to students so long as it is done without malice and to further an educational goal and occurs in a jurisdiction that permits its use. If a teacher inflicts serious injury on a student, the teacher is liable although acting without malice and to further an educational goal if he should have reasonably foreseen that a

serious or permanent injury of some kind would naturally or probably result from the act (*Gaspersohn v. Harnet County Board of Education*, 1985).

3. A teacher may use reasonable force in the exercise of lawful authority to restrain or correct students and maintain order (*Gaspersohn v. Harnet County Board of Education*, 1985).

4. Judicious use of behavioral modification techniques such as “timeout” should be favored over expulsion in disciplining disruptive students. When placing a student in timeout, it is recommended that the isolated student be able to participate in the educational process and that the student be able to leave the timeout for appropriate reasons (i.e., use the bathroom, eat lunch) (*Dickens v. Johnson County Board of Education*, 1987; *Wise v. Pea Ridge School District*, 1988).

5. Seclusion is particularly reasonable when the seclusionary techniques or timeouts are expressly prescribed by the student’s IEP as a mechanism to teach him behavioral control (*Couture v. Board of Education of the Albuquerque Public Schools*, 2008).

6. The rule that administrative remedies under the EHA must be exhausted before judicial review is sought, however, should not be applied inflexibly. For example, exhaustion of administrative remedies is not required if adequate relief is not reasonably available or pursuit of such relief would be futile (*Hayes v. Unified School District*, 1989).

7. School disciplinary actions frequently involve some form of physical contact, but every effort to physically restrain or direct a student does not constitute a seizure in the constitutional sense (*Wallace v. Batavia School District 101*, 1994).

8. Public school teachers and administrators must have considerable latitude in performing their educational responsibilities, including maintaining order and discipline by reasonably restraining the liberty of students (*Wallace v. Batavia School District 101*, 1995).

9. A public school teacher enjoys qualified immunity from civil damages unless their conduct violates “clearly established constitutional rights of which a reasonable person would have known” (*Wallace v. Batavia School District 101*, 1994; *P.B. v. Koch*, 1996; *Johnson v. Newburgh Enlarged School District*, 2001; *Roe v. The State of Nevada*, 2004; *Vicky M. and Darin M. v. Northeastern Educational Intermediate Unit 19*, 2009).

10. A public school teacher is not entitled to qualified immunity when the contours of the allegedly violated right were sufficiently clear that a reasonable official would understand that what he was doing violated that right (*P.B. v. Koch*, 1996).

Guiding Principles for Administrators

1. In determining what limits the Constitution places on the investigative and disciplinary activities of school authorities, the courts have always sought to accommodate both the interests protected by the Constitution and the interests in providing a safe environment conducive to education in the public schools (*Edwards v. Rees*, 1989).

2. Public school teachers and administrators are privileged at common law to inflict only such corporal punishment as is reasonably necessary for the proper education and discipline of the child; any punishment going beyond the privilege may result in both civil and criminal liability (*Ingraham v. Wright*, 1977).

3. Some minimal procedural due process must be afforded before manual corporal punishment can be utilized as a disciplinary measure. First, the student should be given an opportunity to explain his version of the disruptive event as such an explanation may convince a fair-minded person that corporal punishment is not warranted. Second, in the absence of some extraordinary factor, the administration of corporal punishment should be done in the presence of

another adult; this protects both the student and the person administering corporal punishment by providing a neutral observer (*Smith v. The West Virginia State Board of Education*, 1982).

4. Parental notification by school officials prior to police interrogation of a child, at school, regarding criminal activity that occurred on school grounds is not a constitutional requirement (*Brinar v. Bethel School District No. 403*, 2011).

5. The key inquiry is not what form the use of force takes but whether the use of force is related to the student's misconduct at school and for the purpose of discipline (*T.W. v. School Board of Seminole County*, 2010).

6. The substantive due process inquiry in school corporal punishment cases must be whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience (*A.B. v. Adams-Arapahoe 28J School District*, 2011; *Cosco v. School Board of Seminole County*, 2009; *Gottlieb v. Laurel Highlands School District*, 2001; *Hall v. Tawney*, 1980; *MG by LG and JG v. Caldwell-West Caldwell Board of Education*, 2011; *Thrasher v. General Casualty Company of Wisconsin*, 1990; *Neal v. Fulton County Board of Education*, 2000; *Nicol v. Auburn-Washburn USD 437*, 2002; *Wilson v. School Board of Seminole County*, 2009).

7. The Third Circuit determined four elements of the shocks-the-conscience standard: (1) Was there a pedagogical justification for the use of force?; (2) Was the force utilized excessive to meet the legitimate objective in this situation?; (3) Was the force applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing

harm?; and (4) Was there a serious injury? (*Gottlieb v. Laurel Highlands School District*, 2001; *MG by LG and JG v. Caldwell-West Caldwell Board of Education*, 2011).

8. A decision to discipline a student, if accomplished through excessive force and appreciable physical pain, may constitute an invasion of the child's Fifth Amendment liberty interest in his personal security and a violation of substantive due process prohibited by the Fourteenth Amendment. In determining whether the constitutional line has been crossed, a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm (*Johnson v. Newburgh Enlarged Sch. Dist.*, 2001; ; *M.H. v. Bristol Board of Education*, 2002; *Metzger v. Osbeck*, 1988; *Wise v. Pea Ridge School District*, 1988; *Sterner v. Titusville Area School District*, 2010; *Thrasher v. General Casualty Company of Wisconsin*, 1990; *Wallace v. Batavia School District 101*, 1994).

9. School officials need not obtain a warrant before searching or seizing a student who is under their authority. Moreover, school officials need not be held subject to the requirement that searches or seizures be based on probable cause to believe that the subject of the search or seizure has violated or is violating the law. Rather, the legality of a search or seizure of a student should depend simply on the reasonableness, under all the circumstances, of the search or seizure (*T.L.O. v. New Jersey*, 1985).

10. Determining the reasonableness of any search or seizure involves a determination of whether the search or seizure was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place (*Bravo v. Hsu*, 2005; *T.L.O. v. New Jersey*, 1985).

11. Courts consider the reasonableness of the school official's actions in light of the age and sex of the student and the nature of the infraction (*W.A. v. Patterson Joint Unified School District*, 2011).

12. Under ordinary circumstances the search or seizure of a student by a school official will be justified at its inception where there are reasonable grounds for suspecting that the search or seizure will turn up evidence that the student has violated or is violating either the law or the rules of the school. And such a search or seizure will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search or seizure and not excessively intrusive in light of the student's age and sex and nature of the infraction (*Bravo v. Hsu*, 2005; *Hassan v. Lubbock Indep. Sch. Dist.*, 1995; *T.L.O. v. New Jersey*, 1985).

13. To consider the reasonableness of the use of restraints, the Court considers the type of restraint used, the circumstances surrounded the use of restraint, and the specific circumstances of the school and child (*W.A. v. Patterson Joint Unified School District*, 2011).

14. A restraint is more likely to be considered reasonable if the restraint is stopped when the behavior that instigated the need for restraint in the first place has stopped (*Wilson v. School Board of Seminole County*, 2009).

15. The reasonableness of a Fourth Amendment seizure of a public school student by a teacher must be evaluated in the context of the school environment, where restricting the liberty of students is a *sine qua non* of the educational process. In the context of a public school, a teacher or administrator who seizes a student does so in violation of the Fourth Amendment only when the restriction of liberty is unreasonable under the circumstances then existing and apparent. Therefore, in seeking to maintain order and discipline, a teacher or administrator is simply constrained to taking reasonable action to achieve those goals. Depending on the

circumstances, reasonable action may certainly include the seizure of a student in the face of provocative or disruptive behavior (*Wallace v. Batavia School District 101*, 1995).

16. A school official may detain a student if there is a reasonable basis for believing that the pupil has violated the law or a school rule (*Wofford v. Botetourt County School Board*, 2004).

17. If school officials are to educate their students, they must maintain a safe and positive learning environment. Drug use severely compromises this goal. School officials have a duty to enforce regulations prohibiting illegal drug possession and use on campus. To perform that duty, school officials have authority reasonably to search and detain a student that they suspect may be possessing drugs (*Bravo v. Hsu*, 2005).

Conclusions

School administrators have complex and demanding jobs. Among their chief responsibilities is to provide a safe and orderly school environment that is conducive to learning. Administrators are often asked to address disruptive or dangerous behavior. The responsibility to provide a safe and orderly environment at school sometimes presents the need for educators to seize students. Due to increased litigation surrounding school seizure, the dilemma for school administrators is how to maintain the safety of all students without violating any student's constitutional rights. It is crucial that school leaders understand the rights guaranteed to students by our Constitution and how those rights apply to the school setting.

Overall, it is imperative that administrators are aware of two standards that may guide their decisions related to student seizure situations. The first standard is the shock-the-conscience standard. This standard was noted in 43 of the 100 cases in this study. The substantive due process inquiry in school corporal punishment cases must be whether the force

applied caused injury so severe, was so disproportionate to the need presented, as was so inspired by malice or sadism rather than merely careless or unwise excess of zeal that it amounted to the brutal and inhumane abuse of official power literally shocking to the conscience. The following questions help guide an educator's decisions so that his actions do not shock the conscience of the court:

1. Is there an educational justification for the use of force?
2. Is the force utilized excessive to meet the legitimate objective of the situation?
3. Is the force applied in a good faith effort to maintain or restore discipline or maliciously for the very purpose of causing harm?
4. Is there a serious injury?

The other standard is the reasonableness standard. This standard was noted in 35 of the 100 cases in this study. Determining the reasonableness of any seizure involves a determination of whether the seizure was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. Educators may ask these key questions to be sure they meet the reasonableness standard:

1. Is the seizure justified at its inception? Is a law or school rule being violated? Is the seizure's purpose to maintain discipline or to provide or protect a safe and orderly environment?
2. Is the seizure conducted in an appropriate manner? Is the seizure reasonable in its scope, duration, and intensity?

Courts consider the reasonableness of the school official's actions in light of the age and sex of the student and the nature of the infraction. To consider the reasonableness of the use of restraints, courts consider the type of restraint used, the circumstances surrounding the restraint, and the specific circumstances of the school and child. In the eyes of the court, a restraint is

more likely to be considered reasonable if the restraint is stopped when the behavior that instigated the need for restraint in the first place has stopped.

As demonstrated in the study, school seizure is an area of law that continues to develop. There is a need to know and understand the case law as it pertains to the legal responsibility of educators. The purpose of this study was to examine how the courts have addressed the restraint, detainment, and seclusion of students in schools. By looking at the cases included in this study, educators can begin to see trends that can help them avoid situations that may infringe on a student's constitutional rights. Furthermore, if an educator is faced with a potential lawsuit related to student seizure, the guiding principles in this study can help him know the best way to be prepared for a defense.

Recommendations for Future Research

Based on the findings and conclusions of this study, the following recommendations are made:

1. Research should be conducted to examine decisions regarding student seizure after *Thomas v. City of New Orleans* (2012) to determine their impact on the conclusions of this study.
2. Laws, policies, and procedures are rapidly changing concerning the restraint, detainment, and seclusion of students; therefore, the study needs to be repeated in 10 years.
3. Additional studies should be conducted to examine the individual types of student seizures.
4. A study should be conducted to examine the research and cases only pertaining to special education students.

5. A study should be conducted to examine the research and cases only pertaining to general education students.

6. A study should be conducted to examine the research and cases only pertaining to elementary schools.

7. A study should be conducted to examine the research and cases only pertaining to secondary schools.

8. A study should be conducted to examine immunity as it relates to student seizure.

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APPENDIX A
CASES INCLUDED IN THE STUDY

Case Name	Year	Grade Level	Special Education Related	Seizure Type - Primary	Seizure Type - Secondary	Seizure Type - Tertiary	Constitutional Claim(s)	Prevailing Party
<i>Ingraham v. Wright</i>	1977	Secondary	No	n/a			8th; 14th	School
<i>Hall v. Tawney</i>	1980	Elementary	No	Physical Restraint			14th	Student
<i>Youngberg v. Romeo</i>	1982	n/a	n/a	Physical Restraint			8th; 14th	Family
<i>Smith v. The West Virginia State Board of Education</i>	1982	Elementary	No	n/a			14th	School
<i>New Jersey v. T.L.O.</i>	1985	Secondary	No	n/a			4th	School
<i>Gaspersohn v. Harnet County Board of Education</i>	1985	Secondary	No	n/a			n/a	School
<i>Willoughby v. Lehrbass</i>	1986	Secondary	No	Physical Restraint	Detainment		n/a	School
<i>Dickens v. Johnson County Board of Education</i>	1987	Elementary	No	Seclusion			14th	School
<i>Garcia by Garcia v. Miera</i>	1987	Elementary	No	n/a			14th	Student
<i>Frederick B.</i>	1987	Secondary	No	Physical Restraint	Mechanical Restraint	Detainment	4th	School
<i>Hayes v. Unified Sch. Dist.</i>	1987	Secondary	Yes	Seclusion			4th; 8th; 14th	School
<i>Metzger v. Osbeck</i>	1987	Secondary	No	Physical Restraint			1st; 4th; 9th; 14th	School
<i>Webb v. McCullough</i>	1987	Secondary	No	n/a			14th	Student
<i>Metzger v. Osbeck</i>	1988	Secondary	No	Physical Restraint			5th; 14th	Student
<i>Wise v. Pea Ridge Sch. Dist.</i>	1988	Elementary	Yes	Seclusion			14th	School

<i>Hayes v. Unified Sch. Dist.</i>	1989	Elementary	Yes	Seclusion			n/a	School
<i>Edwards v. Rees</i>	1989	Secondary	No	Detainment			4th; 5th; 14th	School
<i>Thrasher v. General Casualty Company of Wisconsin</i>	1990	Secondary	No	Physical Restraint			8th; 14th	Student
<i>Wallace v. Batavia School District 101</i>	1994	Secondary	No	Physical Restraint			4th; 14th	School
<i>Hassan v. Lubbock Independent School District</i>	1995	Elementary	No	Seclusion			4th; 14th	School
<i>Wallace v. Batavia School District 101</i>	1995	Secondary	No	Physical Restraint			4th; 14th	School
<i>Lillard v. Shelby County Bd. of Educ.</i>	1996	Secondary	No	Detainment			1st; 14th	School
<i>Seattle School District v. Stokes</i>	1996	Elementary	No	Physical Restraint			n/a	District
<i>Jones v. Witinski</i>	1996	Secondary	No	Physical Restraint			14th	School
<i>Heidemann v. Rother</i>	1996	Elementary	Yes	Physical Restraint			14th	School
<i>Widdoes v. Detroit Public Schools</i>	1996	Secondary	No	Physical Restraint			n/a	Teacher
<i>Rasmus v. State of Arizona</i>	1996	Elementary	Yes	Seclusion			4th; 11th; 14th	School
<i>P.B. v. Koch</i>	1996	Secondary	No	Physical Restraint			14th	Student
<i>Lewandowski v. Ypsilanti School District Board of Education</i>	1997	Secondary	No	Physical Restraint			n/a	Tenure Commission
<i>Campbell v. McAlister</i>	1998	Elementary	No	Physical Restraint			4th; 14th	School
<i>Jensen v. Reeves</i>	1999	Elementary	No	Detainment			4th; 14th	School

<i>Kurilla v. Callahan</i>	1999	Secondary	No	Physical Restraint			4th; 14th	Student
<i>Covington v. Knox County School System</i>	2000	Secondary	Yes	Seclusion			14th	Student
<i>Widdoes v. Detroit Public Schools</i>	2000	Secondary	No	Physical Restraint			n/a	Teacher
<i>Bisignano v. Harrison Central School District</i>	2000	Secondary	No	Seclusion	Physical Restraint		4th; 14th	Student
<i>Milligan v. City of Slidell</i>	2000	Secondary	No	Detainment			4th	School
<i>Neal v. Fulton County Bd. Of Educ.</i>	2000	Secondary	No	n/a			14th	Student
<i>Brown v. Ramsey and Hart</i>	2000	Elementary	Yes	Physical Restraint			14th	School
<i>Johnson v. Newburgh Enlarged Sch. Dist.</i>	2001	Secondary	No	Physical Restraint			14th	Student
<i>Stockton v. City of Freeport</i>	2001	Secondary	No	Detainment	Physical Restraint	Mechanical Restraint	4th; 14th	School
<i>Doe v. S & S Consolidated I.S.D.</i>	2001	Elementary	No	Physical Restraint	Mechanical Restraint	Seclusion	4th; 14th	School
<i>M.H. v. Bristol Board of Education</i>	2001	Elementary	Yes	Physical Restraint	Mechanical Restraint		14th	Student
<i>Harris v. Robinson</i>	2001	Elementary	Yes	n/a			14th	School
<i>Gottlieb v. Laurel Highlands School District</i>	2001	Secondary	No	n/a			4th; 14th	School
<i>M.H. v. Bristol Board of Education</i>	2002	Elementary	Yes	Physical Restraint	Mechanical Restraint		14th	School
<i>Pineault</i>	2002	Secondary	No	Physical Restraint	Detainment		n/a	School
<i>Nicol v. Auburn-Washburn USD 437</i>	2002	Secondary	No	Physical Restraint	Mechanical Restraint	Detainment	4th; 14th	Student

<i>Nicol v. Auburn-Washburn USD 437</i>	2002	Secondary	No	Physical Restraint	Mechanical Restraint	Detainment	4th; 14th	Student
<i>Knicrumah v. Albany City School District</i>	2003	Secondary	No	Physical Restraint			14th	Student
<i>CJN v. Minneapolis Public Schools</i>	2003	Elementary	Yes	Physical Restraint	Seclusion		n/a	School
<i>Golden v. William A. Anders</i>	2003	Elementary	No	Physical Restraint			14th	School
<i>Doe v. State of Hawaii Department of Education</i>	2003	Elementary	No	Mechanical Restraint			4th	Student
<i>Samuels v. Independent School District 279</i>	2003	Secondary	No	Mechanical Restraint	Detainment		4th	Student
<i>Valentino v. School District of Philadelphia</i>	2004	Secondary	Yes	Mechanical Restraint	Detainment		n/a	Student
<i>Roe v. The State of Nevada</i>	2004	Elementary	Yes	Physical Restraint			4th; 14th	Student
<i>Flores v. School Board of DeSoto Parish</i>	2004	Secondary	Yes	Physical Restraint			4th; 14th	School
<i>Wofford v. Botetourt County School Board</i>	2004	Elementary	No	Detainment			4th; 14th	School
<i>Pigford v. Jackson Public School District</i>	2005	Secondary	Yes	Physical Restraint			n/a	School
<i>Jones v. Hunt</i>	2005	Secondary	No	Detainment			4th	Family
<i>Alex G. v. Board of Trustees of Davis Joint Unified School District</i>	2005	Elementary	Yes	Physical Restraint			n/a	School
<i>Shuman v. Penn Manor School District</i>	2005	Secondary	No	Detainment			4th; 14th	School
<i>McKinley v. Lott</i>	2005	Secondary	No	Detainment	Mechanical Restraint		4th; 5th; 14th	School
<i>Bravo v. Hsu</i>	2005	Secondary	No	Detainment			4th	School

<i>Gorthy v. Clovis Unified School District</i>	2006	Secondary	No	Detainment			4th; 8th; 14th	Student
<i>Autism Society of Michigan v. Fuller</i>	2006	Secondary	Yes	Physical Restraint			n/a	School
<i>Alexander v. Bostic</i>	2006	Elementary	No	Detainment	Mechanical Restraint		4th	Student
<i>Mislin v. City of Tonawanda</i>	2007	Secondary	No	Detainment			4th; 14th	School
<i>John G. and Gloria G. v. Northeastern Educational Intermediate Unit 19</i>	2007	Elementary	Yes	Physical Restraint			14th	Student
<i>Joseph M. and Judith M. v. Northeastern Educational Intermediate Unit 19</i>	2007	Elementary	Yes	Physical Restraint	Mechanical Restraint		14th	Student
<i>Vicky M. and Darin M. v. Northeastern Educational Intermediate Unit 19</i>	2007	Elementary	Yes	Physical Restraint			14th	Student
<i>DeFelice v. Warner</i>	2007	Secondary	No	Detainment			4th	School
<i>Couture v. Board of Education of the Albuquerque Public Schools</i>	2008	Elementary	Yes	Seclusion			4th; 14th	School
<i>C.N. through J.N v. Willmar Public Schools</i>	2008	Elementary	Yes	Physical Restraint	Seclusion		4th; 14th	School
<i>Jordan v. Blackwell</i>	2008	Secondary	No	Physical Restraint			4th; 14th	Student
<i>Wilson v. School Board of Seminole County</i>	2009	Secondary	Yes	Physical Restraint	Seclusion		14th	School
<i>Cosco v. School Board of Seminole County</i>	2009	Secondary	Yes	Physical Restraint			14th	School
<i>H.F. v. Moffett and Minguzzi</i>	2009	Elementary	Yes	Physical Restraint			14th	Student
<i>Vicky M. and Darin M. v. Northeastern Educational Intermediate Unit 19</i>	2009	Elementary	Yes	Physical Restraint			14th	Student

<i>King v. Pioneer Regional Educational Service Agency</i>	2009	Secondary	Yes	Seclusion	Physical Restraint		14th	School
<i>Greene v. Camreta</i>	2009	Elementary	No	Detainment			4th	Case Worker/Deputy
<i>C.N. through J.N v. Willmar Public Schools</i>	2010	Elementary	Yes	Physical Restraint	Seclusion		4th; 14th	School
<i>Alleyne v. New York State Education Department</i>	2010	Both	Yes	Physical Restraint	Seclusion	Mechanical Restraint	14th	School
<i>D.D. Ex Rel. Davis v. Chilton County Board of Education</i>	2010	Elementary	Yes	Mechanical Restraint			14th	School
<i>T.W. v. School Board of Seminole County</i>	2010	Secondary	Yes	Physical Restraint			14th	School
<i>Sterner v. Titusville Area School District</i>	2010	Elementary	Yes	Physical Restraint			14th	School
<i>W.A. v. Patterson Joint Unified School District</i>	2010	Elementary	Yes	Physical Restraint			4th	Student
<i>Washington v. Chicago Public Schools and Soccomando</i>	2011	Secondary	No	Seclusion			4th; 14th	School
<i>Minnis v. Sumner County Board of Education</i>	2011	Elementary	Yes	Physical Restraint			14th	School
<i>Schafer v. Hicksville Union Free School District</i>	2011	Elementary	Yes	Seclusion			4th; 14th	School
<i>K.W. through M.W. v. Independent School District No. 12</i>	2011	Elementary	Yes	Physical Restraint	Seclusion		n/a	School
<i>B.H. v. West Clermont Board of Education</i>	2011	Elementary	Yes	Physical Restraint			n/a	Student
<i>Ebonie S. v. Pueblo School District</i>	2011	Elementary	Yes	Physical Restraint			4th; 14th	School
<i>Brinar v. Bethel School District No. 403</i>	2011	Secondary	No	Mechanical Restraint	Detainment		4th; 5th; 14th	School

<i>MG by LG and JG v. Caldwell-West Caldwell Board of Education</i>	2011	Elementary	Yes	Physical Restraint	Seclusion		4th; 14th	School
<i>W.A. v. Patterson Joint Unified School District</i>	2011	Elementary	Yes	Physical Restraint			4th	School
<i>Savoy v. Charles County Public Schools</i>	2011	Secondary	No	Physical Restraint			14th	School
<i>Ashford v. Edmond Public School District</i>	2011	Elementary	Yes	Seclusion			4th; 14th	School
<i>A.B. v. Adams-Arapahoe 28J School District</i>	2011	Elementary	Yes	Physical Restraint	Mechanical Restraint		4th; 14th	Student
<i>J.P.M. v. Palm Beach County School Board</i>	2012	Secondary	Yes	Physical Restraint			14th	Student
<i>Thomas v. City of New Orleans</i>	2012	Elementary	Yes	Physical Restraint	Mechanical Restraint	Detainment	4th; 14th	School