ELA Case Commentary

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Littell v. Houston Independent School District: Is a School District Liable Under a "Failure to Train" Theory for an Unconstitutional Strip Search of 22 Preteen Schoolgirls?

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Introduction

In a 2018 opinion, the Fifth Circuit Court of Appeals ruled that two parents of preteen girls had stated a cause of action against the Houston Independent School District (HISD) based on their accusation that the school district had violated their children's Fourth Amendment rights when a HISD administrator directed a school nurse to strip search twenty-two preteen girls in a quest to find missing money.[1] A federal trial court dismissed the parents' complaint on the school district's motion, but the Fifth Circuit reversed. The strip search violated the students' Fourth Amendment rights, the court ruled, and the parents had sufficiently alleged that the school district had acted with deliberate indifference to their children's constitutional rights by failing to train school administrators on the constitutional constraints on strip searching students.

Facts

On December 3, 2012, $50 went missing during a sixth-grade choir class at Lanier Middle School in Houston, Texas. School administrators searched students' belongings but failed to find the missing money. A school police officer "suggested that girls like to hide things in their bras and panties."[2] Then, according to the parents of two sixth-grade girls, Assistant Principal Verlinda Higgins took twenty-two class members—all preteen girls—to the female school nurse. The nurse took the girls one by one to a private bathroom, "where she check[ed] around the waistband of [their] panties, loosened their bras, and checked under their shirts."[3] In addition, according to the parents, the nurse required the girls "to lift their shirts so they were exposed from the shoulder to the waist."[4] Parents were not notified before the search took place, and no missing money was found.

HISD had formal policies in place for searching students at the time of this event. Legal Policy FNF stated that "[s]chool officials may search a student's outer clothing, pockets, or property by establishing reasonable cause or securing the student's voluntary consent."[5] The policy did not mention strip searches, but HISD maintained that its employees had the authority to strip search students if necessary to maintain safety in the schools. In addition, HISD's Student Code of Conduct specifically stated that "[s]chool officials are empowered to conduct reasonable searches of students and school property when there is reasonable cause to believe that students may be in possession of drugs, weapons, alcohol, or other materials ('contraband') in violation of school policy or state law."[6]

Fifth Circuit's Opinion

The Fifth Circuit began its analysis by ruling that the alleged strip search involving a search of students' underwear "was clearly unconstitutional."[7] Quoting the Supreme Court's decision in *Safford Unified School District No. 1 v. Redding*,[8] the Fifth Circuit court said that such searches are "embarrassing, frightening, and humiliating."[9] Therefore, "[b]oth subjective and reasonable societal expectations of personal privacy support the treatment of such a search as categorically distinct, requiring distinct elements of justification."[10] Accordingly, the search of a student's underwear is "impermissibly intrusive unless the school officials reasonably suspect either that the object of the search is dangerous, or that it is actually likely to be hidden in the student's underwear."[11]

Based on *Redding's* guidance, the Fifth Circuit court continued, "Higgins violated the constitutional rights of the twenty-two girls unless Higgins reasonably suspected that the missing $50 cash (1) would be found on that particular girl's person and either (2) would be found specifically in that girl's underwear or (3) would pose a dangerous threat to other students."[12] In the court's view, the alleged search failed all three conditions. Indeed, the school district itself acknowledged that the alleged facts constituted a constitutional violation.

Thus, the court continued, the parties' real dispute on appeal concerned whether HISD could be held liable for the constitutional violation. The school district could not be held liable for an employee's unconstitutional conduct under a *respondeat superior* theory, the court noted. "Rather, the school district *itself* must have caused the violation."[13]

The schoolgirls' parents argued that HISD could be held liable for strip searching their daughters under a "failure to train" theory. To prevail on that theory, the Fifth Circuit explained, they "must show that, in the light of specific duties assigned to specific officers or employees, the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that policy makers ... can reasonably be said to have been deliberately indifferent to the need."[14]

In the Fifth Circuit's opinion, "the alleged facts, taken together and assumed to be true, permit the reasonable inference . . . that the risk of public officials' conducting unconstitutional searches was or should have been a highly predictable consequence of the school district's decision to provide its staff no training regarding the Constitution's constraints on searches."[15] Moreover, the court stated, the school district could not rely on its employees "to come pre-quipped with legal knowledge."[16] The court also pointed out that the plaintiffs' allegations indicated that Higgins, a school police officer, and the school nurse were all ignorant of the constitutional constraints on strip searches. In fact, even the principal of the school, who disciplined Higgins for conducting an unlawful search, "failed to diagnose the search's serious constitutional defects."[17]

Thus, the court opined, "[W]e must credit Plaintiffs' factual allegations and proceed on the assumption that the school district has made a conscious choice to take no affirmative steps to instruct *any* of its employees on the constitutional rules governing student searches—even though at least some of those employees are regularly called upon to conduct such searches." In sum, the court ruled, "this case presents an alleged '*complete failure to train*' of the kind we have found actionable."[18]

The Fifth Circuit acknowledged that the plaintiffs would be required show more than a failure to train in order to hold the school district liable for an unconstitutional search. They would also need to prove causation But, the court reasoned, it would be plausible to conclude that Vice Principal Higgins would not have ordered the strip search had she known that the search was unconstitutional. "Thus, to the extent the amended complaint plausibly alleges deliberate indifference, it also plausibly alleges causation."[19]

Conclusion

In reversing the trial court's dismissal of plaintiffs' claims against HISD, the Fifth Circuit did not rule conclusively in the plaintiffs' favor. Ultimate liability, the court emphasized, would depend on the evidence presented at summary judgment or at trial.[20] Nevertheless, the *Littell* decision is a wake-up call to all school districts that have not trained their employees on the constitutional constraints on strip searching students. The plaintiffs' claim—that a school administrator ordered a strip search of twenty-two preteen school girls in a quest to find a trivial amount of money—clearly alleged a constitutional violation. Indeed, HISD admitted as much during the litigation. Thus, the Fifth Circuit concluded, the plaintiffs stated a plausible cause of action against Houston Independent School District for deliberate indifference to their children's constitutional rights by failing to train its employees on the Fourth Amendment's restrictions on strip searches. Moreover, the plaintiffs had raised plausible factual allegations that the school district's failure to train its employees was the cause of the constitutional violation that took place.

Endnotes

1 Littell v. Houston Indep. Sch. Dist., 894 F.3d 616 (5th Cir. 2018).
2 *Id*. at 620.
3 *Id.* (internal punctuation omitted).
4 *Id.*
5 *Id*., fn 1.
6 *Id. a*t 621.
7 *Id*. at 624.
8 Safford Unified Sch. Dist. No. 1 v. Redding, 557 U.S. 364 (2009).
9 *Littell*, F.3d at 623, quoting *Redding*, 557 at 374-375.
10 *Id*., quoting *Redding*, 557 U.S. at 374.
11 *Id.*, quoting *Redding*, 557 U.S. at 377.
12 *Id*.
13 *Id*. at 622.
14 *Id*. at 624 (internal citation and internal punctuation omitted).
15 *Id*. at 625 (internal punctuation omitted).
16 *Id*. art 626.
17 *Id.*
18 *Id*. at 627 (internal citation omitted).
19 *Id*. at 629.
20 *Id*. at 627.