

February 7, 2019

VIA EMAIL & FEDEX

Robert H. McKertich
Coughlin & Gerhart, LLP
99 Corporate Drive
Binghamton, NY 13904

Re: Unlawful Searches at East Middle School

Dear Mr. McKertich,

The undersigned counsel represent Ms. Anais Disla on behalf of I.S., Ms. Ibelyh Disla on behalf of J.B., Ms. Zulayka McKinstry on behalf of I.M., and Ms. Chanderlia Silva on behalf of A.S. (collectively, “Clients”) with respect to the unlawful, intrusive, and demeaning searches that occurred on January 15, 2019, at East Middle School in Binghamton, New York, involving all of these children (“January 15 Searches”). We write to provide the Binghamton City School District (the “District”) with notice that the January 15 Searches violated each child’s rights under, *inter alia*, the Fourth and Fourteenth Amendments to the United States Constitution, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* Additional provisions of federal, state, and/or local law also may have been violated as a result of the January 15 Searches. Our Clients reserve the right to pursue all available legal recourse to fully vindicate each child’s rights and fully compensate them for their injuries.

I. The Unlawful and Demeaning January 15 Searches

I.S., J.B., I.M., and A.S. are Black and Latina, 12-year-old girls who, until the events of January 15, 2019, attended East Middle School in Binghamton, New York.¹ Based on our preliminary investigation, we understand the January 15 Searches to have proceeded as described below. We reserve the right to supplement this account as our investigation continues.

On January 15, 2019, Mr. Tim Simonds, the principal of East Middle School, stopped the girls in the hallway during their lunch break. Mr. Simonds asked where the girls were headed. The girls laughed during this brief conversation with Mr. Simonds, who then—along with Assistant Principal Michelle Raleigh—escorted them to the school’s health office. Neither Mr. Simonds nor

¹ At East Middle School, the overall student enrollment is 3.7% Asian, 30.3% Black, 14.5% Latino, 41.6% white, and 9.9% two or more races. 2015-16 U.S. Dep’t of Educ., *Civil Rights Data Collection* (2018), <https://ocrdata.ed.gov/Page?t=s&eid=282402&syk=8&pid=2275>.



Ms. Raleigh, both of whom are white, explained to the girls why they were taken to the health office.

The girls were held in the health office for approximately one hour. The nurse, Mary Ellen Eggleston, who also is white, brought each girl to the exam room for separate sessions without prior notification or consent from any of the girls' parents. Once in the exam room, Ms. Eggleston conducted a vitals check, a sobriety check, and then a search on each girl. The searches varied amongst the girls, but all girls were made to remove at least some of their outer clothing, in some cases exposing their undergarments. During some of these searches, Ms. Eggleston also made embarrassing and humiliating comments about some of the girls' bodies and physical condition.

The girls then remained in school the rest of the day, and three of them returned to class. They were not permitted to contact their parents despite explicit requests. Principal Simonds contacted three of their parents. He told those parents that their respective daughters were sent to the nurse's office for a vitals check because they were "hyper" and "giddy." He did not inform the parents that their children had undergone a sobriety check and strip search at school that day.

The girls have been traumatized by the January 15 Searches. They feel humiliated because they were forced to expose their bodies and were subject to embarrassing comments. They feel their dignity was violated by adults whom they trusted in what should have been a safe educational setting. And they are confused about why they were targeted for such degrading treatment by school staff. The girls have additionally experienced harm to their reputations. The sobriety check suggested that one or more school officials suspected them of having been under the influence. Peers have since asked at least one student if she uses illegal drugs.

In the days since the January 15 Searches, the girls have each exhibited despondent behavior symptomatic of trauma and depression, such as loss of appetite and excessive sleeping throughout the day. All of the parents agree that some form of therapy is necessary to address the harm that resulted from such traumatic experiences during a critical period in their development as adolescents.

The girls have been out of their normal school setting for nearly three weeks and out of school entirely for at least seven days because they feel uncomfortable and unsafe returning to East Middle School and have not been provided an adequate substitute. The girls have been attending classes from 9:30 am to 1:30 pm at an alternative school, which is wholly inappropriate given that the District's own Code of Conduct states that placement at the alternative school is a *disciplinary* sanction. See *Binghamton City School District Code of Conduct* 13, 44, http://www.binghamtonschools.org/UserFiles/Servers/Server_512723/File/For%20Parents/Code%20of%20Conduct/BCSD%20Code%20of%20Conduct_7-26-17.pdf (last visited Feb. 6, 2019). Instead, our Clients demand that the girls receive a quality education at the other middle school in the District, West Middle School.

II. Legal Notice of Rights Violations

The conduct by school officials described above violated each child’s constitutional rights under clearly established U.S. Supreme Court precedent. The Supreme Court applies a two-prong test to evaluate the constitutionality of school officials’ search of a student: (1) the search must be justified at its inception; and (2) the search must be reasonably related in scope to the circumstances justifying the search in the first place. *New Jersey v. T.L.O.*, 469 U.S. 325, 354-55 (1985). In *Safford Unified School District No. 1 v. Redding*, the Supreme Court specifically addressed strip searches in school, holding that the “meaning of such a search, and the degradation its subject may reasonably feel, place a search that intrusive in a category of its own demanding its own specific suspicions.” 557 U.S. 364, 377 (2009). The *Redding* Court further explained that, to be lawful under the Fourth Amendment, a strip search of students in school “requires the support of *reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing* before a search can reasonably make the quantum leap from outer clothes and backpacks to exposure of intimate parts.” *Id.* (emphasis added). The strip searches that occurred at East Middle School plainly fail to meet these clearly established constitutional requirements.²

First, the January 15 Searches were not justified at their inception because there were no “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.” *T.L.O.*, 469 U.S. at 342. In other words, school officials did not have “reasonable suspicion” or “a moderate chance of finding evidence of wrongdoing,” as required by the Supreme Court. *Redding*, 557 U.S. at 370-71. Indeed, Principal Simonds lacked *any* individualized suspicion to conduct the January 15 Searches, let alone reasonable suspicion. By his own account, Principal Simonds merely observed “giddy” middle school girls laughing after lunch, which is perfectly normal behavior for any middle school student.

Second, the January 15 Searches were excessively intrusive in light of the age and sex of the girls and not reasonably related in scope to the circumstances justifying the search. *T.L.O.*, 469 U.S. at 341-42. In *Redding*, a 13-year-old female middle school student, Redding, was strip searched due to suspicions that she possessed unauthorized drugs after (1) Redding’s friend was found to have unauthorized drugs, which she claimed to have received from Redding; and (2) another student stated that classmates were distributing and using prohibited drugs. *Redding*, 557 U.S. at 371-72. The Supreme Court held that these facts provided “reasonable suspicion” to justify a search of Redding’s backpack and outer clothing. *Id.* at 373-74. The Court further held, however, that this reasonable suspicion did not justify a strip search because “the content of the

² The strip searches also violated the District’s own search policy, which recognizes that: “Strip searches are intrusive in nature and are almost never justified.” *Searches and Interrogations of Students*, Binghamton City School District Policy No. 7330 (2016) (“District Policy”), http://bcsd1.ss14.sharpschool.com/UserFiles/Servers/Server_512723/File/Board%20Policies/Section%207000%20Students%20updated%20february%202018.pdf. The District’s policy on strip searches provides: “If school officials have highly credible evidence that such a search would prevent danger or yield evidence, such a search may be conducted under exigent circumstances.” *Id.* Here there was no exigent circumstance warranting a strip search.

suspicion failed to match the degree of intrusion.” *Id.* at 375. Here, unlike the situation in *Redding*, there was no reasonable suspicion to justify a search of any kind.

Thus, there is no doubt that the January 15 Searches lacked reasonable suspicion and were excessively intrusive, in clear violation of the girls’ Fourth Amendment rights. *See also Littell v. Houston Indep. Sch. Dist.*, 894 F.3d 616, 623-24 (5th Cir. 2018) (rejecting a school strip search of students to recover \$50 as “clearly unconstitutional”). In fact, the Supreme Court in *Redding* specifically noted that “adolescent vulnerability intensifies the patent intrusiveness of the exposure” of strip searches, which are “fairly understood as so degrading that a number of communities have decided that strip searches in schools are never reasonable and have banned them no matter what the facts may be.” 557 U.S. at 375 (citing Brief for National Association of Social Workers et al. as Amici Curiae 6-14; Irwin A. Hyman & Donna C. Perone, *The Other Side of School Violence: Educator Policies and Practices that May Contribute to Student Misbehavior*, 36 J. Sch. Psych. 7, 13 (1998); N.Y.C. Dep’t. of Educ., Reg. No. A-432, 2 (2005)), <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-432-english>. The January 15 Searches were no less degrading for the four girls who were made to suffer through them at the hands of District school officials.

The evidence supports an inference that the January 15 Searches were also conducted at least, in part, because the students are Black and Latina girls, constituting discrimination based on their race and their sex in violation of the Equal Protection Clause, Title VI of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972, as well as state and local anti-discrimination laws. *See, e.g.*, New York State’s Dignity for All Students Act, N.Y. Educ. Law § 12 (McKinney 2013). Research has shown that stereotypes lead adults to perceive Black and Latina girls as less innocent than white girls, and needing less nurturing, protection, and support.³ These stereotypical perceptions impact how school staff treat Black and Latina girls as inherently suspicious, threatening, dangerous, and deserving of harsh punishment. Data on school discipline in the District is consistent with this pernicious stereotyping: girls of color constitute 51% of girls in the District, but girls of color make up approximately 70.6% of all suspensions of girls in the District.⁴ While only 4.4% of white girls are suspended in the District, 12.4% of Black girls and 11.1% of Latina girls are subjected to the same punishment. *Id.*

This type of punitive and unempathetic treatment based on racial and gender bias also explains how Principal Simonds could interpret the laughter and excitement of Black and Latina middle school girls as suspicious evidence supporting such extreme measures as a strip search, rather than the innocent playfulness of children.

³ *See, e.g.*, Rebecca Epstein, Jamilia J. Blake, & Thalia González, *Girlhood Interrupted: The Erasure of Black Girls’ Childhood*, Georgetown Law Ctr. on Poverty & Inequality (2017), <https://bit.ly/2OErYTg>.

⁴ National Women’s Law Center (“NWLC”) calculations of U.S. Department of Education, Office of Civil Rights, *Civil Rights Data Collection (“CRDC”), 2013-14 Public Use Data File*, <http://ocrdata.ed.gov>.

III. Clients' Demands

Four Black and Latina girls were singled out by District school personnel for overly harsh and demeaning treatment, based upon race and gender stereotypes. School authorities acted on the belief that the girls' adolescent laughter and excitement constituted suspicious behavior supporting the extreme measure of a strip search. These girls and their parents do not believe that the girls can return to East Middle School; doing so would pose a barrier to their educations because they feel neither safe nor welcome at the school.

Every student deserves to attend a school where they are not subject to intrusive and demeaning searches, and where their race and gender do not pose barriers to learning in a safe and welcoming environment. Our Clients demand that you act swiftly to ensure that these girls are not denied their right to a quality education and to immediately address their injuries stemming from the violations of their rights at the hands of District employees.

More specifically, the Clients make the following demands:

1. Immediate enrollment of each girl in West Middle School.⁵
2. Immediate provision of compensatory school work and tutoring for the days during which the girls have been out of school and for an adjustment of their grades during the interim period once make-up assignments have been completed.
3. Payment for mental health and social emotional support for each student on a bi-weekly basis or as needed with a provider of each student's choice until graduation.
4. To the extent that they are still employed by the District, a written apology from the Principal, Assistant Principal, and School Nurse that includes an acknowledgment that the events occurred.
5. To the extent that they are still employed by the District, appropriate disciplinary actions, up to and including termination, of the Principal, Assistant Principal, and School Nurse for their roles in the unlawful and demeaning January 15 Searches.
6. Revision of the school code of conduct and the District's policy to prohibit strip searches.
7. Documentation of student searches with aggregate information made publicly available.
8. Training of all school personnel on the constitutional rights of students, including the District's policy on student searches and parental notification and/or consent of searches.
9. A survey to assess the racial climate in the District.

⁵ District Policy specifically provides that children may attend school outside of their attendance zone with authorization by the Superintendent or his/her designee. *School Attendance Boundaries*, District Policy No. 7150. Additionally, District Policy explains that the Safe Public School Choice law provides for students who are victims of violent criminal offenses to transfer to a safe public school within the District. *Safe Public School Choice Option to Students Who Are Victims of a Violent Criminal Offense*, District Policy No. 7580.



10. Race and gender bias training for all staff in the District, as well as training to combat stereotypes at the intersection of race and gender.

We further request a meeting within ten days. If you fail to comply with the above demands within thirty days from the date of this letter, our clients may file a civil action addressing, *inter alia*, the causes of action and events described in this letter. If you have any questions concerning these matters, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel Kleinman", is written over a horizontal line.

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