

MEMORANDUM

TO: The School Board of Education
FROM: Attorney for the Board of Education
DATE: (1/20/19)
RE: School Suspension of Lincoln High School Student Jessie

JAN 28 2019

BACKGROUND

Parents have expressed concern regarding a video circulating on social media of Lincoln High School student “Jessie” shooting at a firing range in the company of his brother and father. Both boys are students at the school, but only Jessie has alarmed parents who describe his behavior on the video as unsettling. Principal Tubaya describes Jessie as “odd” and having a “challenged personality.” Jessie has been suspended from school and recommended for alternative school placement. As Jessie was being escorted from the building his locker was searched and several “Guns and Ammo” magazines were found.

THE USE OF PREDICTIVE ANALYTICS

Predictive analytics is a new and different approach toward preventing school violence. Unlike a reflexive approach, predictive analytics uses a series of warning signs and red flags to indicate if a student is at risk to commit violence. Warning signs are “a sequence of overt, serious, hostile behaviors or threats directed at peers, staff, or other individuals.”¹ They range from disturbing social media posts, mental health care related to dangerousness, arrests, poor academic performance, history of discipline, physical violence, inappropriate affect, uncontrolled anger, feelings of isolation, social withdrawal, threats of suicide, substance abuse, paranoia, and other

¹ Red Flags, Warning Signs, and Indicators <https://www.uno.edu/counseling-services/documents/redflags.pdf>

aberrant behaviors. Some warning signs carry more weight than others, while a cluster of signs present greater concern.² Validating the accuracy of this information, accumulating data, and monitoring are all necessary steps in identifying potential behavior patterns that predict when a person may be prepared to act out. Following this protocol gives school officials the ability to make a justified case for discipline or action.

ARGUMENTS AGAINST DISCIPLINARY ACTION FOR JESSIE

Claiming predictive analytics as justification for imposing discipline requires strong evidence. School officials have not offered any of the red flags, warning signs, or indicators under this system that Jessie is at risk for self-harm or harm of others. Having access to firearms gives a person the capacity to carry out an attack, but merely owning guns or shooting at a firing range is not predictive of future violence. Jessie and his brother were under the parental guidance of their father and under the protection of the 2nd Amendment to engage in such activity. Furthermore, the firing range is off- campus and beyond the proverbial “schoolhouse gate” and reach of school jurisdiction.

The U.S. Supreme Court and numerous appellate court cases have declared that although school administrators have the power to provide a safe environment for learning, a student does not lose his/her constitutional rights while at school.³ Public elementary and secondary schools are state actors and as such may not deny to any person within its jurisdiction the equal protection of the laws provided under the Equal Protection Clause of the 14th Amendment. This includes the area of student discipline. When long term suspensions or expulsions are a penalty a formal hearing is

² (Ibid)

³ Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)

in order. Jessie was denied access to a formal hearing to determine if such drastic action was legally justified.⁴

The search of Jessie's locker also raises concerns. Public school children have diminished privacy interests, but school safety and student privacy interests should be equally balanced. Several court cases have constitutionally validated that schools may conduct random or blanket searches as preventive measures (using metal detectors at school entrances and sweeping lockers for illegal drug possession), but courts take a stricter view concerning individual searches.⁵ The 1985 U.S. Supreme Court case *New Jersey v. TLO* determined that the Fourth Amendment applied to students in public schools. Probable cause or a warrant to search student lockers is unnecessary, but The Court articulated that school officials are still held to the lesser standard of reasonable suspicion regarding searches of individual students.⁶ Absent exigent circumstances or consent, individual student searches are only legally justified "when 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."⁷ There was no reasonable suspicion that Jessie was in possession of firearms on school property or that he violated any law or the rules of the school. Finding Guns and Ammo magazines does not justify the search.

⁴ Search and seizure, due process, and public schools/ Center for Public Education

<http://www.centerforpubliceducation.org/research/search-and-seizure-due-process-and-public-schools>

⁵ *Vernonia School District 47J v. Acton* (1995), *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls* (2002)

⁶ *New Jersey v. TLO*, 469 U.S. 325 (1985)

⁷ (*Ibid*)

RECOMMENDATIONS AND OPTIONS

Jessie is a new student at Lincoln High School whose appearance is outside the social norm. He is being bullied by his brother and may not have integrated with peers. Principal Tubaya states that Jessie is “odd” and has “challenging behavior” but does not specify what that means. His style of clothes and choice to wear makeup may make some students and parents uncomfortable, but unless Jessie’s mode of self-expression causes “substantial interference,” or “interferes with the rights of others” it is considered protected free speech as determined in *Tinker v. Des Moines*.⁸

The video at the range indicates Jessie is proficient with firearms, unlike his brother. While this may be unsettling to parents, it is not by itself indicative of future violence. School officials should monitor and assist Jessie at school, including his family in the process of helping him adjust to his new environment. Jessie and Jack have a dysfunctional relationship which should be addressed by their parents, the school psychologist, and the school guidance counselor Ms. DiMauro. In the meanwhile, school officials can investigate Jessie’s background by talking to teachers and staff at his previous school, check for prior interactions with law enforcement, review academic records, and most importantly, request that the parents limit access to any guns while Jessie adjusts to school. It is my recommendation that Jessie be reinstated in school immediately unless school officials can provide hard evidence that Jessie poses a significant risk to school safety.⁹ School officials have offered no compelling justification for his suspension and threat of alternative schooling.

⁸ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)

⁹ Dwyer, K., Osher, D., & Warger, C. (2000, Spring). Warning signs of school violence. *ERIC Review. School Safety: A Collaborative Effort*. 7(1) pp 16-17. (ERIC Document No. ED440640)

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