IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VALENTINO C., et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
SCHOOL DISTRICT	:	
OF PHILADELPHIA, et al.	:	NO. 01-2097

MEMORANDUM AND ORDER

HUTTON, J. January 23, 2003

In this case, the plaintiffs, Valentino C., a minor, and his parents, Eduardo and Evelyn Cortes, are suing the defendants, the School District of Philadelphia, the Philadelphia Superintendent of Schools, Jay W. Lane, a teacher, Andrea Cross, a school police officer, and Gloria Hooks, an assistant principal, alleging a variety of claims arising out of two incidents that allegedly took place when Valentino was a student in the Philadelphia public school system. In their original complaint, Plaintiffs allege the following causes of action: (1) a violation of several of Valentino's C.'s constitutional rights actionable under 42 U.S.C. § 1983; (2) false imprisonment of Valentino C.; (3) battery upon Valentino C.; (4) intentional infliction of emotional distress upon Valentino C.; (5) negligent infliction of emotional distress upon all Plaintiffs; and (6) assault upon Valentino C.

The following motions are presently before the Court: (1) Plaintiffs' Motion for Enlargement of Time (Docket No. 22); (2) Defendants' Summary Judgment Motion (Docket No. 18); and (3)

Plaintiffs' Motion for Leave to Amend the Complaint (Docket No. 28).

For the reasons discussed below: (1) Plaintiffs' Motion for Leave to Amend the Complaint (Docket No. 28) is granted; (2) Defendants' Motion for Summary Judgment (Docket No. 18) is granted in part and denied in part and (3) Plaintiffs' Motion for Enlargement of Time is granted.

I. BACKGROUND[1]

During the late 1990's, the minor plaintiff in this action, Valentino C., was enrolled in the Philadelphia public school system. In May of 1998, Valentino was classified by the School District of Philadelphia ("SDP") as a student eligible for special services under the Individuals with Disabilities Act, 20 U.S.C. § 1400, et seq ("IDEA"). Defs.' Summ. J. Mem. at 2. According to the record, Valentino has been diagnosed with multiple disabilities, including Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder, depression, and Separation Anxiety Disorder. Compl. at 2.

In the 1998-99 school year, Valentino enrolled at the Julio deBurgos Bilingual Middle School, which is a part of the Philadelphia public school system. Defs.' Summ. J. Mem. at 2. Due

[1] To the extent that the facts are disputed, they are presented in the light most favorable to the non-moving party, the plaintiff.

to his status under the IDEA, Valentino was placed in an emotional support class. Id. According to Valentino, this class did not adequately support his needs because it had an enrollment of 20 students, which exceeds the number of enrolled students that was stipulated in his Individualized Education Plan ("IEP"). Compl. at 3. During the Spring of 1999, Valentino was assigned to the homeroom of an apprentice teacher, Jay W. Lane. Defs.' Summ. J. Mem. at 4. According to the plaintiff, Lane was not certified or trained to teach the type of special education class in which Valentino was enrolled. Compl. at 3.

Plaintiff bases his complaint on two events that occurred in the spring and summer of 1999. First, on or about April 28, 1999, Valentino approached Lane's desk, and searched or appeared to search through the papers on the teacher's desk. Defs.' Summ. J. Mem. at 3. At this point, Lane ordered Valentino to return to his own desk. Id. The subsequent events appear to be disputed by the parties. According to the defendants, Valentino picked up a desk and moved toward Lane as if he was going to strike him with it. Id. In his affidavit, Valentino states that he picked up a chair, not a desk, because he was frightened of Lane. See Valentino Aff. He states that he was only using the chair so that Lane "would not hurt [him]." Id.

After the incident in the classroom, Lane and Valentino went to the school's main office. Def.'s Summ. J. Mem. at 3. In

accordance with school district policy, the police were called and Valentino was arrested. Id. 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 25th police district headquarters, Valentino was placed in a holding cell, where he allegedly remained for 21 hours. Pls.' Compl. at 4. Plaintiffs state that the school failed to inform Valentino's parents of his arrest until Eduardo Cortes, Valentino's father, called the school at 5 p.m. that afternoon. Lane never pressed the charges against Valentino. Id. at 5.

The second incident occurred on June 8, 1999. On that date, Plaintiffs allege that Valentino was standing in the hallway of his school when he "suffered an intentional and malicious blow to the head at the hand of School Police Officer Andrea Cross . . . ." Id. In his deposition, Valentino offered a slightly different version of the events, stating that he was standing in the school's office when he was hit in the back of the head. Defs.' Summ. J. Mem. at Ex. 11.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled

to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file showing a genuine issue of material fact for trial. Id. at 324. The substantive law determines which facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). If the evidence is such that a reasonable jury could return a verdict for the nonmoving party, then there is a genuine issue of fact. Id.

When deciding a motion for summary judgment, all reasonable inferences are drawn in the light most favorable to the non-moving party. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912, 113 S. Ct. 1262, 122 L. Ed. 2d 659 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than just rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

III. DISCUSSION

A. The Original Complaint

Count I of the Complaint asserts several claims under 42 U.S.C. § 1983 against all defendants based on a number of theories of liability. This Count includes claims that Defendants deprived Plaintiff Valentino of his rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Count II alleges that Defendants Lane, Cross, and the SDP falsely imprisoned Valentino by "causing him to be unreasonably handcuffed and incarcerated for twenty-one hours." Count III asserts a claim that Defendants Lane and Cross committed battery against Valentino by "causing the unprivileged handcuffing of [him] and by Andrea Cross's blow to [his] head . . . ." Count IV asserts a claim of intentional infliction of emotional distress. In this Count, Plaintiffs claim that the "corporal punishment" of Valentino was extreme and outrageous. Count V alleges that Defendants Lane, Cross, and the SDP negligently inflicted emotional distress upon all Plaintiffs. Finally, Count VI alleges that Defendants Lane and Cross assaulted Valentino by placing him in imminent apprehension of serious bodily harm.

B. Motion to Amend the Complaint

In conjunction with their answer to Defendants' summary judgment motion, Plaintiffs move for leave to amend their Complaint

(Docket No. 28). In this motion, Plaintiffs seek to add two claims under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, et seq. Defendants oppose this motion on two grounds: (1) granting Plaintiff's motion will result in undue prejudice to Defendants; and (2) Plaintiffs' failure to exhaust administrative remedies precludes this Court from exercising jurisdiction over these claims. Defs.' Opp'n Mem. at 4. For the reasons discussed below, this Court finds that Plaintiffs' motion must be granted.

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, it is within the trial court's discretion to grant or deny a motion to amend the complaint. Such leave, however, shall be "freely given as justice requires." Fed. R. Civ. P. 15(a). In this circuit, leave to amend is ordinarily granted unless there is a finding of undue delay or bad faith on the part of the plaintiff, prejudice to the defendant, uncured jurisdictional defects, or futility of the amendment. Alvin v. Suzuki, 227 F.3d 107, 121 (3d Cir. 2000).

First, Defendants argue that the motion should be denied because they will suffer undue prejudice if Plaintiffs are allowed to amend their Complaint. Specifically, Defendants argue that Plaintiffs have repeatedly engaged in dilatory tactics and that this motion is another attempt to delay final disposition of this matter. Defendants, however, do not offer any evidence to support

the claim that the current motion is anything more than a good faith attempt to make out a valid IDEA claim.

Second, Defendants argue that this Court lacks jurisdiction to adjudicate the Plaintiffs' IDEA claims because Plaintiffs have not exhausted their administrative remedies as required under the IDEA. In Count VIII of their proposed Amended Complaint, however, Plaintiffs aver that they participated in a state administrative hearing conducted pursuant to the IDEA. In their filings, Defendants do not appear to dispute this claim. Accordingly, based solely on the current limited nature of the filings, it appears that this Court has jurisdiction over the IDEA claims. Accordingly, Plaintiffs' motion to amend their complaint is granted. Because the first six counts of the Amended Complaint are identical to the first six counts of the original Complaint, this Court will now examine Defendants' Motion for Summary Judgment as to those claims.

C. <u>Claims Under Section 1983 as to Individual Defendants</u>

Section 1983[2] is not, by its own terms, a source of

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[2] 42 U.S.C. § 1983 provides, in pertinent part, as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

substantive rights. Instead, it provides a remedy for deprivations of rights that are established elsewhere in the Constitution or the federal statutes. Baker v. McCollan, 443 U.S. 137, 144 n.3, 99 S. Ct. 2689, 2694 n. 3, 61 L. Ed. 2d 433 (1979); Kniepp v. Tedder, 95 F.3d 1199, 1204 (3d Cir. 1996). To establish a valid claim under § 1983, Plaintiff Valentino must demonstrate that Defendants, while acting under the color of state law, deprived him of a right secured by the Constitution or the laws of the United States. Mark v. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir. 1995).

1. First, Fourth and Fourteenth Amendment Claims

Plaintiff alleges that Defendants deprived him of his rights under the Fourth, Fifth, and Fourteenth Amendments[3] by causing his arrest and incarceration after the April incident in Lane's classroom. Because different standards attach to each of these rights, it essential that Court evaluate the specific facts to determine the proper constitutional approach. Gottlieb v. Laurel Highlands Sch. Dist., 272 F.3d 168, 171-72 (3d Cir. 2001). The Third Circuit recently noted that the difference between reviewing a claim under the Fourth Amendment's reasonableness standard and the Fourteenth Amendment's more rigorous "shocks the conscience" standard may be determinative in some cases. Id.

[3] The Court notes that, because the defendants are a school district and state employees, respectively, the Fourteenth Amendment, not the Fifth Amendment, is the proper vehicle for the substantive due process analysis in this case.

In Gottlieb, an assistant principal at a public high school pushed a student into a door jam, allegedly injuring her lower back. The student brought a § 1983 action against the school district and the assistant principal. She claimed that the push amounted to an unlawful seizure under the Fourth Amendment. In response, the defendants argued that the Fourteenth Amendment's stricter "shocks the conscience" standard was the appropriate test. The Third Circuit, noting the broad difference between the two tests, characterized the plaintiff's claim as one of excessive force, rather than unreasonable detention. Accordingly, the court held that the Fourteenth Amendment's shocks the conscience test applies to claims alleging excessive force by public school officials. Id.

In the instant case, however, Plaintiffs' § 1983 claim is not based upon the June 1999 incident where Defendant Cross allegedly struck Valentino in the head, which would be an excessive force claim. Instead, the June 1999 incident is pleaded only in the plaintiffs' pendant state tort claims. Plaintiffs base their § 1983 claim on the April 1999 incident, which occurred after the classroom confrontation. They argue that Defendants violated Valentino's Fourth, Fifth and Fourteenth Amendment rights when they "caused" his arrest and incarceration following the incident in Lane's classroom. Compl. at 6.

Although not entirely clear, it appears Plaintiffs are arguing that Defendants illegally caused Valentino's arrest by calling the police after the alleged classroom confrontation. Without directly stating it, Plaintiff implies that Defendants knew Valentino did not actually threaten Lane and that they called the police out of some malice towards Valentino. Plaintiff, however, produces no evidence to establish this conspiracy. Plaintiff also claims that Defendant Cross, a school police officer, joined with city police in searching and arresting Valentino. Pls.' Answer at 2.

This Court finds that the correct constitutional approach is to analyze Valentino's claim under the Fourth Amendment's reasonableness standard. Although this Court did not find any Third Circuit cases on point with the facts of this case, several other circuits have held that the Supreme Court's enunciation of the Fourth Amendment reasonableness standard in New Jersey v. T.L.O., 469 U.S. 235, 105 S. Ct. 733, 51 L. Ed. 2d 711 (1977, applies to seizures in school settings. See Wallace v. Batavia, 68 F.3d 1010, 1014 (7th Cir. 1995); Hassan v. Lubbock Indep. Sch. Dist., 55 F.3d 1075, 1079 (5th Cir. 1995); Edwards v. Rees, 883 F.2d 882, 884 (10th Cir. 1989). Valentino does not allege that excessive force was used during his time in the school office or during his actual arrest. Instead, he argues that he was unreasonably removed from his classroom, taken to the school office, and arrested. Thus, Valentino's claim is one of

unreasonable detention, rather than one of excessive force. Cf. Gottlieb, 272 F.3d at 172 (finding plaintiffs claim one of excessive force). Accordingly, this Court will apply the reasonableness standard to determine if defendants are entitled to summary judgment on this claim. As discussed below, even applying the somewhat weaker reasonableness standard, this Court finds that Defendants are entitled to summary judgment on this claim.

The Fourth Amendment, applicable to state officials under the Due Process clause of the Fourteenth Amendment, protects the right of the people to be free from unreasonable searches and seizures. U.S. Cons. amend. IV. These protections extend to students in public schools. Vernonia Sch. Dist. v. Acton, 515 U.S. 646, 655, 115 S. Ct. 2386, 132, L. Ed. 2d 564 (1995); New Jersey v. T.L.O., 469 U.S. 325, 336-37, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985). In most situations, probable cause is the touchstone for reasonableness. In the public school context, however, reasonableness is determined by balancing the individual's Fourth Amendment interests, including the expectation of privacy, against legitimate government interests. Vernonia, 515 U.S. at 656-57; Gruenke v. Seip, 225 F.3d 290, 301 (3d Cir. 2000). Additionally, the Court must also take into account the nature of the intrusion. Gruenke, 225 F.3d at 301. Although T.L.O., Vernonia, and Gottlieb deal with searches in the public school context, the same

principles hold when applying the reasonableness test to an allegedly unreasonable seizure in a public school.

Regarding Valentino's privacy interests, he, like any other public school student, has a reduced expectation of privacy. Vernonia, 515 U.S. at 656. In Vernonia, where student athletes challenged a random drug testing policy, the Court noted that students, for their own protection and the protection of their fellow classmates, are routinely subjected to various types of physical examinations. Id. Similarly, in this case, where Valentino is challenging his removal from class and arrest, all public school students, know and expect that, for their own protection and the protection of their fellow classmates, they are subject to removal from class at any time for disciplinary reasons. Students live with this type of intrusion on a daily basis.

Regarding the government's interest, the interest must "important enough to justify the particular [seizure] at hand." Id. at 661. In Vernonia, the Court found that the government's interest – deterring drug use by school children – was compelling. Likewise, this Court finds that the governmental interest in this case – protecting the students at the deBurgos school from a potentially violent situation – is compelling.

Finally, the Court must evaluate the nature of the intrusion itself. Id. at 658; Gruenke, 225 F.3d at 301. In evaluating the intrusion, the Court must first identify the intrusion. Second,

the Court must determine whether the action was "justified at its inception." T.L.O., 469 U.S. at 341. Third, the Court must determine whether, as the intrusion transpired, it was "reasonably related in scope to the circumstances which justified the interference in the first place." Id.

First, this Court finds that the intrusion at issue in this case is the removal of Valentino from his class and his detention in the school office while awaiting arrest. In their complaint and answer, Plaintiffs seem to argue that Defendants are liable for Valentino's incarceration at the 25th District police station, which allegedly lasted 21 hours. Plaintiffs argue that Defendants "caused" this illegal seizure by calling the police after the classroom altercation. Plaintiffs also argue that Andrea Cross's participation in the arrest, as a school police officer, supports their theory. As Defendants properly point out, they, as school officials, do not have the power to arrest or incarcerate Valentino. Defs.' Summ. J. Mem. at 7-8. Moreover, they cannot be held responsible for actions taken by the Philadelphia police once Valentino was in their custody. Accordingly, for Fourth Amendment purposes, this Court will only examine Valentino's removal from class and his detention while awaiting arrest.

Second, this Court finds that the intrusion was justified at its inception. As noted above, the facts regarding the classroom altercation are in dispute. Defendants state that Valentino picked

up a desk as if to strike the teacher, Lane. Plaintiffs claim that Valentino merely picked up a chair and held it in between he and Lane for protection. Even accepting Plaintiffs' version of the facts, as required for this summary judgment motion, Defendants were justified in removing Valentino from the classroom, taking him to the office, and calling the police. Reasonableness is always an objective inquiry, and this Court must evaluate Defendants' actions without taking into account either party's subjective intent. Under comparable circumstances, other courts have held that similar intrusions were justified. See e.g., Wallace, 68 F.3d at 1014.

In Wallace, a teacher returned to his classroom to find two female students screaming at one another. 68 F.3d at 1011. The teacher ordered one of the young women to leave the classroom, and when she failed to move quickly, he grabbed her elbow and escorted her to the school office. Id. The court found that the teacher did not violate the student's Fourth Amendment rights by seizing her. Instead, the court held that the teacher reasonably acted to restore the educational atmosphere in the room. Id. at 1015. Similarly, in this case, even if Valentino merely picked up the chair in a perceived need for self-defense, Lane was justified in removing Valentino from class and taking him to the school office. Under the circumstances, regardless of Valentino's subjective intent, Lane had to restore the educational atmosphere in his

classroom, which was disturbed by the altercation. Accordingly, this Court finds the intrusion was justified at its inception.

Third, this Court finds the scope of the intrusion was reasonably related to the circumstances that gave rise to it. Even accepting as true Valentino's claim that he did not intend to assault Lane, the individual defendants reasonably followed school district procedure by calling the police. Valentino does not allege that Defendants improperly kept him confined at the school or otherwise unreasonably restricted his liberty. Instead, he argues that Defendants exceeded the scope of a permissible intrusion by causing his arrest and incarceration. As Defendants properly point out, school district policy requires that any alleged student assault with a weapon on a school official must be reported to the police. Defs.' Summ. J. Mem. at Ex. 9. In this case, Defendants were faced with an ambiguous situation where a teacher felt threatened by a desk-wielding student, but the student claimed to be acting in self-defense. Rather than hold Valentino themselves, Defendants reasonably responded by calling the police and letting them handle the matter, as school district policy directs. Accordingly, the scope of the seizure was reasonably related to its inception.

Although this Court was unable to find any cases exactly square with these facts, other courts examining seizures in public schools have also looked to the circumstances of the initial

seizure in examining the proper scope of such a seizure. See e.g., Hassan, 55 F.3d at 1079-80. In Hassan, a group of elementary students were on a field trip to a juvenile detention center. One of the students, Hassan, repeatedly refused to follow the teacher's instructions and attempted to disrupt the trip. Id. School officials asked the juvenile authorities to lock Hassan in a room at the center for the remainder of the field trip. Id. The court found that the detention did not exceed the proper scope because, under the circumstances, it was necessary to protect the safety of the other students and maintain order at the facility. Id. Although the facts of this case are quite different, the principles underlying Hassan demonstrate that the scope of Valentino's detention was also proper. In this case, the school officials only briefly detained Valentino while awaiting the arrival of the police. They did so out of a desire to protect the other students and to maintain order at the school. Under the circumstances, the scope of the intrusion was not unreasonable.

In sum, this Court finds that, given Valentino's low expectation of privacy, the strong governmental interest in maintaining order in public schools, and the limited nature of the intrusion, Valentino cannot state a claim for Fourth Amendment violation, even assuming his version of the facts. Accordingly, Defendants motion is granted as to this claim.

2. "State-Created Danger" Claim

As noted above, this Court finds that the Fourth Amendment is the applicable constitutional provision in this case. The parties, however, spend a great deal of effort arguing about whether Plaintiffs' Complaint raises a triable issue of fact under the Fourteenth Amendment's substantive due process component. Accordingly, the Court will briefly address this issue. As discussed below, the Court finds that Defendants' summary judgment motion must also be granted as to Plaintiffs' substantive due process claim.

Generally, state officials have no affirmative obligation to protect citizens from injuries caused by their own actions or the actions of others. DeShaney v. Winnebago County Dep't of Soc. Servs., 489 U.S. 189, 195-96, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989). There are two exceptions to this general rule. First, the special relationship exception allows a plaintiff to recover when the state enters into a special relationship with a citizen and then fails to live up to its affirmative duty to protect that citizen from injury. DeShaney, 489 U.S. at 200. Second, several circuits, including the Third Circuit, recognize a "state-created danger" exception that allows a plaintiff to recover when a state actor creates a danger that causes harm to an individual. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 907 (3d Cir. 1997). Although Plaintiffs do not clearly argue a state-created danger

theory in their complaint, both parties discuss the exception in great detail in other filings.

In this circuit, the plaintiff must satisfy a four-part test in order to prevail on a claim based upon a state-created danger theory. Kneipp v. Tedder, 95 F.3d 1199 (1996). The plaintiff must establish the following elements: (1) the harm inflicted was a foreseeable and fairly direct result of the state official's actions; (2) the state official's actions "shock the conscience";[4] (3) there is a special relationship between the state and the plaintiff; and (4) the state actors used their authority to create an opportunity for harm that would not have otherwise occurred. Id. Plaintiff argues that Defendants are liable under the state-created danger theory because, by calling the police, they caused Valentino be detained, without his medication, for 21 hours at the 25th District police headquarters.

Applying this test to the facts, the Court finds that Defendants' motion must be granted as to Plaintiffs' state-created

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[4] The Kneipp Court enunciated the second prong of this test as follows: "the state actor acted in willful disregard for the safety of the plaintiff." 95 F.3d at 1208. After Kneipp, however, the Supreme Court ruled in County of Sacramento v. Lewis, 523 U.S. 833, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998), that courts must look to the context of the relevant state action in order to determine what standard of fault to apply in a § 1983 action. In light of the Lewis decision, courts of this district have held that a state official's actions must shock the conscience in order to be liable under a state-created danger theory. See e.g., Cannon v. Philadelphia, 86 F. Supp. 2d 460, 469 (E.D. Pa. 2000). This Court agrees that the "shocks the conscience" standard is the proper standard of fault under a state-created danger theory because it is the proper standard for all substantive due process claims. Accord United Artists Theatre Circuit, Inc. v. Warrington, No. 01-3533, 2003 WL 115585, — F.3d — (3d Cir. 2003) (holding that, in light of Lewis, "shocks the conscience" standard applies to cases involving alleged due process violations in land disputes).

danger claim. Regarding the first Kneipp prong, Plaintiffs argue that Valentino endured "physical suffering" and "continuing psychological problems" as result of being confined at the 25th District police headquarters for 21 hours without his medication. Compl. at 5; Pls.' Answer at 2-3. According to Plaintiffs, these injuries were foreseeable because the 25th District is "the most crime ridden in the city" and, as a result, it was foreseeable that Valentino would be confined in a crowded holding cell. Pls.' Answer at 3-4. This Court finds this causal connection too attenuated to support a finding that Plaintiffs' injuries were foreseeable or that Defendants' action was a fairly direct cause of these injuries. Morse, 132 F.3d at 908-10.

In Morse, a teacher was shot by a local resident with a history of mental illness. Id. at 904. The assailant entered the public school through an unlocked door. Id. The Morse plaintiffs asserted a state-created danger claim. They argued that the school district had a written policy of keeping school doors lock at all times and that the school officials knew that the door in question was unlocked for construction workers' use. The Third Circuit held that the attack was not a foreseeable result of the defendants' conduct. Id. at 908-10. Specifically, the court found that there was no evidence to support a claim that the defendants knew of the assailant's violent propensities. Id. at 908. Additionally, the court found that the attack was not a "fairly direct" result of the

defendants' decision to let construction workers use the unlocked entrance. Id. at 908-9.

Similarly, in this case, there is no evidence to establish that the individual Defendants knew or reasonably could have known that Valentino would be held at the police station for 21 hours. Plaintiff offers no more than bald assertions that such a result was foreseeable. Moreover, Defendants conduct did not directly result in Valentino's extended detention. Plaintiff can prove no set of facts showing that, by calling the police, Defendants directly caused the police to hold Valentino for an extended period. The decision to hold Valentino fell to the police, not the school administrators. Although Plaintiff alludes to a theory that the school officials and police conspired to hold Valentino against his will, he offers no proof to support such a claim.

Regarding the second Kneipp prong, Plaintiffs argue that Defendants' actions shock the conscience because they did not act with Valentino's safety in mind when they "took no action to remove [him] from the 25th Police District jail and failed to send records of his need for medication to the police." Pls.' Answer at 4. This Court finds that the individual defendants' actions did not shock the conscience.

To determine whether the school officials activity shocks the conscience, the Court must determine where their conduct falls on the spectrum of tort liability. Lewis, 523 U.S. at 847. As the

Court recently noted, while the conscience-shocking standard does not provide a perfectly clear standard of conduct, it necessarily covers conduct "only at the ends of the tort law's spectrum of liability." Id. at 848. This Court finds that Defendants, by calling the police in response to a potentially violent classroom incident, did not engage in conduct that shocks the conscience. Such actions are not the kind of severe conduct falling at the extreme end of the tort spectrum.

Regarding the third Kneipp prong, this Court finds that no special relationship existed between Valentino and Defendants. In Morse, the court held that, while members of the general public are not in a special relationship with the state, individual plaintiffs or classes of plaintiffs could be in such a relationship. 132 F.3d at 913-14. A special relationship exists if the state actors' actions make "a discrete plaintiff vulnerable to foreseeable injury." Mark v. Borough of Hatboro, 51 F.3d 1137, 1153 (3d Cir. 1995). As this Court noted above, no foreseeable injury resulted from Defendants' actions in this case. Accordingly, no special relationship existed.

Finally, regarding the fourth Kneipp prong, this Court finds that Defendants' did not use their official authority to create the opportunity for harm. In Morse, the court held that, because there was no causal connection between the school officials' actions and the shooting, the defendants did not use their authority to create

the opportunity for harm which would not have otherwise occurred. 132 F.3d at 914-15. Similarly, in this case, because there is no causal connection between Defendants' actions and Valentino's alleged injury, the Plaintiffs can prove no set of facts showing that Defendants used their authority to create the injury.

In sum, this Court finds that none of the Kneipp factors can be satisfied in this case. Accordingly, Defendants' summary judgment motion is granted as to Plaintiffs' state-created danger claim.

3. Claims under the IDEA and the Eighth and Fourteenth Amendments

In Count I of their Complaint, Plaintiffs appear to attach several claims under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, et seq. Specifically, Plaintiffs claim that Defendants deprived Valentino of his rights under the IDEA to be free from "aversive techniques." Although not entirely clear, it appears Plaintiffs are arguing that Defendants, by calling the police after the classroom altercation, denied Valentino his rights, under the IDEA's "stay put" provisions, to remain in his present school.

Moreover, Plaintiffs claim that the IDEA requires Defendants to send a special education student's medical records to the police any time such a student is arrested at school. Plaintiffs argue that these statutory violations rise to an actionable

constitutional claim under § 1983 because Defendants' actions violate the Fourteenth Amendment's substantive due process protections and the Eighth Amendment's protection against cruel and unusual punishment, respectively. In this circuit, violations of the IDEA may be actionable under § 1983. W.B. v. Matula, 67 F.3d 484 (3d Cir. 1995). As discussed below, however, Plaintiffs' arguments lack merit and require that Defendants' summary judgment motion also be granted as to these claims.

First, Plaintiffs argue that Defendants violated the Fourteenth Amendment Due Process clause when they called the police to arrest Valentino. Plaintiffs argue that, under the IDEA's stay-put provision, 20 U.S.C. § 1415(j), special education students are exempt from such "aversive techniques." The stay-put provision provides, in pertinent part, as follows: "[D]uring the pendency of any proceedings conducted pursuant to this section, . . . the child shall remain in the then-current educational placement of such child." 20 U.S.C. § 1415(j) (emphasis added). Although the statutory language itself clearly applies only to the due process proceedings available under the statute, Plaintiff argues that this provision prevents any "aversive techniques", such as arrest, from being used to remove a special education student form his current educational setting. Such a strained construction would have the illogical effect of removing all special education students from the reach of law enforcement for any illegal actions taken at

school. This argument cannot be sustained under the language of the statute itself, and accordingly, Plaintiff can prove no set of facts to support this theory.

Second, Plaintiffs argue that the medical records section of the IDEA requires that, any time a special education student is arrested, school officials must immediately transfer his medical records to the police. Under Plaintiffs view, Defendants' failure to do so in this case amounts to deliberate indifference under the Eighth Amendment.

Once again, the plain language of the statute, coupled with the illogical results of Plaintiffs' construction, shows that this argument must fail. The IDEA's medical records provision, 20 U.S.C. § 1415(k)(9)(B), provides, in pertinent part, that "[a]n agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities . . . ." Plaintiffs, however, ignore the IDEA provision immediately proceeding this one, which states "[n]othing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with disability to the appropriate authorities . . . ." 20 U.S.C. § 1415(k)(9)(A).

Moreover, the provision cited by Plaintiffs only requires that, at some point, the school authorities transmit the child's "educational and disciplinary" records to law enforcement

authorities. There is no statutory requirement that medical records be forwarded to the police. The logical reading of this statute is that such records are to be sent to the proper authorities so that the student's disabilities can be properly considered in evaluating what punishment, if any, should be sought against the child. Following Plaintiffs' construction, school authorities would have to immediately hand over a disabled student's medical records to police any time such a student is arrested. Nothing in the statute supports such a strained construction. Accordingly, Plaintiff cannot prove any set of facts to support this theory, and Defendants' summary judgment motion must be granted as to this claim.

D. Section 1983 Claims as to the School District

That the individual defendants did not violate Valentino's civil rights does not automatically relieve the School District of Philadelphia from liability under 42 U.S.C. § 1983. Kneipp, 95 F.3d at 1213 (citing Monell v. New York City Dept. of Social Serv., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)); Fagan v. City of Vineland, 22 F.3d 1283, 1291-92 (3d Cir. 1994). Instead, the School District may still be liable under § 1983 "if it act[ed] 'with deliberate indifference to the consequences [of its policies, and] established and maintained a policy, practice or custom which directly caused constitutional harm.'" Gottlieb, 272 F.3d at 175-

76 (quoting Stoneking v. Area Sch. Dist., 882 F.2d 720, 725 (3d Cir. 1989)). To sustain such a claim, Plaintiffs must demonstrate a direct causal connection between a district policy and Valentino's injuries. Id. (citing Losch v. Borough of Parkesburg, 736 F.2d 903 (3d Cir. 1984)). Such a causal connection is established by showing "that policymakers were aware of similar conduct in the past, but failed to take precautions against future violations, and this failure, at least in part, led to [the] injury." Id. Because Plaintiffs fail to allege the facts necessary to maintain such a cause of action, Defendants' motion is granted as to this claim.

In their filings, Plaintiffs make no attempt to allege that the school district policymakers were somehow aware of any similar incidents where disabled students were arrested because of conduct in school. Moreover, the causal connection between the school district's policy and the alleged injuries is too attenuated. Plaintiffs offer no facts showing that Valentino's injuries were the direct result of the school district's policy of reporting violent school incidents to the police. In their complaint, Plaintiffs appear to allege that Valentino's injuries resulted from being held at police headquarters without his medicine for 21 hours. Even assuming that such injuries occurred, as the Court must for this summary judgment motion, Plaintiffs have not alleged sufficient facts to demonstrate a direct causal link between school

district policy and Valentino's alleged injuries. Accordingly, Defendants' motion is granted as to this claim.

E. Pendant State Law Claims

In Counts II-VI of their Complaint, Plaintiffs bring a number of Pennsylvania state law claims against Defendants. This Court has supplemental jurisdiction over these claims pursuant to 28 U.S.C. § 1367. A district court, however, is not obligated to hear such pendant claims if the court determines that it lacks federal subject matter jurisdiction over the dispute. 28 U.S.C. § 1447(c); Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995) (directing district courts to remand such claims when lacking subject matter jurisdiction).

At this point in the proceedings, this Court notes that it is unclear whether it retains subject matter jurisdiction over Plaintiffs' pendant state law claims. This Memorandum and Order dismisses Plaintiffs' § 1983 claims. Moreover, the only other pending federal claims are the IDEA claims added in the Amended Complaint, which have yet to be developed in any fashion. Accordingly, this Court will not rule on Plaintiffs' pendant state law claims at the present time. Instead, Defendants' summary judgment motion, as to the pendant state law claims, is denied with leave to renew once the IDEA claims are developed.

IV. CONCLUSION

Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Celotex Corp., 477 U.S. at 324. Regarding Plaintiffs' § 1983 claims, Defendants' motion is granted because Plaintiffs cannot prove any set of facts entitling them to relief under the statute. Additionally, Defendants' motion is denied with leave to renew as to the state law claims. Finally, Plaintiffs' motion to amend the complaint is granted.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VALENTINO C., et al.	:	CIVIL ACTION
v.	:	
SCHOOL DISTRICT OF PHILADELPHIA, et al.	:	NO. 01-2097

O R D E R

AND NOW, this 23rd day of January, 2003, upon consideration of: (1) Plaintiffs' Motion for Enlargement of Time (Docket No. 22); (2) Plaintiffs' Motion for Leave to Amend the Complaint (Docket No. 28); (3) Defendants' Motion for Summary Judgment (Docket No. 18); and (4) Defendants' Motion to Amend Summary Judgment Motion (Docket No. 36), IT IS HEREBY ORDERED that said motions are disposed of as follows:

1. Plaintiffs' Motion for Enlargement of Time (Docket No. 22) is **GRANTED**;

2. Plaintiffs' Motion for Leave to Amend the Complaint (Docket No. 28) is **GRANTED**; and

3. Defendants' Motion for Summary Judgment (Docket No. 18) is **GRANTED IN PART AND DENIED IN PART** as follows:

(a) Defendants' Motion is **GRANTED** as to Count I of the Amended Complaint;

(b) Count I of the Amended Complaint is **DISMISSED with prejudice; and**

(c) Defendants' Motion is **DENIED with Leave to Renew** as to Counts II-VI of the Amended Complaint.

BY THE COURT:

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HERBERT J. HUTTON, J.