

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

PHILADELPHIA FEDERATION OF	:	CIVIL ACTION
TEACHERS, et al.,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
THE SCHOOL DISTRICT OF	:	
PHILADELPHIA, et al.,	:	
Defendants.	:	NO. 97-4168
 Newcomer, J.		 April , 1998

M E M O R A N D U M

Presently before the Court are defendants' Motion for Summary Judgment and plaintiffs' response thereto. For the reasons that follow, said Motion will be granted in part and denied in part.

I. Background

This case arises from the School District's controversial decision in early 1997 to designate Olney High School as a Keystone School pursuant to the request of Olney's principal, Renee Yampolsky. This designation required the reconstitution of Olney, in particular the involuntary transfer of seventy-five percent of Olney's teaching faculty out of the school in an effort to revitalize Olney. By all accounts the atmosphere at Olney during this time was emotionally and politically charged, rife with anger, distrust, and suspicion, and the marches and walk-outs, by both faculty and students, drew national media attention.

Plaintiffs in this case are the following: the Philadelphia Federation of Teachers, Local 3 ("PFT"); Grace

Whitehair, a mathematics teacher at Olney; Michael Gallagher, an English teacher at Olney; and Jo Ann Adams, a social sciences teacher at Olney. The defendants are the Philadelphia School District; David Hornbeck, the Superintendent of the School District; and Renee Yampolsky, the principal of Olney.

During this period of controversy and turmoil, Ms. Yampolsky, apparently due to incidents of vandalism and theft, conferred with the School District's Chief of Staff, Germaine Ingram, about the possibility of instituting a search of any boxes being removed from school premises by faculty members. Ms. Yampolsky received permission to conduct such searches and implemented the searches as of May, 1997. The exact contours of these searches are in dispute. At her deposition, Ms. Yampolsky testified that she instructed School District Police Officer Isabelo "Izzie" Padron that "if people were leaving with cartons or equipment, he was to ask them if the material was their personal belonging, and if it was a carton, he was to ask if he could see what was in the carton." (Pl.'s Resp. at Exh. B, p. 87.) She further testified that if a person refused to give permission to the officer to conduct the search, then the officer was "not to make an issue of it" and "just let the person go." (Pl.'s Resp. at Exh. B, p. 88.) There exists no written memorialization of this decision nor of the parameters of the searches that were to be conducted.

Although the exact manner in which the searches were carried out is in dispute, it appears clear that various

teachers, including the named plaintiffs, were stopped and that some were subjected to searches of boxes, briefcases, and even the trunks of their cars. The constitutionality of these searches is at issue in this case.

Plaintiff Jo Ann Adams was stopped twice in May of 1997. On the first occasion, as Ms. Adams was wheeling a cart with four boxes to a friend's car in the parking lot, Officer Padron approached her and stated that he had to check her boxes because he was under orders. (See Pl.'s Resp. at Exh. I, p. 38.) Although "put out," Ms. Adams permitted him to do so, but Officer Padron was called away before looking in any of the boxes. (See id. at pp. 38-39.) On the second occasion, Ms. Adams, with the help of her students, was wheeling out more boxes, when she saw a group of non-teaching assistants ("NTAs") posted at the rear basement door and spontaneously told them to go ahead and check her boxes, apparently in a preemptive effort to avoid an embarrassing stop. (See id. at pp. 50-53.) Her boxes were searched, but then Ms. Adams was told that she could not leave the school without a note from the principal. (See id. at pp. 52-53.) Ms. Adams telephoned Ms. Yampolsky and informed her of the situation. (See id. at p. 57.) When she returned, she was told that she could move the boxes as they had been checked. (See id. at p. 59.)

Other teachers, whose interests are apparently represented by PFT, although they are not named plaintiffs, such as Edward Stein and Michelle Lovejoy, also claim to have been

stopped by either School District Police or NTAs. Apparently these ongoing searches only further heightened the hostility and distrust already brewing among the faculty, and the situation came to a head on June 11, 1997. On that day, plaintiff Michael Gallagher was stopped by Officer Padron when he and other teachers were leaving the school for the parking lot with several closed boxes. (See Pl.'s Resp. at Exh. K, p. 80-81.) One of the faculty, Anthony Colalongo, challenged Officer Padron and all the teachers present refused him permission to look through the boxes. (See id. at pp. 81-82.) Officer Padron called for another officer, Tom Smyth, and mention of a search warrant was made. (See Pl.'s Resp. at Exh. G, pp. 59-60.) A school administrator was called in, and eventually, after receiving advice from the union's lawyer via telephone, Mr. Gallagher left without having submitted to a search. (See id. at pp. 63-64.)

Meanwhile, School District Police Lieutenant Anthony Canamucio was called to school during this time, and having been informed that a teacher was attempting to leave the school without permitting a search of numerous closed boxes, Lieutenant Canamucio ordered that the driveways of the school be blocked and that all persons leaving the school be required to submit to a search before leaving. (See Pl.'s Resp. at Exh. J, pp. 23-25.) Plaintiff Grace Whitehair, unaware that the school driveways had been blocked, left the school during a break to run an errand. (See Pl.'s Resp. at Exh. H, pp. 29-30.) When she neared the exit, she found her way blocked by a police vehicle occupied by

Officer Padron. (See id. at pp. 30-32.) Officer Padron directed another officer to search Ms. Whitehair's car, and apparently because she felt that the police vehicle would not be moved unless she permitted the search, Ms. Whitehair permitted the search. (See id. at pp. 33-36.) Around that time Lieutenant Canamucio conferred with Chief of Staff Ms. Ingram and immediately thereafter called off the blockade. (See Pl.'s Resp. at Exh. J, pp. 25-26.) The following day, on June 12, 1997, the Superintendent issued a letter of apology to the faculty of Olney.

Plaintiffs bring various claims under 42 U.S.C. § 1983, averring that defendants acted under color of state law to deprive them of certain constitutionally protected rights. Specifically, plaintiffs bring claims alleging unlawful detention, unlawful search, injury to reputation, invasion of privacy, and infringement of First Amendment rights. Plaintiffs also bring state law claims of false imprisonment, defamation and false light, and invasion of privacy. Defendants now move this Court for summary judgment on all of plaintiffs' claims.

II. Summary Judgment Standard

A reviewing court may enter summary judgment where there are no genuine issues as to any material fact and one party is entitled to judgment as a matter of law. White v. Westinghouse Elec. Co., 862 F.2d 56, 59 (3d Cir. 1988). The evidence presented must be viewed in the light most favorable to the non-moving party. Id. "The inquiry is whether the evidence

presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). In deciding the motion for summary judgment, it is not the function of the Court to decide disputed questions of fact, but only to determine whether genuine issues of fact exist. Id. at 248-49.

The moving party has the initial burden of identifying evidence which it believes shows an absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Childers v. Joseph, 842 F.2d 689, 694 (3d Cir. 1988). The moving party's burden may be discharged by demonstrating that there is an absence of evidence to support the nonmoving party's case. Celotex, 477 U.S. at 325. Once the moving party satisfies its burden, the burden shifts to the nonmoving party, who must go beyond its pleadings and designate specific facts, by use of affidavits, depositions, admissions, or answers to interrogatories, showing that there is a genuine issue for trial. Id. at 324. Moreover, when the nonmoving party bears the burden of proof, it must "make a showing sufficient to establish the existence of [every] element essential to that party's case." Equimark Commercial Fin. Co. v. C.I.T. Fin. Servs. Corp., 812 F.2d 141, 144 (3d Cir. 1987) (quoting Celotex, 477 U.S. at 322). Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party

will bear the burden of proof at trial." White, 862 F.2d at 59 (quoting Celotex, 477 U.S. at 322).

III. Discussion

A. Liability of Superintendent David Hornbeck

Defendants move for summary judgment in their favor as to plaintiffs' claims against Superintendent Hornbeck. Pursuant to this Court's Order of December 7, 1997, the claims remaining against the Superintendent are plaintiffs' § 1983 claims. Defendants argue that the Superintendent cannot be held liable under § 1983 on a theory of respondeat superior and that no evidence exists showing that he played any part in or had any knowledge of the complained-of conduct until after the fact. In response, plaintiffs assert that their theory of liability is not respondeat superior, and that the Superintendent can be held liable for his own actions and for his "deliberate indifference" in light of the turmoil-ridden atmosphere of Olney during May and June of 1997. In particular, defendants argue that in light of the Superintendent's knowledge of the volatile situation at Olney, his acknowledgment that Ms. Yampolsky was a rule-breaker, and the fact that his "alter ego," the Chief of Staff, authorized the searches, a jury could find that Mr. Hornbeck was deliberately indifferent to the risk that the constitutional rights of faculty members would be violated.

The Supreme Court articulated the "deliberate indifference" standard of fault in the context of claims against municipalities for inadequate training. See City of Canton v.

Harris, 489 U.S. 378, 387-88 (1989). In Canton, the Court held that "the inadequacy of police training may serve as the basis for § 1983 liability . . . where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." Id. at 388. The Court found that only where a municipality's failure to train amounts to "deliberate indifference" can such a failure be properly considered as a "policy or custom" that is actionable under § 1983. Id. at 389. More recently, the Court had occasion to address this same standard in the context of a claim against a municipality for a single instance of inadequate screening. See Board of the County Commissioners v. Brown, 137 L. Ed. 2d 626, 641 (1997). The Court reiterated its holding in Canton, stating that municipal decisionmakers' "continued adherence to an approach that they know or should know has failed to prevent tortious conduct by employees may establish the conscious disregard for the consequences of their action--the 'deliberate indifference'--necessary to trigger municipality liability." 137 L. Ed. 2d at 641. The Court emphasized that "[a] showing of simple or even heightened negligence will not suffice," id., noting instead that deliberate indifference is a "stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action," id. at 643. In Brown the Court further cautioned that where a facially valid municipality action, such as hiring or screening a police applicant, is alleged to have caused constitutional violations,

"a finding of culpability simply cannot depend on the mere probability that any officer inadequately screened will inflict any constitutional injury." Id. at 644. Instead, "it must depend on a finding that this officer was highly likely to inflict the particular injury suffered by the plaintiff." Id. Or, in other words, the pivotal issue is whether the officer's background made the constitutional violation "a plainly obvious consequence of the hiring decision." Id.

In Stoneking v. Bradford Area School District, 882 F.2d 720, 724-35 (3d Cir. 1989), the Third Circuit applied the "deliberate indifference" standard to individual supervisors who were alleged to have established and maintained a policy or custom that permitted sexual abuse of students by teachers. In San Filippo v. Bongiovanni, 30 F.d. 424, 445-46 (3d Cir. 1994), the Court applied the same standard in a case where a dismissed professor sued a state university and board members, claiming that the board was deliberately indifferent to the fact that charges had been brought against him in retaliation for protected activity. Thus this Court finds the "deliberate indifference" standard to be applicable in the instant case, although the case does not involve allegations of inadequate training or screening, per se.

In applying this standard to the Superintendent for summary judgment purposes, however, the Court finds that the plaintiffs have failed to create a genuine issue of material fact as to the Superintendent's liability. Plaintiffs attempt to draw

the inference that the Superintendent was deliberately indifferent to the risk that Olney teachers' constitutional rights would be violated based on the bare facts that he knew of the volatile situation at Olney, his acknowledgment that Ms. Yampolsky was a rule-breaker, and the fact that his deputy had authorized the searches. However, plaintiffs have not offered any evidence even tending to show that the Superintendent actually knew of the decision to implement searches at Olney. On the other hand, the defendants have pointed to ample evidence demonstrating that the Superintendent had no knowledge that searches had been instituted at Olney. All the deposition testimony universally supports this contention. Plaintiffs have failed to rebut this overwhelming evidence with anything but conclusory statements and questionable assumptions.¹ Such conclusions fall far short of the showing that plaintiffs must make and in essence rely on a theory of respondeat superior liability. As such, the Court concludes that summary judgment must be granted in favor of the Superintendent.

B. Liability of Principal Renee Yampolsky

¹ In all their arguments, the plaintiffs attempt to equate the School District's Chief of Staff, Germaine Ingram, with the Superintendent, going so far as to identify her as the "alter ego" of the Superintendent. The Court, however, is aware of no law, and the plaintiffs have not pointed the Court to any law, that would render the Superintendent liable for the actions of his Chief of Staff absent evidence of his direct culpability. Certainly he cannot be held vicariously liable for her acts under § 1983. It appears to this Court that, having failed to join Ms. Ingram as a defendant, plaintiffs are now attempting to hold the Superintendent liable for Ms. Ingram's acts under some alter ego theory which is devoid of both legal and factual basis.

Defendants also move for summary judgment as to plaintiffs' § 1983 and state law claims against Ms. Yampolsky.

1. § 1983 Claims

Plaintiffs claim that Ms. Yampolsky's decision to institute a search of faculty members leaving the school with cartons--without obtaining a search warrant--violated the plaintiffs' constitutional rights because no probable cause existed to justify such a search. Plaintiffs also claim that Ms. Yampolsky's deliberate indifference led to the blockade of the school exits and the further violation of plaintiffs' constitutional rights.

It is uncontested by defendants that Ms. Yampolsky authorized the implementation of the searches, although the scope of her instructions and her knowledge of how the searches were actually conducted is contested. The defendants nevertheless argue that the decision to implement searches without first obtaining a search warrant passes constitutional muster under the "reasonableness" standard for workplace searches set forth in O'Connor v. Ortega, 480 U.S. 709 (1987) (plurality opinion). Defendants also argue vehemently that the decision to block the exits of the school was made unilaterally by School District Police Officers and that Ms. Yampolsky had no knowledge until after the fact and can therefore bear no liability for the consequences of that decision.

a. Constitutionality of the Searches

The defendants argue that in light of the evidence of

record, the Court should find that as a matter of law, the searches implemented were not violative of the Fourth Amendment. As an initial matter, the Court notes that if the searches had been implemented on a truly voluntary basis, with the officers requesting permission to search in a manner that conveyed that the teacher had the right to refuse, then no Fourth Amendment rights would be implicated. See Florida v. Bostick, 501 U.S. 429, 434-35 (1991) ("We have stated that even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, ask to examine the individual's identification, and request consent to search his or her luggage--as long as the police do not convey a message that compliance with their requests is required.")(citations omitted). However, as the voluntariness of the searches as implemented is hotly disputed, the Court undertakes a Fourth Amendment analysis.

Under well-established Supreme Court precedent, Fourth Amendment rights are implicated where official conduct infringes upon "an expectation of privacy that society is prepared to consider reasonable." O'Connor, 480 U.S. at 715; see also Vernonia School District 47J v. Acton, 515 U.S. 646, 654 (1995) ("The first factor to be considered is the nature of the privacy interest upon which the search here at issue intrudes. The Fourth Amendment does not protect all subjective expectations of privacy, but only those that society recognizes as 'legitimate.'"). Thus, without a reasonable expectation of privacy in the object or area searched, a plaintiff has no basis

for a complaint that his Fourth Amendment rights were violated. The Court has explicitly rejected the contention that public employees can never have a reasonable expectation of privacy in their workplace. O'Connor, 480 U.S. at 717. Instead, “[g]iven the great variety of work environments in the public sector, the question of whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis.” Id. at 718. In O'Connor, the Court in particular stated that expectations of privacy could be reduced by the presence of actual office practices and procedures, or by legitimate regulation, and that such expectations must be assessed in the context of the employment relation. Id. at 717. In light of these factors, the Court concludes that there is evidence from which a jury could determine that the plaintiffs in the instant case had a reasonable expectation of privacy in the boxes that they were removing from Olney as they prepared to permanently transfer to another school.

Once a public employee’s constitutionally protected privacy interest comes into play, the court must next determine the appropriate standard of reasonableness applicable to the search. Id. at 719. Such a determination requires a balancing of the nature and quality of the intrusion on the plaintiff’s privacy interests against the importance of the governmental interests alleged to justify the intrusion. Id.; see also Acton, 515 U.S. at 658-661 (considering first the character of the intrusion complained of, then the nature and immediacy of the

governmental concern at issue). Except in certain carefully defined classes of cases, searches conducted without consent or a valid search warrant are deemed unreasonable. O'Connor, 480 U.S. at 720. The Court has recognized exceptions to this rule, however, when "special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." Skinner v. Railway Labor Executives' Assn., 489 U.S. 602, 617 (1989) (quoting New Jersey v. T.L.O., 469 U.S. 325, 351 (1985) (Blackmun, J., concurring)). For instance, in New Jersey v. T.L.O., 469 U.S. at 341, the Court ruled that a search of a student's property by school officials did not require a warrant or probable cause, but instead must be measured against a "reasonableness under all the circumstances" standard. Likewise, in O'Connor, the Court held that in the public employment context, if an employer intrudes upon an employee's constitutionally protected privacy interest for "noninvestigatory, work-related purposes, as well as for investigations of work-related misconduct," the proper standard to judge such intrusions is not probable cause but rather "reasonableness under all the circumstances." 480 U.S. at 725-26. The Court reasoned that such a standard of reasonableness struck an appropriate balance between the competing privacy and governmental interests in that it neither burdened the efforts of government employers in ensuring the proper operation of the workplace, nor authorized arbitrary intrusions upon the privacy of public employees. Id. at 725. Under this standard, both the

inception and the scope of the intrusion must be reasonable in that (1) the intrusion must have been justified at its inception and (2) the search as actually conducted must have been reasonably related in scope to the circumstances which justified the intrusion in the first place. Id. at 726. The Court specifically chose not to address whether "individualized suspicion" of employee misconduct is an essential element of the standard of reasonableness, id. at 726, and likewise chose not to delineate the appropriate standard applicable when an employee is investigated for criminal misconduct or breaches of other nonwork-related statutory or regulatory standards, id. at 729*.

In the instant Motion, the parties expend much of their energy arguing over what standard should apply in this case, and in particular, whether the searches instituted in this case can be characterized as work-related. Plaintiffs contend that the searches were motivated by suspicion of criminal conduct, that is, theft, and that therefore there must have been probable cause and a search warrant before a teacher could be subjected to a search unless exigent circumstances existed. Plaintiffs also point to the fact that law enforcement officers, that is, School District Police Officers, conducted the searches, as further evidencing a criminal investigation as opposed to investigation of workplace misconduct. Defendants disagree, claiming that the searches were implemented for the work-related purpose of conducting an investigation of work-related misconduct, that is, to prevent loss of school property.

The Court determines that at this juncture the record is not fully developed enough as to the motivating purpose of the searches for a determination of what standard should apply. See O'Connor, 480 U.S. at 726-27 (finding that both the district and appellate courts erred in granting summary judgment when the record was inadequate and the parties were in dispute over the actual justification for the search). The record before this Court also contains differing characterizations of the search and in particular contains no mention of whether the searches would have led to criminal charges. Furthermore, the Court is satisfied that the plaintiffs have created a genuine issue of material fact as to the reasonableness of the searches implemented. Even if the Court were to apply the lower standard of "reasonableness under all the circumstances," there exists evidence from which a jury could find that the decision to search was not justified at its inception and that the search as actually conducted was not reasonably related in scope to the circumstances which justified the intrusion in the first place. Accordingly, the Court concludes that plaintiffs have created a triable issue with respect to the constitutionality of the searches in question.²

² The Court thus reserves its ruling as to the proper standard applicable to the searches in question. In lieu of holding an evidentiary hearing prior to trial, the Court will consolidate such a hearing with trial and expect the parties to present evidence at trial as to the justification for the search. The Court will issue its ruling on the applicable standard at the end of all evidence, and charge the jury appropriately.

b. Decision to Block School Exits

Defendants also argue that Ms. Yampolsky cannot be held individually liable for alleged constitutional violations stemming from the decision to block the school exits on June 11, 1997 because she had no knowledge of and no part in that decision. Plaintiffs, on the other hand, contend that Ms. Yampolsky is responsible for the reasonable and obvious consequences of her decision to implement the searches under the theory of "deliberate indifference." According to plaintiffs, Ms. Yampolsky can be held responsible for the constitutional violations stemming from the blocking of the school exits because she decided to implement the searches and because an inference can be drawn from the evidence of record that she knew that the original parameters of the search protocol were being exceeded. In other words, plaintiffs claim that Ms. Yampolsky can be found liable because she was deliberately indifferent to the reasonable and foreseeable consequences of her actions and because the blocking of the exits was a reasonable and foreseeable consequence of her decision to implement a search and her failure to clarify the search protocol to her officers.

As noted previously, the Third Circuit has permitted use of the "deliberate indifference" theory of liability both as to individual supervisors as well as in non-training or screening contexts. See Stoneking, 882 F.2d at 724-35; San Filippo, 30 F.d. at 445-46. In view of the above cases and the evidence of record, the Court concludes that plaintiffs have created a

triable issue with respect to Ms. Yampolsky's liability under a theory of "deliberate indifference." In particular, the Court notes the deposition testimony of plaintiff Jo Ann Adams. Ms. Adams telephoned Ms. Yampolsky on an occasion in May of 1997 when she had been stopped while attempting to carry numerous boxes out of the school and told that she needed a note from the principal. (See Pl.'s Resp. at Exh. I, p. 56-59.) When she told Ms. Yampolsky the situation, Ms. Yampolsky's response, after initial silence, was "I don't remember telling anybody to do that but I'll check with Izzy [Padron]." (Pl.'s Resp. at Exh. I, p. 57.) Ms. Adams was then kept waiting on the line for ten minutes. The Court finds that an inference can be drawn from this evidence that Ms. Yampolsky discovered that the parameters of her initial search protocol had been exceeded and failed to take corrective action to ensure that the search protocol would not be exceeded again. It was not until June 11, 1997 that the blockade was ordered, and a jury could infer that Ms. Yampolsky's failure to take any action during that time--after learning that searches were being conducted in a manner that she did not recall having ordered--amounted to deliberate indifference. As the Court finds that such a determination is for the jury, defendants' Motion is denied as to plaintiffs' § 1983 claims against Ms. Yampolsky.

2. Qualified Immunity

Defendants also claim that Ms. Yampolsky should be entitled to qualified immunity with respect to plaintiffs' § 1983 claims based on Harlow v. Fitzgerald, 457 U.S. 800 (1982). Under

Harlow, Ms. Yampolsky must show that her conduct did not “violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Id. at 818. Reasonableness under Harlow is measured by an objective standard; arguments that a defendant desired to handle or subjectively believed that she had handled the incident properly are irrelevant. Stoneking v. Bradford Area School District, 882 F.2d 720, 726 (3d Cir. 1989). A defendant is entitled to qualified immunity if a reasonable official in the defendant’s position at the relevant time could have believed, in light of clearly established law, that her conduct comported with established legal standards. Id.

The Court finds that summary judgment cannot be granted in view of the factual disputes present in the case and in view of this Court’s determination that the constitutionality of the searches must go to the jury. Furthermore, Ms. Yampolsky cannot with any degree of credibility claim that the Fourth Amendment’s prohibition against unreasonable searches is not clearly established law. Thus, whether, in light of this clearly established law, her conduct, that is, her decision to implement searches, comported with established legal standards, is an issue for the jury.

3. State Law Claims

Pursuant to the doctrine of supplemental jurisdiction, plaintiffs also brings state law tort claims of false imprisonment, defamation and false light, and invasion of privacy against Ms. Yampolsky. Defendants move for summary judgment as

to these claims, arguing, inter alia, that such claims are barred by the Pennsylvania Tort Claims Act, 42 Pa. Cons. Stat. Ann. § 8541 et seq., under which a state official's qualified immunity is waived only for "willful misconduct." Plaintiffs, on the other hand, argue that Ms. Yampolsky's actions can amount to willful misconduct.

"For purposes of the Tort Claims Act, 'willful misconduct' is synonymous with the term 'intentional tort.'" Kuzel v. Krause, 658 A.2d 856, 859 (Pa. Commw. Ct. 1995). In other words, the governmental employee must have desired to bring about the result that followed her conduct or be aware that it was substantially certain to follow. Id. Furthermore, under the Pennsylvania Supreme Court's reasoning in Renk v. City of Pittsburgh, 641 A.2d 289, 293-94 (Pa. 1994), "willful misconduct" has been interpreted as "willful misconduct aforethought." Id. at 860. Thus, plaintiffs must establish more than the intentional tort itself; they must also establish that the Ms. Yampolsky knew or should have known that it was improper or against public policy to implement searches and did so anyway. See id. Mere recklessness is insufficient for a finding of willful misconduct as well. See Renk, 641 A.2d at 294 (finding that a jury's award of punitive damages does not in itself establish willful misconduct since reckless conduct could be sufficient to support an award of punitives).

The Court finds that plaintiffs have not produced any evidence sufficient to meet this stringent definition of "willful

misconduct." The Court finds no evidence in the record from which a jury could conclude that Ms. Yampolsky knew or even should have known that the plaintiffs would be subject to false imprisonment, defamation and false light, or invasion of privacy, and that Ms. Yampolsky instituted the searches anyway. In other words, there is no evidence showing or even tending to show that Ms. Yampolsky engaged in willful misconduct towards the plaintiffs. While a jury could find that she violated the constitutional rights of the plaintiffs by implementing the searches and acquiescing in the broadening of the scope of the searches, there is no evidence suggesting that she willfully imprisoned, or defamed, or cast in a false light, or invaded the privacy of the plaintiffs. Thus, as the Court finds that Ms. Yampolsky did not engage in willful misconduct, she is entitled to qualified immunity under the Tort Claims Act, and the plaintiffs' state law claims against her cannot be permitted. Accordingly, judgment is entered in favor of Ms. Yampolsky on the plaintiffs' state law claims.

C. Liability of the School District

Finally, defendants move for summary judgment on plaintiffs' § 1983 claims against the School District. Under § 1983, a municipality cannot be held liable for violations of civil rights under a theory of respondeat superior. See Monell v. Department of Social Services, 436 U.S. 658, 692-95 (1978). Instead, a plaintiff must prove that the municipality itself supported the alleged violation of rights in that the

municipality's policy or custom, whether made by its lawmakers or those whose acts represent official policy, inflicted the injury. Id. at 694. Whether a particular official has final policymaking authority is a question of state law. City of St. Louis v. Praprotnik, 485 U.S. 112, 123 (1988) (plurality opinion); Pembauer v. City of Cincinnati, 475 U.S. 469, 482 (1986) (plurality opinion). Furthermore, although "official policy" normally refers to formal rules or understandings that establish fixed plans of action to be followed in similar situations consistently over time, a one-time course of action tailored to a particular situation may also represent "official policy" if determined by the authorized decisionmakers of the municipality. Pembauer, 475 U.S. at 481. "[W]here action is directed by those who establish governmental policy, the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly." Id. Municipal liability only attaches, however, where the decisionmaker has final authority to establish municipal policy with respect to the action ordered. Id. The simple fact that a decisionmaker possessed and exercised discretion in carrying out a particular function does not, without more, give rise to municipal liability. Id.

Defendants admit that Chief of Staff Germaine Ingram is a policymaker whose decisions can render the School District liable under § 1983. However, defendants contend, as in their arguments on behalf of Ms. Yampolsky, that the decision to institute searches was constitutional in and of itself. The

Court already having found that the constitutionality of the searches is an issue for the jury, determines that under the same reasoning the School District's liability as to the decision to implement searches must also be reserved for the jury.

On the other hand, the defendants argue that the decision to block the exits cannot be considered a decision of the School District because that decision was made by a lower level police officer, Lieutenant Canamucio, with at most the non-disagreement of John McLees, the Executive Director of School Safety, neither of whom, according to defendants, are policymakers who can bind the School District with their actions. Plaintiffs argue in turn, that the deliberate indifference of key policymakers, such as Ms. Ingram, can render the School District liable, and that Mr. McLees was a policymaker for § 1983 purposes.

The Court first addresses defendants' argument that Mr. McLees is not a final policymaker whose actions can bind the School District. Assuming without holding that Mr. McLees ratified Lieutenant Canamucio's decision to block the exits to the school, this Court nevertheless cannot find that Mr. McLees was a final decisionmaker or policymaker for § 1983 purposes, if only because this decision was immediately overturned by Chief of Staff Ingram. Once Ms. Ingram was informed of the blockade, she instructed Lieutenant Canamucio that the officers were to ask if boxes could be checked, and if permission was not granted, that the officers were to note the names of the individuals, the

number of boxes in their possession, and a description of the boxes, and then that they were to be allowed to go on their way. (See Def.'s Mot. for Summ. J. at Exh. M, p. 25.) Immediately thereafter, Lieutenant Canamucio notified the other officers to open up the driveways. (See id. at p. 25-26.) In view of these facts, Mr. McLees, despite his position and responsibilities, cannot be said to be a final policymaker whose acts can bind the School District for § 1983 purposes.

Plaintiffs contend, however, as in their previous arguments with respect to the Superintendent and Ms. Yampolsky, that the School District can be liable for the constitutional violations stemming from the blocking of the school exits on the theory that the School District, through its final policymakers, were deliberately indifferent to the risk that the constitutional rights of Olney teachers would be violated. This Court cannot agree, however, because no evidence supports such an inference.

The Court first notes that Ms. Yampolsky is not a final decisionmaker of the School District. Although plaintiffs attempt to clump Ms. Yampolsky and Ms. Ingram together, the Court is aware of no precedent for finding that a principal of a single school can be a policymaker for an entire School District, and the facts likewise do not permit such a finding as Ms. Yampolsky first sought and received authorization from Ms. Ingram before instituting the searches in question, and as the blockade was called off upon Ms. Ingram's order. Thus the pertinent inquiry is whether evidence exists from which a jury could find that Ms.

Ingram, as a policymaker of the School District, was deliberately indifferent to the known or obvious consequences of her decision to authorize the implementation of searches. Unlike the case for Ms. Yampolsky, however, there is no evidence showing or tending to show that Ms. Ingram had any notice of how the searches were being implemented or of the teachers' complaints. Though the Court could freely speculate, speculation cannot be the basis for surviving a motion for summary judgment where there is no evidence from which a jury could infer that Ms. Ingram was deliberately indifferent to a known or obvious consequence. In the absence of any evidence, the Court cannot find that the blockade of the school exits is, a priori, a known or obvious consequence, nor that Ms. Ingram deliberately ignored or failed to correct the search protocol. Accordingly, defendants' Motion is granted as to plaintiffs' § 1983 claims against the School District relating to the blocking of the exits. The issue of the School District's potential liability with respect to the constitutionality of the searches that it authorized remains for trial.

IV. Conclusion

In conclusion, defendants' Motion for Summary Judgment will be granted in part and denied in part for the aforementioned reasons.

Clarence C. Newcomer, J.

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

PHILADELPHIA FEDERATION OF	:	CIVIL ACTION
TEACHERS, et al.,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
THE SCHOOL DISTRICT OF	:	
PHILADELPHIA, et al.,	:	
Defendants.	:	NO. 97-4168

O R D E R

AND NOW, this day of April, 1998, upon consideration of defendants' Motion for Summary Judgment, and plaintiffs' response thereto, it is hereby ORDERED that said Motion is GRANTED in part and DENIED in part. It is further ORDERED that JUDGMENT is ENTERED in favor of defendants and against plaintiffs on plaintiffs' § 1983 claims against Superintendent David Hornbeck; plaintiffs' § 1983 claims against the School District relating to the blocking of the school exits; and plaintiffs' state law claims against Renee Yampolsky. The claims that remain for trial are (1) plaintiffs' § 1983 claims against Ms. Yampolsky with respect to the constitutionality of the searches and the blocking of the school exits, and (2) plaintiffs' § 1983 claims against the School District with respect to the constitutionality of the searches.

AND IT IS SO ORDERED.

Clarence C. Newcomer, J.