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

DEZHRA MORRELL, et al.	:	
Plaintiffs	:	CIVIL ACTION
v.	:	
	:	
CHICHESTER SCHOOL	:	
DISTRICT, et al.	:	
Defendants	:	NO. 04-2049

MEMORANDUM AND ORDER

McLaughlin, J. August 5, 2005

This action arises from the suspensions of Dezhra Morrell and Raymond Cleveland following a physical altercation between students at Chichester High School on April 23, 2004. Dezhra and Raymond, and their mothers, Odessa Morrell and Beatrice Cleveland, bring claims against Superintendent Michael Golde, Principal James Donnelly, and Assistant Principal Jeff Nesbitt resulting from these suspensions.

The complaint alleges the following claims: (1) Ms. Morrell and Ms. Cleveland, on behalf of Dezhra and Raymond, bring a Fourteenth Amendment Due Process Clause violation claim against Mr. Donnelly and Mr. Golde; (2) All the plaintiffs bring an intentional infliction of emotional distress claim against Mr. Donnelly; and (3) Ms. Morrell brings assault and battery claims against Mr. Nesbitt.[1]

[1]These are the remaining claims in the complaint following the Court's Order of August 17, 2004, dismissing all other claims in the complaint.

The defendants moved for summary judgment on all claims. The Court held oral argument on the summary judgment motion on May 5, 2005. The Court will grant the motion with respect to the Due Process Clause violation and the intentional infliction of emotional distress claims. The Court will deny the motion with respect to the assault and battery claims. Because the Court is granting summary judgment on the only federal claim, the Court declines to exercise supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over these remaining state law claims. The assault and battery claims will be dismissed.

I. Facts

The facts in the light most favorable to the plaintiffs are as follows.[2] On April 23, 2004, Raymond and M.F.[3], both students at Chichester High School, had a loud oral confrontation. Defs' Ex. 2, p. 16. M.F. pushed Raymond to the

[2]In deciding a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party. Summary judgment is appropriate if all of the evidence demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. Pro. 56(c). The moving party has the initial burden of demonstrating that no genuine issue of material fact exists. Once the moving party has satisfied this requirement, the non-moving party must present evidence that there is a genuine issue of material fact. The non-moving party may not simply rest on the pleadings, but must go beyond the pleadings in presenting evidence of a dispute of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986).

[3]The student's initials are used for confidentiality purposes.

floor and began stomping on him. Id. at. 19-20. William Smerigan, a teacher at the school, grabbed M.F. in a "bear hug" to move him away from Raymond. Id. at. 22-23. While Mr. Smerigan was restraining M.F., he observed Dezhra and another student hitting M.F. Id. at. 28-29, 33-34.

Mr. Smerigan took M.F., Raymond, Dezhra, and the other student to the office where Mr. Nesbitt asked them to write statements about what had occurred. Defs' Ex. 2 at 34; Defs' Ex. 6 at. 16-17. Mr. Nesbitt also asked Mr. Smerigan to write a statement about what he witnessed. Defs' Ex. 2 at. 16-17.

After Mr. Nesbitt read the statements from the students and Mr. Smerigan, he and Mr. Stankavage, another assistant principal, interviewed the students. Defs' Ex. 6 at. 17-18. Mr. Nesbitt then shared the results of the investigation with Mr. Donnelly.

Mr. Nesbitt called the students' parents and asked them to come to the school. Defs' Ex. 6 at 21. Mr. Nesbitt also informed the parents over the telephone that the students would be suspended pending an informal hearing. Id. at 21-23. When Ms. Morrell and Ms. Cleveland arrived at the school, Mr. Nesbitt asked them to come into his office to have a meeting regarding the incident of which their sons were involved. Id. at. 27-28.

Mr. Donnelly, Mr. Nesbitt, Mr. Stankavage, Ms. Morrell, Ms. Cleveland, Dezhra, and Raymond, as well as another student and his mother were present at the meeting. Id. at 27. Mr.

Donnelly primarily conducted the meeting. Id. at 30. At the beginning of the meeting, either Mr. Donnelly or Mr. Nesbitt explained what an informal hearing was. Defs' Ex. 11 at 60. Mr. Donnelly began explaining to the parents what occurred, and he read to the parents the statement from Mr. Smerigan. Defs' Ex. 6 at 31, 60.

The parents asked questions about the alleged incident and screamed that they wanted Mr. Smerigan to be present at the meeting. Id. at 31. Because Mr. Smerigan was teaching, Mr. Donnelly offered to have Mr. Smerigan come to the office to talk to them for three minutes or to talk to them after school. They, however, refused the offer because they wanted to speak to him immediately and for a longer period of time. Id.

Mr. Donnelly told Dezhra and Ms. Morrell that Dezhra was being suspended for fighting based on Mr. Smerigan's statement. Defs' Ex. 10 at 86. Ms. Morrell yelled at Mr. Donnelly in the meeting, saying, "My son said he didn't hit anybody." Defs' Ex. 11 at 60-61.

The administrators also told Raymond and his mother that Raymond would be suspended after explaining what happened during the incident. At that point, the administrators informed him that he would be receiving 10 days. It was later changed to 3 days. Raymond repeatedly told the administrators that he did not do anything. Defs' Ex. 4 at 47.

At some point during the meeting, Mr. Donnelly advised

the parents that he heard the students were involved with a gang, known as L.T.N. Defs' Ex. 10 at 82. L.T.N. is a name that Dezhra, Raymond, and others from their neighborhood made up. Id. at 76-77. In explaining what L.T.N. meant, Mr. Donnelly said it stood for "Lower Trainer...I'm just going to say it, niggers." Defs' Ex. 4 at 61. Mr. Donnelly told them that he was going to get rid of the "T" and the "N" from the school. Defs' Ex. 10 at 75-76; Defs' Ex. 14 at 84.

During the course of the meeting, Mr. Donnelly became angry because of the parents' questioning. Mr. Donnelly told the parents to leave his office. Defs' Ex. 14 at 96. Ms. Morrell continued to ask Mr. Donnelly why the students were being suspended. Mr. Nesbitt then grabbed Ms. Morrell's arm and attempted to remove her from his office. Id. at 102.

On April 26, 2004, the school sent letters to the parents of the students involved in the incident, notifying them that their sons were being suspended. Each letter included a referral form documenting the student's behavior and stating the length of the suspension. Defs' Exs. at 18-21. Mr. Donnelly imposed a 10-day suspension for Dezhra because the investigation concluded that he had physical contact with M.F. Mr. Donnelly imposed a 3-day suspension for Raymond because he had a verbal confrontation. Defs' Ex. 11 at 46.

II. Discussion

The defendants make three arguments in their motion for summary judgment on the procedural due process claim. They argue that: (1) the plaintiffs' procedural due process rights have not been violated; (2) there is no claim against Mr. Golde because he cannot be held liable for the conduct of school employees; and (3) Mr. Golde and Mr. Donnelly are entitled to qualified immunity. The defendants argue that the Court should grant summary judgment on the intentional infliction of emotional distress claim because Mr. Donnelly's conduct was not outrageous, and the plaintiffs cannot support their claims with medical evidence. Finally, Mr. Nesbitt seeks summary judgment on the assault and battery claims because (1) he did not intend to harm or offend Ms. Morrell; (2) his contact was not offensive to a reasonable person; (3) and his contact was privileged under the circumstances.

A. Procedural Due Process

In Goss v. Lopez, 419 U.S. 565 (1975), the Supreme Court determined that students facing temporary suspensions have interests qualifying for protection of the Due Process Clause. The Court described the process that is constitutionally required when a student is suspended from school for 10 days or less:

> [D]ue process requires...that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side

of the story.

Id. at 581.

The Court held only that, in being given an opportunity to explain his version of the facts, the student first be told what he is accused of doing and the basis of the accusation. Id. at 582. The Court found that there does not have to be a delay between the notice and the hearing. Id. The Court also stopped short of construing the Due Process Clause to require that the hearings afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call witnesses. Id. at 583.

The procedural due process requirements in connection with short suspensions, such as these, may be satisfied by informal procedures. In S.G. v. Sayreville Bd. of Educ., 333 F.3d 417 (3d Cir. 2003), a father of a kindergarten student brought a civil rights action against the Sayreville Board of Education, the Superintendent of Schools, and the principal of the school. He claimed that they violated his son's procedural due process rights by suspending him from school for uttering the statement, "I'm going to shoot you" to his friends while they were playing at recess.

Sayerville Board of Educ. found that a short discussion with the student regarding the incident fulfilled due process requirements. Id. at 424. A teacher took the boys and his friends to the principal's office. Id. at 419. The school

attempted to contact the students' parents, but was unable to do so. The principal asked the boy and his friends what had occurred, and they told her that they were "playing guns." This informal procedure was all that was required to satisfy due process requirements.

Under Goss and Sayreville Board of Educ., the defendants afforded the students with at least the minimum level of due process in connection with their suspensions. The plaintiffs do not dispute the specific efforts that the defendants took to provide due process. Mr. Smerigan brought Raymond and Dezhra to the office immediately after the fight on April 23, 2004. Mr. Nesbitt allowed them to prepare written statements about their version of the incident. After reading the stories from the students, Mr. Nesbitt and another assistant principal interviewed the students and Mr. Smerigan about the incident. The school administrators allowed the students' mothers to participate in a meeting to discuss the suspensions. Mr. Donnelly and Mr. Nesbitt advised Dezhra, Raymond, and their mothers of what the investigation concluded. Defs' Ex. 11 at 60. Mr. Donnelly read Mr. Smerigan's statement, which was the basis of the suspension decision. Ms. Morrell, Ms. Cleveland, Dezrha, and Raymond had the opportunity to ask questions and to deny the allegations.

The defendants satisfied each of the procedural due process requirements under Goss. The administrators put the

students on notice that they would be suspended. They provided the students and their parents with the basis for the suspension, and allowed them more than one opportunity to give their version of the events. Goss does not require anything more.

The plaintiffs argue that they did not receive due process because Mr. Donnelly would not allow them to read Mr. Smerigan's statement or to meet with him. They also argue that there is a dispute as to what day Mr. Smerigan drafted the statement. The plaintiffs contend that it was dated April 27, 2004, and therefore drafted after the incident happened.

The dispute regarding Mr. Smerigan's statement does not impact the due process inquiry. First, the statement is dated April 22, 2004, not April 27, 2004. See Pls' Ex. A. Although the date is incorrect, this factual issue, without more, does not give rise to the inference that it was prepared after the incident. Second, due process did not require Mr. Donnelly to allow the parents to speak to Mr. Smerigan or to review his statement. Under Goss, a student, let alone a parent, has no right to confront or cross-examine witnesses regarding the charges against him.

The plaintiffs also argue that there was never a meaningful opportunity to be heard in this matter. However, the plaintiffs do not cite factual support from the record for this contention. Because there is no dispute regarding the measures that the defendants took to satisfy due process requirements, the

defendants are entitled to summary judgment on this claim.

The Court does not need to reach the issues as to whether Mr. Golde may be held liable for the conduct of school employees or whether the defendants may invoke qualified immunity because there is no constitutional violation.

B. Intentional Infliction of Emotional Distress

The plaintiffs bring a claim of intentional infliction of emotional distress (IIED) against Mr. Donnelly.[4] The plaintiffs allegedly have suffered fatigue, worry, anguish, migraines, and humiliation as a result of the events surrounding the suspensions.

Section 46 of the Restatement (Second) of Torts sets forth the minimum elements for a claim of IIED. See Taylor v. Albert Einstein Medical Center, 562 Pa. 176, 181 (2000). According to section 46, "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm."

Under Pennsylvania law, "the gravamen of the tort of intentional infliction of emotional distress is that the conduct

[4]The plaintiffs argue that the conduct of Mr. Nesbitt and Mr. Donnelly make them liable for IIED. However, the IIED claim has been dismissed against Mr. Nesbitt.

complained of must be of an 'extreme or outrageous type.'" See Cox v. Keystone Carbon Company, 861 F.2d 390, 395 (3d Cir. 1988) (quoting, Rinehimer v. Luzerne County Community College, 372 Pa. Super. 480, 494 (1988)). The conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society. Id. at 395.

The plaintiffs argue that the defendant's conduct in using the words "nigger", "you people," as well as his yelling and the attempt to throw Ms. Morrell out of the office go beyond the bounds of decency, which no person should be expected to tolerate in a civilized society.

The plaintiffs do not provide factual support in the record for the contention that Mr. Donnelly called them "niggers" or referred to them as "you people" at any time during the April 23, 2004 meeting. Mr. Donnelly said the word "nigger" once when referring to the meaning of L.T.N. Mr. Donnelly allegedly said he was getting rid of the "T" and the "N" from the school, referring to the group name that Dezrha and Raymond made up.

The plaintiffs have not put forth sufficient evidence in the record to raise a question as to whether Mr. Donnelly's behavior rose to the level of outrageousness. First, there is no evidence in the record that Mr. Donnelly characterized the plaintiffs or referred to them in a racially offensive way. Second, Mr. Donnelly's conduct in yelling and asking the

plaintiffs to leave is not outrageous in light of the fact that the parents contributed to the argument by yelling and making demands.

It is understandable that the plaintiffs would be upset with the course of events throughout the day and the outcome of the meeting with Mr. Donnelly. However, the conduct of which they complain cannot be regarded as so atrocious and utterly intolerable in a civilized society.

Even assuming that Mr. Donnelly's conduct was outrageous, the plaintiffs cannot recover because they have not provided medical evidence in support of severe emotional distress. In Kazatsky v. King David Memorial Park, Inc., 515 Pa. 183, 197 (Pa. 1987), the Pennsylvania Supreme Court rejected the plaintiffs' IIED claim and found that given the advanced state of medical science, "it is unwise and unnecessary to permit recovery to be predicated on an inference based on the defendant's 'outrageousness' without expert medical confirmation that the plaintiff actually suffered the claimed distress." Id. The court determined that to recover damages for severe emotional distress caused by the intentional or extreme conduct of another, the existence of the alleged emotional distress had to be supported by competent medical evidence. Id.

Here, it is undisputed that the plaintiffs never sought medical assistance and have no medical evidence to support their

claimed distress. Because the plaintiffs cannot provide competent medical evidence of emotional distress and Mr. Donnelly's conduct did not rise to the level of outrageousness, the Court will grant summary judgment on this claim.[5]

C. Assault and Battery

Battery is defined by Pennsylvania courts as harmful or offensive contact. Dalyrample v. Brown, 701 A.2d 164, 170 (Pa. 1997). An assault has been described as an action intended to put a person into apprehension of an immediate battery. Cuccinotti v. Orti, 159 A.2d 216, 217 (Pa. 1960).

Ms. Morrell claims that Mr. Nesbitt is liable for assault and battery because he grabbed her arm and attempted to remove her from the office. She argues that Mr. Nesbitt's conduct was an offensive and unwanted touching, and that the touching was a means of intimidation.

The disputed facts regarding the incident in the office raise a question as to whether Mr. Nesbitt committed an assault and battery against Ms. Morrell. Mr. Nesbitt contends that he

[5]The plaintiffs seek punitive damages in their complaint. The defendants argue in their motion for summary judgment that the Court should dismiss the plaintiffs' request for punitive damages because none of the claims against the defendants rises to the level of outrageousness. Because the Court is dismissing the IIED claim, the issue of whether the plaintiffs are entitled to punitive damages is moot. The plaintiffs argue that they are entitled to punitive damages due to Mr. Donnelly's conduct only. See Pls' Opp. Mot Summ. J. at 10.

touched her shoulder blade, simply in an attempt to guide her from the room after she had been asked to leave. The plaintiff, in contrast, claims that Mr. Nesbitt grabbed her arm, trying to remove her forcibly from the office.

Grabbing one's arm in an attempt to remove one from a room would suffice as a harmful and offensive contact. Given the yelling and screaming that precipitated Mr. Nesbitt touching Ms. Morrell, a jury could conclude that Mr. Nesbitt intended to put Ms. Morrell into apprehension of an offensive contact, and that he caused an offensive contact by grabbing her arm to remove her from the office. Due to the factual issues in dispute, summary judgment is inappropriate on the theory that there is insufficient evidence to establish the requirements of assault and battery.

The defendant also argues that Mr. Nesbitt's contact with Ms. Morrell was privileged because once she had already been asked to leave the office, she became a trespasser. The defendant argues that he had the absolute privilege to eject Ms. Morrell from the office because he was faced with an irate parent who would not leave when requested and who presented a threat to the safety of the school employees.

The defendant does not present legal support for his contention that Mr. Donnelly was privileged to eject Ms. Morrell for being a trespasser. Further, due to the disputed facts

surrounding Mr. Nesbitt's contact with Ms. Morrell's person, summary judgment is inappropriate on the privilege theory as well.

The Court declines to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over these state law claims, and the Court will dismiss these claims.

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DEZHRA MORRELL, et al. Plaintiffs	:	CIVIL ACTION
v.	:	
CHICHESTER SCHOOL	:	NO. 04-2049

DISTRICT, et al. :
Defendants :

ORDER

AND NOW, this 5th day of August, 2005, upon consideration of the defendants' Motion for Summary Judgment (Docket No. 25), all responses thereto, and after oral argument held on May 5, 2005, IT IS HEREBY ORDERED that the motion is GRANTED in part and DENIED in part for the reasons stated in a memorandum of today's date as follows:

1. The motion is GRANTED with respect to the violation of the Due Process Clause against James Donnelly and Michael Golde. Judgment is entered in favor of the defendants, James Donnelly and Michael Golde.

2. The motion is GRANTED as to the intentional infliction of emotional distress claim against James Donnelly. Judgment is entered in favor of the defendant, James Donnelly.

3. The motion is DENIED with respect to the assault and battery claims against Jeff Nesbitt.

IT IS FURTHER ORDERED that the assault and battery claims against Jeff Nesbitt are dismissed because the Court declines to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.