

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

ASHLEY HUTCHINSON-HARPER and
TERRY HARPER, on behalf of their
minor child, J.H.,

Plaintiffs,

v.

JEFFERSON PARISH SCHOOL
BOARD, a public entity,
501 Manhattan Blvd
Harvey, LA 70058, and

JEFFERSON PARISH SHERIFF
JOSEPH P. LOPINTO, III in his official
capacity,
1233 Westbank Expressway
Harvey, LA 70058,

Defendants.

CIVIL ACTION NO.: 22-1271

SECTION: T

DIVISION: 4

JUDGE: GREG G. GUIDRY

MAGISTRATE JUDGE:
KAREN WELLS ROBY

JURY DEMAND

JOINT STATUS REPORT OF THE PARTIES

I. Parties

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II. Pending Motions

Currently, there are no motions pending in this case.

III. Conference Dates, Trial Date and Trial Details

The trial in this case was originally set to commence on April 17, 2023. However, on December 8, 2022, the Court issued an order continuing the trial date. A scheduling conference was held on December 24, 2022, at 11 a.m. via phone, and a revised scheduling order was issued on December 27, 2022. The final pre-trial conference will be held on October 11, 2023, at 1:30 p.m. via phone. The trial, which will be a jury trial, will commence on October 30, 2023, at 9:30 a.m. The trial is estimated to last 5 days.

A settlement conference before Magistrate Judge Karen Wells Roby is currently scheduled to be held on March 1, 2023, at 2 p.m. However, the parties plan to notify the Magistrate that the trial has been continued in accordance with the instructions in R. Doc. 32.

IV. Brief Description of Factual and Legal Issues Underlying Dispute

Brief description of the Plaintiffs' position:

Plaintiffs generally allege the following facts: On May 13, 2021, Plaintiffs' minor child, J.H., who was 10 years old at the time, was bullied at C.T. Janet Elementary School by another student. J.H. has ADHD, ODD, Mood Disorder, and Emotional Outburst, and he is sensitive to bullying interactions. J.H. became upset to the point of yelling, but his teacher did nothing to stop the bullying and reprimanded J.H. Upset by these events, J.H. went to eat his lunch in the office of C.T. Janet Principal Karen Doyle, which he routinely did to avoid bullying during the lunch period. J.H., still experiencing stress, refused to eat his lunch. Doyle and other administrators demanded that J.H. eat or else he would go hungry for the rest of the day. J.H., in response to his growing frustration, threw a ball of yarn, hand sanitizer, and a tissue box. Doyle and her secretary threatened to call J.H.'s mother. Further agitated by this threat, J.H. struck Doyle, who did not fall to the ground or otherwise appear to be injured.

Though J.H. was clearly exhibiting behaviors that were a manifestation of his disabilities, no one at the school attempted to calm him, contact a counselor for assistance, or even ask him why he was upset. J.H. then walked toward the cafeteria, where he threw a trashcan into a window, breaking it. J.H. then walked away from the school, in and around the school's grounds. Though J.H. was clearly distraught, crying, and non-communicative, school administrators placed four calls to 911, rather than attempting to assuage the symptoms of his disabilities. Some of administrators who placed these calls informed dispatch that J.H. had a disability. Dispatch alerted the responding officers from the Jefferson Parish Sheriff's Office (Sgt. Steven Trapani, Deputy Gary Bavaret, Deputy Colin Dunning, and Deputy Brandon Cheron) that J.H. was on medication.

When the officers arrived at the school, J.H. did not pose a threat to himself or others. He was walking away from school with tears streaming down his face. He was visibly scared and in distress. Though the officers had been told J.H. was on medication, his behavior was such that his disabilities were also apparent. Rather than attempting to de-escalate the situation—and before speaking with anyone at the school about J.H. or his disabilities—the officers responded with force. Sgt. Trapani grabbed J.H.'s arm and pulled it behind his back. He then placed J.H. in a chokehold and pulled him to the ground. J.H., a ten-year-old fourth grader, was 4 feet 5 inches tall and weighed 93 pounds at the time. He was fearful for his life. One of J.H.'s neighbors, Ms. Ashley Jackson, witnessed the incident and told Sgt. Trapani that physical restraint was not necessary to calm J.H. However, the officer ignored her and proceeded to handcuff J.H. and take him to the principal's office for interrogation. Ms. Jackson tried to follow J.H. and the officers, but school administrators denied her access.

The school only called J.H.'s mother, Plaintiff Ashley Hutchinson-Harper, two times within a ten-minute timeframe. However, she is unable to drive, and her husband, Plaintiff Terry Harper, was at work. After Ms. Ashley Jackson witnessed the police physically restrain J.H., she drove to pick up Plaintiff Ashley Hutchinson-Harper. When Plaintiff Ashley Hutchinson-Harper arrived at the school, she was told that she could not enter the school to speak with J.H. or the officers. J.H. was subjected to interrogation by the officers for over an hour and a half. The officers verbally abused J.H. and kept him restrained in handcuffs for the duration of the questioning. After the interrogation, officers brought J.H. outside and made him sit on the curb in handcuffs, where he was briefly allowed to see his mother, father, and grandparents. J.H. was distraught and terrified, but his parents were not allowed to take him home. Instead, the officers took him to the Jefferson Parish Juvenile Assessment Center and booked J.H. on five criminal charges, all of which were later dropped. J.H. was placed in a cell for approximately four hours and was not allowed to see his parents. After he was released later that evening, his parents took him to Children's Hospital for evaluation.

As a direct result of Defendants' discriminatory conduct, J.H. has suffered significant distress and trauma. J.H.'s anxiety is heightened, and he immediately becomes fearful when he sees or interacts with police officers. Aside from the economic hardship imposed on J.H.'s family because of his arrest, J.H.'s loved ones have noticed a decrease in his overall demeanor, affect, and sociability. Plaintiffs believe the emotional distress J.H. has experienced since May 13, 2021, is directly attributable to Defendants' failure to accommodate his disabilities, for which they had constructive and actual notice. C.T. Janet Elementary School is within the Jefferson Parish School System and is controlled by the Jefferson Parish School Board. Sheriff Joseph P.

Lopinto, III, in his official capacity, is the chief law enforcement officer of Jefferson Parish and the Jefferson Parish Sheriff's Office.

Brief description of the position of Jefferson Parish School Board:

As a starting point, plaintiffs' general allegations appearing in Part IV. of this Joint Status Report, and indeed in its complaint, are for the most part disputed by the defendant Jefferson Parish School Board (JPSB). With the caveat that its description is just that, a brief description, the JPSB states the following.

At this point, the JPSB is not aware of any bullying incident involving J.H. that occurred at C.T. Janet on May 13, 2021. Rather, on that date, J.H., while in the school office, became upset in connection with his dissatisfaction with his lunch. Numerous efforts were made to rectify the lunch situation, none of which involved threats of calling J.H.'s mother in an effort to make him eat his lunch. To the contrary, efforts were made by Janet staff to get J.H. an alternative lunch.

Thereafter, J.H., for lack of a better explanation, embarked on a series of disruptive and dangerous behaviors. He began to throw things, kick doors and punch things. He wandered around the school campus and into the school yard. From the beginning, he was followed around by the school principal Karen Doyle and school social worker/counselor, Pearlie Griffin, as per the request of Karen Doyle. Throughout, Doyle and Griffin made repeated attempts to speak to J.H., in an effort to calm him down. In fact, numerous attempts were made by a number of staff members, teachers and coaches to both calm J.H. down, and otherwise monitor his behavior. Initially these grew out of concerns for his own safety.

At some point, as demonstrated by two incidents, the gravamen of the situation changed. Of course, this should not be taken to imply that J.H.'s eloping from campus is not a serious and grave matter, for it is a direct threat to his safety. In one instance, while in the school courtyard, J.H. picked up a garbage can and threw it through the cafeteria window, shattering the window. Students were present both in the cafeteria and in the courtyard at that time. Not only was there fear for J.H.'s safety, but for the safety of the other students at C.T. Janet. Prior to this time calls were indeed made to 911 for assistance. It is not denied that calls were made seeking police assistance; however, the seriousness of the entire situation that was unfolding dictated such action. Again, included was J.H.'s having eloped from the school campus on multiple occasions. In any event, following the trash can incident, contact was made with the office and a request made to call for police assistance, and that J.H.'s mother again be called to come and assist to calm J.H. down, or to physically remove him from school. This was done.

In the other instance, J.H. had entered the office and came up to Karen Doyle from behind, violently striking Karen Doyle on the side of her head and face, knocking her into a file cabinet. The cabinet broke her otherwise fall to the floor and a struggle ensued. Doyle asked someone on the staff to call J.H.'s mother and to call the police as well. This was done.

Again, calls had been made to J.H.'s mother for her assistance in an effort to either calm J.H. down or remove him to his home. In fact, multiple calls, more than four in number, were made to 911 Emergency throughout the course of these events of May 13, 2021 by as many as four separate staff members at C.T. Janet. One staff member admits she, herself, made 3 or 4 calls to 911. When asked by the dispatcher what the child's special needs were, her reply was that this was a special education student. Another staff member stated that she, too, called at

which time she told the dispatcher that the student involved was a Special Education student, but was unsure of his age.

Ultimately, a single police officer arrived at first. It was at this point that Karen Doyle and everyone else on the scene at C.T. Janet deferred to the police. As concerns the police, if J.H. was questioned or interrogated by the JPSO while in the counselor's office or at any other time, this is unknown by anyone at C. T. Janet and the JPSB. As stated previously, once the JPSO arrived, the JPSB and its employees deferred to the JPSO and followed any instructions given by the police. One such instruction was that no one be allowed to enter the school building. These instructions were followed. It should be added that employees of the JPSB did observe that as J.H. was being escorted off campus by the JPSO, his parents and others were allowed to meet and interact with him at or near the flagpole located in the front yard of the school campus.

As can be deduced from the above, J.H.'s acts were hazardous, sometimes violent, and dangerous. Numerous attempts were made by the staff at C.T. Janet to calm J.H. down, including allowing him to calm down on his own. In fact, contrary to the allegations of the plaintiffs, the JPSB did indeed practice de-escalation. As to interaction between J.H. and anyone, including his parents, the JPSB deferred to the police on site. The JPSB does not deny that 911 Emergency was called, nor that police assistance was requested. It is denied that this was out of deliberate or reckless indifference. It is denied that this was done in an effort to intentionally discriminate or cause harm to a special education student, and in particular doing so as a result of, or rather because of his particular disability. The calls were made to protect J.H. himself, to protect the other students at C.T. Janet, to protect the school staff from potential harm at the hands of J.H., and to report the commission of a battery upon the principal. All had their genesis in J.H.'s having eloped from campus, having tossed a trash can through the window of the occupied

cafeteria, and having violently attacked and struck, without warning, the school principal from behind. It should be noted that it was not until the time of J.H.'s Manifestation Determination Review (MDR) of May 24, 2021 that the JPSB, or for that matter anyone at C.T. Janet, learned of J.H.'s new diagnosis of Oppositional Defiant Disorder, which subsequently was incorporated in J.H.'s IEP.

Brief description of the position of Sheriff Joseph P. Lopinto, III:

On May 13, 2021, deputies of the Jefferson Parish Sheriff's Office were dispatched to the C.T. Janet School located at 2500 Bent Tree Blvd. in Marrero, Louisiana. The deputies were dispatched there in response to a 911 call requesting police assistance. The information provided by the 911 operator was that an unruly juvenile student had physically attacked the principal of the school. The juvenile also had thrown a garbage can through one of the windows to the school cafeteria and then fled the schoolyard.

Upon arrival, the JPSO officers were able to locate the juvenile and, after a brief struggle, the juvenile was taken into custody with the use of reasonable force to overcome his resistance. The juvenile remained belligerent and resistant throughout the on-scene investigation as well as during his transportation to the Juvenile Assessment Center.

The juvenile, referred to in Plaintiffs' Complaint as J.H., was charged with violations of R.S. 14:34.3 (battery on a school teacher), one count of violating R.S. 14:56B(1) (simple criminal damage), one count of violating of R.S. 14: 108 (resisting an officer), and one count of violating R.S. 14:34.2 (battery on a police officer).

Contrary to what is alleged in the Plaintiffs' Complaint, at no time prior to or during the incident in question were any of the JPSO officers advised that the juvenile in question suffered

from any sort of “disability” as defined in the Americans with Disabilities Act, nor was any accommodation for any such disability requested.

It is the position of Sheriff Joseph P. Lopinto, III that his officers were summoned to the scene in response to a citizen complaint to which they responded and performed the duties required of them in bringing the situation under control.

V. Discovery

The parties exchanged Initial Disclosures by the October 12, 2022 deadline. Plaintiffs served Interrogatories and Requests for Production for both Defendants on October 12, 2022. Defendant Jefferson Parish School Board provided responses to Plaintiffs’ Interrogatories and Requests for Production on November 11, 2022. Defendant Joseph P. Lopinto, III, provided responses to Plaintiffs’ Interrogatories and Requests for Production on November 17, 2022. Plaintiffs have reviewed those responses and have discussed deficiencies with both Defendants. Additionally, Magistrate Judge Roby entered a Joint Protective Order governing the use of sensitive personal and educational records on January 18, 2023. Thus, Plaintiffs served Defendant Jefferson Parish School Board with a subpoena on February 3, 2023, requesting production of some sensitive educational records that were originally requested in Plaintiffs’ Interrogatories and Requests for Production.

Defendant Jefferson Parish School Board served Interrogatories and Requests for Production to the Plaintiffs on November 21, 2022. Plaintiffs provided their responses on December 21, 2022. Plaintiffs supplemented their responses on January 19, 2023, and again on January 20, 2023 in order to produce documents now covered by the Joint Protective Order.

Plaintiffs conducted four depositions of Defendants' witnesses on January 17 and 18, 2023. Defendants conducted one deposition of a Plaintiffs' witness on January 19, 2023. Additionally, Defendants began conducting the deposition of Plaintiff Ashley Hutchinson-Harper on January 19, 2023, but upon Plaintiffs' request, the deposition was continued until March 7, 2023. On March 7, 2023, Defendants also plan to depose Plaintiff Terry Harper. Plaintiffs plan to conduct four additional depositions of Defendants' witnesses on March 8 and 14, 2023. Once these depositions are completed, the parties intend to conduct additional written discovery, where necessary and will evaluate the need for any additional depositions. The deadline for the completion of discovery in this case is August 28, 2023.

VI. Settlement Negotiations

To date, there have been no settlement negotiations in this case.

/s/ M. Lucia Blacksher Ranier

Date: February 13, 2023

/s/ Olden C. Toups, Jr.

Date: February 13, 2023

/s/ Daniel R. Martiny

Date: February 13, 2023