

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

D.B., a minor, by and through his parent)
and guardian, SHARON BROGDON,)
and SHANA MILLER,)
)
Plaintiffs,)
)
v.) No.: 3:06-CV-86
) (VARLAN/SHIRLEY)
STEVE LAFON, in his individual and)
official capacities; MARK WILLIAMSON,)
in his individual and official capacities, and)
BLOUNT COUNTY SCHOOL BOARD,)
)
Defendants.)

MEMORANDUM OPINION

Plaintiffs, two students at William Blount High School in Blount County, Tennessee, allege defendants, Blount County school officials, harassed them in retaliation for D.B.’s initiation of a federal civil action against defendants Lafon and Blount County School Board.

This civil action is now before the Court for consideration of plaintiffs’ motion for preliminary injunction and temporary restraining order [Doc. 2]. Plaintiffs seek an order requiring that:

Shana Miller be transferred out of defendant Williamson’s class, that defendants Williamson and Lafon stay at least fifty feet away from Ms. Miller and DB, that defendants Williamson and Lafon make no attempt to communicate directly or indirectly with Ms. Miller or DB, and that any administrative or disciplinary matters involving Shana or DB be handled by school officials other than defendants Williamson or Lafon.

Doc. 2 at 1-2. Plaintiffs argue that a preliminary injunction is appropriate because Ms. Miller will suffer irreparable harm without it, a preliminary injunction would have a minimal effect

on defendants, plaintiffs are likely to succeed on the merits of their claims, and imposition of a preliminary injunction is not adverse to the public interest. *See id.* at 4-7. Defendants respond in opposition to the motion, generally rebutting each of plaintiffs' arguments. *See* Doc. 7 at 3-9.

The issues have been briefed, the Court has reviewed the record and legal authorities, and the motion is now ripe for disposition. For the reasons discussed herein, the Court will deny plaintiffs' motion.

I. Relevant Facts

The Blount County Board of Education has adopted a dress code that applies to all high school students. *See* Doc. 7-4 at 5. That dress code prohibits students from wearing certain items, including the following:

b. torn, cut-off, or damaged clothing.

....

f. clothing which exhibits written, pictorial, or implied references to illegal substances, drugs or alcohol, negative slogans, vulgarities, or causes disruption to the educational process; wearing apparel that is sexually suggestive or that features crude or vulgar commercial lettering or printing and/or pictures that depict drugs, tobacco, alcohol beverages, racial/ethnic slurs or gang affiliation

....

Id.

On March 2, 2006, plaintiff D.B. and two other students initiated a federal civil action in this Court alleging violations of their First and Fourteenth Amendment rights because defendants Lafon and Blount County School Board prohibited them from wearing clothing

at school that depicts the confederate battle flag. *See D.B. ex rel. Brogdon v. Lafon, et al.*, 3:06-CV-75 (E.D. Tenn.). The defendants in that case banned depictions of the confederate battle flag because it allegedly “causes disruption to the educational process,” which violates section 4f of the dress code. Neither plaintiff Miller or defendant Williamson are parties to that civil action. *See id.*

On March 3, 2006, shortly after defendant Lafon was served with process in that case, defendant Williamson sent plaintiff Miller, who is plaintiff D.B.’s girlfriend, and several other students who are not parties to either civil action to the principal’s office for reported violations of the dress code. *See Doc. 1 at 3.* There is no allegation that plaintiff D.B. was among the group sent to the principal’s office. *See id.* While at the principal’s office, defendant Lafon told plaintiff Miller that her ripped jeans violated the dress code, presumably referring to section 4b of the dress code. *See id.*

Plaintiffs allege that defendant Lafon “forced Miller to pose while Lafon took close-up pictures of Miller’s thighs.” *Id.* at 3. In a declaration in support of the complaint, plaintiff Miller alleges that she began to cry when defendant Lafon took the photographs and that she told defendant Lafon she felt humiliated, but defendant Lafon responded by threatening to escort her from the school grounds if she did not cooperate. *Doc. 1-2 at 1.* Plaintiff Miller also states that defendant Lafon told her to lift her arms and continued taking pictures despite her objections. *Id.* Plaintiff Miller also notes that this incident took place where no other students or school officials were present and that none of the other students were photographed in this way. *Id.* at 2. Finally, as a result of these events, plaintiff Miller

complains that she has suffered humiliation, which has required her to seek medical attention and has prevented her from returning to school. *Id.* According to an affidavit submitted by defendant Williamson in support of an unrelated motion, plaintiff Miller transferred to another high school on March 22, 2006. *See* Doc. 11-3 at 2.

Plaintiffs do not allege that plaintiff D.B. experienced a similar incident, but the complaint alleges, “The events described above represent an escalation of harassment directed toward the plaintiffs and other students involved in litigation [related to the confederate battle flag] in this Court” Doc. 1 at 4. Thus, based on the events just discussed, plaintiffs allege three violations of plaintiffs’ civil rights, actionable under 42 U.S.C. § 1983. Specifically, plaintiffs allege a violation of their First Amendment right to petition for redress of grievances and two violations of Fourteenth Amendment Due Process Clause arising from plaintiffs’ denial of a public education and enforcement of a vague and overbroad dress code policy. *See id.* at 4-7. Plaintiffs also allege the Tennessee torts of intentional infliction of emotional distress, false imprisonment, and assault. *See id.* at 7-8.

In response to the instant motion, defendant Lafon filed an affidavit in which he generally denies plaintiffs’ characterization of the incident involving plaintiff Miller. *See* Doc. 7-2 at 1-3. He explains that defendant Williamson sent four students, including plaintiff Miller, to the Student Affairs Office for violating the dress code. *See id.* at 2. Defendant Lafon asserts that he explained to the students that their options for remedying the dress code violation were to change clothes, participate in in-school suspension, or go home. *See id.* According to defendant Lafon, three students chose one of the options, but plaintiff Miller

protested that she had not violated the dress code. *See id.* Nevertheless, plaintiff Miller asked whether she could get a change of clothes from her boyfriend, and defendant Lafon said that she could, but she would have to wait until he came to the office. *See id.*

Defendant Lafon states that plaintiff Miller continued to protest and “pressed the issue for approximately twenty or thirty minutes.” *Id.* at 2. Defendant Lafon asked Ms. Jennifer Moore, the substitute assistant principal, to “give her a second opinion.” *Id.* According to defendant Lafon, and corroborated by Ms. Moore’s affidavit, Ms. Moore indicated that the pants “were probably the worst she had seen.” *Id. See also Doc. 7-3 at 2.*

With regard to the photographs, defendant Lafon states that he was concerned that plaintiff Miller would change clothes and deny the dress code violation, so he borrowed a camera to document the appearance of plaintiff Miller’s pants. *See Doc. 7-2 at 2.* According to defendant Lafon, the photographs were taken in the hallway outside the Student Affairs Office and Assistant Principal’s Office, and a teacher was nearby. *Id.* He states that he took one photograph of the lockers as a practice, then told plaintiff Miller not to cover the ripped pants with her arms, and took two pictures of the rips in plaintiff Miller’s pants. *Id.*

II. Discussion

A party seeking a temporary restraining or preliminary injunction order bears the burden of establishing four factors: (1) irreparable harm to movant if such an order is not entered; (2) likelihood of harm to others if such an order is entered; (3) movant’s substantial likelihood of success on the merits; and (4) the impact on the public interest by entry of such

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