Case No. 12-1382

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MELLONY BURLISON, as Parent and Next Friend of C.M. and H.M., Minors, and DOUGLAS BURLISON, as Parent and Next Friend of C.M. and H.M., Minors,

Plaintiffs-Appellants,

v.

SPRINGFIELD PUBLIC SCHOOLS, NORM RIDDER RON SNODGRASS, and JAMES ARNOTT,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Missouri

APPELLANTS' BRIEF

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SUMMARY OF THE CASE

This appeal is from an order granting the Defendants-Appellees summary judgment on claims by the Plaintiffs-Appellants seeking relief under 42 U.S.C. § 1983. The claims arose out of the execution of a public school district policy for the detection of illegal drugs and other contraband within a public high school in the City of Springfield, Missouri, and Plaintiffs-Appellants alleged that the policy and its execution violated the rights of students under U.S. Const., Fourth Amendment, and Mo. Const. art. I, § 15. The District Court ruled that the under the undisputed facts the Plaintiffs-Appellants could not prevail on their claims that for damages, declaratory relief and injunctive relief because no actual or prospective violation of the Fourth Amendment was demonstrated.

Oral argument of 15 minutes should be allowed in this case because the Fourth Amendment issue raised by this appeal, while narrow, is unsettled within this Circuit and the subject of only limited precedent nationally, and extended discussion and argument will be beneficial for the Court and the parties.

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JURISDICTIONAL STATEMENT

The District Court had jurisdiction over this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1343, as it is an action arising under the Constitution and laws of the United States and seeks relief under 42 U.S.C. § 1983 for deprivations and threatened deprivations of rights protected by federal law. The District Court had supplemental jurisdiction over the claim under the laws and Constitution of the State of Missouri under 28 U.S.C. § 1367(a), as those state law claims arise out of the same transactions and occurrences giving rise to the District Court's jurisdiction under 28 U.S.C. §§ 1331 and 1343.

This Court has jurisdiction over this appeal under 28 U.S.C.§ 1291, as the appeal is from a final order of the United States District Court for the Western District of Missouri disposing of all claims in the action. The final order and judgment of the District Court were entered on January 25, 2012 (J.A. Vol. I at 8), [1] and the Plaintiffs-Appellants filed their notice of appeal from the order and judgment on February 15, 2012. (J.A. Vol. I at 9).

ISSUES PRESENTED FOR REVIEW

[1] "J.A." references are to pages of the Joint Appendix filed in conjunction with this brief.

I. Did the District Court err in ruling that the forced separation of a student from his personal belongings and effects by government agents in the course of and for the purpose of conducting drug detection activities within a public school does not constitute a seizure of the student's personal belongings and effects for purposes of the prohibition on unreasonable searches and seizures contained in the United States and Missouri Constitutions?

Cases

Dixon v. Lowery, 302 F.3d 857 (8th Cir. 2002)

United States v. Alvarez-Manzo, 570 F.3d 1070 (8th Cir. 2009)

Audio Odyssey, Ltd. v. Brenton First Nat. Bank, 245 F.3d 721 (8th Cir. 2001), *opinion reinstated*, 286 F.3d 498 (8th Cir.), *cert. denied*, 537 U.S. 990 (2002)

New Jersey v. T.L.O., 469 U.S. 325 (1985)

II. Did the District Court err in ruling that Defendant Arnott, Greene County Sheriff, was not liable for any constitutional deprivation?

Cases

Doores v. McNamara, 476 F.Supp. 987 (W.D. Mo. 1979)

Calloway v. Miller, 147 F.3d 778 (8th Cir. 1998)

McGautha v. Jackson County, Mo., Collections Dept., 36 F.3d 53 (8th Cir. 1994)

Pembaur v. City of Cincinnati, 475 U.S. 469 (1986)

STATEMENT OF THE CASE

This case is an action brought by Mellony and Douglas Burlison on behalf of their son, C.M.,[2] seeking damages, a declaratory judgment and an injunction against the Springfield Public Schools (hereinafter "SPS"), SPS Superintendent Norm Ridder, Central High School Principal Ron Snodgrass, and James Arnott, Greene County (Missouri) Sheriff. The defendants were each named in their individual and official capacities. (J.A. Vol. I at 12-13). The complaint, as amended, alleged that the Defendants deprived C.M. of his right to be free from an unreasonable search and seizure when the Defendants conducted a "lock down" drug detection operation at Central High School, where C.M. is a student, on April 22, 2010. (J.A. Vol. I at 18). The complaint alleged that C.M. was deprived of his rights under the Fourth Amendment to the United States Constitution and Mo. Const. art. I, § 15, and requested the policy under which the "lock down" operation was

[2] The action originally was also brought on behalf of the Burlisons' daughter, H.M., but because she is no longer a student at Central High School and H.M.'s only claims were for declaratory and injunctive relief, her claims are now moot. The Amended Complaint also added an additional parent, as next friend for her child/student, as a plaintiff, who was dismissed from the action before final judgment.

conducted be declared unconstitutional and its enforcement be enjoined. (J.A. Vol. I at 20).

Each of the parties filed motions for summary judgment. On January 25, 2012, the District Court entered an order granting the motions of Defendants SPS, Ridder, Snodgrass and Arnott, and denying the motion of the Burlisons. (J.A. Vol. I at 8).

STATEMENT OF FACTS

On April 22, 2010, C.M., then a freshman at Central High School, a public high school operated and controlled by SPS, was in his third period classroom when an announcement was made over the school's public address system by Defendant Snodgrass**.** Snodgrass announced that the school was going into "lockdown" and that students may not leave their classrooms. At that time, deputies of the Greene County Sheriff's Office were present at Central High School along with two police dogs, Dar and Reiko. (J.A. Vol. I at 111). Dar and Reiko were "aggressive alert response dogs" which were trained to aggressively search and bite to the odor of narcotics. (J.A. Vol. I at 112-113)

About fifteen minutes after Defendant Snodgrass's announcement, deputies of the Greene County Sheriff's Office entered C.M.'s classroom.

The deputies ordered students and teachers to leave the room. C.M. and the other students were instructed to leave their belongings behind in the classroom, line up and file out into the hallway outside the classroom. (J.A. Vol. I at 110). Students were told not to take any possessions or effects, such as backpacks, notebooks and purses, with them but to leave them in the classroom. (J.A. Vol. I at 37). C.M. did as instructed, leaving his possessions in the classroom and going out into the adjoining hallway to wait. (J.A. Vol. I at 110). C.M. could not see into the classroom.

After a few minutes, the law enforcement officers and their dogs left the classroom and C.M. and his classmates returned to the room. C.M. observed that although all the zippers on his backpack were shut when he left the room, when he returned the zippers on his backpack were open and items within the backpack had been moved. (J.A. Vol. I at 114). The lockdown concluded at approximately 11:07 a.m. (J.A. Vol. I at 115), after which the students were instructed to move on to their Fourth Period class. (J.A. Vol. I at 39).

The lockdown operation executed at Central High School on April 22, 2010, was conducted pursuant to a Policy JFG of SPS dealing with School Police Services, titled "Protocol For Use of Drug Dogs in School Buildings" and given Standard Operating Procedure 3.4.1. (J.A. Vol. I at 90). Under

S.O.P. 3.4.1, SPS works in cooperation with the Defendant Greene County Sheriff's Office and their drug detection dogs. (J.A. Vol. I at 91). S.O.P. 3.4.1 also provides that "[s]tudents will not be present in an area/room when the drug detection dog is working." (J.A. Vol. I at 92). The search policy provides that the Greene County Sheriff's Office dogs will be used to sniff "back packs, book bags, gym bags, purses or other similar items, when such items are not in the physical possession of a student or person[.]" (J.A. Vol. I at 92)

The lawsuit, filed by Mellony and Douglas Burlison on behalf of their son, alleged that the lockdown operation conducted jointly by SPS and the Greene County Sheriff's Office violated C.M.'s right to be free from unreasonable searches and seizures under the Fourth Amendment and Mo. Const. art. I, § 15. (J.A. Vol. I at 18-19). Each party filed a motion for summary judgment, and the District Court granted the motions of SPS, Ridder, Snodgrass and Arnott. (J.A. Vol. II at 400-401). As to Ridder and Snodgrass, the District Court ruled that the evidence did not show that either was personally involved in the constitutional violations alleged, and so they

were entitled to judgment on the claims against them in their individual capacities. (Add. at 6-7).[3]

With respect to Defendant Arnott, the Greene County Sheriff, the District Court acknowledged that he had directed a subordinate to coordinate the Sheriff Office's aspects of the lockdown exercise, and that because Arnott was not present during the April 22, 2010 lockdown exercise he was not liable in his individual capacity for any constitutional deprivation. (Add. at 5-6). It also found that Arnott was not liable in his official capacity because even though the Greene County Sheriff's Office had in effect an officially-adopted policy and procedure regarding the use of canine teams to assist in the detection of controlled substances, the District Court determined that this policy did not cause any constitutional deprivation alleged by the Plaintiffs. (Add. at 8).

As to SPS, the District Court concluded that C.M. had not suffered any violation of his right to be free from unreasonable searches and seizures as a result of a policy of SPS. Although S.O.P. 3.4.1 provides for and authorizes school officials to deploy canine units in the schools to sniff student belongings and requires that students will not be present in any area or room when a drug detection dog is working, the District Court concluded

[3] "Add." references are to the addendum to this brief filed in accordance with 8th Cir. R. 28A(g)(1).

that this policy did not result in an unconstitutional seizure of C.M.'s belongings. The District Court acknowledged that "a seizure of property occurs when there is some meaningful interference with an individual's possessory interest in the property," but made the conclusory ruling that "C.M.'s backpack was not subject to a seizure. . . . Therefore, the provisions of SOP 3.4.1. do not reflect a procedure which would constitute a constitutional violation." (Add. at 9).

SUMMARY OF THE ARGUMENT

Students in public schools retain their rights under the Fourth Amendment to the United States Constitution to be free from unreasonable seizures of personal property. The "lockdown" exercise that occurred in C.M.'s school pursuant to SPS policy subjected him and other students to mass and suspicionless seizures of their backpacks, cases and other belongings because the students were forcibly separated from their effects. This interference with student property rights was constitutionally meaningful not only because they were dispossessed of their possessions, but also because the students were unable to see their belongings and were unable to determine if even more drastic interferences with their privacy rights took place. The District Court's conclusory assertion that there was

no seizure in this case simply because it occurred in the schools is contrary to controlling Supreme Court precedent which recognizes that students retain a right of possession and privacy with respect to belongings they bring to school. Thus, the District Court erred in granting the Defendants summary judgment on the Plaintiffs' Fourth Amendment claim and should have granted the Plaintiffs' summary judgment motion on this claim.

The District Court also erred in ruling that Defendant Arnott, the Greene County Sheriff, was not liable in either his individual or official capacity. The evidence of record showed that Arnott directed subordinates to assist with the execution of the lockdown at Central High School and so can be held responsible for constitutional deprivations that resulted. Additionally, there was sufficient evidence to show that Arnott's direction to assist with the lockdown constituted or was made pursuant to the policy of the Greene County Sheriff's Office such that Arnott could be held liable in his official capacity.

ARGUMENT

I. THE DISTRICT COURT ERRED IN RULING THAT NO SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT RESULTED FROM THE SCHOOL DISTRICT POLICY AND SHOULD HAVE GRANTED THE PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON THIS CLAIM

A. Standard of Review

The standard of review for summary judgment determinations is de novo. *AvidAir Helicopter Supply, Inc. v. Rolls-Royce Corp.*, 663 F.3d 966, 976 (8th Cir. 2011). This Court applies the same standard as the district court on a summary judgment motion: summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *American Airlines, Inc. v. KLM Royal Dutch Airlines, Inc.*, 114 F.3d 108, 110 (8th Cir.1997); Fed.R.Civ.P. 56(c)(2).

B. Discussion of Authority

The Amended Complaint asserts claims against the Defendants under 42 U.S.C. § 1983 for deprivations of C.M.'s rights under the Fourth Amendment to the United States Constitution. (J.A. Vol I at 19).[4] The elements of a claim under 42 U.S.C. § 1983 are (1) the defendant acted under color of state law and (2) the defendant deprived the plaintiff of a constitutionally protected federal right. *Van Zee v. Hanson*, 630 F.3d 1126,

[4] A claim is also made under Mo. Const. art. I, § 15, which, like the Fourth Amendment, prohibits unreasonable searches and seizures (J.A. Vol. I at 19). Because the Missouri constitutional provision is co-extensive with the Fourth Amendment, *State v. Tackett*, 12 S.W.3d 332, 337 (Mo. App. 2000), the arguments set forth below apply with equal force respecting the state constitutional claim and warrant summary judgment for the Plaintiffs on that claim also.

1128 (8th Cir. 2011). SPS unquestionably acts under color of state law with respect to its actions and its promulgation and enforcement of policies. *Doe A v. Special Sch. Dist. of St. Louis County*, 637 F. Supp. 1138, 1143 (E.D. Mo. 1986); *ABC League v. Missouri State High School Activities Ass'n*, 530 F. Supp. 1033, 1044 (E.D. Mo. 1981), *rev'd on other grds., In re U.S. ex rel. Missouri State High School Activities Ass'n*, 682 F.2d 147 (8th Cir. 1982). Additionally, Defendant Sheriff Arnott and his department are state actors for purposes of § 1983. *Gapske v. Morgan County Sheriff's Dept.*, 2008 WL 5136054 *2 (W.D. Mo. Dec. 2, 2008).

The remaining element is whether the Defendants deprived C.M. of his Fourth Amendment rights. The undisputed facts in this case demonstrate that officers of both SPS and Defendant Arnott's department entered C.M.'s classroom during the school day and ordered C.M. and other students to leave the room. This was done pursuant to school S.O.P. 3.4.1, which provides for the random examination of student effects during school hours. Under this policy, a wholesale seizure of student effects is not only authorized but intended to take place during the "lockdowns" like the one that occurred on April 22, 2010. Thus, S.O.P. 3.4.1 provides that "[s]tudents will not be present in an area/room when the drug detection dog is working" (J.A. Vol. I at 92), and that the Greene County Sheriff's Office dogs will be

used to sniff "back packs, book bags, gym bags, purses or other similar items, when such items are not in the physical possession of a student or person[.]" (J.A. Vol. I at 92). This can only be accomplished if students are separated and removed from their belongings. Moreover, student effects are held for examination without any individualized suspicion; the seizure is executed in en masse in those rooms selected for targeting.

This suspicionless seizure and inspection is precisely what C.M. and his classmates were subjected to on April 22, 2010. Indeed, while C.M. was out of the classroom and separated from his belongings, his belongings and those of other students were examined by dogs under the control of the Greene County Sheriff's Office. When C.M. reentered the classroom to claim his belongings, these effects showed clear evidence that they had been opened and searched during the time officers and agents of the Defendants were in the room. (J.A. Vol. I at 114).

These facts demonstrate that there was, at the very least, a seizure of C.M.'s property that was not reasonable under established Fourth Amendment principles. As this Court held in *Dixon v. Lowery*, 302 F.3d 857, 862 (8th Cir. 2002):

> Among other safeguards, the Fourth Amendment protects against unreasonable seizures of property. U.S. Const. amend. IV; *Soldal v. Cook County*, 506 U.S. 56, 61-62 (1992). A seizure of property occurs when "'there is some meaningful

> interference with an individual's possessory interests in that property.'" *Id.* at 61 (quoting *United States v. Jacobsen,* 466 U.S. 109, 113 (1984)). It is well settled that a seizure carried out without judicial authorization is per se unreasonable unless it falls within a well-defined exception to this requirement. *E.g., Coolidge v. New Hampshire,* 403 U.S. 443, 474, 484 (1971); *Lesher v. Reed,* 12 F.3d 148, 151 (8th Cir.1994); *United States v. South Half of Lot 7 and Lot 8. Block 14,* 876 F.2d 1362, 1371 (8th Cir.1989); *see also Soldal,* 506 U.S. at 71(stating that, had officers acted pursuant to a court order in seizing a mobile home, "a showing of unreasonableness ... would be a laborious task indeed," and that "had the ejection ... properly awaited the state court's judgment it [was] quite unlikely that the federal court would have been bothered with a § 1983 action alleging a Fourth Amendment violation"); *Michigan v. Tyler,* 436 U.S. 499, 506 (1978) (stating that, under the Fourth Amendment, "'one governing principle, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is "unreasonable" unless it has been authorized by a valid search warrant'") (quoting *Camara v. Municipal Court of San Francisco,* 387 U.S. 523, 528-29 (1967)).

The actions at issue in the instant case are even more invasive than those found to constitute an unlawful seizure in *United States v. Alvarez-Manzo*, 570 F.3d 1070 (8th Cir. 2009). There, police took luggage from the cargo compartment of a bus without reasonable suspicion and confronted passengers on the bus with it to determine its owner. As a result of this seizure, the defendant made incriminating statements that led to his arrest and the discovery of heroin in the suitcase. Affirming the district court's order suppressing evidence police found after the luggage was taken from

the cargo hold, the court ruled that this taking of the luggage was a seizure for Fourth Amendment purposes even though it was not in the direct custody and control of the defendant when it was taken. The court held that this was still a meaningful interference with the defendant's possessory interest in the luggage and because police did not have even reasonable suspicion for taking the luggage, the seizure was illegal and the fruits thereof had to be suppressed. *Id.* at 1076-77.

Even more to the point is the decision in *United States v. Lakoskey*, 462 F.3d 965, 975-76 (8th Cir. 2006), which held that a seizure of a package occurs when it is removed from its ordinary progress in the mail by government officers in order for it to be subjected to a dog sniff. Such seizures must be supported by reasonable suspicion.

In the instant case, the seizure was even more egregious. C.M. was forcibly separated from his belongings by school officials for the purposes of conducting a drug sniff. In these other cases, the effects at issue were not even within the immediate control of the owner, and still the courts found that the government's action constituted a seizure of the property. Clearly, where the owner of property is in possession and control of it and government officials force the owner to relinquish dominion and control of the property the government has seized the property for Fourth Amendment

purposes. *See Audio Odyssey, Ltd. v. Brenton First Nat. Bank*, 245 F.3d 721, 735-36 (8th Cir. 2001), *opinion reinstated*, 286 F.3d 498 (8th Cir.), *cert. denied*, 537 U.S. 990 (2002) (police ejection of owner from his store, changing of locks, and posting of "No Trespassing" signs constituted a seizure of the property even if only for a rather brief period of time).

In light of this precedent, any claim that the interference with C.M.'s property rights was not "meaningful" must be rejected. The above-cited cases demonstrate that dispossession or interference with property rights for even a brief amount of time is nonetheless a "meaningful interference" and a seizure. *Audio Odyssey, Ltd.*, 245 F.3d at 735. Additionally, the separation of C.M. from his property and dominion and control over it was particularly meaningful in this context because it prevented him from monitoring and observing the actions of the officers and dogs with respect to his belongings. C.M. was unable to determine what exactly a dog may or may not have done when it approached his belongings, whether there was really any action by the dog indicating an alert, and what the officers did with respect to his belongings. Because C.M. was separated from his belongings, we have only the word of the officers as to whether there was an alert by a dog and whether they searched through C.M.'s belongings. This is particularly alarming since by all accounts, based upon C.M.'s observations of his

belongings, the officers did open and search them and yet no contraband was found within. Thus, the seizure here was certainly meaningful not only because it deprived C.M. of possession and control of his belongings, but because he was unable to protect his right to be free of an illegal search by observing the conduct of the dogs and officers.

In denying the Burlisons' motion for summary judgment on the basis that C.M.'s belongings were seized, the District simply wrote in a conclusory manner that "C.M.'s backpack was not subject to a seizure[,]" (Add. at 9), citing only *Doran v. Contoocook Valley Sch. Dist.*, 616 F.Supp.2d 184 (D.N.H. 2009), for support. But the *Doran* decision does not cite any case even remotely suggesting or implying that dispossessing a student of his belongings without any reason specific to that student or his belongings is a reasonable interference with the student's possessory interests for purposes of the Fourth Amendment. Instead, that case relies upon the generalization that students' rights in schools are not coextensive with adults and the interest of schools in preventing drug abuse as justifying wholesale and suspicionless seizures of student belongings. *Id.* at 194.

The idea expressed in *Doran*, and adopted without discussion or analysis by the District Court in this case, that students have virtually no privacy or possessory interest in belongings brought to school was rejected

in the Supreme Court's seminal school search case, *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). In establishing the standard for school intrusions upon student Fourth Amendment rights, the Court emphasized that the Constitution protects the owner of every container that conceals its contents and that the search of a bag carried by a student "is undoubtedly a severe violation of subjective expectations of privacy." *Id.* at 338. It went on to write as follows:

> The State of New Jersey has argued that because of the pervasive supervision to which children in the schools are necessarily subject, a child has virtually no legitimate expectation of privacy in articles of personal property "unnecessarily" carried into a school. This argument has two factual premises: (1) the fundamental incompatibility of expectations of privacy with the maintenance of a sound educational environment; and (2) the minimal interest of the child in bringing any items of personal property into the school. *Both premises are severely flawed*.

Id. at 338 (emphasis added). The Court wrote that a school's interest in maintaining discipline is not so compelling that students may claim no legitimate expectation of privacy and that students have a legitimate reason for bringing belongings to school. "In short, schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all

rights to privacy in such items merely by bringing them onto school grounds." *Id.* at 339.

Thus, *T.L.O.* directly contradicts the premise underlying the decisions in *Doran* and, necessarily, the District Court in this case, that the school setting renders a student's possessory interest in effects meaningless. Indeed, this "severely flawed" assumption was the sole basis for the holding in *Doran* that forced separation of students from their belongings was not a seizure. Because the conclusion reached in *Doran* was wrong, the District Court similarly erred in rejecting the Burlisons' claim that there had been an unreasonable seizure of C.M.'s belongings in violation of the Fourth Amendment.

This seizure was plainly illegal because not only was it not undertaken pursuant to judicial authority, and so is per se unreasonable, *Dixon*, 302 F.3d at 862, but there was not even the kind of reasonable suspicion which might justify the seizure. Even though precedent has relaxed Fourth Amendment requirements in the school environment, the case law still requires that warrantless searches and seizures by school officials be supported by reasonable suspicion. Students unquestionably retain a right of possession and privacy with respect to belongings they bring to school, *Doe v. Little Rock School District*, 380 F.3d 349, 353 (8th Cir. 2004), and intrusions into a

student's privacy interest must be supported by reasonable suspicion in order to comport with the Fourth Amendment. *Safford Unif. Sch. Dist. No. 1 v. Redding*, 129 S. Ct. 2633, 2639 (2009). In this case, there was no individualized suspicion regarding the belongings of C.M., or any other student for that matter. Indeed, the kind of mass, random, suspicionless seizure and search of student belongings that was executed here is precisely what was contemplated by the policy of SPS, as set forth in its S.O.P 3.4.1. This kind of intrusion upon Fourth Amendment rights violates that provision of the United States Constitution, even in the public school context. *Doe*, 380 F.3d at 355-56.

SPS clearly can be held responsible for the illegal seizure that occurred on April 22, 2010 because the constitutional deprivations resulted from a policy adopted by SPS. While a governmental entity does not have respondeat superior liability under 42 U.S.C. § 1983, it is responsible for constitutional deprivations that result from a policy, custom or practice. *Dahl v. Rice County, Minn.*, 621 F.3d 740, 743 (8th Cir. 2010). S.O.P. 3.4.1 unquestionably represents a policy upon which the SPS may be held liable as it is an official statement or regulation that has been promulgated by the appropriate rulemaking body. *Webster v. City of Houston*, 735 F.2d 838, 841 (5th Cir. 1984); *see also Pembaur v. City of Cincinnati*, 475 U.S. 469,

480-481 (1986) ("official policy" refers to formal rules or understandings—often but not always committed to writing—that are intended to, and do, establish fixed plans of action to be followed under similar circumstances consistently and over time). It also is clear that this policy caused the deprivation of Fourth Amendment rights at issue in this case. Under the undisputed facts and established law, SPS is liable under § 1983 for the Fourth Amendment violation visited upon C.M. and the District Court's judgment denying the Burlisons' summary judgment motion on this claims was error that must be reversed.

II. THE DISTRICT COURT ERRED IN RULING THAT DEFENDANT ARNOTT IS NOT LIABLE FOR THE FOURTH AMENDMENT VIOLATION AT ISSUE IN THE CASE

A. Standard of Review

The standard of review for summary judgment determinations is de novo. *AvidAir Helicopter Supply, Inc. v. Rolls-Royce Corp.*, 663 F.3d 966, 976 (8th Cir. 2011). This Court applies the same standard as the district court on a summary judgment motion: summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *American Airlines, Inc. v. KLM Royal Dutch Airlines, Inc.*, 114 F.3d 108, 110 (8th Cir.1997); Fed.R.Civ.P. 56(c)(2).

B. Discussion of Authority

1. *Individual Capacity Liability*

As to Defendant Arnott, the District Court ruled that he could not be held liable either in his individual or official capacity under the evidence of record. (Add. at 5-6, 8). Individual liability will attach under 42 U.S.C. § 1983 if there is a causal link or direct responsibility for a deprivation of rights. *Mayorga v. Missouri*, 442 F.3d 1128, 1132 (8th Cir. 2006). However, this does not mean that the defendant must have personally participated in the acts which constitute the deprivation of rights. Personal participation is only one of several theories which can be used to establish causation. "In addition to the imposition of liability on supervisory personnel on the basis of personal participation in the act, it may also be premised on their directing the action to be taken, or acquiescing with knowledge in its commission." *Doores v. McNamara*, 476 F.Supp. 987, 992 (W.D. Mo. 1979).

In this case, the District Court erred in granting Defendant Arnott summary judgment on the Burlisons' claims against him in his individual capacity, wrongly believing that Arnott either had to be present or to have "directly participate[d] in [the] alleged constitutional deprivation." (Add. 5). As just noted, liability can also be based upon directing action to be

taken. *Id.* Arnott's own affidavit establishes that he, as the head of the Greene County Sheriff's Department, decided that the Department and its officers should participate in the drug detection "lockdown" at Central High School on April 22, 2010. Arnott was approached by Tom Tucker of the SPS Police Services who asked Arnott for the assistance of the Sheriff's Department in conducting the operation at Central High School. Defendant Arnott then directed his subordinate, Captain Jim Farrell, to take charge of assisting SPS with the drug detection operation and lockdown. (J.A. Vol. II at 297). Thus, Defendant Arnott directed that Sheriff's Department personnel and assets would be involved in the operation, and without this involvement, in particular the use of dogs, the unconstitutional seizure of student effects described supra would not have been possible.

To establish liability under § 1983, it must appear that the defendant's conduct was a cause in fact of the plaintiff's injury, i.e., the injury would not have occurred absent the defendant's conduct. *Calloway v. Miller*, 147 F.3d 778, 781 (8th Cir. 1998). In light of the admission of Defendant Arnott that he directed Captain Farrell to provide the assistance of the Sheriff's Department to SPS in executing its drug interdiction policy, there was no basis for the District Court's order granting Defendant Arnott summary

judgment as to the unconstitutional seizure claim against him in his individual capacity.

2. *Official Capacity Liability*

The claim against Defendant Arnott in his official capacity is, in substance, one against the County itself. *Catlett v. Jefferson County*, 299 F.Supp.2d 967, 969 (E.D. Mo. 2004). As discussed above, in order to attach liability to a government entity such as the County under 42 U.S.C. § 1983, it must appear that the claimed constitutional deprivations were caused by a policy of that entity.

The District Court ruled that there was no evidence indicating some policy caused the constitutional deprivation at issue here, but this ruling ignores the principle that municipal liability for violating constitutional rights may arise from the single act of a policy maker. *McGautha v. Jackson County, Mo., Collections Dept.*, 36 F.3d 53, 56 (8th Cir. 1994). In *Pembaur*, 475 U.S. at 481, the Supreme Court made clear that the power to establish policy is not the exclusive province of legislative bodies, and that the decisions of other officials may be deemed to represent official policy for the purpose of imposing liability under § 1983. There, the Court held that the decision of a county prosecutor to order sheriffs to forcibly enter the plaintiff's medical offices (allegedly in violation of the Fourth Amendment)

constituted county policy because the prosecutor was the final decisionmaker for the county with respect to this action, and the county could be held liable for any constitutional deprivation resulting from that order. *Pembaur*, 475 U.S. at 485. Under *Pembaur*, an official's decision represents the policy of the governmental entity for which it can be held liable "where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered." *Id.* at 481. *Accord Copeland v. Locke*, 613 F.3d 875, 882 (8th Cir. 2010).

Precedent establishes that Missouri county sheriffs are considered county policymakers for the purposes of establishing liability under § 1983. In *Overbay v. Lilliman*, 572 F.Supp. 174 (W.D. Mo. 1983), the court held that the decisions of a county sheriff regarding the conditions of a jail and treatment of prisoners constituted municipal policy for purposes of a § 1983 action brought by a prisoner. Referring to a federal court decision from Texas recognizing, as was done in *Pembaur*, that certain officials because of their autonomy establish policy for a local government, the court determined that the county sheriff's decisions did represent county policy:

> The sheriff in Missouri enjoys much of the same autonomy as does [sic] elected county officials in Texas. As the plaintiff stated, the sheriff is only responsible to the voters. Yet, it is the sheriff who sets the rules and regulations—the policy—for the sheriff's office. As chief law enforcement officer of the county those policies become the policies of the county.

Overbay, 572 F.Supp. at 177.

As the final decisionmaker for the county with respect to law enforcement matters, Defendant Arnott's decisions constitute County policy. Indeed, his status as a policymaker is confirmed by the fact that the Greene County Sheriff's Office Policy and Procedure 5-50-5 was promulgated and is signed by Defendant Arnott. Thus, his decision to assist SPS with its drug detection operation represents, as in *Pembaur*, County policy for which liability may be imposed on the claim against Defendant Arnott in his official capacity.

Additionally, the Greene County Sheriff's Policy and Procedure 5-50-5 dealing with the deployment of canine units may be relied upon as a policy that resulted in the Fourth Amendment deprivations and upon which the official capacity claim against Defendant Arnott may be based. That policy allows the Sheriff's Office to use canines for the "[r]andom exploratory sniffing of luggage, packages or other inanimate objects in public facilities" in a drug detection capacity (Greene County Sheriff's Policy and Procedure 5-50-5(6)(a)). Absent this policy and the essential assistance it allowed the Sheriff's Department to provide to SPS, the lockdown, seizure and search of student belongings that occurred on April 22, 2010, would not have occurred. Because this policy also was a cause of the deprivations

complained of, Defendant Arnott's request for summary judgment in his favor on the official capacity claim against him should be denied.

CONCLUSION

The District Court's decision in this case sets a precedent that is dangerous to the fundamental liberties of the nation's public school students. Even though student Fourth Amendment rights are qualified, they have not been eliminated and court precedent does not authorize public schools to impose virtual police states within their classrooms and hallways. C.M. and his classmates retained the right to be free from unreasonable seizures of their personal belongings and the lockdown exercise jointly executed by SPS and the Greene County Sheriff's Office violated the Fourth Amendment's prohibition on suspicionless seizures. The District Court erred in failing to recognize this and the judgment below should be reversed and the case remanded with directions that the District Court grant the Plaintiffs' motion for summary judgment that the Defendants are liable under 42 U.S.C. § 1983 for a violation of C.M.'s right to be free from unreasonable seizures.

Respectfully submitted,

/s Jason T. Umbarger
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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing Appellants' Brief complies with the type-volume limitation provided in Fed. R. App. P. 32(a)(7)(B) because the foregoing brief contains 5,814 words, excluding parts of the Brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). The undersigned further certifies that the foregoing brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) because it uses Times New Roman (14 point) proportional type. The word processing software used to prepare this brief was Microsoft Office Word 2003.

Dated: April 3, 2012

/s Jason T. Umbarger
Jason T. Umbarger

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25 and 8th Cir. R. 28A(d), the undersigned does hereby certify that on April 6, 2012, one copy of the foregoing Appellants' Brief and Addendum was served upon each counsel of record for Appellees by delivering said copies to a third-party commercial carrier for delivery within three days, addressed to each of the following:

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Case No. 12-1382

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MELLONY BURLISON, as Parent and Next Friend of C.M. and H.M., Minors, and DOUGLAS BURLISON, as Parent and Next Friend of C.M. and H.M., Minors,

Plaintiffs-Appellants,

v.

SPRINGFIELD PUBLIC SCHOOLS, NORM RIDDER RON SNODGRASS, and JAMES ARNOTT,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Missouri

ADDENDUM TO APPELLANTS' BRIEF

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

MELLONY BURLISON, *as parent and next friend of CM and HM, minors,* and DOUGLAS BURLISON, *as parent and next friend of CM and HM, minors,* and CAROLYN ROBINSON,	)	
Plaintiffs,	)	
v.	)	**Case No. 10-3395-CV-S-RED**
SPRINGFIELD PUBLIC SCHOOLS, NORM RIDDER, RON SNODGRASS and JAMES ARNOTT,	)	
Defendants.	)	

ORDER

Before the Court is Plaintiffs' Motion for Summary Judgment (Doc. 61); Separate Defendant Sheriff James Arnott's Motion for Summary Judgment (Doc. 60); and Motion for Summary Judgment by Defendants School District of Springfield R-12, Norm Ridder and Ron Snodgrass (Doc. 63). After careful consideration, this Court **DENIES** Plaintiff's motion, **GRANTS** Separate Defendant Sheriff James Arnott's motion, and **GRANTS** Defendants School District of Springfield R-12, Norm Ridder and Ron Snodgrass' motion.

BACKGROUND

In 2009, Greene County Sheriff James Arnott ("Arnott") was contacted by Tom Tucker, Director of the School Police Services for Springfield Public Schools, who requested that Greene County Sheriff's Office canine units assist with drug detection exercises at high schools in the R-XII School District. Upon receiving this request, Sheriff Arnott assigned the matter to Captain Jim Farrell to coordinate the requested assistance. On April 22, 2010, Deputies James Inlow and Danny

Fillmore performed a canine drug detection exercise at the request and under the supervision of Springfield School District ("District") officials. Defendant Arnott was not present at Central High School on April 22, 2010.

During the course of the drug detection exercise, Deputy Inlow and canine Dar were escorted by school resource officers to the third floor of Central High School where they stopped in the hallway and waited for all of the students in Plaintiff C.M.'s classroom to leave the room. The students, including C.M., were taken to the opposite end of the third-floor hallway from where Deputy Inlow and canine Dar were standing. After all of the students were out of the classroom, Deputy Inlow was escorted into the classroom by school resource officers to deploy canine Dar. Deputy Inlow gave canine Dar his narcotic sniff command and walked down the aisles between the desks. According to established school policy, if the canine alerted to an item, Deputy Inlow or Deputy Fillmore would advise a school resource officer of the alert and walk the canine around the room a second time. If the canine alerted on the same item a second time, then a school administrator or school resource officer would examine the item for drugs outside of the presence of Deputies Inlow and Fillmore and their canine. It is undisputed that canine Dar did not alert on anything in C.M.'s classroom. There is no specific evidence that Deputy Inlow or Deputy Fillmore opened or touched any backpack, purse, or any other object belonging to any students. Any such touching by the Deputies would have been contrary to the applicable written policies.

When the drug detection exercise began, C.M. was in his "third block" class on the third floor of Central High School. C.M. testified that the canine never came within the "personal range" of C.M. The undisputed video of this activity clearly establishes that the canine Dar was never closer than thirty-four feet to C.M. C.M. also testified that before he left the classroom for the drug

detection exercise, he zipped up the pockets on his backpack. However, C.M. further testified that when he re-entered the classroom after the exercise had been completed, some of the zippers on his backpack were unzipped.

As H.M. arrived to school forty-five minutes late, she was not present in Central High School for the drug detection exercise. H.M.'s personal items were not in the Central High School building when the drug dogs were present. Because the doors to Central High School were locked and H.M. was informed that the school was being searched, H.M. returned home. While H.M. was on the school's campus she never saw any School Police Officers, Springfield Police Officers, Greene County Sheriff's Deputies, or drug detection dogs.

Plaintiffs Mellony and Douglas Burlison brought the above captioned case on behalf of the minors C.M. and H.M. and allege that C.M. and H.M. were deprived of their Fourth Amendment rights and their right to be free of unreasonable searches and seizures as set forth in Article 1, Section 15 of the Missouri Constitution.

STANDARD OF REVIEW

According to Fed. R. Civ. P. 56(a), summary judgment may be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." When ruling on a motion for summary judgment, the Court should view the facts in the light most favorable to the adverse party and allow the adverse party the benefit of all reasonable inferences to be drawn from the evidence." *Reed v. ULS Corp.*, 178 F.3d 988, 990 (8th Cir. 1999). A party can show that a fact is not genuinely disputed by "showing that the materials cited do not establish the . . . presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(B).

LEGAL ANALYSIS

In order to "establish personal liability in a § 1983 action, the plaintiff must show that the official, acting under color of state law, caused the deprivation of a federal right." *Clay v. Conlee*, 815 F.2d 1164, 1169-70 (8th Cir. 1987). Plaintiffs have brought suit for alleged violations of the Fourth Amendment to the United States Constitution and Article I, Section 15 of the Missouri Constitution. The analysis for violations of both of these constitutional protections are identical. *State v. Johnson*, 316 S.W.3d 390, 395 (Mo. Ct. App. 2010)("article I, section 15 of the Missouri Constitution is parallel to and co-extensive with the Fourth Amendment."). Therefore, in order for Plaintiffs' Fourth Amendment rights or their rights under the Missouri Constitution, to have been violated, either C.M. or H.M must have been subjected to an unreasonable search and/or seizure.

Both the United States Supreme Court and the Eighth Circuit Court of Appeals have concluded that a canine sniff does not implicate a Fourth Amendment violation. *Illinois v. Caballes*, 543 U.S. 405, 410 (2005); *U.S. v. Sanchez*, 417 F.3d 971, 976 (8th Cir. 2005). Therefore, in order for C.M. to be subjected to an unreasonable search, there must be evidence indicating the occurrence of a search beyond the canine drug sniff.

There may be an issue as to whether C.M.'s belongings were searched as C.M. testified that before he left the classroom for the drug detection exercise, he zipped up the pockets on his backpack, but when he returned to the classroom after the drug detection exercise some of the pockets on his backpack were unzipped. However, even if C.M.'s backpack was searched by either the deputies or school police officers who were in the classroom, none of the Defendants in this case can be liable for any of the non-defendant officer's alleged violations.

I. Immunity from Claims asserted against Defendants in their Individual Capacity

To establish personal liability in a § 1983 action, the plaintiff must show that the official, acting under color of state law, caused the deprivation of a federal right. *Clay v. Conlee*, 815 F.2d 1164, 1169-70. Individual liability will attach under § 1983 if there is a causal link or direct responsibility for a deprivation of rights. *Mayorga v. Missouri*, 442 F.3d 1128, 1132 (8th Cir. 2006). However, "[g]overnment officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1948 (2009). Instead, a supervisor is liable under § 1983 if

> he directly participates in a constitutional violation or if a failure to properly supervise and train the offending employee caused a deprivation of constitutional rights. The plaintiff must demonstrate that the supervisor was deliberately indifferent to or tacitly authorized the offending acts. This requires a showing that the supervisor had notice that the training procedures and supervision were inadequate and likely to result in a constitutional violation. *Tlamka v. Serrell*, 244 F.3d 628, 635 (8th Cir. 2001)(quoting *Andrews v. Fowler*, 98 F.3d 1069, 1078 (8th Cir. 1996)).

A. Defendant Arnott is not liable for the claims asserted against him in his individual capacity.

Even though Defendant Arnott assigned the drug exercise request to Captain Farrell to coordinate the assist, Defendant Arnott was not present at Central High School during the drug detection exercise and, thus, did not directly participate in any alleged constitutional violation. Moreover, it is uncontroverted that Deputy Inlow and his canine partner have taken part in extensive training and Plaintiff presents no evidence that Defendant Arnott failed to properly supervise his subordinates who were involved in the alleged constitutional violations. Finally, it is uncontroverted that Plaintiffs have no evidence that Defendant Arnott had any notice before April 22, 2010 that any custom or policy being utilized by his department, with respect to his deputies using canines for drug detection activities in schools, was unconstitutional. Though Plaintiffs claim to dispute this fact,

they do so in a conclusory manner and without controverting this fact with citations to the record; thus, this fact is deemed admitted pursuant to Local Rule 56.1(a). Thus, Defendant Arnott did not have notice that his training procedures and supervision were inadequate and likely to result in a constitutional violation. According to the established policies of the Sheriff's Department and the Springfield Public Schools, the role of the Sheriff's Deputies would be strictly limited to the canine sniff procedure and they were to actually be removed from the classroom before any search was done. There is nothing unconstitutional about the canine sniff as stated above and there was no reason for Defendant Arnott to believe or even suspect that his deputies would violate the established policies. Therefore, for the above stated reasons, Defendant Arnott cannot be liable for any potential violation in his individual capacity and summary judgment should be granted in favor of Defendant Arnott on this issue.

B. Defendants Ridder and Snodgrass are not liable for the claims asserted against them in their individual capacity.

Plaintiff presents no credible evidence that Defendants Ridder and Snodgrass were directly involved in the alleged constitutional violation, that Defendants Ridder and Snodgrass were present in C.M.'s classroom at the time of the alleged violation, and no evidence that either of them failed to properly supervise their subordinates involved in the alleged actions. Plaintiffs have made reference in Plaintiffs' motion for summary judgment to Defendant Arnott's Answer to Plaintiffs' Interrogatory Number 3 which stated that the Deputies' reports listed Ron Snodgrass along with ten others as being "present" in response to Plaintiffs' request to identify all persons "who participated in the drug detection activities" at Central High School. It is undisputed that Snodgrass was in the school and made decisions related to the search activities, but there is no credible evidence that he was in C.M.'s classroom when the search was conducted. Plaintiffs' own statements of fact 22 and

23 lists two assistant principals (Martin and Anderson) as the only school administrators who "followed and/or assisted in the use of the drug detection dogs." Defendants Ridder and Snodgrass specifically deny that Snodgrass was present during the drug detection activities in the classrooms. Read together this evidence is not sufficient to support a claim that Snodgrass was in C.M.'s classroom at the time of the search. For these reasons, summary judgment should be granted for Defendants Ridder and Snodgrass on any claims against them in their individual capacity.

II. Government Entity Liability Under § 1983

In order to attach liability to a government entity under § 1983, it must appear that the claimed constitutional deprivations were caused by a policy or custom of that entity. *M.Y., ex rel., J.Y. v. Special School Dist. No. 1*, 544 F.3d 885, 890 (8th Cir. 2008)(internal quotation omitted); *Clay v. Conlee*, 815 F.2d 1164, 1170 (8th Cir. 1987). "Official policy involves 'a deliberate choice to follow a course of action . . . made from among various alternatives' by an official who [is determined by state law to have] the final authority to establish governmental policy." *Ware v. Jackson Cnty., Mo.*, 150 F.3d 873, 880 (8th Cir. 1998)(*quoting Jane Doe A v. Special Sch. Dist.*, 901 F.2d 642, 646 (8th Cir. 1990)). Moreover, for Plaintiffs to prevail on their claim, they must "show that the policy was unconstitutional and that it was 'the moving force' behind the harm that he suffered." *Jenkins v. Cnty. of Hennepin, Minn.*, 557 F.3d 628, 633 (8th Cir. 2009)(citations omitted). Alternatively, a custom or usage is demonstrated by:

> (1) The existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity's employees;
> (2) Deliberate indifference to or tacit authorization of such conduct by the governmental entity's policymaking officials after notice to the officials of that misconduct; and
> (3) The plaintiff's injury by acts pursuant to the governmental entity's custom, i.e., proof that the custom was the moving force behind the constitutional violation. *Ware*, 150 F.3d at 880 (*internal quotations omitted).*

However, "[l]iability for an unconstitutional custom or usage . . . cannot arise from a single act." *McGautha v. Jackson Co., Mo., Collections Dept.*, 36 F.3d 53, 57 (8th Cir. 1994).

A. Defendant Arnott is not liable for the claims asserted against him in his official capacity.

A suit against a public employee in his or her official capacity is merely a suit against the public employer." *Johnson v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir. 1999). Thus, Plaintiff's suit against Defendant Arnott in his official capacity is a suit against his employer. The policy that Plaintiffs put in question is Greene County Sheriff's Policy 5-50-5 which authorizes the use of patrol canines for random exploratory sniffing of luggage, packages, or other inanimate objects in public facilities. This policy prohibits the initiation of a sniff on an individual's person with an aggressive alert canine. However, as stated earlier, a canine sniff does not implicate a Fourth Amendment violation.

Moreover, there is no evidence that the claimed constitutional deprivations were caused by a custom of the entity since, as stated above, it is uncontroverted that Plaintiffs have not set forth evidence that Defendant Arnott had any notice before April 22, 2010 that any custom or policy being utilized by his department, with respect to his deputies using canines to do drug detection activities in schools, was unconstitutional or that the deputies were not following the established policies. Therefore, Plaintiffs would not be able to prove the second prong of a "custom or usage." For these reasons, Defendant Arnott cannot be liable in his official capacity and, thus, he is entitled to summary judgment on this issue.

B. The District is not liable under § 1983.

The only District policy which is at issue is SOP 3.4.1. SOP 3.4.1. provides “[t]he drug

detection dog may be used to sniff: (1) student lockers and desks; (2) backpacks, book bags, gym bags, purses or other similar items, when such items are not in the physical possession of a student or person; (3) automobiles located on or adjacent to the campus; and, (4) unoccupied areas of the building or campus." However, as previously stated, a canine sniff does not implicate a Fourth Amendment violation.

SOP 3.4.1. also provides that students will not be present in an area/room when the drug detection dog is working. Although students were directed to leave the classroom and relocate to an area in the hall, the Court finds this was not an unreasonable seizure. A seizure occurs when "a reasonable person would have believed that he was not free to leave" *U.S. v. Garcia*, 613 F.3d 749 (8th Cir. 2010) while a seizure of property occurs when there is some meaningful interference with an individual's possessory interests in the property. *United States v. DeMoss*, 279 F.3d 632, 635 (8th Cir. 2002). H.M. was not subject to a seizure as neither she nor her personal items were in the Central High School building when the drug dogs were present in the building. Moreover, C.M. was not subject to a seizure when he was asked to leave the room while the drug dogs conducted their drug sniff. *See Burbank v. Canton Board of Education*, 2009 WL 3366272 at *8 (Conn. Super. Sept 14, 2009); *Doe v. Renfrow*, 475 F. Supp. 1012, 1019 (N.D. Ind. 1979)(concluding that a student was not seized when the school regulated student movement). Furthermore, C.M.'s backpack was not subject to a seizure. *See Doran v. Contoocook Valley School Dist.*, 616 F.Supp.2d 184 (D.N.H. 2009)(the court concluded that no seizure of student possessions occurred when school officials required students to leave their belongings in the class and required the students to leave the school while drug detection dogs proceeded through the school). Therefore, the provisions of SOP 3.4.1.do not reflect a procedure which would constitute a constitutional deprivation.

Moreover, the Plaintiffs have set forth no evidence that the claimed constitutional deprivations were caused by a custom of the District. Therefore, Plaintiffs would not be able to prove the second prong of a "custom or usage." For the above stated reasons, the Defendant School District cannot be liable under § 1983 and, thus, is entitled to summary judgment on this issue.

C. Defendants Ridder and Snodgrass are not liable under § 1983.

As a suit against a public employee in his or her official capacity is merely a suit against the public employer", a claim against Defendants Dr. Ridder and Dr. Snodgrass in their official capacity is essentially a claim against the District and, thus, Plaintiffs' claims against these Defendants are redundant to the claims against the District. *Johnson v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir. 1999). For these reasons, Defendants Ridder and Snodgrass are entitled to summary judgment on any claims against them in their official capacity.

CONCLUSION

The long and short of all of this is that the written policies and procedures of the Greene County Sheriff and the Springfield Public Schools involved in this case appear to be reasonable and not in any way a deprivation of a federal right. There is no allegation of any past activity contrary to these policies which would support a claim of custom or practice. The only evidence in this case which could possibly support a § 1983 claim is the slight possibility raised by C.M.'s testimony that some zippers on his backpack were unzipped, raising the inference that, even though there was no canine alert, someone searched his backpack in a manner that would be an individual violation of § 1983. Even if we assume there is sufficient evidence to support this claim, which is questionable, there is no evidence that any of the individual Defendants in this case performed that search of C.M.'s backpack or were even in C.M.'s classroom at the time of the search. Therefore, Plaintiffs

have not produced any admissible evidence to support a claim that any of the individual Defendants committed any such constitutional violation. For these reasons, summary judgment is appropriate on their claims.

For the above stated reasons, Plaintiffs' Motion for Summary Judgment is **DENIED**; Separate Defendant Sheriff James Arnott's Motion for Summary Judgment is **GRANTED**; and Motion for Summary Judgment by Defendants School District of Springfield R-12, Norm Ridder and Ron Snodgrass is **GRANTED**. Summary judgment is granted on all counts in favor of Defendants Springfield Public Schools, Norm Ridder, Ron Snodgrass, and James Arnott.

IT IS SO ORDERED.

DATED: January 25, 2012

/s/ Richard E. Dorr
RICHARD E. DORR, JUDGE
UNITED STATES DISTRICT COURT