

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

Derrick through and with his next friend and
mother Tina, Walter through and with his next
friend and mother Janeva, Thomas through and
with his next friend and mother Michelle and Sean
through and with his next friend and mother
Andrea and on behalf of all others similarly
situated,

Plaintiffs,

v.

Glen Mills Schools, Theresa D. Miller,
Secretary of the Pennsylvania Department of
Human Service in her individual capacity,
Theodore Dallas, former Secretary of the
Department of Human Services, in his individual
capacity, Cathy Utz, Deputy Secretary of the
Office of Children, Youth, and Families, in her
individual capacity, Pedro A. Rivera, Secretary
of Education of the Pennsylvania Department of
Education, in his individual capacity,
Pennsylvania Department of Education,
Chester County Intermediate Unit, Randy
Ireson, former Executive Director of Glen Mills
Schools, Andre Walker, Robert Taylor, Sean
Doe, Chris Doe 1, Chris Doe 2, John Does 1-20
Defendants.

CLASS ACTION COMPLAINT

NO. 2:19-cv-01541-HB

REPLY BRIEF IN SUPPORT OF THE MOTION OF DEFENDANT, ROBERT
TAYLOR, TO DISMISS PLAINTIFF’S FOURTEENTH AMENDMENT CLAIM AND
TO SEVER ALL CLAIMS

I. The Third Circuit Applies the Eighth Amendment Standard to Claims of
Adjudicated Juveniles

Plaintiffs’ Omnibus Response to the Defendants’ Motions, section IV, erroneously cites
A.M. ex rel. J.M.K. v. Luzerne Cty. Juvenile Det. Ctr., 372 F.3d 572 (3d. Cir. 2004) as binding
authority that the Fourteenth Amendment applies to adjudicated juveniles; subsequently noting
in parentheses, “applying Due Process Clause and noting plaintiff was a juvenile detainee”. To

be clear, the case actually supports Taylor's position that a traditional Eighth Amendment standard is applicable to Plaintiff-Walter's claims against him.

In determining whether the Eighth Amendment or Fourteenth Amendment should apply to A.M.'s claims, the Third Circuit focused on A.M.'s status as "a detainee and not a convicted prisoner." A.M. ex rel. J.M.K. at 584. Nowhere in the opinion did that court make a distinction regarding A.M.'s status as a juvenile. On the contrary, the Third Circuit strictly focused on A.M.'s status in the criminal justice system.

It also bears noting that Walter's claims that his Eighth and Fourteenth Amendment rights were violated on May 3, 2018, when Taylor allegedly assaulted and battered him, violates the more-specific-provision rule. Under the more-specific-provision rule, "if a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process." United States v. Lanier, 520 U.S. 259, 272 n.7, 117 S. Ct. 1219, 137 L. Ed. 2d 432 (1997). In Betts v. New Castle Youth Development Center, the Third Circuit discussed this rule's application to a state-created danger doctrine in the prisoner context. 621 F.3d 249, 259-61 (3d Cir. 2010).

Betts v. New Castle Youth Development Center involved a youth detention center that permitted adjudicated delinquents to play football but failed to provide any safety equipment. Id. at 252-53. Betts sustained a spinal cord injury while attempting to tackle another player. Id. at 253. In response, Betts brought both an Eighth Amendment claim and a Fourteenth Amendment state-created danger claim against the youth detention center. Id. In analyzing the Fourteenth Amendment claim, the Third Circuit held that "Betts's claims concern his conditions of confinement and an alleged failure by Defendants to ensure his safety. Because these allegations

fit squarely within the Eighth Amendment’s prohibition on cruel and unusual punishment, we hold that the more-specific-provision rule forecloses Betts’s substantive due process claims.” Id. at 261. Notably, the Third Circuit specifically opined that “Betts does not cite any case law for the proposition that he may bring both substantive due process and Eighth Amendment claims challenging the same conduct.” Accordingly, under the established precedent cited by Defendant, it is respectfully submitted that Walter’s only viable Constitutional claim against Taylor arises under the Eighth Amendment.

II. Severance of All Claims Against Taylor is Proper

Walter’s case against Taylor is an isolated incident of alleged assault and battery, regardless of whether couched under the Eighth Amendment or under state law. Absent severance, this singular claim which allegedly took place on May 3, 2018, will be subsumed and beholden to a class action alleging systemic abuse at Glen Mills over a period of years. To make matter worse, there are now two other class actions making similar claims. Accordingly, it is assured that discovery will be incredibly complicated to say the least and trial will likely not take place before 2021, at the earliest.

Plaintiffs’ attorneys’ Complaint and Omnibus Response not only belie this reality but also puts the cart before the horse as to Walter and Taylor. Specifically, their response argues that “Walker’s (sic) and Taylor’s [alleged] violence toward Plaintiffs are specific examples of the ‘policies, practices, and customs’ of Glen Mills, from which the Glen Mills Leadership Defendants failed to protect students, and that Plaintiffs will have to relitigate if the cases are severed.” However, this argument assumes that Walter was subject to excessive force in the first place by Taylor. Severing and litigating the excessive force/assault and battery case first could obviate the need for Walter and Taylor to participate in a trial regarding Monell type claims and

would certainly not prejudice the trial of the class action or cause duplicative litigation as Plaintiffs contend. Rather, the severance litigation would be a sequential and efficient way to timely adjudicate the rights of both Walter and Taylor.

III. CONCLUSION

It is respectfully requested that this Honorable Court grant the Motion to Dismiss Plaintiff Walter's Fourteenth Amendment Claims, and sever all claims against Defendant Robert Taylor from the proposed class-action for purposes of discovery and trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September 2019, I electronically filed the foregoing Reply Brief in Support of the Motion of Defendant, Robert Taylor, to Dismiss Plaintiff, Walter's Fourteenth Amendment Claim and to Sever All Claims with the Clerk of Court using the Electronic Court Filing system. I certify that all participants in the case are registered ECF users and service will be accomplished by the ECF system.

/s/ Edvard L. Wilson _____

Edvard L. Wilson