

No. _____

**In the
Supreme Court of the United States**

O.W.,

Petitioner,

v.

SCHOOL BOARD OF THE CITY OF
VIRGINIA BEACH, VIRGINIA, *et al.*,

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth
Circuit**

**APPENDIX TO THE PETITION FOR A WRIT
OF CERTIORARI**

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APPENDIX A
OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT, FILED APRIL 9, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1288

O.W.,
Plaintiff–Appellant,

v.

MARIE L. CARR, police officer in her individual and
official capacities; REID BAKER, assistant principal
in his individual and official capacities; SCHOOL
BOARD OF THE CITY OF VIRGINIA BEACH,
VIRGINIA, a body corporate; CITY OF VIRGINIA
BEACH, a body politic and corporate,
Defendants–Appellees.

JUVENILE LAW CENTER; RISE FOR YOUTH;
NATIONAL POLICE ACCOUNTABILITY
PROJECT; ELECTRONIC PRIVACY
INFORMATION CENTER,
Amici Supporting Appellant.

Appeal from the United States District Court for the
Eastern District of Virginia, at Norfolk. Elizabeth W.
Hanes, District Judge. (2:21-cv-00448-EWH-LRL)

Argued: October 31, 2024 Decided: April 9, 2026

Before AGEE, QUATTLEBAUM, and RUSHING,
Circuit Judges.

Affirmed by published opinion. Judge Agee wrote the opinion, in which Judge Quattlebaum and Judge Rushing joined.

AGEE, Circuit Judge:

In 2019, O.W.—a 13-year-old male student at Kempsville Middle School in Virginia Beach, Virginia—received a sexually explicit photo from a female classmate. A few months later, he shared that photo with some other students during the school day. Teachers quickly caught wind of the matter and notified the Acting Assistant Principal, Reid Baker.

In response, Mr. Baker took O.W. out of class, asked him some questions, and searched the photo gallery of his phone. Mr. Baker also notified the police officer working at Kempsville, School Resource Officer Marie L. Carr, who then began a criminal investigation. After being questioned by Mr. Baker and Officer Carr, and after showing the explicit photo to Officer Carr, O.W. was criminally charged in juvenile court for possession of child pornography. State juvenile court proceedings followed, but the case against O.W. was ultimately dismissed after he completed the terms and conditions of the deferred disposition set by the juvenile court.

This lawsuit followed. O.W. sued Mr. Baker, Officer Carr, the Virginia Beach School Board, and the City of Virginia Beach (collectively, the Defendants),

alleging violations of his Fourth, Fifth, and Fourteenth Amendment rights. The district court granted summary judgment to the Defendants on all of O.W.'s claims. He now appeals, charging the district court with various errors. For the reasons explained below, we affirm.

I.

A.

Like many school districts, Virginia Beach works with local authorities to maintain a modest police presence on school grounds. It memorialized this relationship with the Virginia Beach Police Department in a “Memorandum of Understanding” (MOU) in 2008. J.A. 132. The MOU was in effect on the day of the events underlying this lawsuit. [J.A. 205].

Under the MOU, the Virginia Beach Police Department agreed to station School Resources Officers (SROs) on school grounds. [J.A. 132]. The stationed SRO was tasked with patrolling the school building and general law enforcement. [*Id.*]. During the school day, the principal or school staff must immediately report any criminal activity to the SRO. [J.A. 134]. The MOU explains:

The SRO will retain all applicable police powers on school property, including the authority to stop, question, interview and take appropriate law enforcement action in situations involving students, faculty and other persons. These law enforcement actions may be taken without prior notification or authorization of the school principal,

although SROs are encouraged to notify school officials of the situation as soon as practicable.

J.A. 135. While the SRO is authorized to take law enforcement actions at the school, he or she is not responsible for the enforcement of school rules or regulations. [J.A. 133].

The MOU also provides that school officials “may conduct searches” of a student “when the student is within the school’s jurisdiction[,]” and “when reasonable suspicion exists to believe that the student has violated or is violating either the Code of Virginia, the Code of the City of Virginia Beach or School Board Policy.” J.A. 136. SROs, by contrast, may not search a student unless they have probable cause to believe the student is violating the law. J.A. 136. The MOU further states that SROs “will not become involved in student or school searches which are conducted by school officials and are not supported by probable cause[,]” and “will not encourage or request a school official to act as the SRO’s agent in conducting searches of students[.]” J.A. 136–37.

B.

While at school on March 5, 2019, O.W. showed at least two classmates a nude picture of A.F., a 14-year-old female student at Kempsville. He also later sent the photograph to another student, G.C. [J.A. 1131]. A.F. had sent the picture to O.W. months earlier via Snapchat, a messaging and social media application. [J.A. 939–40, 974.] According to O.W., “everyone was talking about” the photograph and “asking him . . . if A.F. had really sent it to him.” *O.W. ex rel. Bass v. Sch. Bd. of the City of Va. Beach*, 656 F. Supp. 3d 596, 606 (E.D. Va. 2023).

Later that afternoon, a teacher reported to Mr. Baker that O.W. possessed an inappropriate and sexually explicit image of a female student. [J.A. 1131.] After receiving this report, Mr. Baker took O.W. out of class, brought him to Kempsville's printing room, and asked him if he had an inappropriate photo. O.W. responded "What are you talking about?" which prompted Mr. Baker to say, "Don't lie to me." J.A. 949.¹

Following the questioning in the printing room, Mr. Baker took O.W. to the lobby of the school's guidance office. At Mr. Baker's request, O.W. wrote a statement describing what happened. Once O.W. finished, Mr. Baker read the statement and asked O.W. to redo it because it "did not make sense[.]" and "didn't give enough information."² J.A. 518, 632, 947. In the second statement, O.W. wrote: "I showed people the photo and that was my bad."³ J.A. 1268.

After O.W. finished his second statement, Mr. Baker took him to a small room connected to the guidance office to ask him some more questions. *See* J.A. 385, 755 (estimating that the room was approximately 72 square feet). The door to the room

¹ Officer Carr was not present during this initial conversation.

² Neither O.W. nor Mr. Baker recalled the exact contents of O.W.'s first statement. *See* J.A. 486–87 (Mr. Baker's testimony that he "possibl[y]" asked O.W. to write two statements); J.A. 518 (O.W.'s testimony that he wrote two statements but could not remember the contents of the first).

³ According to O.W., he "did not say that the photograph was a nude image in [his] first statements," and he "did not say that A.F. was in the photograph in [his] first statements." *O.W.*, 656 F. Supp. 3d at 606 n.5 (quoting J.A. 675).

was kept open, and Officer Carr entered after the questioning began and sat by the door. Although his memory of this specific incident was fuzzy, Mr. Baker testified that whenever he questioned students about a possible violation of the Student Code of Conduct, he would tell them that lying was a separate violation of the Code of Conduct. [J.A. 902–03].

During this round of questioning, Mr. Baker first asked O.W. what happened during lunch, believing that was when he showed other students the photo. [J.A. 387, 757]. O.W. replied that nothing happened during lunch. [J.A. 387, 757]. Mr. Baker told O.W., “We’re going through our investigation, we’re gathering more statements, and I’m getting a consistent story over here. Yours isn’t just adding up.” J.A. 387, 757. Eventually, O.W. clarified that he had shown other students the photo in class, not the lunchroom, and that he forgot he had the photo until he was on his phone during class. [J.A. 634]. When he remembered he had it, he showed it to two students. [J.A. 294, 634, 883–84] O.W. also stated that one of those students, G.C., asked to use O.W.’s phone to call someone and then sent the photo from O.W.’s phone to his own device. [J.A. 294, 634] O.W. later admitted that he was the one who sent the picture to the other student, and then stated that he had since deleted the photo and no longer had it. [J.A. 294, 387, 634, 757]. At that point, Officer Carr chimed in, telling O.W. that “even if you deleted something, we can still find the image on your phone.” J.A. 387, 753.

Mr. Baker asked O.W. if he still had his phone. [J.A. 634] O.W. confirmed he did and gave it to Mr. Baker who then looked through it. But Mr. Baker could not find the photo because it was in O.W.’s messages, not his main photo gallery. [J.A. 955]. Officer Carr asked

Mr. Baker to put the phone in airplane mode and power it off. [J.A. 634] She then collected the phone as evidence, at which point Mr. Baker and Officer Carr left O.W. in the small room alone and stepped outside. [J.A. 387, 634, 753]. Officer Carr called the Commonwealth's Attorney and told her that a possible felony had been committed. [J.A. 929–30]. The attorney instructed her to charge O.W. and the other male student, G.C. [J.A. 930].

Officer Carr returned to the room where O.W. was waiting and, without Mr. Baker present, asked O.W. if he still had the photo on his phone. [J.A. 635] Officer Carr was armed, in uniform, and had her badge on display. [J.A. 388, 753] O.W. confessed that he still had the photo. [J.A. 635]. Officer Carr asked O.W. in a “commanding tone” to show her “the contents of [his] phone.” J.A. 675. O.W. complied by unlocking his phone, finding the photo, and showing it to Officer Carr. After seeing the photo, Officer Carr read O.W. his *Miranda*⁴ rights, arrested him, and took him to juvenile detention. [J.A. 390, 635, 753]. At some point, Officer Carr asked for and obtained O.W.'s written statement, as well as A.F.'s and G.C.'s statements. [J.A. 389, 759].⁵

O.W. and G.C. were criminally charged in juvenile court. [J.A. 298.] During those proceedings, O.W.'s counsel filed two suppression motions which were based on arguments similar to those raised here—that

⁴ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁵ The record is somewhat murky as to whether O.W. immediately confessed. Mr. Baker stated that O.W. initially denied having the photo. [J.A. 904]. O.W. claims he immediately told Mr. Baker the truth. [J.A. 802]. In any event, O.W. eventually admitted to possessing the photograph.

Mr. Baker’s questioning violated his Fifth Amendment right against self-incrimination, and that the search of his phone violated his Fourth Amendment right to be free from unreasonable searches and seizures. [See J.A. 298 (referencing state court records), 1133 (district court taking judicial notice of same)]. The juvenile court denied these motions and the matter proceeded to trial. Following trial, the juvenile court found that there was sufficient evidence to find O.W. guilty. [J.A. 298–99.] Even so, it deferred disposition of the matter and imposed certain terms and conditions on O.W. [J.A. 299.] Once O.W. completed those terms and conditions, the court dismissed the case against him. See J.A. 299 (noting that the “case against O.W. was dismissed” after he “successful[ly] complet[ed] the terms and conditions of the deferred disposition set by the [juvenile] [c]ourt”); O.W., 656 F. Supp. 3d. at 607 n.7; Va. Code Ann. § 16.1-278.8(A)(5) (allowing for “defer[red] disposition” of “delinquency charge[s]” under certain circumstances).

C.

In March 2021, O.W.’s mother filed a pro se complaint on behalf of her son in the Eastern District of Virginia. [J.A. 1, 5]. The district court sua sponte ordered her to amend her complaint and told her that she could not represent her son pro se. [J.A. 1134.] O.W.’s mother eventually obtained counsel and filed an amended complaint. [J.A. 1134.]

The amended complaint asserted several categories of claims against Mr. Baker, Officer Carr, the City of Virginia Beach (the City), the School Board, and other school staff. Count I, brought under 42 U.S.C. § 1983, alleged that the School Defendants—i.e., all those but

Officer Carr and the City—violated O.W.’s Fourth, Fifth, and Fourteenth Amendment rights. [J.A. 44]. Count II, also brought under § 1983, alleged that Officer Carr and the City (the City Defendants) conspired to violate O.W.’s rights. [J.A. 45] Counts III through VIII, which are not at issue on appeal, raised other constitutional and tort claims. [J.A. 47–51]. Counts IX and X asserted *Monell*⁶ liability against the City and the School Board. [J.A. 51] Count XI, also not at issue on appeal, raised a Title IX claim. [J.A. 53]

The matter proceeded to discovery. The School Defendants and the City Defendants separately moved for summary judgment. O.W., meanwhile, moved for partial summary judgment. The district court denied O.W.’s motion and granted both of the Defendants’ motions. [J.A. 1160–61.]

The court began with Count I of O.W.’s complaint.⁷ O.W., 656 F. Supp. 3d at 612. As to the Fourth Amendment claim, the district court applied the test from *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), to hold that Mr. Baker’s search of O.W.’s cell phone was constitutionally permissible. *See id.* at 612–14. The court then took up the Fifth Amendment portion of Count I. *See id.* at 614. After considering the totality of the circumstances, the district court held that O.W.’s confession was voluntary and that Mr. Baker did not violate his Fifth Amendment rights. *See id.* at 614–17. Given these findings, the court granted

⁶ *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978).

⁷ The parties’ briefing on this issue below included argument related to Officer Carr. But as the district court noted, the operative complaint (O.W.’s second amended complaint) did “not allege Fourth, Fifth, or Fourteenth Amendment violations against Officer Carr.” J.A. 1142. It therefore declined to reach those arguments. *Id.*

summary judgment to the School Defendants on Count I.

The district court next turned to Count II of O.W.’s complaint. *Id.* at 617. To support his claim that Officer Carr and the City conspired to deprive him of his Fourth, Fifth, and Fourteenth Amendment rights, O.W. primarily relied on the MOU between the City and the School Board. *See id.* The court observed that there was “clear[ly] . . . an agreement between the City and School Board to coordinate when responding to criminal activity[.]” *Id.* at 618. But it concluded that it was “unreasonable to infer, without more, that [the MOU] was an agreement to deprive [O.W.] of his constitutional rights.” *Id.* To that end, the court noted that O.W. failed to “to point to anything in the MOU that was unlawful,” or otherwise “explain how the terms of the MOU establish an agreement to deprive [him] of his constitutional rights.” *Id.* The court therefore granted summary judgment to the City Defendants on Count II.

Later in its opinion, the court turned to Counts IX and X of O.W.’s complaint. *Id.* at 621. Finding that O.W. failed to “establish any [underlying] constitutional violation for which the School Board or the City could be held liable under *Monell*[.]” the court granted summary judgment to those defendants on Counts IX and X. *Id.*

Finally, the district court denied without prejudice O.W.’s motion to file a third amended complaint and ordered him to “file a [t]hird [a]mended [c]omplaint within thirty . . . days” if he desired to “continue the prosecution of his case” in the district court. *Id.* at 623. Rather than heed the district court’s instructions, O.W. filed a notice of appeal on February 17, 2024—just three days after the district court issued its

opinion. J.A. 1164–65. Lacking a final judgment from the district court to review or a certification of an interlocutory order, this Court dismissed O.W.’s original appeal. J.A. 1167–71; *see* 28 U.S.C. §§ 1291, 1292.

O.W. returned to district court, sought and received a final judgment, *see* J.A. 1174–75, and then filed a timely notice of appeal on his second attempt, J.A. 1176. Armed with the district court’s final judgment, this Court now has jurisdiction under 28 U.S.C. § 1291.

II.

The Court reviews *de novo* the district court’s grant of summary judgment. *Belmora LLC v. Bayer Consumer Care AG*, 987 F.3d 284, 291 (4th Cir. 2021). Summary judgment is appropriate when “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.” *Knibbs v. Momphard*, 30 F.4th 200, 213 (4th Cir. 2022) (quoting Fed. R. Civ. P. 56(a)). A fact is “material” if it “might affect the outcome of the suit under the governing law.” *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 313 (4th Cir. 2013) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). And a dispute is “genuine” if “a reasonable jury could return a verdict for the non-moving party.” *Strothers v. City of Laurel*, 895 F.3d 317, 326 (4th Cir. 2018) (quoting *Anderson*, 477 U.S. at 248).

In applying this standard, the Court must “take the facts in the light most favorable to the [non-moving party] to determine the applicable questions of law and ignore any contrary factual claims.” *Hensley ex rel. N.C. v. Price*, 876 F.3d 573, 579 (4th Cir. 2017).

That entails drawing “all reasonable inferences” from those facts in the non-moving party’s favor, *Henry v. Purnell*, 652 F.3d 524, 531 (4th Cir. 2011) (en banc), and refraining from weighing the evidence or making credibility determinations, *Hensley*, 876 F.3d at 584 n.6.

III.

O.W. raises four main arguments on appeal. First, he contends that Mr. Baker’s search of his phone violated his Fourth Amendment rights. Second, he maintains that his confession to Mr. Baker was involuntary and therefore obtained in violation of his Fifth Amendment rights. Third, he argues that Officer Carr and the City conspired with Virginia Beach Public Schools to deprive him of his constitutional rights. And fourth, he claims that the City and the School Board are liable for their employees’ unconstitutional conduct under *Monell*. We address each issue in turn.

A.

O.W. first argues that the district court’s decision transgresses the Fourth Amendment on numerous grounds, including that *T.L.O.* does not authorize warrantless cell phone searches after *Riley*⁸. He also argues that *T.L.O.* is inapplicable here given the coordination between Kempsville school staff and law enforcement personnel. We find none of his arguments persuasive.

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. Courts have

⁸ *Riley v. California*, 573 U.S. 373 (2014).

generally interpreted this language to prohibit searches absent a warrant supported by probable cause. *Katz v. United States*, 389 U.S. 347, 356–57 (1967).

Critical for this case, though, the Supreme Court has observed that the “school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject.” *T.L.O.*, 469 U.S. at 340. Reasoning from the Fourth Amendment’s “fundamental command” that all “searches and seizures be reasonable,” the Supreme Court has established a “twofold inquiry” for determining the “legality of a search of a student.” *Id.* at 340–41; see *id.*

First, courts “must consider ‘whether the . . . [search] was justified at its inception.’” *Id.* at 341 (quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968)). Second, courts “must determine whether the search as actually conducted ‘was reasonably related in scope to the circumstances which justified the interference in the first place[.]’” *Id.* (quoting *Terry*, 392 U.S. at 20). A search of a student by a school official is “‘justified at its inception’ when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” *Id.* at 341–42. And a search is “reasonably related in scope” to its justification when it is “not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” *Id.* at 342.

When a school official’s search of a student and/or their effects is both “justified at its inception” and “reasonably related in scope to the circumstances which justified the interference,” it complies with the Fourth Amendment. *Id.* at 341–42.

1.

A straightforward application of *T.L.O.* confirms that Mr. Baker's search of O.W.'s phone was constitutionally permissible.

Mr. Baker's search was "justified at its inception," *id.* at 341, because by the time he searched the phone, he had both received a report that O.W. possessed an explicit photograph of a classmate and personally heard O.W.'s confession confirming the same. That information certainly provides "reasonable grounds for suspecting that [a] search" of O.W.'s phone would "turn up evidence that [he] violated or is violating [] the law or the rules of the school." *Id.* at 342; *see O.W.*, 656 F. Supp. 3d at 614. After all, possession of that sort of photograph is not only a violation of Virginia Beach City Public Schools Code of Conduct—it also violates a Virginia statute. *See O.W.*, 656 F. Supp. 3d at 614 (citing Virginia Beach City Public Schools Code of Conduct, Rule 9, which prohibits the "[p]ossession of offensive materials such as nude photographs"); Va. Code Ann. § 18.2-374.1:1(C).

The search was also "reasonably related in scope to the circumstances which justified [it] in the first place[.]" *T.L.O.*, 469 U.S. at 341. Again, those circumstances involved O.W., a 13-year-old student, possessing and sharing an explicit photo of his 14-year-old classmate in school. *Id.* And the scope of the ensuing search involved Mr. Baker instructing O.W. to open his phone and then searching its photo gallery. That was eminently reasonable under these circumstances. As the district court observed, a phone's "photo gallery is a likely place for a photograph to be stored[.]" *O.W.*, 656 F. Supp. 3d at 614. Further, the narrow scope of the search was tailored to address the concerns underlying it—i.e.,

locating the photo and preventing further disruption of the school day. *See T.L.O.*, 469 U.S. at 340 (“[M]aintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures[.]”). While O.W. attempts to muddy the record on this point, *see infra* Part III.A.2, there is simply no evidence in the record to suggest that Mr. Baker’s search went beyond the photo gallery.

2.

O.W. spends the bulk of his briefing challenging the district court’s Fourth Amendment holding. His arguments fall into one of two categories: (1) *T.L.O.* is inapplicable on these facts, and (2) even assuming *T.L.O.* applies, the search was unlawful. Neither claim holds water.

Beginning with the first category, O.W. primarily argues that our analysis should be guided by the Supreme Court’s decision in *Ferguson v. City of Charleston*, 532 U.S. 67 (2001)—not *T.L.O.* But that case has no application here. Briefly, *Ferguson* involved a task force made up of police officers, local officials, and staff from the Medical University of South Carolina, which established a policy of identifying and testing pregnant patients for evidence of drug use without any individualized suspicion. *See id.* at 70–76. After “weigh[ing] the intrusion on the individual’s interest in privacy against the ‘special needs’ that supported the program[.]” the *Ferguson* Court ultimately held that the program violated the Fourth Amendment. *Id.* at 78; *see id.* at 86 (“The Fourth Amendment’s general prohibition against nonconsensual, warrantless, and suspicionless

searches *necessarily* applies to [this] policy.” (emphasis added)).

O.W. seeks to analogize the task force in *Ferguson* to the relationship between Virginia Beach Public Schools and the Virginia Beach Police Department. But O.W. overlooks a key difference between the two cases—*Ferguson* involved the permissibility of suspicionless searches. *See id.* at 76–86. Here, there is (rightly) no allegation that Mr. Baker searched O.W.’s phone without suspicion.⁹ So contrary to O.W.’s arguments, *Ferguson* is inapposite on its face.

O.W. also makes much of Officer Carr’s involvement in Mr. Baker’s search of his phone: “The district court [] erred when it applied *T.L.O.* to test the legality of the search [here] which was conducted in conjunction with the police for criminal investigatory purposes.” Opening Br. 20. To be sure, the Supreme Court in *T.L.O.* did not purport to answer the question of “the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies[.]” *T.L.O.*, 469 U.S. at 341 n.7. Still, several pitfalls doom this portion of O.W.’s argument.

To begin, the undisputed record shows that Mr. Baker did not search O.W.’s phone “at the behest of”

⁹ Abandoning the *T.L.O.* test in favor of a more free-flowing “special needs” inquiry would also run contrary to decades of caselaw and the reasoning underlying *T.L.O.* *See T.L.O.*, 469 U.S. at 341–42 (establishing a two-part test specifically for use in determining the reasonableness of a search in the school setting); *see also Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 370–77 (2009) (applying the *T.L.O.* test); *Wofford*, 390 F.3d at 326 (noting that the *T.L.O.* standard seeks to “respect[] the interests that educators have in ‘maintaining security and order’ in schools”).

Officer Carr. Much the opposite—Mr. Baker detained O.W. on his own authority, questioned O.W. himself (and then led the questioning once Officer Carr was later present), and asked for O.W.’s phone without any prompting from Officer Carr. There’s simply no evidence that Officer Carr solicited or directed this course of conduct. And hard as he may try, O.W. cannot overcome this lack of evidence with conclusory allegations. *See Dash v. Mayweather*, 731 F.3d 303, 311 (4th Cir. 2013) (“Although the court must draw all justifiable inferences in favor of the nonmoving party, the nonmoving party must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence.”).

Nor is there any evidence that Mr. Baker’s search was “in conjunction with” law enforcement as that phrase is used in *T.L.O.* For a search to be “in conjunction with” law enforcement, there must be some contemporaneous law enforcement activity. *See* Conjunction, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/conjunction> [<https://perma.cc/7BD4-EVRE>] (“Occurrence together in time or space: Concurrence.”). But that didn’t happen here. Rather, Officer Carr sat by while Mr. Baker searched O.W.’s phone; she did not search it with him.¹⁰

¹⁰ True, Officer Carr asked to seize the phone after Mr. Baker searched it and Mr. Baker delivered it to her. But mere after-the-fact delivery of incriminating evidence to law enforcement does not turn a school official’s standalone search into one performed “in conjunction with” law enforcement. Otherwise, *T.L.O.* would have come out differently. *See* 469 U.S. at 328–29 (teacher turned over

Perhaps sensing the infirmities in his first batch of arguments, O.W. takes a different tack with his second. He assumes that *T.L.O.* applies, but then argues that the search of his phone was still unlawful for two reasons: (1) it was not justified at its inception and the scope of the ensuing search is unknown, so it fails *T.L.O.*'s reasonableness test; and (2) recent Supreme Court precedent—particularly, *Riley v. California*, 573 U.S. 373 (2014)—suggests that *T.L.O.* does not authorize warrantless cell phone searches in the school setting. We disagree on both fronts.

Beginning with the former, and for the reasons already outlined above, Mr. Baker's search was both justified at its inception and reasonable in scope. O.W. mainly takes issue with the purportedly unknown scope of Mr. Baker's search. But as O.W. concedes, "[t]he record does not contain any admissible evidence regarding the scope of the search." Opening Br. 31. Instead, we have only O.W.'s unsubstantiated allegation that Mr. Baker "searched the photo gallery of [his] phone." J.A. 30. Without more, the only reasonable inference we can draw is that Mr. Baker—at most—navigated (or watched O.W. navigate) to the photo gallery and then perused it to look for the photograph. Such a limited search was certainly reasonable given the circumstances justifying it (i.e.,

evidence of marijuana dealing to the police). In addition, Mr. Baker was not present when Officer Carr later returned to O.W. and asked him to show her the photo.

And to the extent O.W. takes issue with Officer Carr's use of O.W.'s phone, that issue is not before us on appeal. Again, he brings no Fourth, Fifth, or Fourteenth Amendment claim against Officer Carr. So for the purposes of this appeal, we need only find that Mr. Baker acted on his own authority and not as a front for police activity.

allegations of child pornography and the distribution thereof in school).

O.W.’s second argument poses a more complicated question. He correctly points out that the Supreme Court has proceeded cautiously when dealing with warrantless searches of cell phones. In *Riley*, 573 U.S. 373, for instance, the Supreme Court held that “a warrant is generally required before” police officers may search “the information on a cell phone,” “even when [that] cell phone is seized incident to arrest.” *Id.* at 401. It reached that conclusion by “assessing, on the one hand, the degree to which [a given search] intrudes upon an individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.” *Id.* at 385 (quoting *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999)).

In the wake of *Riley*, there’s an argument that school officials should obtain a warrant before searching a student’s cell phone, *T.L.O.* notwithstanding. See, e.g., *Jackson v. McCurry*, 762 F. App’x 919, 927 (11th Cir. 2019) (unpublished) (“[B]ecause the reasoning of *Riley* treats cellphone searches as especially intrusive . . . , a search of a student’s cellphone might require a more compelling justification than that required to search a student’s other personal effects under *T.L.O.*”). After all, *T.L.O.* was decided well before the advent of cell phones. So even though it accounted for the privacy interests present at the time, see 469 U.S. at 339 (listing examples of personal effects in which a student may have a privacy interest), it did not account for the unique privacy interests attendant to cell phones, see *Riley*, 573 U.S. at 393–95.

In any event, O.W. has waived this issue. See Opening Br. 32–33; Reply Br. 19. His entire argument on brief is as follows: “*Terry* does not justify cellular phone searches under *Riley v. California*, . . . and this Court should hold that *T.L.O.* does not justify cellular phone searches of students on school grounds on mere reasonable suspicion.” Opening Br. 33; see Reply Br. 19 (same). Such a fleeting mention of *Riley*’s impact on *Terry* and *T.L.O.* is exactly the sort of “passing shot at [an] issue” that this Court has deemed to be waiver. *Grayson O Co. v. Agadir Int’l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) (cleaned up) (holding that a party waived an argument by “assert[ing it] without [any] argument or explanation”); see *Belk, Inc. v. Meyer Corp.*, 679 F.3d 146, 152 n.4 (4th Cir. 2012) (finding that an argument was waived after a party briefly mentioned it but “fail[ed] to develop [it] to any extent in its brief”). Accordingly, O.W. has waived this *Riley*-based argument for reversal.¹¹

But even if O.W. had preserved his *Riley* argument, we’re not persuaded that he’s right. *Riley* was, at bottom, a reasonableness case. As the Supreme Court acknowledged early in its opinion, “the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’” *Riley*, 573 U.S. at 381 (quoting

¹¹ The fact that amici more thoroughly address this issue doesn’t help O.W. *United States v. Buculei*, 262 F.3d 322, 333 n.11 (4th Cir. 2001) (“[A]n issue waived by appellant cannot be raised by amicus curiae.” (quoting *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 1293 (5th Cir. 1991)); see *Amoco Oil Co. v. United States*, 234 F.3d 1374 (“Because these constitutional arguments were not raised in [the] opening brief, we decline to address them. . . . [A]n appellant and an amicus may not split up the issues and expect the court to consider that they have all been raised on appeal.”).

Brigham City v. Stuart, 547 U.S. 398, 403 (2006)). It then applied that principle by balancing the competing interests involved when an individual’s cell phone is searched incident to arrest. *See id.* at 385–91. After balancing those interests, the Supreme Court held that warrants are “generally” required to search cell phones. *Id.* at 386. While various considerations animated the Court’s analysis, one finding was central to its conclusion: that the reasons for the search incident to arrest exception do not “ha[ve] much force with respect to digital content on cell phones.” *Id.*; *see id.* (“On the government interest side . . . the two risks [underlying the search incident to arrest exception]—harm to officers and destruction of evidence—[are not present] when the search is of digital data.”); *id.* at 393 (explaining that “[m]odern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of” the other types of physical items commonly searched incident to arrest). And notably, the Supreme Court in *Riley* made no inference of its impact on *T.L.O.* or its application to the school setting.

T.L.O. involved a similar reasonableness analysis. The Supreme Court first identified the competing interests at play—“the schoolchild’s legitimate expectations of privacy and the school’s equally legitimate need to maintain an environment in which learning can take place[.]” *T.L.O.*, 469 U.S. at 340. It then “str[uc]k[] the balance” between these interests by “dispens[ing] with the warrant requirement” in the school setting. *Id.* It did so because “requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary

procedures needed in the schools.” *Id.*; see *id.* at 342–43 (establishing a two-part test for school searches and stating that “this standard will . . . neither unduly burden the efforts of school authorities to maintain order in their schools nor authorize unrestrained intrusions upon the privacy of schoolchildren”).

Read together, it’s hard to see how *Riley*—a case about police officers searching cell phones incident to arrest—necessarily upends *T.L.O.*—a case about school officials searching students and their belongings. In each instance, the Supreme Court conducted a flexible, fact-specific reasonableness analysis to reach its conclusion. And critically, different concerns drove the analysis in each case. Given those different concerns, we’re not persuaded that *Riley* undermines *T.L.O.*, particularly in this case. A few other observations support this conclusion.

To start, *Riley* explicitly discounted the notion that its holding applied across the board. See 573 U.S. at 401–02 (“[E]ven though the search incident to arrest exception does not apply to cell phones, other case-specific exceptions may still justify a warrantless search of a particular phone.”); *Jackson*, 762 F. App’x at 927 (“[*Riley*] did not attempt to spell out how its holding could be transposed to the setting of a public school.”). That alone makes us hesitate to find that *Riley* extends to school setting, especially since federal courts should be wary of “removing [] devices from the disciplinary tool-box with the blunt instrument of constitutional decree.” *Wofford v. Evans*, 390 F.3d 318, 324–25 (4th Cir. 2004).

Moreover, *Riley*’s rationale does not neatly map on to the school setting. To reiterate, that decision flowed from the Supreme Court’s recognition that the reasons for the search incident to arrest exception—

protecting police officers, preventing the destruction of evidence, and arrestees' reduced privacy interests—lacked force “with respect to digital content on cell phones.” *Riley*, 573 U.S. at 386. By contrast, *T.L.O.*'s rationale—that “maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures”—has not been undermined by the advent of cell phones, as the facts of this case reflect. *T.L.O.*, 469 U.S. at 340. Were school officials unable to promptly and flexibly intervene, O.W. and others may have continued to share in school the explicit photo of A.F. Not only would that have been illegal and against school policy, it also would have further harmed A.F. and continued to disrupt the school and its students. *T.L.O.* exists to enable school officials to prevent that sort of situation. *See id.* at 339–40.

That students have reduced privacy interests while at school also bears on our analysis. *See T.L.O.*, 469 U.S. at 338–43; *Wofford*, 390 F.3d at 322–23. Students in school are not free to go wherever they want or behave however they please. The same is true as it relates to their electronic devices. In fact, many school districts—including Virginia Beach Public Schools—require students and parents to sign an electronic device policy. At the time of the events here, Virginia Beach's policy provided that, while students are allowed to bring their device, their use of it may be limited or revoked. *See J.A.* 128. These sorts of policies certainly do not provide school officials carte blanche to search students' devices in all circumstances. But they no doubt bear on the *T.L.O.* reasonableness analysis, as the policies provide notice that (1) students' privacy interests with respect to their cell

phones are somewhat curtailed, and (2) remedial actions may be taken if phones are misused.

For all these reasons, we hold that *Riley* does not displace *T.L.O.*, and that *T.L.O.* directly controls this case.¹²

* * *

In short, O.W. has failed to demonstrate that Mr. Baker's search of his phone violated the Fourth Amendment. The district court correctly found as much and thus did not err in granting summary judgment to the School Defendants on O.W.'s Fourth Amendment claim.

B.

O.W. also maintains that his confession to Mr. Baker was involuntary under the Fifth Amendment's Self-Incrimination Clause and the Fourteenth Amendment's Due Process Clause.¹³ Because the district court found otherwise, he argues we must reverse its decision. We disagree.

The Fifth Amendment, as applied to the States through the Fourteenth Amendment, *Malloy v. Hogan*, 378 U.S. 1, 6 (1964), commands that "[n]o

¹² While *Riley* might apply in a very different factual setting, it doesn't affect the outcome here. The bottom line is that Mr. Baker had a compelling justification to search O.W.'s phone—a serious code of conduct (and criminal law) violation. And his search appears to have been narrowly tailored to serve that justification. Mr. Baker's search would thus be constitutional even if a more exacting standard applied to his conduct. See *Jackson*, 762 F. App'x at 927.

¹³ Our inquiry is the same under either provision. *United States v. Braxton*, 112 F.3d 777, 780 (4th Cir. 1997). We therefore discuss them interchangeably.

person . . . shall be compelled in any criminal case to be a witness against himself,” U.S. Const. amend V. To determine whether a confession was voluntary, the Court must consider whether it was the “product of a free and deliberate choice rather than intimidation, coercion or deception.” *Colorado v. Connelly*, 479 U.S. 157, 170 (1986) (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)); *United States v. Giddins*, 858 F.3d 870, 881 (4th Cir. 2017) (“Coercive police activity is a necessary finding for a confession . . . to be considered involuntary.”). That said, the “mere existence of threats . . . implied promises, improper influence, or other coercive police activity [] does not automatically render a confession involuntary.” *Giddins*, 858 F.3d at 881 (cleaned up).

In conducting a voluntariness inquiry, courts must consider “the totality of all the surrounding circumstances.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). Among the factors to be considered are the individual’s age, education, whether a *Miranda* warning was given,¹⁴ the length of the detention and questioning, and the use of physical punishment. *Id.*; see *J.D.B. v. North Carolina*, 564 U.S. 261, 270–72 (2011); *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (noting that “special care” must be exercised in applying the voluntariness test to children).

Three additional points before turning to the analysis: First, “the voluntariness of [a] confession is

¹⁴ Failing to issue a *Miranda* warning, without more, is not actionable under 42 U.S.C. § 1983. That’s because the failure to provide such warning is not a “deprivation of any rights, privileges, or immunities secured by the Constitution and laws.” *Vega v. Tekoh*, 597 U.S. 134, 141 (2022).

not to be equated with the absolute absence of intimidation.” *United States v. Braxton*, 112 F.3d 777, 783 (4th Cir. 1997) (internal quotation and ellipses omitted). “[P]olice are allowed to play on a suspect’s ignorance, fears and anxieties so long as they do not magnify these emotionally charged matters to the point where a rational decision becomes impossible.” *United States v. Sablotny*, 21 F.3d 747, 752 (7th Cir. 1994) (citing *United States v. Rutledge*, 900 F.2d 1127, 1130 (7th Cir. 1990)).

Second, “truthful statements about the defendant’s predicament,” including descriptions of the consequences for dishonesty, generally do not render confessions involuntary. *Braxton*, 112 F.3d at 782 (internal quotation and brackets omitted).

And third, whether a confession is voluntary is “a legal question requiring independent . . . determination.” *Arizona v. Fulminante*, 499 U.S. 279, 287 (1991) (quoting *Miller v. Fenton*, 474 U.S. 104, 110 (1985)). There are, of course, subsidiary factual questions relevant to this determination. See *Schneckloth*, 412 U.S. at 226; *Miller*, 474 U.S. at 112. But the ultimate question of voluntariness remains a legal one.

Applying these principles, we hold that Mr. Baker did not violate O.W.’s Fifth Amendment rights.

To begin, we note that O.W.’s failure to bring this claim directly against law enforcement is not fatal. Although one must generally establish “coercive *police* activity” to support a Fifth Amendment claim, *Giddins*, 858 F.3d at 881 (emphasis added), courts have recognized that the Fifth Amendment may be implicated during interviews conducted by school officials, particularly when police officers are also involved. See, e.g., *J.D. v. Commonwealth*, 591 S.E.2d

721, 726 (Ct. App. Va. 2004); *see also, e.g., In re D.A.H.*, 857 S.E.2d 771, 782 (Ct. App. N.C. 2021).¹⁵

Here, we find that Mr. Baker did not overbear O.W.’s will and force a confession. To start, O.W. was questioned in the middle of the day for a relatively short period of time.¹⁶ *Contra Haley*, 332 U.S. at 599–601 (confession involuntary in part because 15-year-old was arrested and interrogated in the middle of the night from midnight to 5 a.m.). And the questioning was led by a school official in a familiar setting—the school guidance office. *C.f. United States v. Carter*, 300 F.3d 415, 423 (4th Cir. 2002) (suggesting that a familiar setting cuts against a finding of involuntariness).

Mr. Baker did not threaten O.W. in any way, nor did he deprive him of food, water, or other necessities. True, Mr. Baker did tell O.W. that he needed to be honest, and that dishonesty would constitute a separate violation of the Code of Conduct. Mr. Baker also shared that other students’ description of events did not match O.W.’s. But truthfully relaying that sort of information does not amount to unconstitutional coercion. *See Braxton*, 112 F.3d at 782 (noting that “truthful statements about the defendant’s predicament” generally do not render confessions

¹⁵ There is a relative dearth of federal caselaw on the issue of school interrogations. There are, however, numerous state law cases discussing the federal issues that arise from such incidents. This discrepancy likely results from the fact that many proceedings involving juveniles begin in state juvenile court and proceed through the state courts, rather than the federal courts.

¹⁶ Although the record is unclear on how long Mr. Baker questioned O.W., it was less than two hours based on when he called O.W. to his office and when he called O.W.’s mother. [J.A. 352, 356, 681, 685–686].

involuntary (cleaned up)); *United States v. Holmes*, 670 F.3d 586, 592–93 (4th Cir. 2012) (recognizing that situations that make an individual “‘uncomfortable’ or create a ‘predicament’ for a defendant are not [inherently] coercive” (quoting *United States v. Pelton*, 835 F.2d 1067, 1072 (4th Cir. 1987))).¹⁷

We also acknowledge O.W.’s relative youth. Cf. *J.D.B.*, 564 U.S. at 277 (“This is not to say that a child’s age will be a determinative, or even a significant, factor in every case. . . . It is, however, a reality that courts cannot simply ignore.”). At the time he was questioned, O.W. was 13 years old. He was also alone, unaccompanied by a parent. Had Mr. Baker’s conduct been more coercive than it was, O.W.’s age may have made this a closer case. But in the end, even a boy as young as 13 can choose between truth and falsehood when he is simply asked to recount what happened.

O.W. disagrees with our assessment of whether his will was overborne. He also claims that we’re not entitled to make that assessment in the first place. In O.W.’s view, whether his will was overborne is a question of fact for a jury, so it was inappropriate for the district court to grant the School Defendants summary judgment on this claim. Yet while it’s true that voluntariness is a fact-specific inquiry, it is not,

¹⁷ That Mr. Baker instructed O.W. to write—and then rewrite—a statement of events does not change our conclusion. O.W. does not allege that Mr. Baker made him confess in the written statement, only that he told him to provide a detailed account of what happened. And when O.W.’s first statement was nondescriptive, Mr. Baker simply told him to redo it. O.W. points to no authority holding that a written medium is somehow more coercive than, for example, follow-up questioning to an ambiguous or incomplete oral statement.

at bottom, a factual question. See *Fulminante*, 499 U.S. at 287 (“[T]he ultimate issue of ‘voluntariness’ is a legal question[.]” (quoting *Miller*, 474 U.S. at 110 (1985))). Courts are thus empowered to rule on the voluntariness issue as a matter of law when, as here, the undisputed facts allow for only one conclusion.

We last note that, in conducting this analysis, we do not create a one-size-fits-all, school-specific test for assessing the voluntariness of a confession. No doubt, the setting of the events here requires us to exercise caution. Otherwise we run the risk of “exchang[ing] the informality of the school setting for the adversarial atmosphere of formalized procedure.” *Wofford*, 390 F.3d at 324; see *id.* (“[T]he balance of rights and interests to be struck in the disciplinary process is a task best left to local school systems, operating, as they do, within the parameters of state law. . . . [Section] 1983 should not become ‘a font of tort law to be superimposed upon whatever systems may already be administered by the States.’” (quoting *Paul v. Davis*, 424 U.S. 693, 701 (1976))).

Regardless, standard Fifth and Fourteenth Amendment principles are sufficient to guide our analysis. And under the circumstances presented here, we find that O.W.’s confession was voluntary. See *Boynton v. Casey*, 543 F. Supp. 995, 997–98 (D. Me. 1982) (declining to find a Fifth Amendment violation where a student was primarily questioned by school officials); cf. *In re D.A.H.*, 857 S.E.2d at 778 (“[A] student simply being questioned by a principal would not generally qualify as a custodial interrogation.”). Because our holding on this issue is in accord with the district court’s, we affirm its decision.

C.

Next up is O.W.'s civil conspiracy claim. The district court held that O.W. failed to establish the elements of a 42 U.S.C. § 1983 conspiracy and so granted summary judgment for the City Defendants on this claim. Finding no error, we affirm.

“To establish a civil conspiracy under § 1983, [a plaintiff] must present evidence that the [defendants (1)] acted jointly in concert and [(2)] that some overt act was done in furtherance of the conspiracy which [(3)] resulted in [the plaintiff's] deprivation of a constitutional right[.]” *Hinkle v. City of Clarksburg*, 81 F.3d 416, 421 (4th Cir. 1996) (citing *Hafner v. Brown*, 983 F.2d 570, 577 (4th Cir. 1992)).

While “direct evidence of a meeting of the minds” is not required, a plaintiff must at least come forward with “specific circumstantial evidence that each member of the alleged conspiracy shared the same conspiratorial objective.” *Id.* (citing *Hafner*, 983 F.2d at 576–77). In other words, “to survive a properly supported summary judgment motion, [the plaintiff's] evidence must, at least, reasonably lead to the inference that [the defendants] positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.” *Id.* This is a “weighty burden,” and one that O.W. has failed to carry. *Id.*

Setting aside the issue of whether he was at any time deprived of a constitutional right, the record lacks any evidence that the alleged members of the conspiracy “came to a mutual understanding to try to accomplish a common and unlawful plan.” *Id.* Rather, the record reflects that (1) Mr. Baker acted to resolve an issue that was causing a disruption at school, and (2) Officer Carr conducted a parallel investigation because the potential school code violations were also criminal law violations. The record does not, however,

indicate any coordination between the members of the alleged conspiracy to accomplish some unlawful, “conspiratorial objective.” *Id.*

O.W. seeks to avoid this conclusion by (1) ascribing unlawful motives to the alleged conspirators without factual support, and (2) claiming—again without factual support—that the “record is teeming with direct evidence” of unlawful “concerted conduct.” Opening Br. 38. The crux of O.W.’s argument is that the parties conspired to leverage the lesser constitutional burdens imposed on school administrators to short-circuit the criminal investigative process. Yet, while it’s “clear that there was an agreement between the City and School Board to coordinate when responding to criminal activity,” it is unreasonable to infer—without more—that this coordination constituted a nefarious “agreement to deprive [O.W.] of his constitutional rights.” *O.W.*, 656 F. Supp. 3d at 618. And tellingly, O.W. still fails to point to anything tangible in the record to support his conspiracy claim. His conclusory assertions regarding intent cannot stand in for actual evidence of an unlawful, conspiratorial objective.¹⁸

In sum, O.W.’s speculative arguments cannot carry the day. O.W. bears a heavy burden in attempting to establish a civil conspiracy under § 1983, and his conclusory allegations and arguments are insufficient to meet that burden. We therefore affirm the district

¹⁸ O.W. likewise fails to point to anything in the MOU that is actually unlawful. Nor does he explain how the terms of the MOU establish an agreement to deprive him of his constitutional rights.

court's grant of summary judgment to the City Defendants on this issue.¹⁹

D.

We last consider O.W.'s *Monell* claim. The district court granted summary judgment for the City and the School Board on the grounds that O.W. failed to establish any constitutional violation for which either could be held liable under *Monell*. We agree.

Under *Monell*, a municipality can be held liable for constitutional violations “when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible [for] under § 1983.” *Hunter v. Town of Mocksville*, 897 F.3d 538, 554 (4th Cir. 2018) (citing *Monell*, 436 U.S. at 694).

For the reasons outlined above, O.W. has failed to establish any constitutional violation. And in the absence of a constitutional violation, O.W.’s attempt to hold the City and the School Board liable under

¹⁹ O.W. also argues that the district court “erroneously treated conspiratorial intent as an additional element of a prima facie § 1983 claim.” Opening Br. 38. Not so. The district court was merely paraphrasing the language from *Hinkle* that elaborated upon the type of evidence required to support a civil conspiracy claim. *Compare O.W.*, 656 F. Supp. 3d at 617 (“To establish conspiratorial intent, [plaintiff’s] evidence must, at least, reasonably lead to the inference that [defendants] positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.” (quoting *Hinkle*, 81 F.3d at 421)), *with Hinkle*, 81 F.3d at 422 (noting that a § 1983 conspiracy plaintiff must adduce evidence giving rise to a reasonable inference that “each alleged conspirator shared the same conspiratorial objective”).

Monell is a nonstarter. See *Hunter*, 897 F.3d at 554; *Spell v. McDaniel*, 824 F.2d 1380, 1385 (4th Cir. 1987) (noting that an underlying constitutional violation is a prerequisite for a *Monell* claim to prevail). We need go no further.

IV.

For the foregoing reasons, the judgment of the district court is

AFFIRMED.

APPENDIX B
JUDGMENT OF THE UNITED
STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT, FILED APRIL 9, 2026

FILED: April 9, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1288

(2:21-cv-00448-EWH-LRL)

O.W.

Plaintiff - Appellant

v.

MARIE L. CARR, police officer in her individual and official capacities; REID BAKER, assistant principal in his individual and official capacities; SCHOOL BOARD OF THE CITY OF VIRGINIA BEACH, VIRGINIA, a body corporate; CITY OF VIRGINIA BEACH, a body politic and corporate

Defendants - Appellees

JUVENILE LAW CENTER; RISE FOR YOUTH;
NATIONAL POLICE ACCOUNTABILITY
PROJECT; ELECTRONIC PRIVACY
INFORMATION CENTER

Amici Supporting Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

APPENDIX C

**ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT DENYING PETITION FOR
REHEARING AND REHEARING EN BANC,
FILED MAY 5, 2026**

FILED: May 5, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1288

(2:21-cv-00448-EWH-LRL)

O.W.

Plaintiff - Appellant

v.

MARIE L. CARR, police officer in her individual and official capacities; REID BAKER, assistant principal in his individual and official capacities; SCHOOL BOARD OF THE CITY OF VIRGINIA BEACH, VIRGINIA, a body corporate; CITY OF VIRGINIA BEACH, a body politic and corporate

Defendants - Appellees

JUVENILE LAW CENTER; RISE FOR YOUTH;
NATIONAL POLICE ACCOUNTABILITY
PROJECT; ELECTRONIC PRIVACY
INFORMATION CENTER

Amici Supporting Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Quattlebaum, and Judge Rushing.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX D

**MEMORANDUM OPINION OF THE UNITED
STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA, NORFOLK
DIVISION, FILED FEBRUARY 14, 2023**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

Civil Action No. 2:21-cv-448

O.W., a minor, by his next friend and parent,
SANTRAYIA BASS,
Plaintiff,

v.

SCHOOL BOARD OF THE CITY OF VIRGINIA
BEACH, *et al.*,
Defendants.

Filed: February 14, 2023

MEMORANDUM OPINION

Plaintiff O.W., a minor, brings this action through his next friend and mother Santrayia Bass, against the City of Virginia Beach, Officer Marie Carr (together, the “City Defendants”), the School Board of the City of Virginia Beach (“School Board”), former Kempsville Middle School acting Assistant Principal

Reid Baker, Virginia Beach Public Schools Superintendent Aaron C. Spence, members of the Virginia Beach School Board,²⁰ and former Kempsville Middle School Principal Patti T. Jenkins (together, the “School Defendants”).

Plaintiff filed this civil rights action after he was charged with possession and distribution of child pornography in the Virginia Beach Juvenile and Domestic Relations Court (“Juvenile and Domestic Relations Court”). The charges resulted from allegations that Plaintiff had shown and sent an explicit photograph to other students at Kempsville Middle School (“Kempsville”). After making a finding of guilt, the state court deferred disposition and ultimately dismissed the charges. Order, Commonwealth of Va., ECF No. 120-1. Plaintiff asserts constitutional violations under 42 U.S.C. § 1983 and brings a variety of other claims under federal and state law. *See generally*, Second Am. Compl. (“SAC”), ECF No. 53.

For the reasons set forth below, the Court will grant summary judgment in favor of Defendants and deny summary judgment to O.W. As to O.W.’s Motion and Accompanying Memorandum for Leave to File a Third Amended Complaint (“Motion to File a Third Amended Complaint”), ECF No. 109, the Court will deny the motion without prejudice, and direct O.W.—if he desires to continue the prosecution of his case in this forum—to file a revised motion within thirty (30) days from today’s date. As to the remainder of the pending motions, Defendants’ Motions to Dismiss will

²⁰ Dan Edwards, Carolyn T. Rye, Kimberly A. Melnyk, Beverly M. Anderson, Sharon R. Felton, Dottie Holtz, Laura K. Hughes, Victoria Manning, Trenace B. Riggs, Carolyn D. Weems, and Joel McDonald.

be denied as moot, ECF Nos. 62, 64; City Defendants' Motion for Leave to File Amended Answer will be granted, ECF No. 136; School Defendants' Motion for Leave to File Amended Answer will be denied as moot, ECF No. 96; O.W.'s Objection and Emergency Motion and Accompanying Memorandum to Strike Exhibits ("Motion to Strike") will be denied with prejudice, ECF No. 121; and O.W.'s Motion to Amend Reply Brief will be granted, ECF No. 145.

I. BACKGROUND

For purposes of the factual background, the Court recites the basic allegations in Plaintiff's Second Amended Complaint and the undisputed fact sections of the parties' memoranda in support of summary judgment. Except as otherwise indicated, the parties do not dispute the facts stated below.

A. Facts

In 2019, O.W. was a 13-year-old student at Kempsville. SAC ¶ 18. On March 5, 2019, while at school, O.W. showed at least two classmates an explicit photograph on his cellular phone of a 14-year-old female student, A.F. School Defendants' Statement of Undisputed Material Facts ("SSUF") ¶¶ 20, 21, ECF No. 118. That same day, O.W. also sent²¹ the photograph to another student, G.C.²² *Id.* ¶ 21. The photograph was of A.F.'s vagina. *Id.* ¶ 14. A.F. had sent O.W. the explicit photograph through Snapchat four months prior, at home, in the evening.

²¹ While the record is not clear, it appears O.W. may have sent the image to G.C. in a text message. *See* Carr Dep. 76:8–22, ECF No. 113-1; O.W. Dep. 30:9–15, ECF No. 113-3.

²² The pleadings at various points also refer to this minor as "G.R."

Id. According to O.W., “everyone was talking about” the photograph and “asking him . . . if A.F. had really sent it to him.” *Id.* ¶ 22.

Later that afternoon, after O.W. had shown the photograph to at least two classmates and sent it to G.C., a teacher reported to Mr. Baker that O.W. may have an explicit image of a female student. *Id.* ¶ 24. Mr. Baker was the acting Assistant Principal at the time. *Id.* ¶ 5. Mr. Baker took O.W. out of class, brought him to Kempsville’s printing room, and asked him about an image circulating around campus. *Id.* ¶ 29. The police officer working at Kempsville, Officer Carr, was not present during this initial discussion. *Id.* ¶ 30. At some point, Mr. Baker “confiscated Plaintiff’s phone” and “searched the photo gallery of the phone and did not find the photograph.” SAC ¶ 30.²³

Following the questioning in the printing room, Mr. Baker took O.W. to the lobby of the school guidance office. SSUF ¶ 31. At the request of Mr. Baker, O.W. wrote two different incident statements. *Id.* Mr. Baker asked O.W. to write a second statement because he believed O.W. was not telling the entire story in the first statement. City Defendants’ Statement of Undisputed Material Facts (“CSUF”) ¶ 21, ECF No.

²³ The record is not clear as to when this search occurred. O.W. contends in his Second Amended Complaint that after the search, Mr. Baker searched the phone, and at Officer Carr’s direction “BAKER put Plaintiff’s phone in airplane mode, powered it off, and placed it directly into the police evidence bag held by Carr.” SAC ¶ 30. This suggests the search occurred in Officer Carr’s presence. However, O.W.’s deposition testimony appears to place Mr. Baker’s search earlier in time. *See* O.W. Dep. 46:19–47:22, ECF No. 113-3 (“Q: And after you told Mr. Baker that you had shown the photo to others, sent it to [], he confiscated your phone, correct? A: No, he already confiscated it . . .”).

116. O.W. wrote in the second statement: “I showed people the photo and that was my bad.” O.W. Dep. 36:15–38:1, ECF No. 113-3.²⁴ Mr. Baker then took O.W. to a room connected to the guidance office and asked him further questions about his statements. CSUF ¶ 23. The door to the room was kept open. *Id.* ¶ 25. Officer Carr entered the room after Mr. Baker’s questioning started. *Id.* ¶ 27.

During the interview in the guidance office, although O.W. had previously admitted to *showing* other students the photograph, he initially denied that he still *possessed* it. Plaintiff’s Statement of Undisputed Material Facts (“PSUF”) ¶ 25, ECF No. 123. Mr. Baker advised O.W. about the importance of being honest. Baker Dep. Vol. I 44:9–11, ECF No. 113-4. Officer Carr did not ask O.W. any questions at this point. SAC ¶ 26; CSUF ¶ 25. O.W. then admitted that he still possessed the photograph on his phone and that he sent it to another student.²⁵ CSUF ¶ 27. After hearing the oral confession, Officer Carr left the room and contacted her supervisor to ask how to proceed. CSUF ¶ 28. Officer Carr was referred to an individual in the Commonwealth’s Attorney’s Office who advised Officer Carr to charge O.W. and G.C., but not to charge A.F. *Id.* Following this discussion, Officer Carr reentered the room with O.W.’s seized phone and

²⁴ O.W. avers he “did not say that the photograph was a nude image in [his] first statements” and that he “did not say that A.F. was in the photograph in [his] first statements.” Rule 56 Affidavit of O.W. ¶¶ 7–8, ECF No. 131-2.

²⁵ O.W. testified that Mr. Baker “never asked [him] who [he] sent the picture to.” O.W. Dep. 44:19–24, ECF No. 113-3. The record suggests Mr. Baker and Officer Carr determined it was G.C. from Mr. Baker’s separate discussion with G.C. Carr Dep. 54:25–55:5, ECF No. 113-1.

asked O.W. to show her the explicit photograph. *Id.* ¶ 29. In response to Officer Carr’s request, O.W. showed Officer Carr the photograph. *Id.*

Mr. Baker also spoke to other students, including G.C. and A.F. *Id.* ¶ 30. Officer Carr was not present during those interviews, but overheard Mr. Baker’s questioning of G.C. *Id.* Based on the information he collected, Mr. Baker referred O.W. for infractions of the Code of Student Conduct. *Id.* ¶ 32. O.W.’s mother, Ms. Bass, was contacted around 4:10 p.m. and arrived at the school around 5:00 p.m. SSUF ¶ 49. Officer Carr placed O.W. and G.C. under arrest. CSUF ¶ 32. Officer Carr informed Ms. Bass that O.W. would be criminally charged and led him out of the school. SSUF ¶ 52. Both O.W. and G.C. spent one night in juvenile detention. *Id.* ¶ 53.

Following the incident, the state brought criminal charges of possession and distribution of child pornography against O.W. in the Juvenile and Domestic Relations Court. CSUF ¶ 36.²⁶ During the

²⁶ While O.W. does not dispute the facts recounted in CSUF ¶¶ 36–39, he objects to the admissibility of records from the Juvenile and Domestic Relations Court in this proceeding. Pl.’s City Def. Opp. at 4–5; *see also* Pl.’s Obj. and Emergency Mot. and Accompanying Mem. to Strike Exs., ECF No. 121. The Court need not address O.W.’s evidentiary objections, as it may take judicial notice of the state court’s November 6, 2019 and August 17, 2020 orders and the existence of the suppression motions. Under Fed. R. Evid. 201(b)(2), “[a] judicially noticed fact must be one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” The Defendants provided copies of the disposition documents and suppression motions, which the Court finds “are not subject to reasonable dispute.” *See* Va. Beach Juvenile Ct. Records, ECF Nos. 120-1, 113-7; *see also Colonial Penn Ins.*

state juvenile proceedings, defense counsel for O.W. filed two suppression motions on the grounds that Mr. Baker's questioning of O.W. in Officer Carr's presence and the request to see the explicit photograph on O.W.'s phone violated his rights under the Fourth and Fifth Amendments of the U.S. Constitution. *Id.* ¶ 37. The state court denied those motions. *Id.* Following trial, the court found the "evidence [was] sufficient for a finding of guilty," but deferred disposition of the matter. *Id.* ¶ 39. Following completion of certain terms and conditions, the Juvenile and Domestic Relations Court dismissed the case against O.W. *Id.*

B. Procedural History

O.W.'s mother, Ms. Bass, filed the initial complaint in this action on March 5, 2021, in the Richmond Division of this Court, seeking to proceed pro se on behalf of her son. ECF No. 1. On August 2, 2021, the case was transferred to the Norfolk Division. ECF No. 26. On December 17, 2021, Plaintiff was ordered to file an amended complaint to more clearly state his claims and Ms. Bass was advised that while she could not assert claims on behalf of her son on a pro se basis, she could assert any claims on her own behalf pro se. ECF No. 27.

On January 14, 2022, O.W., by his next friend and parent, Ms. Bass, filed an Amended Complaint, ECF No. 30, and Makiba A. Gaines noticed her appearance as counsel for O.W. ECF No. 29. O.W. filed his Second Amended Complaint on February 28, 2022. ECF No.

Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989) ("The most frequent use of judicial notice of ascertainable facts is in noticing the content of court records.") (citing 21 C. Wright & K. Graham, *Federal Practice and Procedure: Evidence* § 5106 at 505 (1977)).

53. Subsequently, the City Defendants and the School Defendants moved to dismiss the Second Amended Complaint. ECF Nos. 62, 64. Shortly thereafter, the School Defendants moved to amend their answer. ECF No. 96. Following the close of discovery on August 2, 2022, O.W. sought leave to file a Third Amended Complaint, ECF No. 109, and both sets of Defendants moved for summary judgment. ECF Nos. 115, 117. O.W. then moved to strike certain of Defendants' exhibits and for partial summary judgment. ECF Nos. 121, 122. Subsequently, the City Defendants moved for leave to amend their answer, ECF No. 136, and O.W. moved to amend his reply brief to the School Defendants' Motion for Summary Judgment. ECF No. 145.

The Court will first consider Defendants' requests to amend their answers and O.W.'s Motion to Strike. Then, the Court will resolve the pending summary judgment motions. Finally, the Court will consider O.W.'s Motion to File a Third Amended Complaint.

II. ANALYSIS

A. Defendants' Motions to Amend

Both the City Defendants and School Defendants seek to amend their answers to O.W.'s Second Amended Complaint. *See* City Defs.' Mot. Leave File Am. Answer, ECF No. 136; School Defs.' Mot. Leave File Am. Answer, ECF No. 96.

In general, the Court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a). However, a court "may deny leave to amend for reasons such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of

allowance of the amendment, futility of the amendment, etc.” *Glaser v. Enzo Biochem, Inc.*, 464 F.3d 474, 480 (4th Cir. 2006) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

City Defendants seek to amend their answer as it relates to Paragraph 5 of the Second Amended Complaint, which states the Court has jurisdiction, and Paragraph 16, which states that Officer Carr “unlawfully obtained evidence against [O.W.].” Mem. Law Supp. City Defs.’ Mot. Leave File Am. Answer at 1–3, ECF No. 137. City Defendants seek to deny these specific allegations and to add collateral estoppel to their asserted affirmative defenses. The Court must consider this motion as the admissions (or lack of admissions) are relevant to the pending motions for summary judgment. Additionally, the City Defendants seek to raise an affirmative defense which similarly must be considered if Plaintiff’s motion for leave to amend is granted. The Court finds that Rule 15 is satisfied, and it is in the interest of justice to allow the City Defendants to amend their answer. The denial of these allegations is consistent with the factual record as well as representations made by the City Defendants in other motions. The motion to amend will be granted.

The School Defendants also ask the Court for leave to make one change in their answer related to Paragraph 54 of O.W.’s Second Amended Complaint. School Defs.’ Mot. Leave File Am. Answer, ECF No. 96. Since the Court will grant summary judgment in favor of Defendants as to all claims in O.W.’s Second Amended Complaint, it finds that this amendment, which is relevant to the issue of damages, is moot. The Court will therefore deny the motion.

B. Plaintiff’s Motion to Strike

O.W. asks the Court to strike certain documents from the docket that relate to the proceedings in the Juvenile and Domestic Relations Court filed by Defendants in support of their Motions for Summary Judgment. *See* Mot. Strike, ECF No. 121. He contends that the order from the juvenile court cites to the wrong statutory provision and therefore does not authorize use of his juvenile records in this proceeding, and even if it did, the order is currently vacated pending appeal. *Id.* at 5–6. The School Defendants aver that the July 2022 order allows “all” records associated with O.W.’s criminal charges “to be made available for inspection . . . to the United States District Court for the Eastern-District of Virginia” and that the pending appeal does not vacate the order. School Defs.’ Opp. Pl.’s Mot. Strike at 6, ECF No. 126.²⁷

O.W.’s statutory argument is unpersuasive. O.W.’s argument is that the Juvenile and Domestic Relations Court’s order cited to Va. Code Ann. § 16.1-301, which relates to the disclosure of juvenile *law-enforcement* records, and not Va. Code Ann. § 16.1-305, which relates to the disclosure of juvenile *court* records. Despite the citation to the wrong statute, it is clear from the face of the order that it was intended to release O.W.’s court records, not his law enforcement

²⁷ Although the City Defendants filed the Juvenile and Domestic Relations Court records under seal, the School Defendants did not. Instead, they filed a partially-redacted copy of the records on the public docket. This action may violate the very state court order (which permitted only that the records be made available to the Court, not the public at large) upon which the School Defendants rely. That is not an issue for this Court to decide, but whether a result of gamesmanship or inattention, it has no place in this Court, especially when juveniles are involved.

records for the Court's inspection.²⁸ *See* Order for Use and Inspection of Juvenile Records at 2–3, ECF No. 113-7. Because the Juvenile and Domestic Relations Court's intent is clear, the Court finds no reason to strike the court records from the record. O.W.'s contention that the state court's order is vacated pending appeal likewise lacks merit.²⁹ The Motion to Strike will be denied with prejudice.

C. Motions for Summary Judgment

The School Defendants and the City Defendants move for summary judgment, and O.W. moves for partial summary judgment. For the reasons set forth below, the Court will grant summary judgment in favor of Defendants, and will deny summary judgment to O.W.

Summary judgment is appropriate when there is no issue of material fact in dispute and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). "Rule 56(c) mandates the entry of summary

²⁸ Moreover, the order cites to a provision allowing release to a "person, agency, or institution . . . having a legitimate interest in the case." Va. Code Ann. § 16.1-301(c)(3); Order for Use and Inspection of Juvenile Records, ECF No. 113-7. This is the same standard used in § 16.1-305(4).

²⁹ O.W.'s argument directly conflicts with the statutory language of Va. Code § 16.1-298, which states that, except in circumstances not present here, "a petition for or the pendency of an appeal or writ of error shall not suspend any judgment, order or decree of the juvenile court . . . unless so ordered by the judge of the juvenile court, the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court or a judge or justice thereof." *See also Sasson v. Shenhar*, 667 S.E.2d 555, 562 (Va. 2008). There has been no evidence presented to suggest the order has been suspended.

judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In reviewing cross-motions for summary judgment, the Court will consider each motion separately on its own merits to determine if either party deserves judgment as a matter of law. *Rossignol v. Voorhaar*, 316 F.3d 516, 523 (4th Cir. 2003) (citations omitted). In considering each motion, the Court will take care to resolve any factual disputes and "competing, rational inferences" in the light most favorable to the opposing party. *Id.* (quoting *Wightman v. Springfield Terminal Ry. Co.*, 100 F.3d 228, 230 (1st Cir. 1996)). Once a motion for summary judgment is properly made and supported, the opposing party has the burden of showing that a genuine dispute exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986).

a. Rooker-Feldman

As an initial matter, Defendants argue that this Court lacks subject matter jurisdiction to hear Plaintiff's constitutional arguments based on the *Rooker-Feldman* doctrine. This argument is unpersuasive.

The *Rooker-Feldman* doctrine is derived from two Supreme Court cases, *Rooker v. Fidelity Trust Co.*, 263

U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). It stands for the proposition that a federal district court “has no authority to review final judgments of a state court in judicial proceedings.” *Feldman*, 460 U.S. at 482. The doctrine should be narrowly applied to only “cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). In other words, “[i]n order to determine the applicability of the *Rooker-Feldman* doctrine, the fundamental and appropriate question to ask is whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment.” *Garry v. Geils*, 82 F.3d 1362, 1365 (7th Cir. 1996); see also *Burrell v. Virginia*, 395 F.3d 508, 512 (4th Cir. 2005).

Defendants argue that the *Rooker-Feldman* doctrine “precludes reconsideration” of the constitutional challenges Plaintiff raised in his state court juvenile criminal proceedings. See, e.g., City Defs.’ Mem. Law Supp. Mot. Summ. J. at 12–13 (“City Defs.’ Mem.”), ECF No. 116. Defendants assert that because Plaintiff challenged his criminal charges on the basis that his Fourth and Fifth Amendment rights were violated (arguments the state court rejected), O.W. is foreclosed from raising those same issues in federal court. *Id.* at 13. O.W. argues that the *Rooker-Feldman* doctrine does not apply because he is not seeking redress of a state court judgment. Pl.’s Resp.

Opp. City Defs.’ Mot. Summ. J. at 17–21 (“Pl.’s Opp. City Defs.’ Mot.”), ECF No. 131.

Rooker-Feldman does not apply here. O.W. does not ask the Court to review the judgment from his juvenile court proceeding. The Juvenile and Domestic Relations Court ultimately dismissed the criminal case against him. CSUF ¶ 39. The fact that the state court considered and dismissed similar legal challenges is of no moment to the issue of subject matter jurisdiction because O.W.’s Second Amended Complaint presents independent federal law claims, which are not intertwined with the state court judgment. *Jonathan R. ex rel. Dixon v. Just.*, 41 F.4th 316, 340 (4th Cir. 2022), *cert. denied sub nom. Just. v. Jonathan R.*, 143 S. Ct. 310 (2022) (“[W]here the federal complaint presents an ‘independent claim,’ even ‘one that denies a legal conclusion that a state court has reached in a case to which he was a party, then there is jurisdiction’”) (citation omitted). The relief O.W. seeks in this lawsuit includes, *inter alia*, “[c]ompensatory damages” based on a purported “loss of liberty,” “emotional pain and suffering,” “humiliation associated with being arrested on school grounds,” and “deprivation of his constitutional liberties.” SAC ¶ 156. These alleged injuries arise out of O.W.’s prosecution for possession and distribution of child pornography, which took place prior to, and are distinct from, the Juvenile and Domestic Relations Court’s dismissal of his case. This case is not “of the kind” discussed in *Rooker, Feldman*, and their progeny, and therefore the doctrine does not apply, and the Court has subject matter jurisdiction.

b. Collateral Estoppel

The City Defendants also assert that Plaintiff's constitutional claims are barred by the doctrine of collateral estoppel. They are not.

The doctrine of collateral estoppel applies to constitutional claims, like O.W.'s, brought under 42 U.S.C. § 1983. *Allen v. McCurry*, 449 U.S. 90 (1980). The doctrine requires the Court "to give preclusive effect to state court judgments whenever the courts of the State from which the judgments emerged would do so." *Id.* at 96. In Virginia, collateral estoppel requires: "(1) the parties to the two proceedings must be the same; (2) the factual issue sought to be litigated must have been actually litigated in the prior proceeding; (3) the factual issue must have been essential to the judgment rendered in the prior proceeding; and (4) the prior proceeding must have resulted in a valid, final judgment against the party to whom the doctrine is sought to be applied." *Doe 2 ex rel. Doe 1 v. Fairfax Cnty. Sch. Bd.*, 384 F. Supp. 3d 598, 605 (E.D. Va. 2019), *aff'd*, 832 F. App'x 802 (4th Cir. 2020) (quoting *Whitley v. Commonwealth*, 538 S.E.2d 296, 299 (Va. 2000)). Moreover, "[i]t is the party seeking to preclude a factual issue that bears the burden of demonstrating that these four elements are satisfied." *Id.*

The City Defendants argue that the state court's denial of O.W.'s motions to suppress precludes relitigation of "identical matters" in this Court, which is relevant to the second element of the doctrine—whether the issues have been actually litigated. City Defs.' Mem. at 15. O.W. contends that the City Defendants fail to establish the other three elements of the doctrine. Specifically, he argues that res judicata does not apply because Officer Carr and the City of Virginia Beach were not parties to his juvenile

proceeding, the denial of his constitutional challenges in state court was not “essential” to the dismissal of his case, and the dismissal order itself does not constitute a “final judgment.” Pl.’s Opp. City Defs.’ Mot. at 21. For their part, the City Defendants only respond to one of O.W.’s arguments. They argue that Officer Carr and the City can assert preclusion despite not being part of the criminal proceedings because they both are “in privity” with the Commonwealth of Virginia, and that even if they were not, non-mutual issue preclusion applies. City Defs.’ Reply Pl.’s Opp. City Defs.’ Mot. Summ. J. at 15, ECF No. 141.

In failing to respond to most of O.W.’s arguments, the City Defendants have not met their burden to show that each of the elements of preclusion is satisfied. Moreover, it is clear that the third element is lacking—the state court’s rejection of O.W.’s constitutional challenges was not “essential” to the dismissal of his criminal action. In *Petrus v. Robbins*, the Supreme Court of Virginia explained that “[t]o render the judgment conclusive, it must appear by the record of the prior suit that the particular matter sought to be concluded was necessarily tried or determined,—that is, that the verdict could not have been rendered without deciding that matter.” *Haring v. Prosise*, 462 U.S. 306, 315 (1983) (quoting *Petrus v. Robbins*, 83 S.E.2d 408, 412 (Va. 1954)) (emphasis added). Here, the ultimate dismissal of the action against O.W. in the Juvenile and Domestic Relations Court could have occurred absent O.W.’s unsuccessful constitutional objections. Therefore, O.W.’s claims are not estopped, and the Court will proceed to consider them on the merits.

c. Count I – 42 U.S.C. § 1983, Fourth, Fifth and Fourteenth Amendments

In Count I, O.W. alleges that the School Defendants³⁰ violated his rights under the Fourth, Fifth, and Fourteenth³¹ Amendments of the Constitution. O.W. brings these claims under 42 U.S.C. § 1983, which imposes civil liability upon persons who, acting under color of state law, deprive an individual of rights, privileges, or immunities secured by the Constitution and laws of the United States. For the reasons below, the Court will grant summary judgment as to Count I in favor of the School Defendants.

1. *Fourth Amendment*

³⁰ Although O.W. also includes argument related to Officer Carr in his motion papers, his Second Amended Complaint does not allege Fourth, Fifth, or Fourteenth Amendment violations against Officer Carr. Therefore, the Court does not address these arguments.

³¹ As to any claims under the Fourteenth Amendment, O.W.'s allegations are scant. O.W. asserts that the School Defendants violated his right to "fairness and adequacy in the procedures employed by the government to deprive Plaintiff of his liberty and property, and against arbitrary impairments of his substantive rights and entitlements, under the Due Process Clause of the Fourteenth Amendment." SAC ¶ 99(c). O.W.'s only other reference to the Due Process Clause comes more than fifty paragraphs earlier, in his Statement of Facts, where he asserts that the School Defendants violated the Due Process Clause and the Family Educational Rights and Privacy Act ("FERPA") by releasing his educational records for a "non-emergency criminal investigatory purpose." SAC ¶¶ 40–42. From this, the Court cannot discern a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). As such, to the extent that O.W. seeks to raise claims under the Fourteenth Amendment, the Court will dismiss them without prejudice. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

The Court begins with an analysis of O.W.'s Fourth Amendment claim against Mr. Baker. O.W. alleges that Mr. Baker violated his Fourth Amendment rights when Mr. Baker "confiscated" his phone, "searched the photo gallery," and "did not find the [explicit] photograph." SAC ¶ 30.³²

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" U.S. Const. amend. IV. In most instances, the Fourth Amendment does not permit searches absent a warrant supported by probable cause. *Katz v. United States*, 389 U.S. 347, 356–57 (1967). In schools, however, these requirements are modified and the "reasonableness" of the search is determined by a two-pronged analysis: (1) "whether the . . . action was justified at its inception," and (2) whether the search "was reasonably related in scope to the circumstances which justified the interference in the first place." *New Jersey v. T.L.O.*, 469 U.S. 325,

³² The Court notes that O.W. also alleges in his Second Amended Complaint that he had "a reasonable expectation of privacy in his education records, which were searched and seized by Defendants for criminal investigative purposes; and Plaintiff possessed a protected property and/or liberty interest in his education records under FERPA, on which Plaintiff relied on for protection of his confidential records." SAC ¶ 41. First, to the extent O.W. seeks to allege that his education records were searched in violation of the Fourth Amendment, he fails to make sufficient allegations that would allow the Court to adjudicate this claim, and as such, any potential claim is dismissed without prejudice. *See Bell Atl. Corp.*, 550 U.S. at 556. Second, O.W. has abandoned any FERPA claim against the School Board by choosing to remove the cause of action from his Second Amended Complaint. *See Am. Compl. ¶¶ 130–35, ECF No. 30.*

341 (1985) (quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968)). A search by a school official is “justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating the law or the rules of the school.” *Id.* at 342. This analysis also applies to searches and seizures in schools by law enforcement officers “when a student is suspected of also breaching a criminal law.” *Wofford v. Evans*, 390 F.3d 318, 327 (4th Cir. 2004).

The School Defendants argue that Mr. Baker did not violate O.W.’s constitutional rights because he conducted the search of O.W.’s cellular phone with “reasonable suspicion” based on the report he received from a teacher that O.W. may have been in possession of an explicit photograph of another student. School Defs.’ Mem. Law Supp. Mot. Summ. J. at 15–16 (“School Defs.’ Mem.”), ECF No. 118. Plaintiff argues that even if the standard set forth in *T.L.O.* applies,³³

³³ O.W. contends that a different standard applies to his Fourth Amendment claim. He argues the analysis should be guided by the Supreme Court’s decision in *Ferguson v. Charleston*, 532 U.S. 67 (2001), a case involving a task force comprised of the Medical University of South Carolina, police, and local officials, who set up a policy to identify and test pregnant patients for evidence of drug use, without any individualized suspicion. *Id.* at 70. The Court ultimately found that that program violated the Fourth Amendment by “weigh[ing] the intrusion on the individual’s interest in privacy against the ‘special needs’ that supported the program.” *Id.* at 78. O.W. compares the task force in *Ferguson* to the relationship between Virginia Beach Public Schools and the Virginia Beach Police Department, as laid out in their Memorandum of Understanding (“MOU”), ECF No. 65-2, arguing it is similarly unconstitutional. However, O.W. overlooks a key difference between the cases—*Ferguson* involved the

the scope of the search was unreasonable because “Plaintiff’s conduct was in the category of ordinary, immature behaviors society expects from teenagers.” Pl.’s Resp. Opp. School Defs. Mot. Summ. J. at 9–10 (“Pl.’s Opp. School Defs.’ Mot.”), ECF No. 132.

The search did not violate the Fourth Amendment. Mr. Baker’s search and seizure of O.W.’s phone followed a report by a teacher that O.W. may have been in possession of an explicit photograph of a female student. CSUF ¶ 15. Possessing such a photograph is a violation of the Virginia Beach City Public Schools Code of Student Conduct. Virginia Beach Public Schools Code of Student Conduct, Rule 9, ECF No. 65-1 (prohibiting “[p]ossession of offensive materials such as nude photographs”). It is also against the law. *See* Va. Code Ann. § 18.2-374.1:1(C). Moreover, a student’s use of a cellular phone in school is itself regulated by Kempsville’s “Bring Your Own Device” policy, which provides that the student’s right to carry a cellular phone can be “limited or revoked” if the device is “used by a student to disrupt the educational environment.” Virginia Beach Public Schools Code of Student Conduct at 4, ECF No. 65-1.

Given the circumstances, Mr. Baker’s search was “justified at its inception” and “reasonably related in scope.” *T.L.O.*, 469 U.S. at 341. First, it was reasonable for Mr. Baker to take O.W.’s cellular phone away from him and search it. Reasonable grounds existed for suspecting that the search would turn up relevant evidence because a teacher had reported to

permissibility of suspicionless searches; here there is no allegation that Mr. Baker searched his phone without suspicion. Moreover, O.W.’s contention that school officials must obtain warrants before searching students is highly impractical and lacks legal support.

Mr. Baker that O.W. may have possessed an explicit photograph of another student. It was reasonable to conclude that any explicit photograph would be found on O.W.'s cellular phone. Possession of an explicit photograph is a serious violation of school rules and the law. And seizing O.W.'s phone prevented further disruptions to the educational environment, *id.* at 342, given that according to O.W., “everyone was talking about” the photograph at school that day. SSUF ¶ 22; *see also* *Piechowicz v. Lancaster Cent. Sch. Dist.*, No. 17-cv-00845V(F), 2022 U.S. Dist. LEXIS 8935, at 55 (*W.D.N.Y. Jan. 18, 2022*); *Gallimore v. Henrico Cnty. Sch. Bd.*, 38 *F. Supp. 3d* 721, 725 (*E.D. Va. 2014*); *Milligan v. City of Slidell**, 226 *F.3d* 652, 656 (5th Cir. 2000) (“Students at school . . . have a significantly lesser expectation of privacy in regard to the temporary ‘seizure’ of their persons than does the general population.”). Second, the search was also “reasonably related in scope to the circumstances which justified the interference in the first place.” Mr. Baker “instructed Plaintiff to open [the phone] for further inspection” and searched “the photo gallery of the phone.” SAC ¶ 29. Mr. Baker limited the search to the photo gallery and did not otherwise search the phone. Because the photo gallery is a likely place for a photograph to be stored and given the limited nature of the search, the search was not overbroad.

2. *Fifth Amendment*

O.W. also alleges that he was “detained” and “interrogat[ed]” by Mr. Baker, who “pressured and coerced” him to confess to possessing and sharing the explicit image in violation of his Fifth Amendment right “to not be compelled in a criminal case to be a witness against himself.” SAC ¶¶ 29, 99(b). O.W.

asserts that his “confessions were involuntary in the totality of all the unlawful circumstances surrounding his arrest.” Pl.’s Opp. City Defs.’ Mot. at 14.

The Fifth Amendment, as applied to the States through the Fourteenth Amendment,³⁴ requires that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself . . .” U.S. Const. amend. V. To determine whether a confession was voluntary or improperly compelled, the Court must consider whether it was the “product of a free and deliberate choice rather than intimidation, coercion or deception.” *Colorado v. Connelly*, 479 U.S. 157, 170 (1986). “Coercive police activity is a necessary finding for a confession . . . to be considered involuntary, [and] the mere existence of threats, violence, implied promises, improper influence, or other coercive police activity does not automatically render a confession involuntary.” *United States v. Giddins*, 858 F.3d 870, 881 (4th Cir. 2017) (cleaned up). In determining voluntariness, the Court is required to consider “the totality of all the surrounding circumstances.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). Among the factors to be considered include the individual’s age, education, whether a *Miranda* warning was given,³⁵ the length of the detention and

³⁴ *Malloy v. Hogan*, 378 U.S. 1 (1964). Since O.W. is suing state, rather than federal, actors the Court’s references to the Fifth Amendment should be understood to refer to the Fourteenth Amendment’s incorporation of these protections against state actors.

³⁵ Failure to provide warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), is not in itself actionable under 42 U.S.C. § 1983 because the failure to provide these warnings is not a “deprivation of any rights, privileges, or immunities secured by the Constitution and laws.” *Vega v. Tekoh*, 142 S. Ct. 2095, 2101 (2022).

questioning, and the use of physical punishment. *Id.* “Special care” must be exercised in applying the voluntariness test to confessions of children. *Haley v. State of Ohio*, 332 U.S. 596, 599 (1948); *see also J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

The questioning of O.W. began with Mr. Baker removing him from class following a report by a teacher that he may have been in possession of an explicit photograph of another student. SSUF ¶ 24. Mr. Baker first took O.W. to the printing room, asked him some initial questions about the incident, and then proceeded to take him to the lobby of the school guidance office. *Id.* ¶¶ 29, 31. There, he asked O.W. to write an incident statement, and then a second, determining that in the first O.W. was not telling the entire story. *Id.* ¶¶ 34, 36. O.W. wrote in the second statement: “I showed people the photo and that was my bad.” O.W. Dep. 36:15–38:1, ECF No. 113-3. Then, Mr. Baker took O.W. to a room connected to the guidance office and asked him additional questions about the incident. *Id.* ¶ 39. It was during this questioning that Officer Carr entered the room. Up until this point, O.W. does not allege that he was coerced.³⁶

Once in the room with Mr. Baker and Officer Carr, Mr. Baker asked O.W. questions about the statements he had written and advised him about the importance of being honest. Baker Dep. Vol. I 44:9–11, ECF No. 113-4. He testified that he told O.W. something akin to “if you’re not telling me the truth, you know, there’s

³⁶ O.W.’s Second Amended Complaint does not reference the initial discussion between Mr. Baker and O.W. in the printing room. His allegations related to coercion begin with Mr. Baker and Officer Carr in the guidance office. *See* SAC ¶¶ 24–29.

a violation against the Student Code of Conduct” and “I need you to be honest with me, please tell me what was going on.” Baker Dep. Vol. II 58:6–25, ECF No. 123-2; PSUF ¶ 16. O.W. alleges in his Second Amended Complaint that Officer Carr did not ask him any questions prior to his confession. SAC ¶¶ 26, 34. O.W. then admitted to Mr. Baker that he still possessed the photograph and that he had sent it to another student. CSUF ¶ 27. These admissions, and Officer Carr’s subsequent search of O.W.’s phone to confirm that he, in fact, had the photograph, provided Officer Carr with sufficient information to bring criminal charges against O.W.

As an initial matter, O.W. makes this Fifth Amendment claim against Mr. Baker, a school official, rather than a law enforcement officer. While he is required to establish “coercive police activity,” see *Giddins*, 858 F.3d at 881, the fact that O.W. fails to bring his claim directly against law enforcement is not fatal. Courts have recognized that the Fifth Amendment may be implicated during interviews conducted by school officials when law enforcement is involved. See, e.g., *J.D. v. Commonwealth*, 591 S.E.2d 721, 726 (Va. App. 2004).³⁷ “[W]hen a student is

³⁷ While the Court of Appeals of Virginia applied the Fifth Amendment voluntariness test to an interview of a student by an assistant principal with a school resource officer present, it found that the prophylactic warnings established by *Miranda v. Arizona*, 384 U.S. 436 (1966), were not required under the circumstances. The Court based its decision on the fact that the school official “was not acting as a police officer or as a governmental agent with law enforcement authority,” that the school official “did not act at the direction of the police,” and that the school resource officer did not participate in the interview. *J.D.*, 591 S.E.2d at 724–25. Here the Court is not asked to

interrogated in the presence of a[] [school resource officer]—even when the SRO remains silent—the presence of the officer can create a coercive environment” as “juveniles are uniquely susceptible to police pressure and may feel compelled to confess when a reasonable adult would not.” *Matter of D.A.H.*, 857 S.E.2d 771, 782 (N.C. 2021) (citing *J.D.B.*, 564 U.S. at 277).

O.W. argues his statements were coerced because of his age; the small size and location of the room he was questioned in; the length of the questioning; Baker’s threat to discipline him if he did not confess; Officer Carr’s presence; and the absence of a friend, attorney, or anyone else to aid him. Mem. Law Supp. Pl.’s Mot. Partial Summ. J. at 21, ECF No. 123. School Defendants assert that the door to the room was kept open and that Baker never threatened O.W. School Defs.’ Resp. Opp Pl.’s Mot. Partial Summ. J. at 25–26, ECF No. 139.

The Court finds that the statements O.W. made to Mr. Baker in the presence of Officer Carr were voluntary. The questioning was conducted by a school official in a familiar setting—the school guidance office—and the entire incident occurred over the course of an afternoon.³⁸ Importantly, O.W. admitted that he had shown the photograph to other students

determine whether *Miranda* applies, but instead to consider whether, considering the totality of circumstances, O.W.’s confession was coerced.

³⁸ In this environment, the Court does not find the size or location of the room in the guidance office or that O.W. was not permitted to leave school during the investigation (3–4 hours by O.W.’s account) to be coercive. See O.W. Dep. 45:13–17, ECF No. 118-4 (stating he was taken out of class by Mr. Baker at “two something” and stayed in the office until 6 p.m.).

before any alleged coercion began. Although certain facts—O.W.’s age, that he was alone, Officer Carr’s presence, and Mr. Baker’s admonition about violating the Student Code of Conduct— may have influenced O.W., they are not enough, without more, to suggest O.W.’s will was overborne.³⁹

O.W.’s Fourth and Fifth Amendment claims against Mr. Baker fail. As the allegations against the remainder of the parties named in Count I are based on the allegations against Mr. Baker, they also fail. The Court will grant summary judgment in favor of the School Defendants as to Count I.

d. Count II – 42 U.S.C. § 1983, Civil
Conspiracy⁴⁰

O.W. alleges that Officer Carr and the City of Virginia Beach engaged in a civil conspiracy to deprive him of his Fourth, Fifth, and Fourteenth Amendment rights. As O.W. fails to establish the elements of civil conspiracy under 42 U.S.C. § 1983, the Court will dismiss Count II.

³⁹ While the Court concludes that O.W.’s statements were voluntary, it does not condone the investigatory techniques practiced by the City and the School Board. According to the MOU between these two entities, “questioning of students by law enforcement officers” requires the principal to make a “reasonable effort” to notify parents and guardians when this occurs. MOU § VI.C. However, there are no similar regulations related to the practice at issue here, where a student is being interviewed by school officials in the presence of a school resource officer.

⁴⁰ O.W. abandons this claim in his proposed Third Amended Complaint. *See* ECF No. 109-1. Nevertheless, the Court will rule on summary judgment in order to avoid confusion going forward.

“To establish a civil conspiracy under § 1983, [a plaintiff] must present evidence that the [defendants] acted jointly in concert and that some overt act was done in furtherance of the conspiracy which resulted in [plaintiff’s] deprivation of a constitutional right.” *Hinkle v. City of Clarksburg*, 81 F.3d 416, 421 (4th Cir. 1996). To establish conspiratorial intent, “[plaintiff’s] evidence must, at least, reasonably lead to the inference that [defendants] positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.” *Id.*

The City Defendants argue this claim must fail because O.W. does not establish an underlying constitutional violation, and that even if he had, O.W. fails to provide sufficient circumstantial evidence of a conspiratorial objective. City Defs.’ Mem. at 19–20. In support of his claim, O.W. alleges there was a “direct meeting of the minds” between Officer Carr and Mr. Baker (who is not named in this Count), as well as a partnership between the City and the School Board (who is also not named in this Count), “to jointly extract incriminating evidence from students for criminal investigatory purposes, in violation of those students’ Fourth, Fifth, and often Sixth Amendment rights.” Pl.’s Opp. City Defs.’ Mot. at 16. Plaintiff argues that Officer Carr and the City of Virginia Beach conspired to use “the [Virginia Beach Public Schools’] disciplinary process as a backdoor to affording [sic] Plaintiff criminal safeguards and to coerce his confession.” SAC ¶ 105. As evidence of this, Plaintiff points to the Memorandum of Understanding (“MOU”), ECF No. 65-2, between the School Board of the City of Virginia Beach and the Virginia Beach Police Department. The MOU provides for coordination between these two entities when

criminal activity occurs on campus, including provisions concerning police questioning and search and seizure. MOU at VI, VIII, ECF No. 65-2.

Plaintiff's claim fails. The Court need not consider whether Officer Carr or the City of Virginia Beach committed an underlying violation of O.W.'s Fourth, Fifth, and Fourteenth Amendment rights because O.W. fails to provide any evidence of conspiratorial intent. Plaintiff's citation to the MOU is insufficient to establish that the members of the alleged conspiracy shared an intent to deprive Plaintiff of his constitutional rights. While O.W. is not required to come forward with direct evidence, he has a "weighty burden" and must show "specific circumstantial evidence that each member of the alleged conspiracy shared the same conspiratorial objective." *Hinkle*, 81 F.3d at 421. Here, while it is clear that there was an agreement between the City and School Board to coordinate when responding to criminal activity, it is unreasonable to infer, without more, that this was an agreement to deprive Plaintiff of his constitutional rights. Plaintiff fails to point to anything in the MOU that was unlawful or explain how the terms of the MOU establish an agreement to deprive Plaintiff of his constitutional rights. The Court will grant summary judgment in favor of the City Defendants as to Count II.

e. Count III – Racially Motivated Civil Conspiracy⁴¹

⁴¹ O.W. abandons this claim in his proposed Third Amended Complaint. *See* ECF No. 109-1. Nevertheless, the Court will rule on summary judgment in order to avoid confusion going forward.

O.W. alleges all Defendants engaged in a racially motivated civil conspiracy against him, in violation of 42 U.S.C. § 1985(3).⁴² A § 1985(3) claim requires a separate underlying constitutional violation. See *McNutt v. Duke Precision Dental & Orthodontic Labs., Inc.*, 698 F.2d 676, 680 (4th Cir. 1983) (“Section 1985(3) merely provides a remedy for the violation of rights guaranteed by federal law or the Constitution.”). As O.W. does not plead an underlying constitutional violation based on race, the Court will grant summary judgment in favor of Defendants as to Count III.

f. Count IV – Equal Protection Based on Sex⁴³

O.W. alleges that Officer Carr, Mr. Baker, Ms. Jenkins, and the School Board discriminated against him on the basis of his sex in violation of the Equal Protection Clause of the Fourteenth Amendment. As O.W. fails to show that he was inappropriately “singled out” or that Defendants’ actions were “invidious or in bad faith,” the Court will grant

⁴² The Fourth Circuit has held that a § 1985(3) claim requires a showing of: “(1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy.” *A Soc’y Without A Name v. Virginia*, 655 F.3d 342, 346 (4th Cir. 2011) (quoting *Simmons v. Poe*, 47 F.3d 1370, 1376 (4th Cir. 1995)).

⁴³ O.W. abandons this claim as to Mr. Baker, Ms. Jenkins, and the School Board in his proposed Third Amended Complaint. ECF No. 109-1. Nevertheless, the Court will rule on summary judgment in order to avoid confusion going forward.

summary judgment in favor of Defendants as to Count IV.

The Fourteenth Amendment to the U.S. Constitution provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. Further, “within the context of a gender-based discrimination claim, government action whose effects burden one sex more than another does not violate the Equal Protection Clause absent a showing of intentional or purposeful discrimination.” *Doe v. Fairfax Cnty. Sch. Bd.*, 403 F. Supp. 3d 508, 515 (E.D. Va. 2019) (citing *Mass. v. Feeney*, 442 U.S. 256, 273 (1979)). “To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination.” *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001).

An equal protection claim can be based on “selective enforcement,” *i.e.*, that “the severity of the penalty and/or the decision to initiate the proceeding was affected by the student’s gender.” *Doe 2 ex rel. Doe 1 v. Fairfax Cnty. Sch. Bd.*, 384 F. Supp. 3d 598, 606–07 (E.D. Va. 2019), *aff’d*, 832 F. App’x 802 (4th Cir. 2020). “The defendant must establish both (1) that he has been ‘singled out’ while others similarly situated have not been prosecuted; and (2) that the decision to prosecute him was ‘invidious or in bad faith.’” *United States v. Greenwood*, 796 F.2d 49, 52 (4th Cir. 1986).

The School Defendants argue that O.W. and A.F., the female student who sent him the explicit photograph, were not similarly situated because O.W.’s actions took place at Kempsville during school

hours, while A.F.'s actions did not, and that there is no evidence of bad faith. School Defs.' Mem. at 18. The City Defendants argue that Officer Carr did not act in bad faith in prosecuting O.W. given O.W.'s "acknowledgement of guilt, and the inculpatory statements he admits providing to Baker." City Defs.' Mem. at 26–27. In support of his claim, O.W. argues that A.F. engaged in more serious conduct than he did—producing child pornography—but received no punishment from Officer Carr or Kempsville. SAC ¶¶ 117, 119, 120. He claims that he was "situated identically" to A.F., and that "A.F. was even more culpable having created the image in the first place." Pl.'s Opp. City Defs.' Mot. at 29. For these reasons, O.W. argues that Officer Carr's and Kempsville's decision to punish him was a violation of his rights under the Fourteenth Amendment's Equal Protection Clause. *Id.* at 29–30.

Plaintiff's claim fails. O.W. is unable to show that he was similarly situated to A.F. and puts forward no facts to support the inference that Officer Carr or Kempsville's actions were "invidious or in bad faith." *Greenwood*, 796 F.2d at 52. A.F. and O.W. were not similarly situated—there is no dispute that A.F. sent O.W. the explicit photograph in the evening when they both were at home. SSUF ¶ 14. There is also no evidence that A.F. showed the explicit photograph to classmates or sent it to anyone while at school, as O.W. admitted to doing. Finally, O.W.'s purported evidence that Officer Carr's and Kempsville's actions were "invidious or in bad faith" is merely that O.W. was charged and A.F. was not. This is not sufficient to show intent.

The Court will grant summary judgment in favor of the School Defendants as to Count IV.

g. Counts V, VI, VII, VIII – Failure to Protect,⁴⁴
Negligence, Negligence Per Se

O.W. alleges that the School Defendants failed to protect his Fourth, Fifth, and Fourteenth Amendment rights and are liable for negligence and negligence per se under Virginia state law. For the reasons below, the Court will grant summary judgment in favor of Defendants as to Counts V–VIII.

Underlying O.W.’s claims is the notion that the School Defendants have a duty to protect his constitutional rights under “special relationship” and “state created danger” theories and failed to do so. The Fourth Circuit has recognized certain circumstances where a state actor “is in a special relationship to a private individual [and] acquires a duty to act on that individual’s behalf.” *Waybright v. Frederick Cnty.*, 528 F.3d 199, 207 (4th Cir. 2008). This is derived from the Supreme Court’s decision in *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989), where the Court held that the state violates the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment when it “so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs.” *Id.* at 200. The *DeShaney* Court also suggested that the State “voluntarily undertaking to protect [an individual] against a danger” could create a “duty under state tort law.” *Id.* at 201.

⁴⁴ O.W. abandons these claims as to certain School Defendants in his proposed Third Amended Complaint. *See* ECF No. 109-1. Specifically, O.W. abandons his failure to protect claim against all School Defendants and abandons his state law negligence claims against the School Board. *Id.*

As to the special relationship theory, the School Defendants argue that “such a relationship between the school and the pupil” is not sufficient to create a “special relationship” under *DeShaney*. School Defs.’ Mem. at 18. O.W. responds by arguing that while “students do not automatically enjoy a special relationship with a school authority,” the Virginia Beach School Board enacted a regulation stating that it shall “protect the constitutional rights” of minor students entrusted to its care, and O.W. “had an interest and expectation in such protection.” Pl.’s Opp. School Defs.’ Mot. at 17 (quoting Sch. Bd. City Va. Beach Regul. 5-64.1).

O.W. cannot establish a special relationship. The Fourth Circuit has unequivocally stated that a student’s attendance in public school does not create the kind of relationship contemplated in *DeShaney*. See *Stevenson ex rel. Stevenson v. Martin Cnty. Bd. of Educ.*, 3 F. App’x 25, 31 (4th Cir. 2001) (“When a student attends public school, his liberty is not restrained to the extent contemplated in *DeShaney*. Attending school is not the equivalent of incarceration or institutionalization.”). The School Board regulation does not change this conclusion. *DeShaney* made clear that the special relationship arose not “from [the State’s] expressions of intent to help . . . but from the limitation which it has imposed on his freedom to act on his own behalf.” 489 U.S. at 200. The Fourth Circuit has described this limitation on freedom as “incarceration, institutionalization, or the like.” *Pinder v. Johnson*, 54 F.3d 1169, 1175 (4th Cir. 1995). The statements by the School Board do not change the

nature of the school environment’s restriction on a student’s liberty.⁴⁵

As to the state created danger theory, the School Defendants argue that it cannot be the case that the state is liable “every time it does anything that makes injury at the hands of a third party more likely.” School Defs.’ Mem. at 23. O.W. argues Kempsville acquired a duty because Baker “increased the risk” of harm to him by agreeing to jointly investigate him with Officer Carr, allegedly putting Officer Carr in a position to deprive him of his constitutional rights. Pl.’s Opp. School Defs.’ Mot. at 22.

O.W. cannot prevail on a state created danger theory. The harm O.W. alleges—the violation of his Fourth, Fifth, and Fourteenth Amendment rights by Officer Carr—is not the kind of physical “danger” that *DeShaney* contemplated could create a duty under state tort law. *See, e.g.*, 489 U.S. at 192–93 (harm involved severe brain damage); *Pinder*, 54 F.3d at 1172 (harm involved death); *Doe v. Rosa*, 795 F.3d 429, 440 (4th Cir. 2015) (harm involved sexual abuse). As such, the Court need not address whether Officer Carr violated O.W.’s constitutional rights.

The Court will grant summary judgment in favor of the School Defendants as to Counts V–VIII.

h. Counts IX, X – Monell Liability

O.W. alleges that all Defendants are liable in their official capacities for constitutional violations under *Monell v. Department of Social Services of City of New*

⁴⁵ Since the Court does not find that O.W. has established a duty under the special relationship theory, it need not consider his claims that the School Defendants breached that duty and are liable in negligence or negligence per se. *See* SAC ¶¶ 126–27.

York, 436 U.S. 658 (1978). The Court construes these claims as against the two municipal parties to the lawsuit, the City of Virginia Beach and the School Board of the City of Virginia Beach. *See Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (stating that suits against government officials in their official capacity are properly “treated as a suit against the entity” because the entity is “the real party in interest”). As O.W. fails to identify any underlying constitutional violations that the City or School Board could be held liable for, the Court will grant Defendants’ motions for summary judgment as to these claims.

Under *Monell*, a municipality can be held liable for constitutional violations “when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible [for] under § 1983.” *Hunter v. Town of Mocksville*, 897 F.3d 538, 554 (4th Cir. 2018) (citing *Monell*, 436 U.S. at 694). A municipality’s failure to train its officers can also serve as an “official policy” for purposes of *Monell* liability, but “a failure to train can only form a basis for liability if ‘it can be shown that policymakers were aware of, and acquiesced in, a pattern of constitutional violations.’” *Lytle v. Doyle*, 326 F.3d 463, 471, 474 (4th Cir. 2003).

Defendants argue that *Monell* is not implicated because O.W. has not established an underlying constitutional violation. School Defs.’ Mem. at 24; City Defs.’ Mem. at 27. O.W. contends, however, that the MOU between the School District and the City is an unlawful policy, practice, or custom because it “focuses wholly on methods of crime control throughout the school system,” SAC ¶¶ 76, 133–139,

and that it is “unlawful for the [Virginia Beach Police Department] to conduct criminal investigations through [Virginia Beach City Public School] personnel.” Pl.’s Opp. School Defs.’ Mot. at 23.

The Court agrees with Defendants that O.W. does not establish any constitutional violation for which the School Board or the City could be held liable under *Monell*. As discussed *supra* in the Court’s analysis of Count II, O.W. does not explain how the policy set forth in the MOU violates his constitutional rights. Therefore, the Court need not consider whether such a violation could be fairly attributed to these municipal entities under *Monell*.

The Court will grant summary judgment in favor of the Defendants as to Counts IX and X.

i. Count XI – Title IX⁴⁶

O.W. alleges that the School Board violated Title IX of the Educational Amendments of 1972 because A.F. sexually harassed him by sending him the explicit photograph. For the reasons set forth below, the Court will grant summary judgment in favor of the School Board as to Count XI.

Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). Moreover, “[t]o establish a Title IX claim on the basis of sexual harassment, a plaintiff must show that (1) [he] was a student at an

⁴⁶ O.W. abandons this claim in his proposed Third Amended Complaint. See ECF No. 109-1. Nevertheless, the Court will rule on summary judgment in order to avoid confusion going forward.

educational institution receiving federal funds, (2) [he] was subjected to harassment based on [his] sex, (3) the harassment was sufficiently severe or pervasive to create a hostile (or abusive) environment in an educational program or activity, and (4) there is a basis for imputing liability to the institution.” *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007).

The School Defendants concede that the School Board receives federal funds, but argue that O.W. was not subjected to harassment because he asked A.F. to send him the explicit photograph and he expected to receive it. School Defs.’ Mem. at 27. O.W. disputes that he asked A.F. to send him the photograph. Pl.’s Opp. School Defs.’ Mot. at 3.

O.W.’s claim lacks merit. It is undisputed that A.F. sent the explicit photograph in the evening when both of them were at home. SSUF ¶ 14. O.W. does not meaningfully articulate how sending an explicit picture to another student (even if unsolicited) constitutes “harassment based on [his] sex,” how it created a hostile or abusive environment at school, or why the actions of A.F. are fairly attributable to Kempsville.

The Court will grant summary judgment in favor of the School Board as to Count XI.

D. Plaintiff’s Motion to File a Third Amended Complaint

While the Court’s foregoing decision on summary judgment resolves all claims in O.W.’s Second Amended Complaint, O.W.’s Motion for Leave to File a Third Amended Complaint remains pending. ECF No. 109. In the proposed amended complaint, O.W. seeks to add numerous claims. Specifically, the

proposed amended complaint brings a direct claim against Officer Carr for a violation of his Fourth, Fifth, and Fourteenth Amendment rights; a Fourteenth Amendment Equal Protection Clause claim based on race against some of the School Defendants; a separate supervisory liability claim against some of the School Defendants; and a conversion/trover claim against the City of Virginia Beach arising from the seizure of O.W.'s cellular phone. The proposed amended complaint also materially changes certain factual allegations and modifies various existing claims by adding or removing defendants. Finally, the proposed amended complaint removes some claims entirely, specifically the civil conspiracy claim, racially motivated conspiracy claim, state created danger special relationship claim, and the Title IX claim. *See* Mot. to File Third Am. Compl. at 2–3, Ex. 1.

As previously noted, the Court “should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a). However, a court “may deny leave to amend for reasons such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.” *Glaser v. Enzo Biochem, Inc.*, 464 F.3d 474, 480 (4th Cir. 2006) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

The Court will deny without prejudice O.W.'s Motion to File a Third Amended Complaint, and order O.W.—if he desires to continue the prosecution of his case in this forum—to seek leave to file a Third Amended Complaint within thirty (30) days from today's date. The Court concludes that proceeding in

this way is necessary in light of the Court's grant of summary judgment in favor of Defendants, the substantial changes O.W. proposes in his Third Amended Complaint, and the instruction to "freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Additionally, the parties' existing briefing fails to adequately address whether "the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986) (citing *Foman*, 371 U.S. at 182).

The parties are advised to carefully consider today's decision and avoid rehashing legal arguments that have already been rejected by the Court. Any proposed complaint submitted by O.W. should stand on its own without reference to any prior complaints, clearly separate out each theory of liability, and reference facts that would state a plausible claim for relief given the existing record in this case. The Defendants should be sure to adequately consider whether any proposed amended complaint filed by O.W. would be futile. The parties are also advised that any additional motions to amend will be viewed critically. While the Court "should freely give leave [to amend] when justice so requires," Fed. R. Civ. P. 15(a), this rule (and all of the Federal Rules of Civil Procedure) "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding," Fed. R. Civ. P. 1.

III. CONCLUSION

For the reasons set forth above, the Court will grant summary judgment in favor of Defendants and deny

summary judgment to O.W. As to O.W.'s Motion to File a Third Amended Complaint, ECF No. 109, the Court will deny the motion without prejudice, and direct O.W.—if he desires to continue the prosecution of his case in this forum—to file a revised motion within thirty (30) days from today's date. As to the remainder of the pending motions, Defendants' Motions to Dismiss will be denied as moot, ECF Nos. 62, 64; the City Defendants' Motion for Leave to File Amended Answer will be granted, ECF No. 136; the School Defendants' Motion for Leave to File Amended Answer will be denied as moot, ECF No. 96; O.W.'s Motion to Strike will be denied with prejudice, ECF No. 121; and O.W.'s Motion to Amend Reply Brief will be granted, ECF No. 145.

An appropriate order shall issue. The parties are directed to contact the undersigned's Courtroom Deputy within seven (7) days from today's date to schedule a status conference.

/s/ Elizabeth W. Hanes

Elizabeth W. Hanes

United States District Judge

Norfolk, Virginia

Date: February 14, 2023

APPENDIX E

**ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA, FILED
FEBRUARY 14, 2023**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

O.W., a minor, by his next friend and parent,

SANTRAYIA BASS,

Plaintiff,

v.

Civil Action No. 2:21-cv-448

SCHOOL BOARD OF THE CITY OF VIRGINIA
BEACH, et al.,

Defendants.

ORDER

Upon consideration of the parties' briefing, relevant legal authority, and as set forth in the Court's Memorandum Opinion:

1. City Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint is **DENIED AS MOOT**. ECF No. 62.

2. School Defendants' Motion to Dismiss the Plaintiff's Second Amended Complaint is DENIED AS MOOT. ECF No. 64.
3. School Defendants' Motion for Leave to File Amended Answer is DENIED AS MOOT. ECF No. 96.
4. Plaintiff's Motion and Accompanying Memorandum for Leave to File Third Amended Complaint is DENIED WITHOUT PREJUDICE. ECF No. 109. If Plaintiff wishes to continue prosecution of his case in this forum, he is DIRECTED to file a renewed motion for leave to file an amended complaint and accompanying proposed amended complaint within thirty (30) days from today's date.
5. City Defendants' Motion for Summary Judgment is GRANTED. ECF No. 115.
6. School Defendants' Motion for Summary Judgment is GRANTED. ECF No. 117.
7. Plaintiff's Objection and Emergency Motion and Accompanying Memorandum to Strike Exhibits is DENIED WITH PREJUDICE. ECF No. 121.
8. Plaintiff's Motion for Partial Summary Judgment is DENIED WITH PREJUDICE. ECF No. 122.
9. City Defendants' Motion for Leave to File Amended Answer is GRANTED. ECF No. 136.
10. Plaintiff's Motion to Amend Reply Brief is GRANTED. ECF No. 145.

The parties are DIRECTED to contact the undersigned's Courtroom Deputy within seven (7) days from today's date to schedule a status conference.

It is so ORDERED.

/s/

Elizabeth W. Hanes

United States District Judge

Norfolk, Virginia

Date: February 14, 2023

APPENDIX F

**ORDER OF THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF
VIRGINIA, NORFOLK DIVISION, FILED
MARCH 5, 2024**

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

O.W., a minor, by
his next friend and
parent,
SANTRAYIA
BASS,
Plaintiff,

v.

Civil Action No. 2:21-cv-448

SCHOOL BOARD OF THE CITY OF VIRGINIA
BEACH, *et al.*,
Defendants.

ORDER

On February 14, 2023, this Court entered an order granting summary judgment in favor of Defendants and denying without prejudice Plaintiff's request to file a third amended

complaint. ECF No. 151. In doing so, the Court “order[ed] O.W.—if he desires to continue the prosecution of his case in this forum—to seek leave to file [the] [c]omplaint within thirty (30) days.” ECF No. 150 at 31. Three days later, O.W. appealed the decision. ECF No. 152. Thereafter, the Fourth Circuit dismissed the appeal, finding that O.W. “appealed too soon” because this Court “[wa]s not finished with the case.” ECF No. 155 at 4 (quoting *Britt v. DeJoy*, 45 F.4th 790, 797 (4th Cir. 2022) (en banc)). As noted by the Court of Appeals, “*Britt* instructs that, to appeal, [O.W.] had to have ‘the district court itself [] confirm that its decision is final,’ either by waiting for the district court to issue a final order after the 30 days expired, or by moving for a finalized decision prior to the expiration of the 30-day period.” ECF No. 155 at 4. Following dismissal of the appeal, Plaintiff has indicated that “he does not intend to file a renewed motion for leave to amend his complaint,” and requests that this Court “enter its final judgment in this matter.” ECF No. 161. Accordingly, the Court’s Order at ECF No. 151 is final. The Clerk is DIRECTED to enter judgment in favor of Defendants. Fed. R. Civ. P. 58(b).

It is so ORDERED.

/s/

Norfolk, Virginia
Judge

Date: March 5, 2024

Elizabeth W. Hanes
United States District

APPENDIX G**CONSTITUTIONAL PROVISIONS,
STATUTES, AND REGULATIONS INVOLVED****U.S. CONST. AMEND. IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. AMEND. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. AMEND. VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

U.S. CONST. AMEND. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX H

Brief of Appellees (Excerpts)

O.W. v. Carr, No. 24-1288

(United States Court of Appeals for the Fourth
Circuit)

Filed July 15, 2024

NOTE ON EXCERPTS

The following pages reproduce selected portions of the Brief of Appellees filed in *O.W. v. Carr*, No. 24-1288 (4th Cir. July 15, 2024), in the order they appear in the brief:

1. **Cover page.**
2. **Table of Authorities** (pp. ii–iii).
3. **Section B of the Argument:** “The District Court Correctly Held That O.W.’s Confessions Were Entirely Voluntary” (pp. 22–23).

The Table of Authorities is included because it demonstrates, on its face, that respondents cited neither *Riley v. California*, 573 U.S. 373 (2014); *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364 (2009); *Miller v. Fenton*, 474 U.S. 104 (1985); nor *Arizona v. Fulminante*, 499 U.S. 279 (1991), anywhere in their 35-page brief.

Section B is included because it contains respondents’ complete and sole treatment of the voluntariness question—the section in which *Miller v. Fenton* and *Fulminante* do not appear, and in which the fact/law character of the voluntariness inquiry is not addressed.

These omissions are material to the argument in Part I(A), and IV(A) of the Petition.

United States Court of Appeals
for the
Fourth Circuit

O.W.,
Plaintiff-Appellant,

— v. —

MARIE L. CARR, police officer in her individual and
official capacities;

REID BAKER, assistant principal in his individual
and official capacities;

SCHOOL BOARD OF THE CITY OF VIRGINIA
BEACH, VIRGINIA, a body corporate;

CITY OF VIRGINIA BEACH, a body politic and
corporate,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA AT
NORFOLK

BRIEF OF APPELLEES

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TABLE OF AUTHORITIES

Cases:

<i>Andes v. Vesant Corpo.</i> , 788 F.2d 1033 (4th Cir. 1986)	30
<i>Cook v. Howard</i> , 484 F. App'x 805 (4th Cir. 2012)	11
<i>Ferguson v. City of Charleston</i> , 532 U.S. 67 (2001)	4, 20, 21
<i>Gallimore v. Henrico County School Board</i> , 38 F. Supp. 721 (E.D. Va. Aug. 5, 2014)	15
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982)	30
<i>Hinkle v. City of Clarksburg</i> , 81 F.3d 416 (4th Cir. 1996)	24, 25, 26
<i>New Jersey v. T.L.O.</i> , 469 U.S. 325 (1985)	passim
<i>Pearson v. Callahan</i> , 555 U.S. 223 (2009)	30
<i>Perdue v. Sanofi-Aventis U.S.</i> , 999 F.3d 954, fn. 5 (4th Cir. 2021)	31
<i>Piechowicz v. Lancaster Central School District</i> , 2022 U.S. Dist. LEXIS 8935 (W.D.N.Y. Jan. 18, 2022)	20, 30
<i>Rossignol v. Voorhaar</i> , 316 F.3d 516 (4th Cir. 2003)	31

<i>Ryan v. Commodity Futures Trading Commission</i> , 125 F.3d 1062 (7th Cir. 1997).....	31, 32
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968).....	14, 15
<i>United States v. Foreman</i> , 369 F.3d 776 (4th Cir. 2004).....	10
<i>United States v. Frazer</i> , 98 F.4th 102 (4th Cir. 2024)	10
<i>Wofford v. Evans</i> , 390 F.3d 318 (4th Cir. 2004)....	15, 21, 24, 30

Statutes & Other Authorities:

28 U.S.C. § 1291.....	1
Fed. R. App. P. 28(e)	5
Fed. R. App. P. 28(f).....	5
Fed. R. Civ. P. 41	30
Fed. R. Civ. P. 56	30, 31
Virginia Code 18.2-374.1:1(C)	11

[Scholarly articles cited by respondents at pages 18–19 of their brief are omitted from this reproduction as not relevant to the issues identified above.]

**ARGUMENT — SECTION B (pp. 22–23 of Brief
of Appellees)**

Arguments by O.W. regarding the applicability of T.L.O. or advocating for an outright change to T.L.O. are misplaced. Baker’s search and seizure of O.W.’s phone was plainly lawful under existing precedent.

**B. THE DISTRICT COURT CORRECTLY HELD
THAT O.W.’S CONFESSIONS WERE ENTIRELY
VOLUNTARY.**

O.W. states that he fully confessed his actions to Baker as part of the disciplinary investigation before Officer Carr became involved in any manner. O.W. readily admitted to Baker that he had the photograph on his phone, that he showed it to other students, JA355, JA1264-1265, and that he texted it to G.R./G.C, JA884. O.W. testified that when he confessed his actions to Baker he had neither spoken to Carr nor been in her physical presence. JA955. Baker used a “normal tone”, during the March 5, 2019, interviews with O.W., i.e., “not angry”. JA882. Further, Baker conducted the interview in a familiar setting with the door open. JA881. O.W.’s own deposition testimony does not accuse Baker of doing anything more than what is alleged in the Complaint: he asked O.W. to “answer his questions truthfully.” JA30. O.W. has neither alleged nor testified that Baker used any aggressive tactics in eliciting O.W.’s confession. The totality of the facts in this case does not evidence, in any way, that O.W.’s will was overborne. His confession was entirely voluntary.

O.W. testified he was being truthful from the start with Baker and he remained truthful when he wrote his statements. JA510, JA802, JA954, JA1234-1235. This critical fact undermines his argument on appeal that the suggestion there were likely disciplinary consequences for being untruthful somehow compelled his confession. It had already occurred. Moreover, Baker's reference to such consequence did not constitute undue pressure on O.W. There is no error in the District Court's finding where the record shows that at the time of his confession, O.W. was not subjected to a custodial interrogation requiring Miranda, his responses were consensual, and there is no objective evidence he was coerced by Baker (or Carr) in his responses. JA1149 n.20. The testimony of Baker, Officer Carr, and O.W. himself all support a finding that the confession was voluntary under the law.*

As a result, the district court did not err in its holding.

* Respondents' footnote 7, omitted from the body of this reproduction but appearing at page 23 of their brief, reads: "O.W.'s citation to his self-serving affidavit suggesting he was 'scared' or 'couldn't say no' (JA606, JA883) is an after-the-fact addition to his case and, nonetheless, is a purely subjective statement that cannot inform the objective reasonableness analysis required under the Fourth and Fifth Amendment."

APPENDIX I

**CIVIL MINUTES OF THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF VIRGINIA, NORFOLK
DIVISION, FILED JULY 20, 2022**

(ECF No. 101)

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA**

Norfolk Division

**O.W., a minor by his next friend and parent
Santrayia Bass, Plaintiff,**

v.

**School Board of the City of Virginia Beach, Virginia,
et al, Defendant(s).**

Civil Case Number: 2:21cv448

Date: July 20, 2022

Presiding Judge: Lawrence R. Leonard

Court Reporter: Jill Trail, OCR

Courtroom Deputy: L. Woodcock

Time Set: 3:00 pm; Start Time: 3:04 pm; End Time:
3:55 pm

Proceedings:

This matter came before the court on Plaintiff's Motion for Protective Order (ECF 100). Makiba Gaines appeared on behalf of Plaintiff. Joseph Kurt, Anne Lahren and Andrew Harding appeared for Defendants. Bill Muhr, AUSA, present.

The Court questions Ms. Gaines, Mr. Kurt and Ms. Lahren as to the location of the cell phone and the photograph/video in question. The Court is concerned who may have the photograph and why the image still exists. Responses by the parties heard.

The Court is troubled that the JDR case closed in 2021 and the City kept and distributed this image and is appalled that this evidence was not destroyed.

The Court will issue an order that the image is not to be further disseminated, reviewed or otherwise visualized at all in this litigation. The parties should also show cause why the Court should not order the City to destroy O.W.'s phone.

Court in recess.