



# EDUCATION LAW NOTES

Federal and Virginia Developments in School Law

Bradford A. King, Attorney at Sands Anderson

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## Arresting Developments: The Fourth Circuit Cautions School Resource Officers about Excessive Force

Federal agencies as well as student and family advocates in recent years fostered public conversations about the "school-to-jail pipeline" — criminal consequences for school behaviors. Earlier this year, a panel of the United States Court of Appeals for the Fourth Circuit warned school resource officers (SROs) about their use of force with student offenders.

E.W., a minor, By and Through her next friend and Mother, T.W., vs. Rosemary Dolgos, Case No. 16-1608 (4<sup>th</sup> Cir. February 12, 2018), involved a 10 year-old elementary school student, but resonates at all grade levels. The case involved a SRO's decision "to handcuff a calm, compliant elementary school student for fighting with another student three days" before the arrest. Her mother then sued the SRO for excessive force in violation of the Fourth Amendment and several state (e.g. Maryland) laws. The Court granted the SRO's plea of qualified immunity, but only after finding that the SRO indeed used excessive force.

The fight occurred on a school bus, and both the subject student - E.W. - and another student received school discipline. The elementary school administration waited three days to call the Sheriff's Department. Officer Dolgos interviewed E.W. on the third day in a school conference room in the presence of two school administrators. Officer Dolgos took E.W. into custody when she believed that E.W. continued to act as if the situation was not a "big deal."

Officer Dolgos placed E.W. in handcuffs and re-seated her. She made sure the handcuffs were not too tight. Officer Dolgos later reported she was concerned about her physical safety and that of school administration because of the fight itself (she had viewed the bus surveillance tape) and E.W.'s apathy. She was concerned that E.W. might act violently if she attempted to walk E.W. to her patrol car, despite not having any knowledge regarding whether E.W. had a history of behavioral issues.

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*United States Court of Appeals  
for the Fourth Circuit*

Immediately after Officer Dolgos handcuffed her, E.W. began to cry, complained she did not want to go to jail and said she would not hit the other student again. Officer Dolgos removed the handcuffs after two minutes and decided to release E.W. to her mother. Officer Dolgos advised E.W.'s mother that she would refer the matter to the County Department of Juvenile Justice, who replied "[f]or a kid fight?" and "[s]o you're going to put my 10-year-old daughter in the system when she's 10?"

The Fourth Circuit weighed a number of factors before determining that Officer Dolgos' actions amounted to excessive force. "Dolgos took a situation where there was no need for any physical force and used unreasonable force disproportionate to the circumstances presented," the Court wrote. "We are not considering the typical arrest of an adult (or even a teenager) or the arrest of an uncooperative person engaged in or believed to

be engaged in criminal activity. Rather, we have a calm, compliant ten-year-old being handcuffed on school grounds because she hit another student during a fight several days prior." The Court determined that Officer Dolgos could not reasonably have believed that E.W. presented any immediate risk of harm to anyone: she had no weapon; made no threats; was 4'4" tall and weighed only 95 pounds; and was in a closed office with four adults. The Court found that E.W. posed little threat even if she were to become aggressive.

The Court also found that the significant time lapse (three days – for each of which E.W. attended school with other children without further incident) between the fight and the interview further negated any notion that E.W. posed an immediate threat. The Court recognized that even a child with a history of attacking school officials should not be handcuffed if, at the time of handcuffing, she did not present a danger. The Court also acknowledged that "E.W. was only ten years old at the time of the arrest. She therefore falls squarely within the tender age range for which the use of handcuffs is excessive absent exceptional circumstances."

The school context also informed the Court's decision. "Courts have found that officers should exercise more restraint when dealing with student misbehavior in the school context. . . . Society expects that children will make mistakes in school – and, yes, even occasionally fight. That teachers handle student misbehavior and unruliness 'on a routine basis without the use of any force' suggests that force is generally unnecessary in the school context." The Fourth Circuit was concerned about the arrest's impact on student perceptions. "The use of handcuffs . . . may undermine students' perception of the school and their willingness to attend, thereby disrupting their education far beyond the time they actually spend in handcuffs. And being handcuffed is often a source of stigma, which can lead to alienation and further disrupt long term outcomes. In other words, the use of

handcuffs and force is not reasonably expected in the school context because it is counter-productive to the mission of schools and school personnel."

Ultimately, the Court of Appeals held that no reasonable officer confronted with the information Officer Dolgos had would have determined that handcuffing E.W. for any amount of time was justified; therefore, Officer Dolgos acted unreasonably. However, the Court dismissed the suit against Officer Dolgos by granting her plea of qualified immunity, holding that it would not have been clear to a reasonable officer that handcuffing E.W. in these circumstances would give rise to a Fourth Amendment violation. It will be clear moving forward: "[w]e emphasize . . . that our excessive force holding is clearly established for any future qualified immunity cases involving similar circumstances."

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The Court's opinion closes with an important admonition about the school-law enforcement relationship. "School-based policing is the fastest growing area of law enforcement. While the officers' presence surely keeps the nation's children safe, officers should not handcuff young students

who may have committed minor offenses but do not pose an immediate threat to safety and will not evade arrest. Unnecessarily handcuffing and criminally punishing young schoolchildren is undoubtedly humiliating, scarring, and emotionally damaging. We must be mindful of the long-lasting impact such actions have on these children and their ability to flourish and lead prosperous lives – an impact that should be a matter of grave concern for us all."

School administrators are well advised to share and discuss this decision with their law-enforcement partners. Balancing true safety and criminal justice concerns with the appropriate developmental needs of students may not always be clearly defined. Ongoing communication between educators and law enforcement officials is critical to succeeding on both fronts.