DOCKET NO.: CV 09 4043192-S	:	SUPERIOR COURT
HAROLD BURBANK ET AL	:	J. D. OF HARTFORD
V.	:	AT HARTFORD
CANTON BOARD OF EDUCATION	:	SEPTEMBER 14, 2009

MEMORANDUM OF DECISION

This is an action brought by public school students and their parents seeking to enjoin a school board's policy of using drug-sniffing dogs to conduct warrantless, suspicionless sweeps of school property. In the alternative, the plaintiffs seek a court order requiring schools officials to provide parents no less than forty-eight hours notice prior to conducting any future similar searches. Because the plaintiffs have failed to establish a legal or factual basis for obtaining injunctive relief, their application is denied and the defendant is entitled to a judgment in its favor.

Facts and Procedural History

This action was commenced by service of process on the defendant, Canton board of education (board), on April 3, 2009. When the action was first filed, the named plaintiffs were Harold Burbank, Marianne Burbank, Elisa Villa and Jane Latus, each of whom has children attending Canton High School and/or Canton Middle School.

At an initial hearing in this matter held on May 26, 2009, the court indicated to the plaintiffs that to the extent that the plaintiffs were attempting to raise constitutional claims belonging to their minor children, the plaintiffs would be required to formally add the children as

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plaintiffs. Following this colloquy, the court granted an oral motion made by the parents for leave to amend their complaint to include their minor children in the action. At this hearing, the parties also agreed that the next hearing on the matter would be for a permanent, rather than temporary, injunction.

Subsequently, on June 22, 2009, the plaintiffs filed an "Amended Complaint for Permanent Injunction," in which the Burbank's minor child, A.B., and Latus' minor child, I.J., were added as plaintiffs. Although she did not file a formal motion to withdraw her claims against the board, Elisa Villa was not named as a plaintiff in the amended complaint and the court no longer considers her a plaintiff in this action.

The hearing on the plaintiffs' amended application for a permanent injunction was held before this court on August 3, 2009. The court heard testimony from two witnesses: Marianne Burbank, who is the mother of A.B., a student who attends Canton high school, and from Kevin Case, the superintendent of the Canton public schools. Based on the testimony and exhibits presented, the court finds the following facts.

On June 5, 2008, the board and Superintendent Case ordered local police officers to conduct a sweep of cars and unattended lockers at the Canton high school and middle school using dogs trained to identify illegal substances and other contraband. These sweeps are permitted under § 5145.122 (a) (5) of the Regulations of the Canton board of education.[1] No

[1] Section 5145.122 (a) (5) of the Regulations of the Canton board of education provides: "The Board may permit the administration to invite law enforcement agencies or other qualified agencies or individuals to sweep school property with dogs trained for the purpose of detecting the presence of illegal substances, when necessary to protect the health and safety of students, employees or property *or* to detect the presence of illegal substances or contraband, including alcohol and/or drugs. The use of trained canine sniffing dogs and their associated law enforcement personnel is for the purpose of "alerting" on property only, and is subject to the following: (5) All school property which students have access to during the day, such as lockers, classrooms, parking areas and storage areas may be swept. (a) Dogs shall not be used in rooms

student or faculty member's body was searched or sniffed in the course of this sweep.

Around 8:30 that morning, the principals of the middle and high schools made announcements to their schools, alerting the students and faculty that a sweep would be occurring and that all individuals were to "stay put." The announcement included directions for teachers to check their e-mail, where school officials had sent further instructions and information about the search. (Def.'s Ex. B.) The e-mail stated that during a "stay put," no student was allowed to leave the classroom unless an emergency occurred. (Def.'s Ex. D.) During the "stay put," the schools were not in "lock down" because the doors to the schools were not locked and students were able to enter and leave the building freely if given permission.

Once the "stay put" began, the police and their dogs swept unattended school lockers and cars in the parking lot. A school locker, however, would not be opened unless a dog "alerted" to a particular locker. Approximately six dogs and ten police officers conducted the sweep. While in the parking lot, a dog alerted to the police to one of the cars. The student who drove that car was brought to the parking lot. As the student watched, the police officers searched the car and found a stem or seed of marijuana inside the car. After the search, school officials contacted the student's parents. The student was then arrested and suspended from school for ten days.

The sweep lasted for about one hour. Prior to the start of the sweep, the students had almost finished their first period class. Therefore, including the time spent in first period, the students remained in their classrooms for approximately one hour and fifty minutes. They

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occupied by persons except for demonstration purposes. The handler and representative from school administration will always be present with the dogs. (b) When used for demonstration purposes, the dog may not sniff any student and/or staff." (Emphasis in original.) (Def.'s Ex. A.)

missed at least one full class period. After the sweep, Superintendent Case held an assembly at both the high school and middle school. Case and the Canton police chief spoke to the students, describing what the sweep involved and why it was performed, and provided time for students to ask questions. Additionally, Case sent the students' parents a letter on June 5, 2008, describing the sweep and explaining why it was conducted. (Def.'s Ex. C.)

The plaintiffs seek a permanent injunction from the court to either prohibit the warrantless dog-sniff sweeps allowed under the school's regulations or to afford parents no less than forty-eight hours notice prior to any such sweeps. At trial, the plaintiffs' only witness, Marianne Burbank, testified that she did not believe that using drug-sniffing dogs was an effective way to protect the safety of students and was harmful to them and that conducting such sweeps without notifying parents interfered with the parents' fundamental right to control the upbringing of their children.

The plaintiffs are claiming relief based on the state constitution and not the federal constitution. "It is well established that federal constitutional and statutory law establishes a minimum national standard for the exercise of individual rights and does not inhibit state governments from affording higher levels of protection for such rights. . . . Furthermore, although we often rely on the United States Supreme Court's interpretation of the amendments to the constitution of the United States to delineate the boundaries of the protections provided by the constitution of Connecticut, we have also recognized that, in some instances, our state constitution provides protections beyond those provided by the federal constitution, as that document has been interpreted by the United States Supreme Court. . . . The analytical framework by which we determine whether, in any given instance, our state constitution affords broader protection to our citizens than the federal constitutional minimum is well settled. In

State v. *Geisler*, [222 Conn. 672, 684-86, 610 A.2d 1225 (1992)], we enumerated the following six factors to be considered in determining that issue: (1) persuasive relevant federal precedents; (2) the text of the operative constitutional provisions; (3) historical insights into the intent of our constitutional forebears; (4) related Connecticut precedents; (5) persuasive precedents of other state courts; and (6) contemporary understandings of applicable economic and sociological norms, or as otherwise described, relevant public policies." (Internal quotation marks omitted.) *Perricone* v. *Perricone*, 292 Conn. 187, 212-13, 972 A.2d 666 (2009).

At the hearing on the permanent injunction, the court gave the plaintiffs the opportunity to analyze these factors in a supplemental brief, but the plaintiffs have failed to do so. Our courts "have repeatedly apprised litigants that we will not entertain a state constitutional claim unless the [plaintiff] has provided an independent analysis under the particular provisions of the state constitution at issue. . . . Without a separately briefed and analyzed state constitutional claim, we deem abandoned the [plaintiff's] claim." *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 55 n.36, 970 A.2d 656 (2009). The court, therefore, declines to review the plaintiffs' claims *separately* under the Connecticut constitution as they have not provided the prerequisite analysis under *Geisler*. Accordingly, the court will treat the plaintiffs' state constitutional rights as co-extensive with any rights guaranteed to them by the federal constitution.

Furthermore, although the plaintiffs are not claiming that sweeps using drug-sniffing dogs are per se illegal, they contend they have the right to stop future sweeps or to be entitled to notice at least forty-eight hours prior to the start of such sweeps. They claim to have this right because, as parents, they have the rights to liberty, privacy, family integrity, care, custody, companionship, education, control and management of their minor children.

In addition to asserting their parental rights, the parents have added their children to this action as co-plaintiffs for the purpose of asserting the children's rights, as public school students, to be free from unreasonable searches and seizures. Not a single student testified, however, as to any harm that students suffered as a result of the June 5, 2008 sweep or any harm that may result from future sweeps. Despite providing no testimony in support of their claims, the plaintiffs nevertheless assert in their various briefs that the board unlawfully seized the minor plaintiffs when they were kept in their classrooms and unable to leave the room for approximately one hour and fifty minutes.

Discussion

"A party seeking injunctive relief has the burden of alleging and proving irreparable harm and lack of an adequate remedy at law." *Kelo* v. *New London*, 268 Conn. 1, 89, 843 A.2d 500 (2004), aff'd, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005). Additionally, to obtain a permanent injunction, the plaintiffs must demonstrate actual success on the merits rather than a likelihood of success, as is required when a preliminary injunction is requested. *Amoco Production Co.* v. *Gambell*, 480 U.S. 531, 546 n.12, 107 S. Ct. 1396, 94 L. Ed. 2d 542 (1987). In ordering a permanent injunction, "the relief granted must be compatible with the equities of the case." *Castonguay* v. *Plourde*, 46 Conn. App. 251, 267, 699 A.2d 226, cert. denied, 243 Conn. 931, 701 A.2d 660 (1997).

Given the limited evidence presented and this court's review of the law relevant to this case, the plaintiffs have failed to establish success on the merits of their claims. Furthermore, the plaintiffs have not briefed the issues of whether they have an adequate legal remedy or that they would suffer irreparable injury without the injunction. In sum, the court finds that the balance of the equities does not favor issuing the injunction.

I. Success on the merits

In essence, the plaintiffs have challenged the board's policy of conducting warrantless, suspicionless sweeps of school property using drug-sniffing dogs on two constitutional grounds. First, the plaintiff students argue that the sweep violated the Fourth Amendment rights of public school students to be free of unreasonable searches and seizures. Second, the plaintiff parents claim that the right of parental integrity under the Fourteenth Amendment includes the right to halt future searches or to be notified before such a search occurs. Both claims fail on the merits, and, therefore, the application for a permanent injunction is denied.

A. General rules applying to school searches

In *New Jersey* v. *T.L.O.*, 469 U.S. 325, 341-42, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985), the United States Supreme Court outlined the rules applying to school officials conducting searches of students' bodies and personal effects. Although court held that school officials, as government agents, are subject to the Fourth Amendment; id., 336; they do not have to obtain a warrant before conducting such searches. Id., 340. School officials do have to meet the following standards, however, in assessing whether a search of a student's person or effects is reasonable and, therefore, permissible. First, the search must be reasonable at its inception, which means when school officials have "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., 342. Second, the search's scope must be reasonably related to the purpose of the search and not excessively intrusive in light of the age and sex of the students who are searched and the nature of the infraction. Id.

Although *New Jersey* v. *T.L.O.*, supra, 469 U.S. 341-42, only addressed the constitutionality of warrantless searches of students' bodies and personal effects, in 1994, the

Connecticut General Assembly passed legislation expressly permitting school officials to search school property within constitutional bounds. See Public Acts 1994, No. 94-115. General Statutes § 54-33n provides in relevant part: "All local and regional boards of education . . . may authorize the search by school or law enforcement officials of lockers and other school property available for use by students for the presence of weapons, contraband or the fruits of a crime if (1) the search is justified at its inception and (2) the search as actually conducted is reasonably related in scope to the circumstances which justified the interference in the first place. A search 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. A search is reasonably related in scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." The Canton board of education expressly referenced § 54-33n when it adopted § 5145.122 (a) (5) of its Regulations. (Def.'s Ex. A.)

B. Dog sniff of lockers or cars on school property is not a Fourth Amendment "search"

Federal courts hold that school officials may use drug-sniffing dogs to conduct exploratory sweeps of lockers and cars on school property without a warrant on the theory that this action does not constitute a search for purposes of the Fourth Amendment. See, e.g., *Horton* v. *Goose Creek Independent School District*, 690 F.2d 470, 477 (5th Cir. 1982). Courts are divided, however, on the issue of whether the use of drug-sniffing dogs to search a student's body violates the Fourth Amendment protection against unreasonable searches. See *Doe* v. *Renfrow*, 631 F.2d 91 (7th Cir.) (per curiam), cert. denied, 451 U.S. 1022, 101 S. Ct. 3015, 69 L. Ed. 2d 395 (1981); contra *Jones* v. *Latexo Independent School District*, 499 F. Sup. 223, 236 (E.D. Tex. 1980).

A case that preceded *New Jersey* v. *T.L.O.* from the United States Fifth Circuit Court of Appeals, *Horton* v. *Goose Creek Independent School District*, supra, 690 F.2d 473, squarely addressed this question: "as a matter of constitutional law, can a school district, acting in good faith in an effort to deal with a serious drug and alcohol problem, subject students, their lockers, and their automobiles to the exploratory sniffing of dogs trained to detect certain contraband?" The *Horton* court held that the use of dogs to sniff unattended lockers and cars was constitutional, but the use of dogs to sniff students' persons was not. Id., 488.

The school district in *Horton* conducted random and unannounced dog sniffs of students' persons, lockers and cars. Id., 474. Under this policy, when a dog alerted to a student's car, the driver was asked to open the doors and trunk, and if the driver refused, the school notified the driver's parents. Id. When a dog altered to a locker, however, the school searched the locker without the consent of the student who was assigned the locker. Id. Students whose persons had been sniffed brought an action challenging the constitutionality of the school's policy, arguing that it violated the Fourth Amendment prohibition against unreasonable searches and seizures and the due process rights guaranteed by Fourteenth Amendment. Id.

The *Horton* court acknowledged that a split in authority existed concerning the reasonableness of the use of drug-sniffing dogs in the school environment. Id., 475. For example, the United States Court of Appeals for the Tenth Circuit had upheld the use of drug-sniffing dogs in exploratory locker searches. *Zamora* v. *Pomeroy*, 639 F.2d 662, 670 (10th Cir. 1981). The Tenth Circuit held that a student, who had been disciplined after school officials discovered marijuana in his locker following a dog sniff, had not suffered a due process violation, and the school's use of drug-sniffing dogs did not violate the Fourth Amendment because "although a student has rights under the Fourth Amendment, these rights must yield to

the extent that they interfere with the school administration's fundamental duty to operate the school as an educational institution and that a reasonable right to inspect is necessary in the performance of its duties, even though it may infringe, to some degree, on a student's Fourth Amendment rights." Id.

Likewise, in *Doe* v. *Renfrow*, supra, 631 F.2d 91, the United States Court of Appeals for the Seventh Circuit upheld a school's use of drug-sniffing dogs for suspicionless searches of students' persons. It adopted the opinion of the district court, which held that "[w]eighing the minimal intrusion against the school's need to rid itself of the drug problem, the actions of the school officials leading up to an alert by one of the dogs was reasonable and not a search for purposes of the Fourth Amendment." *Doe* v. *Renfrow*, 475 F. Sup. 1012, 1022 (N.D. Ind. 1979), aff'd on this ground and rev'd on other grounds by 631 F.2d 91 (7th Cir.) (per curiam), cert. denied, 451 U.S. 1022, 101 S. Ct. 3015, 69 L. Ed. 2d 395 (1981).

By contrast, in *Jones* v. *Latexo Independent School District*, 499 F. Sup. 223, 236 (E.D. Tex. 1980), a federal district court rejected the district court's opinion in *Doe* v. *Renfrow*, supra, 475 F. Sup. 1012, in evaluating the reasonableness of suspicionless dog-sniff searches of students' persons and cars. The *Jones* court weighed the rights of students and school officials differently than the *Doe* v. *Renfrow* court, finding that "the school environment was a factor to be considered, but it did not automatically outweigh all other factors. The absence of individualized suspicion, the use of large animals trained to attack, the detection of odors outside the range of the human sense of smell, and the intrusiveness of a search of the students' persons combined to convince the judge that the sniffing of the students was not reasonable. Since the students had no access to their cars during the school day, the school's interest in the sniffing of cars was minimal, and the court concluded that the sniffing of the cars was also unreasonable." *Horton* v.

Goose Creek Independent School District, supra, 690 F.2d 475 (summarizing the reasoning of *Jones* v. *Latexo Independent School District*).

At the core of this split was the question whether the use of dogs to sniff the students' persons, rather than the students' lockers or cars, presented a Fourth Amendment violation: "After all, the fourth amendment protects people, not places." (Internal quotation marks omitted.) *Horton* v. *Goose Creek Independent School District*, supra, 690 F.2d 477, citing *Katz* v. *United States*, 389 U.S. 347, 351, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967). Less central to the split, however, was the issue of whether dog sniffs of student lockers in public hallways and cars parked in public parking lots constituted a Fourth Amendment "search." Id.

The *Horton* court summarily addressed the issue of dog sniffs of lockers and cars by applying the "public smell" doctrine: "The courts have reasoned that if a police officer, positioned in a place where he has a right to be, is conscious of an odor, say, of marijuana, no search has occurred; the aroma emanating from the property or person is considered exposed to the public 'view' and, therefore, unprotected." Id. The *Horton* court cited *United States* v. *Goldstein*, 635 F.2d 356, 361 (5th Cir.), cert. denied, 452 U.S. 962, 101 S. Ct. 3111, 69 L. Ed. 2d 972 (1981), which held that the use of dogs to sniff luggage checked in an airport did not constitute a search because "the passenger's reasonable expectation of privacy does not extend to the airspace surrounding that luggage." (Internal quotation marks omitted.) Id.[2]

Applying this "public smell" doctrine, the *Horton* court reasoned: "Had the principal of the school wandered past the lockers and smelled the pungent aroma of marijuana wafting

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[2] United States Supreme Court decisions holding that the Fourth Amendment is not implicated in dog sniffs of luggage or cars include: *Illinois* v. *Caballes*, 543 U.S. 405, 409, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005) (traffic stop); *Indianapolis* v. *Edmond*, 531 U.S. 32, 40, 121 S. Ct. 447, 148 L. Ed. 2d 333 (2000) (highway checkpoint); *United States* v. *Place*, 462 U.S. 696, 707, 103 S. Ct. 2637, 77 L. Ed. 2d 110 (1983) (luggage search).

through the corridors, it would be difficult to contend that a search had occurred. *Goldstein* stands for the proposition that the use of the dogs' nose to ferret out the scent from inanimate objects in public places is not treated any differently." Id. Thus, the use of dogs to sniff for contraband inside unattended lockers and cars did not constitute a Fourth Amendment search. Id.

Other courts have similarly concluded that a dog sniff of an unattended locker or car on school property does not constitute a Fourth Amendment search. See, e.g., *Hearn* v. *Board of Public Education*, 191 F.3d 1329, 1333 (11th Cir. 1999), cert. denied, 529 U.S. 1109, 120 S. Ct. 1962, 146 L. Ed. 2d 794 (2000) (dog alerted to teacher's car during "drug lockdown"); *Marner* v. *School Board*, 204 F. Sup. 2d 1318, 1325 (M.D. Ala. 2002) (dog alerted to student's car during school-wide sweep); *In Re Dengg*, 132 Ohio App. 3d 360, 367, 724 N.E.2d 1255 (1999) (same); *Doran* v. *Contoocook Valley School District*, United States District Court for the District of New Hampshire, Docket No. 07-CV-307 (D.N.H. March 25, 2009) (dog sniff of students' unattended personal belongings). Thus, the overwhelming weight of authority does not support the position that these sweeps constitute a search implicating constitutional protection.

The plaintiffs point out that warrantless, suspicionless urinalysis of student athletes constitutes an unconstitutional search under the Washington state constitution. See *York* v. *Wahkiakum School District No. 200*, 163 Wn.2d 297, 299, 178 P.3d 995 (2008) (holding that although random drug testing is constitutional under the Fourth Amendment; see *Vernonia School District 47J* v. *Acton*, 515 U.S. 646, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995); it was unconstitutional under Washington state's constitution, which provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."). This case is clearly inapposite. Obviously, the intrusion into personal privacy flowing from testing students' urine for drugs is far greater than that of any intrusion resulting from the act of dogs sniffing the

air around unattended school property.

More importantly, as noted above, the plaintiffs have failed to analyze whether Connecticut's constitution affords a similarly expansive privacy right. Even if more expansive privacy rights exist under Connecticut's constitution, such protections would not appear to be so expansive as to prevent the minimally intrusive sweeps used here. Arguably, if Canton's policy permitted dogs to sniff directly students' persons, this case might be more similar to the random urinalysis screening of student athletes because some courts have found both practices to be intrusive of students' privacy rights. Nevertheless, a student simply does not have a reasonable expectation of privacy in the smells emanating from his or her locker or car. *Horton* v. *Goose Creek Independent School District*, supra, 690 F.2d 477. Finally, unlike a direct sniff of a student's person, the United States Court of Appeals for the Second Circuit has held that "[s]niffing [of luggage] results in virtually no annoyance and rarely even contact with the owner of the bags, unless the scent is positive . . . ." *United States* v. *Waltzer*, 682 F.2d 370, 373 (2d Cir. 1982), cert. denied, 463 U.S. 1210, 103 S. Ct. 3543, 77 L. Ed. 2d 1392 (1983). Thus, based on the level of intrusiveness of random drug screening as compared to dog sniffs of unattended lockers and cars, *York* is distinguishable from *Horton* and from the facts of the present case.

In sum, the federal courts almost uniformly agree that a dog sniff of a car or unattended locker is not a "search" for purposes of the Fourth Amendment. Consequently, the plaintiff students' claim under the state constitution must fail. This court likewise holds that § 5145.122 of the Regulations of the Canton board of education, which governs drug-sniffing dog searches, does not violate the Fourth Amendment prohibition against unlawful searches because under this policy, dogs are not allowed to sniff individual students, but may sniff cars or unattended

lockers.[3] Therefore, the plaintiff students cannot prevail on the merits of their claim that the sweeps constitute a search implicating constitutional protections.

C. The board of education's policy does not effect a "seizure"

The plaintiff students further argue that board of education's policy of enforcing a "stay put" while police conduct dog sniff searches of unattended lockers and cars constitutes an unlawful seizure because students are not permitted to move freely around the school while the dogs are sweeping the premises.

Courts do not characterize such practices, however, as "seizures" under the constitution because "[s]chool officials maintain the discretion and authority for scheduling all student activities each school day." *Doe* v. *Renfrow*, supra, 475 F. Sup. 1019. Thus, a court held that a student was not unconstitutionally seized where school officials made her and her classmates wait in a classroom for ninety-five minutes while drug-sniffing dogs swept school property. Id. See also *Doran* v. *Contoocook Valley School District*, supra, United States District Court for the District of New Hampshire, Docket No. 07-CV-307 (students who were briefly held on a football field while drug-sniffing dogs swept school property were not unconstitutionally seized); *B.C.* v. *Plumas Unified School District*, 192 F.3d 1260, 1269 (9th Cir. 1999) (students confined to designated area for five to ten minutes during drug-sniffing dog sweep of classroom did not suffer an unconstitutional seizure).

In the present case, the students were detained in their classrooms for approximately one hour and fifty minutes during the "stay put." During some of this time, the students would

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[3] Specifically, § 5145.122 (a) (6) provides: "Individual(s) shall not be subjected to a search by dogs."

normally have been in their first period class. Although this time frame is somewhat longer than the alleged seizure in *Doe* v. *Renfrow*, supra, 475 F. Sup. 1019, it does not exceed the discretion vested in the Canton school officials to schedule student activities during the day. Furthermore, students were permitted to leave the classroom in the event of an emergency. Because this detention is not a seizure for purposes of the Fourth Amendment, the plaintiffs cannot succeed on this ground.

D. Right to family integrity does not include right to be notified before dog sniff search

The plaintiff parents' final claim is that the right to family integrity guaranteed under the Fourteenth Amendment encompasses a right for parents to demand that the board stop warrantless, suspicionless drug-sniffing dog searches from being conducted on school grounds or be notified at least forty-eight hours before such a search. This claim fails because the rights asserted by the plaintiff parents are not limitless and do not extend to prohibit constitutional activities by school officials empowered in the course their duties to provide a safe and efficacious school environment.

It is true, as the United States Supreme Court has often noted, "a parent's desire for and right to the companionship, care, custody, and management of his or her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection." (Internal quotation marks omitted.) *Lassiter* v. *Dept. of Social Services*, 452 U.S. 18, 27, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981). "[A]lthough the Constitution is verbally silent on the specific subject of families, freedom of personal choice in matters of family life long has been viewed as a fundamental liberty interest worthy of protection under the Fourteenth Amendment. . . . Within the general ambit of family integrity, the Court has accorded a high degree of constitutional respect to a natural parent's interest both in controlling the details of the

child's upbringing, . . . and in retaining the custody and companionship of the child . . . ." (Citations omitted.) Id., 38-39. The issue here, however, is whether these liberty interests extend to prohibit a public school system from engaging in otherwise constitutional, legitimate attempts to provide a safe and efficacious learning environment for *all* students who attend these schools.

The plaintiff parents argue that the Connecticut Supreme Court's decision in *Roth* v. *Weston*, 259 Conn. 202, 789 A.2d 431 (2002) supports their claim for relief. In *Roth*, the court heard a constitutional challenge to a visitation statute brought by a father who objected to a court order permitting his minor children's maternal grandmother and maternal aunt to have unsupervised visits with them. *Roth* v. *Weston*, supra, 259 Conn. 204. The court held that the visitation statute was "unconstitutional as applied to the extent that the trial court, pursuant to the statute, permitted third party visitation contrary to the desires of a fit parent and in the absence of any allegation and proof by clear and convincing evidence that the children would suffer actual, significant harm if deprived of the visitation." Id., 205-206. The court grounded its constitutional analysis on the right of family integrity, holding that "among those interests lying at the core of a parent's right to care for his or her own children is the right to control their associations. . . . The essence of parenthood is the companionship of the child and the right to make decisions regarding his or her care, control, education, health, religion and association. . . . [F]amily integrity is the core element upon which modern civilization is founded and that the safeguarding of familial bonds is an innate concomitant of the protective status accorded the family as a societal institution." (Citations omitted.) Id., 216-17.

The *Roth* court, therefore, addressed a father's fundamental right to determine who could associate with his children and the strict procedures the state must follow before taking away that power. In addition to visitation rights, a parent's custody rights have also been deemed

fundamental to the parent-child relationship. *In re Romance M.*, 229 Conn. 345, 641 A.2d 378 (1994) (mother has fundamental right to retain relationship with her child that may only be severed in strict accordance with applicable statutory standards); *McDuffee* v. *McDuffee*, 39 Conn. App. 412, 664 A.2d 1164 (1995) (natural parent has right to be present and to be heard at custody hearing).

Here, the plaintiff parents argue that their right to family integrity, within the meaning of *Roth* v. *Weston*, extends so far as to make unconstitutional the board's attempt to control the drug problem in its schools because the sweeps limit their ability to control their children's upbringing. This claim cannot be sustained.

First, the plaintiffs have failed to cite a single case in which the privacy rights described in *Roth* v. *Weston* have been extended to strike down a constitutional school policy intended to protect and serve the health and well-being of all of the students who attend a school.[4] Unlike visitation or custody rights, a constitutional education policy of this type does not strike at the heart of the parent-child relationship or implicate a fundamental interest in family integrity. The sweeps conducted by the Canton school system simply do not intrude in any meaningful way in the core relationship between parent and student.

By contrast, the plaintiffs do have the fundamental right to control where their children are educated. *Pierce* v. *Society of Sisters*, 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070 (1925) (parent has right to send child to private school to satisfy compulsory attendance requirements). If parents choose to enroll their children in the public schools, however, they permit school officials to act in loco parentis for many purposes, "with the power and indeed the duty to inculcate the habits and manners of civility." (Internal quotation marks omitted.) *Vernonia*

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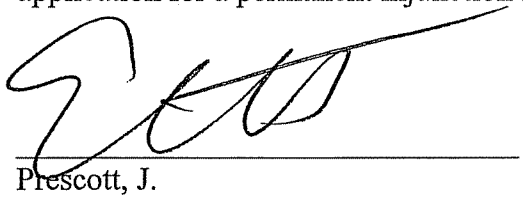
4 The court, as a factual matter, rejects the plaintiffs' contention that the sweeps "harm" students

School District 47J v. *Acton*, 515 U.S. 646, 655, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995). As part of this duty, school officials are empowered and obligated to provide an appropriate learning environment for students, which includes "a safe school setting." General Statutes § 10-220 (a). Other responsibilities include prescribing rules for the management and discipline of public schools; § 10-221 (a); and developing, adopting and implementing policies dealing with drug use, sale and possession at school. General Statutes § 10-221 (d). The board's decision to perform drug-sniffing dog sweeps of school grounds, which uniformly affects all students and faculty, does not infringe on family integrity within the meaning of *Roth* v. *Weston*. Indeed, if school officials failed to provide a school environment that is reasonably free from drugs and contraband, other parents would undoubtedly argue that its failure to do so was negatively impacting their attempts to raise their children in a safe and appropriate manner.

For the foregoing reasons, the plaintiff parents cannot prevail on their claim.

Conclusion

As the plaintiffs have failed to establish success on the merits of their claim, the court need not reach the other elements necessary to prove entitlement to a permanent injunction. The application for a permanent injunction is denied.



Prescott, J.

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in any manner. There simply is no evidence in this record to support such a claim.