

# Suit challenges use of pepper spray on Birmingham, Alabama students

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The Southern Poverty Law Center filed a federal lawsuit against the Birmingham, Alabama School District and police department to end the practice of spraying students with pepper spray and other abusive and unconstitutional behavior. Students in Birmingham, Alabama schools have been sprayed as punishment for age appropriate and predictable adolescent behavior problems.

For at least two years, police officers have been brought into the schools to pepper-spray students for such routine problems as students talking back to officers and school officials, fighting and arguing with each other, or simply being at the wrong place at the wrong time.

In one case, police pepper sprayed a group of students who had gathered in the hallway when a fight between two students broke out. In another, a student falsely accused of mumbling a curse word at a teacher was pinned to lockers by two assistant principals and sprayed in the face by a police officer. Another instance saw a five-foot two-inch, 120-pound girl sprayed in the face while being held on the ground by a school employee.

In yet another case, a five-foot four-inch, young girl was held on the ground by five men and sprayed in the face with pepper spray. Her crime was having been accused of smoking. In all of these cases, the students were denied basic medical attention and were not even allowed to wash the chemicals from their face and eyes.

The suit outlines a pattern of brutal and sadistic treatment of students by both school officials and police.

The suit was filed December 1, 2010 after the Birmingham School Board (BSB) refused to address the issue at their November 29 meeting. The Southern Poverty Law Center (SPLC) sent a letter to the School Board on November 18 demanding that they stop the pepper spraying of students or action would be taken. A copy of the suit can be found [here](#).

According to the law center's web site: "The lawsuit describes how the Birmingham Board of Education, the superintendent and the Birmingham Police Department [BPD] violated the constitutional rights of students through an abusive policy that allowed school resource officers [city police] to use chemical weapons against students to enforce basic school discipline."

The complaint charges that officials violated students' Fourth and Fourteenth Amendment rights by brutalizing them with chemical weapons and other excessive force. It states that the "defendants—the Birmingham Board of Education, Superintendent Craig Witherspoon, and the Birmingham Police Department—have created a police state within the City's public high schools,

stationing police officers known as School Resource Officers ("SRO") in each school, arming them with chemical weapons and authorizing them to use these weapons to enforce basic school discipline."

The suit goes on to state that mace was used against children who were entirely restrained and presented no threat to themselves or others. The "crime" of these children was to engage in normal, non-dangerous age appropriate adolescent behavior. Examples include things such as talking back to school security guards, and not responding quickly enough when told to clear halls and other areas.

Seven students aged 14-19 are plaintiffs in the suit that has been filed on behalf of the 8,000 pupils in Birmingham. The suit seeks damages and demands officials "immediately abandon the use of chemical and other weapons" against schoolchildren. There are 30 counts against the defendants, including use of excessive force, tort of outrage/intentional infliction of emotional distress (IIED), assault and battery, excessive corporal punishment, conspiracy to violate civil rights, failure to protect, rights to be free from unlawful search and seizure, due process, and rights to personal security.

The docket goes on to state: "As a result of the Defendants' conduct, all of which is authorized by the BPD policy, practice and custom, the Plaintiffs have suffered severe physical and psychological harm. The physical effects of pepper spray are serious and can be life threatening."

Ebony Glenn Howard, lead attorney on the case for the Southern Poverty Law Center, said, "We must ask ourselves: What kind of school system allows the entry of armed police officers who mace its students? One with a serious illness. One that needs to re-examine its ultimate purpose for existence—educating and protecting its students."

According to the SPLC, hundreds of students were arrested in the Birmingham City Schools last year. However, most of the arrests were for petty offenses that most schools would handle in-house, with no need to call the police.

The text of the lawsuit includes some truly chilling examples. B.J., a teen, was accused of mumbling a profanity to a substitute. B.J. maintains his innocence and says another student spoke the profanity. B.J. was asked to leave the classroom to tuck his shirt into his pants. When he returned, B.J. maintains that another student muttered a curse at the teacher; the teacher sent him back outside the room.

Outside, an assistant principal began patting him down and going through his pockets. A second assistant principal came up and the two held B.J. to a set of lockers as a police officer blasted pepper spray directly into B.J.'s face and eyes. B.J. fell to the ground, blind and choking. The officer shoved him fully onto the ground with her knee and handcuffed him.

One of the assistant principals is accused of saying, "Woo! That's the first macing of the year!" B.J. was kept in an office for over 20 minutes before being taken to a hospital where he was not treated, but was asked to sign a medical release waiver, even though he could not see.

In another case two sisters were pepper sprayed. The older sister, G.S. "was jogging across the lawn outside Huffman High School when Defendant Clark grabbed her from behind by the waist. He did not identify himself as a law enforcement officer or say anything before grabbing her," the suit says. When she struggled and freed herself from the attacker, the officer responded by drawing his pepper spray and spraying her directly in the face.

Another officer grabbed G.S.'s sister who was approaching G.S. at the time, also from behind, while officer Clark sprayed G.S. a second time, causing her to collapse on the ground while macing her sister indirectly at the same time. The officers left the girls where they were. G.S. went into the school office requesting that they call for medical treatment. Emergency Medical Service arrived at the school, but did not provide any medical treatment.

G.S.'s mother arrived at the school shortly after the incident. At first she was blocked from entering the school and officer Clark threatened to arrest her if she continued to ask about her daughter. Later she was allowed in, but forced to sit in an adjoining room for 45 minutes while she heard her daughter screaming, "I can't breathe!" from the next room.

Another student, T.A.P., was accused of smoking cigarettes. T.A.P. explained that she smoked before school started, off school grounds. After being told to go home, the student was tripped as she exited the building and held on the ground by the vice principal's foot. The student was allowed up and she saw another officer reaching for his belt. Fearing what would happen, she began to run.

She was grabbed by officers and eventually pinned by five grown men holding her arms and legs, one of whom sprayed her in the face with pepper spray. She felt like choking and the skin around her eyes was damaged and peeling for a week after she was sprayed. She was taken to the hospital but not treated and asked to sign a medical release waiver. She was then taken to a detention center until her mother picked her up at 5 p.m. Student T.A.P. described this as the second attack on her with pepper spray.

It should be noted that, with the exception of the two sisters referenced above, all of the other students, rather than being given immediate medical treatment, were taken to a juvenile detention facility where they were held until as late as 7 p.m. when family members discovered their whereabouts and came for them.

Both mace and pepper spray are aerosolized irritants designed to temporarily blind and incapacitate people as a means of self-defense. The active ingredient in pepper spray is Oleoresin Capsicum (OC), which is the same chemical that makes chili peppers hot. The amount delivered in the spray is about 15 times

more than is found in a typical habañero pepper.

The police in Birmingham use a product called Freeze +P against Birmingham school children—a product that contains Orthochlorobenzalmalononitrile (CS) and Oleoresin Capsicum (OC). According to the manufacturer, they use these two chemicals because "[t]he strong respiratory effects of CS combined with the severe pain induced by OC magnify each other."

A National Institute of Justice study found that pepper spray exposure was a contributing cause of death in two fatalities due to its use on people with asthma. The American Civil Liberties Union has come out against the use of pepper spray on nonviolent adult protesters, due to its chemical dangers and its capacity to inflict death or serious injury. This same spray is being used on school children.

Pepper spraying a student—inflicting any form of physical or psychological malice—is unacceptable and a violation of basic democratic rights. It is a ruthless message for the unfortunate child that school is a jail, and he or she is a prisoner. As schools are starved for cash and teachers are made the scapegoats for deteriorating conditions in the schools, such forms of violence against students go hand in hand with the attack on public education, both at the local and national level.

Birmingham, Alabama, is the largest city in the state. According to an estimate by the US Census Bureau in 2009, Birmingham had a population of about 230,650. The Birmingham Metropolitan Area, with a population of about 1,212,848, contains about one-quarter of the entire population of Alabama.

Nestled at the foothills of the Appalachian Mountains at the cross-section of two major railroads, the city was once the primary industrial center of the southern United States. At the height of the nation's manufacturing age, the city grew so fast in population it was called the "Magic City." Frequently it was called the Pittsburgh, Pennsylvania of the south. Today, Birmingham has been transformed into a low-wage medical research, banking and service-based economy.

According to 2008 US census data the median income in Birmingham is \$42,586, with almost 16 percent of the population living below the poverty level, a family of four living on \$22,025 or less.



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