

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

<p>BLAKE J. ROBBINS, et al.,</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">-and-</p> <p>COLLEEN AND KENNETH WORTLEY, FRANCES AND DAVID MCCOMB, AND CHRISTOPHER AND LORENA CHAMBERS,</p> <p style="text-align:center">Plaintiff-Intervenors,</p> <p style="text-align:center">v.</p> <p>LOWER MERION SCHOOL DISTRICT, et al.,</p> <p style="text-align:center">Defendants.</p>	<p>CIVIL ACTION</p> <p>NO. 2:10-CV-00665JD</p>
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COMPLAINT IN INTERVENTION

1. Plaintiff-Intervenors, Colleen and Kenneth Wortley, Frances and David McComb, and Christopher and Lorena Chambers (“Intervenors”) bring this action individually and on behalf of their children who are students of Lower Merion High School and Harriton High School, against the Lower Merion School District (“LMSD”), the Board of Directors of LMSD and Christopher W. McGinley, in his capacity as Superintendent of LMSD (“Defendants”). LMSD issued Intervenors’ children laptop computers equipped with cameras connected to the Internet (“webcams”), which were capable of recording images of the laptops’ screens and whatever passed before them, and which LMSD officials were capable of activating via laptop tracking software installed on the computers. Intervenors seek injunctive and declaratory relief only, in connection with Defendants’ remote activation of those webcams on at least 42 occasions, in violation of Section 1983 of the Civil Rights Act and the Fourth Amendment of the United States Constitution, and for Invasion of Privacy-Intrusion Upon Seclusion under

Pennsylvania common law. Intervenors do not seek monetary damages of any kind, or attorneys' fees or costs. Intervenors have retained counsel *pro bono* and are not paying for their representation.

2. Intervenors seek declaratory and injunctive relief, limited to a full public disclosure and accounting of the facts and circumstances under which LMSD employees remotely activated the webcams, including the identity of the persons whose laptop webcams they activated, and injunctive relief tailored to prevent such wrongdoing from reoccurring and to prevent other potential misuse of LMSD's remote webcam activation capability.

3. Intervenors, along with more than 460 other parents and guardians of LMSD high school students, signed a petition expressing their preference that the issues raised by LMSD's action be resolved in a manner different from that proposed in the February 16, 2010 class action complaint filed by the Robbins Plaintiffs ("Robbins Action").

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over Intervenors' federal claims pursuant to 28 U.S.C. §§ 1331 and 1137, and supplemental jurisdiction over Intervenors' state claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c), as Intervenors reside in this district, and Defendants conduct their business and operations in this district.

THE PARTIES

6. Colleen and Kenneth Wortmer are Lower Merion Township residents who have three children at Harriton High School. LMSD issued those children laptops with webcams that LMSD could activate remotely.

7. Frances and David McComb are Lower Merion Township residents who have one child at Lower Merion High School. LMSD issued that child a laptop with a webcam that LMSD could activate remotely.

8. Lorena and Christopher Chambers are Narberth Borough residents who have two children at Lower Merion High School. LMSD issued that child a laptop with a webcam that LMSD could activate remotely.

9. Intervenors now file this Complaint in Intervention because Intervenors' interests and standing in the Robbins Action diverge from those of Plaintiffs in that action, for reasons stated in Intervenors' memorandum of law in support of their Motion for Intervention, and for the following reasons. Unlike the Robbins: (1) Intervenors paid for the insurance that LMSD required in order for their children to be permitted to take their laptops off school property; (b) Intervenors' children were not monitored by LMSD for potential disciplinary action; (c) Intervenors are not requesting damages and believe that an award of damages is neither necessary nor appropriate under the circumstances of the case; and (d) Intervenors believe that protracted litigation and discovery including, but not limited to, forensic review of the issued laptops and discovery directed to absent class members relating to damages issues is unwarranted and will unnecessarily prolong the litigation and increase the litigation costs ultimately to be borne by the parents of LMSD high schools and other taxpayers of Lower Merion Township.

10. Defendant LMSD is a Pennsylvania public school district with its principal place of business in Ardmore, Pennsylvania.

11. Defendant Board of Directors of LMSD consists of nine elected officials who are charged with carrying out LMSD's mission to educate Lower Merion public school students.

12. Defendant Christopher W. McGinley is a school district administrator appointed by the Board of Directors to supervise the daily operations of LMSD. As such he is responsible for the implementation of policies, procedures and practices instituted by the Board.

FACTS

LMSD Issued Laptops To High School Students In The District

13. During the 2008-2009 school year, LMSD began issuing laptop computers to students at Harriton High School. That program continued at Harriton during the 2009-2010 school year, and was expanded to include students at Lower Merion High School, the other high school in LMSD. Embedded within the laptops were webcams that provide videoconferencing and other capabilities for the students.

14. The school district was capable of remotely activating those webcams and taking still images of the laptops' screens and whatever passed before them, via laptop tracking software installed on the laptops.

15. Defendants have admitted that LMSD never explicitly notified students or their families about the laptop tracking software, its functionality, or LMSD's intentions with regard to its use.

The Robbins Action

16. On February 16, 2010, the Robbins Plaintiffs filed their complaint, alleging seven counts encompassing violations of federal and state statutory and common law, seeking class certification pursuant to Fed R. Civ. P. 23(b)(1), (b)(2) and (b)(3), compensatory damages, attorneys fees and costs, punitive damages and declaratory and injunctive relief ("Class Action Complaint").

17. The Robbins Action was filed by Blake Robbins, a student at Harriton High School and his parents, Michael Robbins and Holly S. Robbins (collectively the “Robbins”), on behalf of themselves and “a Class consisting of Plaintiffs and all other students at Harriton High School and Lower Merion High School who have been issued by the School district a laptop computer equipped with a webcam, together with their families.” Class Action Complaint ¶ 12.

18. Blake Robbins alleged that an assistant vice-principal at Harriton High School, Lindy Matsko, “informed minor Plaintiff that the School District was of the belief that minor Plaintiff was engaged in improper behavior in his home, and cited as evidence a photograph from the webcam embedded in minor Plaintiffs’ personal laptop issued by the School District.” *Id.* ¶ 23.

19. The Robbins averred that their claims were typical of the claims of other members of the putative class because “all other members were injured in exactly the same way by the unauthorized, inappropriate and indiscriminant [sic] remote activation of a webcam . . . [.]” *Id.* ¶ 14.

20. Other than the incident involving Blake Robbins and Ms. Matsko, the Robbins plaintiffs did not allege any facts that Defendants’ conduct was indiscriminate or done “at the whim of the School District.” *Id.* ¶ 64.

21. The Robbins Plaintiffs requested punitive damages pursuant to five of the seven counts alleged in their complaint. *See Id.* ¶¶ 38, 47, 61, 73 and 77.

22. Although the Class Action Complaint states that Plaintiffs seek class certification pursuant to Fed. R. Civ. P. 23(b)(1), (b)(2) and (b)(3), they actually pled only allegations relating to Rule 23(b)(3), pursuant to which they seek monetary damages of behalf of the putative class. *See Id.* ¶¶ 12-19.

Publicity And Immediate Results Of The Robbins Action

23. The Robbins Action promptly drew international attention, from front page coverage in the Philadelphia Inquirer to the Spanish website milenio.com.

24. In the wake of that attention, LMSD admitted that it could remotely activate the laptops' webcams to take still images of their screens and whatever passed before them, that it had not notified parents or students of that capability, and that it had used that capability on 42 occasions during the 2009-10 school year.

25. The United States Attorney for the Eastern District of Pennsylvania and the Montgomery County District Attorney are both conducting criminal investigations into LMSD's use of the webcams' remote activation capability. Those investigations, however, are confidential and their results may never be revealed to anyone not directly involved in the investigations.

26. LMSD has asked its counsel in this action, Ballard Spahr, and a New York-based defense contractor to investigate its officials' and employees' use of the laptop tracking software, and has claimed that it will make the results of that investigation public. But the public has no binding assurances that the investigation will be thorough and that the results will in fact be made public in their entirety.

27. On February 22, 2010, the Court entered a Stipulation and Order ("February 22 Order") in the Robbins Action that, among other things, prevented Defendants from disseminating information concerning the action or the findings of any investigations without first providing the Robbins' counsel with six hours advance notice.

28. The February 22 Order also prohibited LMSD from remotely activating any webcams during the pendency of the Robbins Action, but did not impose any restrictions on LMSD's subsequent actions.

29. LMSD has never stated that it will not reactivate the remote webcam software in the future, or that it will seek anyone's consent before doing so.

Parents Establish LMSDParents.Org In Response To The Robbins Action

30. Shortly after the Robbins Action commenced, four fathers of LMSD high school students established a website, www.lmsdparents.org, on which parents who are members of the putative class alleged in the Class Action Complaint were asked to endorse a petition in support of the following statement:

We are parents or guardians with one or more high school children at Harriton or Lower Merion High School, who have been issued a laptop equipped with a webcam. We are aware of the lawsuit Robbins v. Lower Merion School District. We seek a resolution of the webcam issue that is in the best interests of our children and the Lower Merion School District, one that does not involve the class action lawsuit.

31. Within one week thereafter, 460 parents of between 500 and 600 LMSD high school students endorsed the petition.

32. On March 2, 2010, the founders of lmsdparents.org held a meeting ("March 2 Meeting"), which was limited to the parents and guardians of LMSD high school students. Over 150 parents attended the meeting. At the meeting, the organizers and parents (including Intervenor) discussed alternative resolutions of the issues raised in the Robbins Action. The organizers said that their "primary objective is to devise and implement strategies to facilitate a fair, satisfactory, and expeditious resolution to the issues under investigation."

33. On March 7, 2010, the founders of the website posted a letter that further explained their goals: "(1) [t]o ensure our students' right to privacy is secured moving forward;

(2) a thorough investigation and all appropriate consequences to wrongdoers if wrongdoing is found; and (3) sunshine. The only way our community can move forward with confidence is for the gag order to be lifted and allow the facts of the case to go public....”

34. The March 7, 2010 letter also expressed disagreement with the apparent purposes of, and concern over, the potential consequences of the Robbins Action, noting that “[t]he class action suit seeks monetary, even punitive damages. We believe such claims are more appropriately tailored to deter willful and continuing misconduct by for-profit corporations, not non-profit public school districts, which will ultimately cause educational programs to be cut.”

The Court’s March 10, 2010 Order

35. On March 10, 2010 the Court entered another Stipulated Order (“March 10 Order”) that struck the provision of the February 22 Order that prevented Defendants from disseminating information regarding the Robbins Action. LMSD may not, however, directly contact any member of the putative class as defined in the Robbins lawsuit.

36. Intervenors have not yet received any update from the Robbins’ lawyers or LMSD.

37. The March 10 Order also extended by thirty days the deadline for Defendants to respond to the Class Action Complaint, and provided that “LMSD and plaintiffs’ counsel are in the process of investigating the facts relating to the history and use of the laptop tracking software application at issue in this action.” March 10, 2010 Order ¶ B.

38. The March 10, 2010 Order explained that the investigation sought to “ascertain, among other things: (i) the extent to which the laptop tracking software application was used; and (ii) to what extent there exists evidence of the use of the laptop tracking software application (such as webcam photographs).” March 10, 2010 Order ¶ B.

39. The stated purpose of the investigation was to “enable an expeditious and cost-effective resolution of this action that is in the best interests of the parties and LMSD students, parents and taxpayers[,]” and to “better inform the parties so that an independent determination can be made by each party regarding whether and how to proceed.” *Id.*

40. To the extent that the March 10 Order suggests that a resolution of the Robbins Action may be imminent, Intervenors must necessarily be parties to that action so as to ensure that the interests of hundreds of like-minded parents, and all families of LMSD high school children, are adequately represented in the settlement process.

**COUNT I: VIOLATION OF FOURTH AMENDMENT
OF THE UNITED STATES CONSTITUTION**

41. Intervenors incorporate herein by reference all of the foregoing allegations.

42. LMSD’s activation of webcams that take pictures inside laptop operators’ homes constitutes a search for the purposes of the Fourth Amendment of the United States Constitution.

43. LMSD has never obtained parents’ or students’ consent, or obtained warrants to conduct such searches. Such searches are therefore warrantless and non-consensual.

44. Such warrantless and non-consensual searches are unreasonable and violate parents’ and students’ reasonable expectations of privacy within their homes.

45. LMSD has not articulated a need for the searches that overrides the substantial invasion to and deprivation of Intervenors’ rights to privacy secured by the Fourth Amendment.

46. There are means for locating stolen or missing laptops that are reasonable, effective, and far less intrusive than remotely activating webcams.

47. LMSD has not stated that it will not reactivate webcams once the Robbins Action is resolved, and has not stated its intention to obtain parents’ or students’ consent before doing

so. There is, therefore, an imminent, actual, substantial and recurring danger that Intervenors' Fourth Amendment rights to privacy will be compromised.

COUNT II: VIOLATION OF 42 U.S.C. § 1983

48. Intervenors incorporate herein by reference all of the foregoing allegations.

49. 42 U.S.C. § 1983 provides in relevant part:

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....

50. Defendants are "persons" for the purposes of Section 1983, as at all relevant times Defendants acted under color of state law.

51. LMSD had the ability to remotely activate the webcams on LMSD high school students' laptops at any time, and to record images of the laptops' screens and whatever passed before them, including the laptop operators' homes.

52. LMSD never obtained the consent of LMSD high school students or their parents to remotely activate the webcams, or to record images of the laptops' screens and whatever passed before them.

53. LMSD used, and has not stated that it will not use in the future, the above-referenced technology to record images of the laptops' screens and whatever passed before them. Such past and potential use of webcams by government officials inside students' homes without warrants and without their consent is and would be an unreasonable government intrusion that deprived and would deprive Intervenors of their right to privacy secured by the Fourth Amendment to the U.S. Constitution.

54. As LMSD has not stated that it will not reactivate the webcams once the Robbins Action is resolved, and has not stated that it will obtain students' or parents' consent before doing so, there is, therefore, an imminent, actual, substantial and recurring danger that Intervenors' right to privacy as secured by the Fourth Amendment will be compromised, and that Defendants will further violate 42 U.S.C. § 1983.

COUNT III: COMMON LAW INTRUSION UPON SECLUSION

55. Intervenors incorporate herein by reference all of the foregoing allegations.

56. Intervenors have a reasonable expectation of privacy inside their homes.

57. The activation and potential activation of laptop webcams to take pictures inside Intervenors' homes without their consent is an intentional intrusion upon the rights of Intervenors to be secure in their private affairs and is an intentional invasion of their reasonable expectation of privacy.

58. As such intrusions occur inside Intervenors' homes without their permission, such intrusions would be highly offensive to reasonable persons.

59. LMSD has not stated that it will not reactivate the webcams once the Robbins Action is resolved and has not obtained or stated that it will obtain parents' or students' consent before reactivating the webcams. There is therefore an imminent, actual, substantial and recurring danger that Defendants will invade Intervenors' right to privacy and intrude upon Intervenors' right to be secluded in their private affairs.

PRAYER FOR RELIEF

WHEREFORE, Intervenors pray that this Court enter an order requiring that:

A. Defendants permanently disable any technology that allows for the remote activation by Defendants of webcams on student-issued laptops, or anyone related to Defendants, and refrain from purchasing or using any such technology at any time in the future;

B. LMSD implement a cost-effective alternative technology to track, for security purposes only, lost, stolen, missing or misappropriated student-issued computers, in a manner that does not compromise the privacy rights of LMSD students and their families;

C. With the advice and consent of the Intervenor, LMSD select, engage and appoint a public advocate to: (i) review, with expert forensic assistance as needed, any and all paper and electronic documents and images in any way related to the Defendants' remote activation of webcams on student-issued laptops; (ii) freely conduct interviews of any and all of Defendants' representatives, employees and agents regarding same; and (iii) report to the LMSD public regarding these events and the activities and performance of LMSD, its representatives, employees and agents related thereto, and including appropriate recommendations for the future;

D. LMSD create and implement student-issued laptop policies and practices that include explaining to and obtaining the consent of parents, guardians and students, the precise activities LMSD can perform with the laptops, including without limitation reviewing websites searched on the laptops and reviewing documents stored on laptops.

E. Defendants take other, further and different actions as the nature of the case may require or as may seem just and proper to this Court.

Dated: March 18, 2010

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