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PRESS RELEASE

October 3, 2014

On September 30, 2014, this Office received from the Grand Traverse County Sheriff's Office a request to review assault complaints (request for action, delinquency proceedings) for two students involved in an incident at the TCAPS East Junior Middle School on or about September 18, 2014 in which another student was injured. A request for the video recording of the incident and medical records of the complaining witness was made the same day the complaints were received and the additional information was made available to my office on October 1, 2014. This is to announce that both complaints for action are declined. Because of the significant public interest in this case, the reasons for that denial, including a summary of the law and its application to the facts, follows.

In order to prove assault, the prosecution must prove beyond a reasonable doubt that the suspect intended to commit a battery. A battery is a forceful, violent or offensive touching of the person of another. The terms "force and violence" mean any use of physical force against another person so as to harm or embarrass him. It does not matter whether the touching caused injury. For a battery to occur, the touching must have been against the complainant's will. It is, therefore, axiomatic that there is no battery if the other person consents to the battery. Because the act of touching must be willful, a battery cannot result from criminally negligent behavior.

Having reviewed the police report of Deputy Roelofs, including the statements of complainant and all witnesses who consented to be interviewed, complainant's medical records and the video recording, the facts are insufficient to make out an assault as to any of the participants. First, the evidence is insufficient to prove that the actions of the other students were done against complainant's will. It is apparent from both the video and complainant's own statement that he was – at least initially – a willing participant in a school yard game that clearly involved the use of physical aggression to gain or maintain control of a ball. Other participants in the game can be seen being tackled, drug across the lawn, and kicked at, belying claims that complainant was singled out. Complainant in fact runs to join in the game just as one student is being drug across the lawn by a number of other students in an effort to take the ball from the first student. Upon entering the fray, complainant is forcefully pushed by one student, but, nevertheless, continues to chase after and eventually retrieves the ball. Complainant dodges the physical advances of the other participants in an attempt to maintain control of the ball. Eventually complainant is either pushed or falls to the ground.

It is also clear that several other students use varying amounts of physical force against complainant in an attempt to take possession of the ball. This force includes lifting complainant off the ground by his arms which were tightly wrapped around the ball, grabbing at the ball, and kicking or poking at complainant's body with feet.

Although complainant states that at one point he asked the others to "stop," none of the other participants indicate that complainant made any statement to indicate that he was injured or that he no longer wished to participate in the game. At least three participants state that complainant was laughing while attempts were made to take the ball from him. Numerous students and at least one teacher are observed passing by as the incident was happening and there is no evidence that anyone's attention was particularly drawn to what was going on either by the actions of the participants or any statements that were made. Also, even after complainant retrieves his shoes, rather than seek help or report the incident, complainant returns to the area where many of the alleged assailants are still gathered.

It should be noted that near the end of the incident, one young man is seen to poke at or place his foot on complainant's hip or waist area after he falls to the ground the second time. Although the game has ended at this point, given the overall context of the event, complainant's fall may very well be perceived as play rather than, as complainant explains, that he fell because of difficulty breathing due to asthma symptoms.

Second, there is insufficient evidence to find probable cause that any of the other participants intended to cause physical harm to or embarrass complainant beyond that which is to be anticipated in any game involving physical contact. While at first glance seeing a group of students kicking another student on the ground is disturbing, close examination of the recording also reveals that none of the kicks appear especially forceful, consistent with the statement of all of the other participants who stated that the kicks were not intended to be harmful but only to take the ball from complainant. It is also apparent that had any of the students wanted to cause substantial injury through kicking, they were in a position to do so, yet that did not happen. It is also clear that once complainant lost control of the ball, the other participants immediately chase after the ball and cease all physical contact with complainant. Several other participants are tackled, kicked, pushed and drug about similar to those actions used to take the ball from complainant.

In addition, the medical report indicates that complainant was taken to a doctor the following evening for "joint pain-pelvis." The report notes complaints of mild tenderness in the left loin region and upper back/shoulder area, ecchymosis in the upper arms and lower legs, and headache. At the time of the examination, the doctor recommended Tylenol or ibuprofen, cool compresses for contusions and warm compresses for cervical strain. There is no indication in the report of any serious injury or injury to any internal organ.

In conclusion, the evidence is insufficient to find probable cause that an assault occurred. This is due primarily to clear evidence that complainant was, at least initially, a willing

participant in the game and the lack of any substantial evidence to show that during the incident complainant communicated to others a desire to no longer participate. In addition, there is insufficient evidence to find probable cause that any of the participants intended to harm or embarrass complainant beyond what is naturally expected in a game of physical contact. While the evidence certainly supports complainant's claim of injuries due to the actions of other students, that fact alone does not make out a charge of criminal wrong-doing. The fact that the actions of some participants may have violated school behavior policy is also irrelevant to whether any criminal act was committed.