

assistant principal for Lafayette High School. With respect to the events described herein, Ms. Mehrotra acted in her capacity as assistant principal for Lafayette High School, under color of state law.

4. Defendant Jodi Davidson, on information and belief, is an individual resident of St. Louis County, Missouri. Ms. Davidson is employed by Rockwood School District as an associate principal for Lafayette High School. With respect to the events described herein, Ms. Davidson acted in her capacity as associate principal for Lafayette High School, under color of state law.

5. Defendant John Shaughnessy, on information and belief, is an individual resident of St. Louis County, Missouri. Mr. Shaughnessy is employed by Rockwood School District as principal of Lafayette High School. With respect to the events described herein, Mr. Shaughnessy acted in his capacity as principal for Lafayette High School, under color of state law.

Jurisdiction and Venue

6. This Court has federal question jurisdiction over the claims herein, because such claims are based on violations of the First and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. § 1983. Jurisdiction is therefore proper under 28 U.S.C. § 1331 (general federal question jurisdiction) and § 1343 (civil rights actions).

7. Venue is appropriate in this district under 28 U.S.C. § 1391 because the defendants reside in this district and the action arose in this district.

Facts

8. L.G. is a student at Lafayette High School, currently in the tenth grade. Prior to the events described herein, he had never been subject to serious disciplinary action at

Lafayette High School. He participates in school programs and in athletics, and is pursuing the college preparatory course of studies.

9. On or about November 20, 2007, during his Language Arts class, L.G. took several candid photographs showing the classroom and its teacher, Jessica Hauser. The subjects of L.G.'s photographs were in plain view in the classroom during a time when the teacher was not lecturing or leading a class-wide discussion.

10. The photographs were taken with a normal camera using a normal lens and no flash. They show the teacher sitting at her desk speaking with students, as was plainly visible in the classroom. The photographs did not portray anything highly embarrassing to a person of ordinary sensibilities nor did they portray anyone in a false light. They were merely accurate (though somewhat blurred) representations of a portion of the classroom during an informal period of the Language Arts class. True and correct copies of the photographs in issue are attached hereto as Exhibit A.

11. L.G. did not disrupt the class when he took the photographs on November 20, 2007. The class proceeded that day as on any other day. Nor was any disruption evident in the class during the two weeks following the taking of the photographs.

12. On the day that the photographs were taken, L.G., while at home during after-school hours, using his home personal computer, posted the photographs to his personal section on the Facebook social networking website. The photos were posted on page 2 of the "photos" section of L.G.'s Facebook pages. In order to view the photos, a registered Facebook user had to go to L.G.'s Facebook page, then move to the "Photos" section of his Facebook pages, and the click through to the second page of the "Photos" section.

13. L.G.'s Facebook personal pages contain content personally created by him, as well as messages contributed by friends. His Facebook pages are not part of his studies at

Lafayette High School. They are a purely personal social space, used by L.G. for his personal purposes and for social interaction with friends and associates. L.G.'s Facebook pages have no official connection to Lafayette High School.

14. The photographs posted by L.G. were ordinary candid photographs, showing ordinary classroom activities. They were no different in subject matter than candid photographs as might be seen in any high school yearbook. Like other content that L.G. has posted on his Facebook pages, they reflected certain of his personal activities and interests.

15. L.G. did not post captions with the photographs. He did not identify the subjects of the photographs by name. Nor did he make any statements in the Facebook postings about Lafayette High School, its curriculum, or Ms. Hauser.

16. On December 6, 2007, Defendant Mehrotra, acting under color of law as Tenth Grade Assistant Principal for Lafayette High School, summoned L.G. to her office. She demanded to see and search his cell phone, and then searched the cell phone, looking for photographs. After finding none of the classroom setting at issue, she asked him to provide copies of the photographs posted on his Facebook page.

17. Prior to school on the morning of December 7, 2007, L.G. made copies of the photographs as they were on his webpage. He then deleted the photographs from his webpage. He took the photographs to school, as instructed by Defendant Mehrotra, and provided the photographs to her office.

18. Defendant Mehrotra told L.G. that he had engaged in serious violations of school rules. She told him that he was going to be suspended for three days as an out of school suspension.

19. Defendant Mehrotra then issued a suspension order against L.G. The suspension order stated that L.G. had engaged in "Disruption of School Environment." In

support, it stated that he had used a digital camera to take pictures of his Language Arts teacher during class without her permission, and that he "went on to post these pictures on his Face book web page and send it to other students." The suspension order went on to state that "[L.G.] admitted to doing this and provided us with copies of his postings," thus indicating that the "postings" were important to the charge and the order. A true and correct copy of the suspension order is attached hereto as Exhibit B.

20. No disruption of the school environment occurred on November 20, 2007, when L.G. took the photographs, or in the following days. By claiming "disruption of school environment" and by noting in the charge that L.G. had posted the pictures on his Facebook page and sent them to other students, Defendants Mehrotra and Rockwood School District must have been claiming that the posting of the photographs on L.G.'s personal Facebook pages constituted disruption of the school environment.

21. Defendant Mehrotra's charge against L.G. claimed that L.G.'s actions violated Regulation 2610 of the Rockwood School District student policy.

22. The Rockwood School District's 2006-2007 "Policies, Regulations, Procedures and Consequences Pertaining to Middle and High School Students" booklet, currently posted on the Rockwood School District website, contains no reference to invasion of privacy, posting of photographs, or sending photographs to others except in connection with "sexual misconduct." In that section, it states that students may not use imaging devices in school grounds or buses to record partially clothed persons, images that violate commonly held standards of privacy including taking pictures underneath the clothing of another individual, and images where students or others have a reasonable expectation of privacy, such as involving receipt of health care services. The policy does not prohibit, or even address, photographs taken in a classroom not involving any matters of traditional intimacy.

23. L.G. and his parents, Jerome Glover and Regina Glover, appealed the suspension on December 7, 2007 to Defendant Jodi Davidson, the associate principal of the high school. Acting under color of state law, Defendant Davidson denied the appeal and affirmed the suspension.

24. L.G. and his parents communicated with the principal of Lafayette High School, Defendant John Shaughnessy, and asked him to rescind the suspension. Defendant Schaughnessy, acting under color of state law, refused to rescind the suspension.

25. School officials have informed L.G. and his parents that Glover will not be permitted to attend the Language Arts class even after his suspension is completed. L.G. was assigned to this particular Language Arts class, which includes a teacher from the Special School District, as part of an Individualized Education Plan under the Individuals with Disabilities Education Act. Upon information and belief, the school does not have a substitute class that meets the requirements of L.G.'s Individualized Education Plan.

26. The First and Fourteenth Amendments to the United States Constitution protect individuals' rights of freedom of speech and expression which includes, among other things, the rights of all citizens, including teenagers and high school students, to communicate using the Internet and other modern means of expression.

27. Under the leading precedent of *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969), the United States Supreme Court has held that students do not shed their constitutional rights at the schoolhouse door, and may engage in First Amendment protected activity so long as any such activities on school premises do not materially disrupt the educational process.

28. With respect to student free speech and free expression outside of the school and school-directed activities, *Tinker* clearly bars schools from censoring or controlling such

activities, or disciplining or punishing students with respect to the content of such private speech.

29. The right of students to use their personal computers during after-school hours to post school-related content on the Internet is well established. In *Beussink v. Woodland R-IV School District*, 30 F.Supp.2d 1175 (E.D. Mo. 1998), this Court has held that students may not be punished by school authorities for posting school-related content on the Internet. In *Beussink*, student-posted content that was vulgar and highly critical of the school administration was found to be constitutionally protected.

30. L.G.'s activities are protected by the First and Fourteenth Amendments under the *Tinker* standard. In taking photographs in the classroom, L.G. engaged in First Amendment protected activity that did not disrupt the educational process. Moreover, on information and belief, no rule or regulation of the Rockwood School District or Lafayette High School (and certainly nothing in Regulation 2610, which was cited against him) prohibited such activities.

31. All other activities in issue, including L.G.'s posting of the photographs on his Facebook webpage, took place outside of the high school using L.G.'s home computer and personal Internet page, and are beyond the powers of the school authorities to prohibit or punish.

32. By issuing and affirming a three-day out of school suspension against L.G., Defendants have violated his constitutional rights of free speech and free expression. Pursuant to 42 U.S.C. § 1983, L.G. is entitled to injunctive relief to prevent Defendants from carrying out the suspension or entering it on his record, and damages to compensate him for Defendants' violation of his Constitutional rights.

Claim for Constitutional Violation

33. Plaintiff reincorporate the allegations of paragraphs 1 through 32 as this paragraph 33.

34. By suspending Plaintiff for posting photographs on his personal Facebook page, Defendants punished and retaliated against Plaintiff for his private expressive activity protected by the First and Fourteenth Amendments of the United States Constitution. The posting of the photographs, and communications relating to them, constituted private protected expressive activity, which occurred outside of the school property and beyond the school day, and which in any event did not materially and substantially disrupt educational activities of the school.

35. To the extent Defendants seek to justify their suspension of Plaintiff based on his taking of the photographs at the school—even though the suspension notice by its terms clearly complains of the posting and distribution of the photographs, not just the taking of them—the suspension is nonetheless also illegal and unconstitutional on such grounds. The taking of the photographs constitutes expressive activity protected by the First and Fourteenth Amendments of the United States Constitution, and it did not materially and substantially disrupt educational activities of the school. Indeed, neither school officials nor the teacher involved were apparently even aware of the taking of the photographs, much less any disruption attendant thereto, for more than two weeks thereafter.

36. By removing L.G. from the Language Arts class specified in his Individualized Education Plan, Defendant will deprive L.G. of appropriate educational opportunities as specified by the plan.

37. Because they suspended L.G. based on the exercise of his constitutional rights, while acting under color of state law, Defendants are liable to him under 42 U.S.C. § 1983.

WHEREFORE, for the reasons stated above, Plaintiff requests that the Court enter Judgment in his favor, and against all Defendants, for full relief, including the following:

- (1) An injunction prohibiting Defendants from enforcing or recording on Plaintiff's school record the suspension issued on December 7, 2007;
- (2) Mandatory relief requiring Defendants to expunge the suspension issued on December 7, 2007, and any other disciplinary action taken arising from the events set forth herein, from Plaintiff's school record, and to fully reinstate Plaintiff to the position he was in before the illegal suspension was issued;
- (3) Compensatory damages for the deprivation of Plaintiff's constitutional rights;
- (4) Plaintiff's costs and attorneys fees herein pursuant to 42 U.S.C. § 1988; and,
- (5) Such other relief as is just and appropriate under the circumstances.

Respectfully submitted,
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