

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

KATHERINE EVANS,

Case No:

Plaintiff,

08-61952-CIV-LENARD/GARBER

v.

PETER BAYER, in his individual capacity

Defendant.

_____ /

COMPLAINT

COMES NOW, Plaintiff, KATHERINE EVANS, by and through undersigned counsel, and hereby files this complaint for damages, injunctive relief and declaratory relief against Defendant PETER BAYER for violation of her rights under the First and Fourteenth Amendments to the United States Constitution, and hereby alleges as follows:

Introduction

1. Katherine Evans, while a senior at Pembroke Pines Charter High School in 2007, was suspended for three days for engaging in protected off-campus speech. The suspension removed her from her critical senior year of Advanced Placement (“AP”) English class, stained her academic record and violated her First Amendment rights. Her only “offense” was to create a “Facebook” page that criticized one of her teachers as “the worst teacher she had ever had,” and solicited comments about that teacher. She also posted a photo of that teacher from a prior year’s school yearbook. After receiving three comments, all of which berated *her* and supported the teacher, Evans removed the page from Facebook.

2. The retaliatory and disciplinary acts taken by Defendant against Ms. Evans for the internet posting violated Evan's freedom of speech guaranteed by the First and Fourteenth Amendments. The unjustifiable three-day suspension cast a pall on Ms. Evans' academic record. Accordingly, Katherine Evans seeks declaratory and injunctive relief against Defendant Principal Peter Bayer, in his individual capacity, and asks this Court to order the redaction or expungement of her disciplinary record on this matter.

Jurisdiction

3. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for violation of her rights under the First and Fourteenth Amendments to the United States Constitution.

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and injunctive relief pursuant to Fed R. Civ. P. 65.

Parties

5. At all times material hereto, Plaintiff, KATHERINE EVANS, ("Evans") was a high school student in her senior year at Pembroke Pines Charter High School located in the City of Pembroke Pines, Florida.

6. At all time material hereto, Defendant, PETER BAYER ("Bayer") was the principal of Pembroke Pines Charter High School.

7. Plaintiff sues Defendant Bayer in his individual capacity.

Facts

8. In November 2007, Evans was a senior at Pembroke Pines Charter High School. Her AP English teacher was Sarah E. Phelps, who is not a party to this action.

9. During the evening of Friday November 9, 2007 [Veterans' Day weekend], after school hours and from her home computer, Evans posted on Facebook a photograph of Ms. Phelps, from a prior year's school yearbook. The posting sought to create a group to express students' opinions about the teacher. Evans only expressed her own opinion that Ms. Phelps was the "worst teacher" she had ever met, and invited **others** to "express their hatred." Evans used no profanities and stated no threats.

10. Evans' posting was, verbatim:

Ms. Sarah Phelps is the worst teacher I've ever met! To those select students who have had the displeasure of having Ms. Sarah Phelps, or simply knowing her and her insane antics: Here is the place to express *your feelings of hatred*.

Exhibit A (emphasis added).

11. In response, three postings appeared that supported the teacher, lauded Ms. Phelps and derided and debased Evans for creating the Facebook group. *See* Exhibit A.

12. The posting had been up for only two days, over the weekend, and was not seen by the teacher while it was on Facebook.

13. Plaintiff herself removed the posting from Facebook as soon as she was able to. Upon learning of Evan's posting on Facebook, Defendant Bayer suspended Evans for three days for the stated reasons of "Bullying / Cyber Bullying Harassment towards a staff member" and "Disruptive behavior." The suspension notice indicated that "Katie [Evans] had posted an inappropriate site regarding her teacher on Facebook. *See* Exhibit B.

15. Plaintiff's posting contained no threats of violence, veiled or explicit. Defendant only became aware of the posting after Plaintiff had removed it from Facebook. Although the posting did not disrupt school activities, Defendant's discipline of Ms. Evans forcibly removed

her from school for three days, removed her from her AP classes and forced her into the lesser-weighted honors classes.

16. Moreover, the posting gave rise to a spirited exchange of opinions by students who disagreed with Evans, who ultimately proved her wrong in her assessment of the teacher. The posting and its aftermath thereby accomplished one of the goals of the First Amendment: the free and unfettered exchange of ideas and opinions in the public arena.

17. Defendant's acts that are the subject of this complaint were taken under color of state law.

18. Defendant Bayer's three-day suspension of Evans for expressing her opinions and soliciting the opinions of others in off-campus activity and in a non-violent, non-threatening forum unjustifiably besmirched Plaintiff's academic record.

19. Plaintiff has no adequate remedy at law, because the denial of Plaintiff's Constitutional rights cannot be remedied through legal relief.

20. Unless enjoined by this Court, Defendant's suspension of Evans for three days will stand as part of her permanent school record, unjustifiably staining her academic reputation and good standing; removal of the suspension and any records relating to it is required to redress the violation of Evans' constitutional rights.

21. Plaintiff is therefore entitled to an order from this Court enjoining Defendant Bayer from maintaining any records relating to the Facebook posting and ordering Bayer to revoke, *nun pro tunc*, the three-day suspension.

CAUSE OF ACTION

22. Defendant Bayer's three-day suspension of Evans for expressing her opinions and soliciting the opinions of others in off-campus activity and in a non-violent, non-threatening public forum violated Evans' clearly established First Amendment right to freedom of speech.

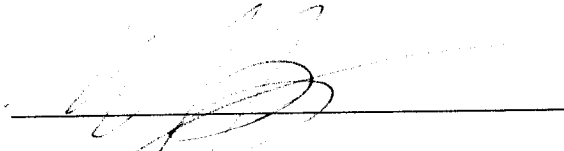
23. The violation of Evans' constitutional rights may be redressed pursuant to 42 U.S.C. §1983.

Demand for Relief

WHEREFORE, Plaintiff, KATHERINE EVANS, respectfully requests this Court to:

- A. Assume jurisdiction of this matter.
- B. Declare that Defendant PETER BAYER'S action in suspending Plaintiff violated her First and Fourteenth Amendment rights.
- C. Enjoin Defendant PETER BAYER from maintaining any records relating to the suspension in Plaintiff's permanent school record and revoking, *nunc pro tunc*, the three-day suspension.
- D. Award Plaintiff nominal damages for the deprivation of her First Amendment and Fourteenth Amendment rights.
- E. Award Plaintiff her attorneys' fees and costs for bringing this action pursuant to 42 U.S.C. § 1988.
- F. Enter all other relief that the court deems just and proper.

Respectfully submitted by:



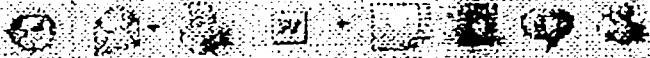
MATTHEW D. BAVARO, ESQUIRE
Florida Bar No. 175821
Bavaro Legal, LLC
377 N. SR 7 Suite #201
Plantation, FL 33317
(954) 523-4357
(954) 581-2786 (fax)
mbavaro@pitrialgroup.com

Cooperating attorney for the American Civil
Liberties Union Foundation of Florida, Inc. –
Broward Chapter



Randall C. Marshall, Esq.
Florida Bar No. 181765
Maria Kayanan
Florida Bar No. 305601
ACLU Foundation of Florida, Inc.
4500 Biscayne Boulevard, Ste. 340
Miami, Florida 33137-3227
786-363-2700
786-363-1108 (fax)
rmarshall@aclufl.org

Attorneys for Plaintiff



27 blocked | Check | Send to

Profile | Friends | Messages | Inbox | Search | Account | Privacy | Logout

Ms. Sarah Phelps is the worst teacher I've ever met!

Group

Information

Group Info

Name: Ms. Sarah Phelps is the worst teacher I've ever met!
Type: Student Groups - Classes & Departments
Description: To those select students who have had the displeasure of having Ms. Sarah Phelps, or simply knowing her and her insane antics. Here is the place to express your feelings of hatred.

Contact Info

Office: Pembroke Pines Charter High School
Street: 17189 Sheridan Street
City/Town: Pembroke Pines, FL

Photos

No one has uploaded any photos.

Videos

No one has uploaded any videos.

Posted Items

No one has posted any items.

Discussion Board

There are no discussions.

Members



Join this Group

Reject Invitation

Share | +

Related Groups

mr.cunningham is a fucking spartan
Just for Fun - Inside Jokes

I Went To Charter School... Blitch.
Organizations - Religious Organizations

Classes of 2008 worldwide (High School)

Student Groups - Classes & Departments

I Wish I Were Your Derivative So I
Could Lie Tangent To Your Curve!!
Just for Fun - Facebook Offshoots

I'm an honors kid. I procrastinate and
use sparknotes and don't do

PLAINTIFF'S
EXHIBIT

A

tabbies



Message - Report



Fiorella Andrea Bazan (FSU) wrote
at 3:21pm

Seriously, was this group necessary, katie?
& putting up the school's information, really?
You're only asking for trouble with this "group" of
yours.

You may think she's a terrible teacher, but you could
never imagine how much she's taught me, anam, & all
her other students who are looking at this group with
disgust.

Message - Report



Anam Ismail (Noya Southeastern University) wrote
at 11:37am

wow katie,
the only reason i joined this group is to tell you how
wrong you are.
ms.phelps is one of the most amazing teachers i've
ever had, and theres plenty of people who agree
with me.
whatever your reasons for hating her are, they're
probably very immature, and more importantly,
probably your own fault.
clearly, you cant handle a heavy workload, one
which requires REAL thinking, and if that is the case
you probably should not be taking AP classes.
so i would love to hear how you justify calling her
the "worst" teacher, besides the fact that you cant
suck up to her and get your A...?

Message - Report

Report Group

PEMBROKE PINES CHARTER HIGH SCHOOL
NOTICE OF SUSPENSION OF UP TO TEN DAYS

DATE: 11/15/07

STUDENT: Katherine Evans
ID: [REDACTED] DOB 02/26/90

GRADE 12
RACE H
SEX F

Dear Parent or Guardian,

We regret to inform you that in accordance with School Board of Broward County Policy #5006: Katherine has been suspended for a period of 3 days. The reason for the suspension is as follows:

- Bullying / Cyber Bullying / Harassment towards a staff member
- Disruptive behavior

Katie posted an inappropriate site regarding her teacher on facebook.

Suspension from school days: 11/16/07 – 11/20/07

- Recommended For Expulsion.
- Pending Further Investigation A Recommendation For Expulsion May Be Forthcoming.

While on suspension a student may not attend any Pembroke Pines Charter School function or be on any school grounds. Students who are externally suspended and who attend alternatives to suspension programs are allowed to makeup classwork. Students who elect not to participate in alternatives to suspension programs will not be allowed to make up work. Classwork is due two days after the day of the student's return.

With Prior Hearing (Student Conference and Parent In-School Conference)
A hearing was held pursuant to Policy 5006 during which time the student was advised of the alleged violation(s) and given an opportunity to present his/her version of the incident. At the conclusion of the hearing it was decided Board Policy was violated and the suspension was justified.

Without Prior Hearing (Student Conference)
Because of the nature of the alleged violation(s) or circumstance surrounding the violation(s) it was impossible to hold a hearing prior to the suspension.

This letter is to advise you concerning the nature of the allegation(s) and to inform you that a hearing concerning the allegation(s) has been set for _____ at _____
Time Date Address

_____ to advise _____
Address Name

concerning the nature of the allegation(s) as well as to permit him/her version of the incident. We trust that you will be able to attend the hearing with _____
Name

in order that we may work together in his/her best interests. If the above scheduled hearing date and /or time is not convenient for you please contact this office so that it may be rescheduled.

Phone Number

Should (name) _____ fail to appear for this hearing/conference we have no alternative but to extend the period of suspension to _____ days.

Your student will be expected to return to school on Wednesday, November 21, 2007

[Signature]
Steve Bruns, Behavior Specialist

[Signature]
Peter Bayer, Principal



SRO Contact Pembroke Pines Charter High School
ADMINISTRATION OFFICES- 17189 SHERIDAN STREET, PEMBROKE PINES, FL 33331

CIVIL COVER SHEET

JS 44 (Rev. 2/08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

DEC. 8, 2008

STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI

I. (a) PLAINTIFFS
KATHERINE EVANS
(b) County of Residence of First Listed Plaintiff Broward
(c) Attorney's (Firm Name, Address, and Telephone Number)
Matthew D. Bavaro, Bavaro Legal, LLC, 377 N. SR 7 Suite #201, Plantation, FL 33317, (954) 523-4357; Randall C. Marshall, Maria Kayanan, ACLU Foundation of Florida, Inc., 4500 Biscayne Boulevard STE 340 Miami FL 33137 786-363-2700

DEFENDANTS
PETER BAYER, in his individual capacity
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.
Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excl. Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Personal Injury - Med. Malpractice
365 Personal Injury - Product Liability
368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability
610 Agriculture
620 Other Food & Drug
625 Drug Related Seizure of Property 21 USC 881
630 Liquor Laws
640 R.R. & Truck
650 Airline Regs.
660 Occupational Safety/Health
690 Other
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
820 Copyrights
830 Patent
840 Trademark
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS—Third Party 26 USC 7609
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
810 Selective Service
850 Securities/Commodities/Exchange
875 Customer Challenge 12 USC 3410
890 Other Statutory Actions
891 Agricultural Acts
892 Economic Stabilization Act
893 Environmental Matters
894 Energy Allocation Act
895 Freedom of Information Act
900 Appeal of Fee Determination Under Equal Access to Justice
950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Re-filed- (see VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).
a) Re-filed Case YES NO
b) Related Cases YES NO
JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
violation of First Amendment rights -- punishment of student by principal for protected speech, actionable pursuant to 42 U.S.C. 81983
LENGTH OF TRIAL via 1 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
SIGNATURE OF ATTORNEY OF RECORD DATE
December 8, 2008

FOR OFFICE USE ONLY
AMOUNT 350- RECEIPT # 991519 IFP