

FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
PARMA, OHIO
JUL 11 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

R.O., a minor,
by and through his parents,
Toader and Marianna Osan,
individually and on behalf
of their son,
2701 Mary Lane
Seven Hills, OH 44131,

Plaintiffs,

-vs-

PARMA CITY SCHOOL DIST.
BOARD OF EDUCATION
5311 Longwood Ave.
Parma, OH 44134

and

SARAH ZATIK
5311 Longwood Ave.
Parma, OH 44134
(sued in her official
and individual capacities)

and

Civil Action No.

1:08CV0417

**JUDGE O'MALLEY
MAG. JUDGE BAUGHMAN**

VERIFIED COMPLAINT
With Jury Demand

PAMELA EDMONDS
 5311 Longwood Ave.)
 Parma, OH 44134)
 (sued in her official)
 and individual capacities))
 and)
 JEFF COOK)
 1 Educational Park Drive)
 Seven Hills, OH 44131)
 (sued in his official)
 and individual capacities))
 Defendants.)

INTRODUCTION

1. This is an action brought to redress violation of federally protected rights of free speech and of parents' rights to determine how best to raise, nurture and discipline their child, by a government entity and government officials under color of law. The plaintiffs seek declaratory and injunctive relief and damages.

CLAIMS AND JURISDICTION

2. This action is initiated pursuant to the Civil Rights Act of 1871, 42 U.S.C. Section 1983, to redress the deprivation under color of statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured to plaintiff under the First and Fourteenth Amendments to the United States Constitution.

3. Jurisdiction is invoked pursuant to 28 U.S.C. Sections 1331 and 1343(3) and (4). To the extent declaratory relief is sought, claims are asserted pursuant to 28 U.S.C. Sections 2201 and

2202.

4. At all times relevant to this complaint, defendants acted under color of law and under color of the statutes, ordinance, regulations, customs and/or usages of the Parma City School District.

PARTIES

5. Plaintiffs R.O. and his parents, Toader and Marianna Osan are residents of Seven Hills, Ohio, within the Northern District of Ohio, and at all relevant times R.O., a minor, was a full-time student in the Parma City School District, attending Hillside Middle School in the eighth grade.

6. Defendant PARMA CITY SCHOOL DISTRICT BOARD OF EDUCATION is a public entity, operating under the constitutions, statutes, ordinances, rules and regulations of the United States, the State of Ohio and the Parma City School District. As such, it is responsible for the implementation and enforcement of all policies, practices, procedures, acts and conduct regarding the administration of matters affecting the students of Parma City Schools, including Hillside Middle School.

7. Defendant SARAH ZATIK was, at all times relevant to this complaint, the Superintendent of the Parma City School District. In that capacity, defendant Zatik was responsible for the implementation and enforcement of all policies, practices, procedures, acts and conduct regarding the administration of matters affecting the students of Parma City School District.

8. Defendant Zatik is sued in her official and individual capacities.

9. Defendant PAMELA EDMONDS is the supervisor of Student Services for the Parma City School District. In that capacity, defendant Edmonds is responsible for the implementation and enforcement of all policies, practices, procedures, acts and conduct regarding the administration of matters affecting the students of the Parma City School District, as designated to her by defendant Zatik. Defendant Edmonds was the hearing officer designated by defendant Zatik to recommend to defendant Zatik whether plaintiff R.O should be expelled from school.

10. Defendant Edmonds is sued in her official and individual capacities.

11. Defendant JEFF COOK is the principal at Hillside Middle School. In that capacity, defendant Cook is responsible for the implementation and enforcement of all policies, practices, procedures, acts and conduct regarding the administration of matters regarding the students of Hillside Middle School, as designated to him by defendant Zatik. Defendant Cook was the decision-maker who decided to suspend plaintiff R.O. for ten (10) days and to recommend expulsion.

12. Defendant Cook is sued in his official and individual capacities.

FACTS

13. Plaintiffs reassert the foregoing allegations and incorporate them by reference as if fully set forth herein.

14. The basic facts of this matter are contained in detail in the Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order and the Affidavit of R.O., which is attached to that memorandum as Exhibit B, and those documents are incorporated herein by reference.

15. Plaintiff R.O. is thirteen (13) years old and is an eighth grader at Hillside Middle School in the Parma City School District.

16. On or about November 17, 2007, R.O. and a friend of his were at R.O.'s house, playing on R.O.'s computer.

17. The two boys decided to create a parody "MySpace" page using a picture of their school principal, defendant Cook, and made-up personal characteristics.

18. MySpace is an online social networking web site that has become very popular among teenagers; a person posting a MySpace web site can post pictures and information about him/herself, including personal characteristics, and other people can post messages to the person.

19. The parody never mentioned defendant Cook by name, but instead referred to him as "Your Princeypal."

20. The parody web site contained several lewd and vulgar references to "Your Princeypal"'s personal desires, including references to gay porn and having sex with other students and one staff-member.

21. The web site was created completely at R.O.'s home on his home computer; to the best of R.O.'s knowledge, the site was never

accessed on school computers by students.

22. According to a representation made by defendant Cook at an expulsion hearing which took place on February 7, 2008, defendant Cook learned of the existence of the web site in early December, 2007.

23. According to defendant Cook, on December 17, 2007, he obtained a printed-out copy of the web site from a teacher, who had logged on to the web site at home.

24. According to defendant Cook, on December 17, 2007 the web site was taken down by the officials of MySpace.com.

25. According to defendant Cook, in early January, 2008, he learned the identities of the students who had created the web site.

26. According to defendant Cook, on January 23, 2008, he received confirmation through law enforcement that the web site originated from the computer of R.O.

27. On January 24, 2008, defendant Cook called R.O. and the other student into his office and questioned them about the web site; both boys admitted having a role in the creation of the web site.

28. On January 24, 2008, defendant Cook notified R.O. and his parents that R.O. was being suspended for ten (10) days, with a recommendation for expulsion.

29. The basis for the suspension was a violation of #26 of the Parma Student Code of Conduct, entitled "Malicious Harassment."

30. "Malicious Harassment" is defined as follows: "A student

shall not maliciously and intentionally intimidate or harass another person because of that person's race, color, ancestry, religion, national origin, gender, age, disability or personal characteristics."

30. On February 7, 2008, a hearing was held to determine whether R.O. should be expelled from school.

31. At the hearing, over which defendant Edmonds presided, defendant Cook described the events leading up to the expulsion hearing, i.e., the date that the web site was discovered, the investigation to determine who created the web site, and interviews with R.O. and the other student.

32. At no time during the hearing did defendant Cook or any other school official state that the web site had in any way disrupted school or that anyone had taken the content contained in the web site as a serious recitation of defendant Cook's personal characteristics or preferences or that anyone really believed the web site was created by defendant Cook.

33. On February 7, 2008, R.O. and his parents were notified that R.O. had been expelled from school for eighty (80) days, virtually until the end of the 2007-2008 school year.

34. R.O.'s parents learned about the web site on or about January 24, 2008, when they were informed of its existence by defendant Cook.

35. R.O.'s parents immediately disciplined R.O. for exercising poor judgment in posting the web site.

36. Since the web site was created off-campus and in their

home during non-school hours, it is the province of R.O.'s parents to discipline their child in the manner they see fit.

37. The defendants have violated R.O.'s parents' constitutional rights, guaranteed by the Fourteenth Amendment, to raise their child as they see fit, including disciplining him for matters that occurred in their home and not on school grounds.

38. The defendants have violated R.O.'s constitutional rights, guaranteed by the First Amendment, by punishing R.O. for having expressed himself via protected speech, i.e., a parody MySpace web site that did not cause disruption to the school.

COUNT I

39. Plaintiffs reassert the foregoing allegations and incorporate them by reference as if fully set forth herein.

40. The actions and conduct of all of the defendants, jointly and severally, constitute a violation of plaintiffs' First Amendment rights to free speech.

41. As a direct result of defendants' conduct, plaintiffs have suffered and continue to suffer a loss of their fundamental constitutional rights.

42. As a direct consequence of the actions of the defendants, plaintiffs have no adequate remedy at law in securing their federal constitutional rights and continue to suffer irreparable injury.

COUNT II

43. Plaintiffs reassert the foregoing allegations and

incorporate them by reference as if fully set forth herein.

44. The actions of defendants, jointly and severally, constitute a violation of plaintiffs Toader and Marianna Osan's rights, guaranteed by the Fourteenth Amendment to the U.S. Constitution, to determine how best to raise, nurture and discipline their child

45. As a direct result of defendants' conduct, plaintiffs have suffered and continue to suffer a loss of their fundamental constitutional rights.

46. As a direct consequence of the actions of the defendants, plaintiffs have no adequate remedy at law in securing their constitutional rights and have suffered and continue to suffer irreparable injury.

COUNT III

47. Plaintiffs reassert the foregoing allegations and incorporate them by reference as if fully set forth herein.

48. Defendant Parma City School District Board of Education's actions constitute a policy and practice of violating the rights of plaintiffs and other students.

49. As a direct result of defendants' conduct, plaintiffs have suffered and continue to suffer a loss of their fundamental constitutional rights.

50. As a direct consequence of the actions of the defendants, plaintiffs have no adequate remedy at law in securing their constitutional rights, and suffered and continue to suffer

irreparable injury.

WHEREFORE, plaintiffs urge this Court to grant the following relief:

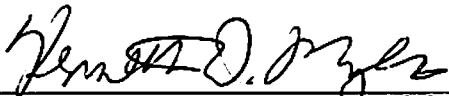
A. Declare that the acts and conduct of the defendants constitute violations of the First and Fourteenth Amendments to the Constitution of the United States and the Civil Rights Act of 1871, 42 U.S.C. Section 1983.

B. Temporarily restrain and preliminarily enjoin the defendants, their agents, employees or any persons acting independently or in concert with the defendants, from interfering with the plaintiffs' rights of free expression by using methods including, but not limited to, suspending and/or expelling plaintiff R.O. from school.

C. Maintain the status quo by prohibiting defendants from carrying out any discipline until further order of the court;

D. Grant to the plaintiffs and against the defendants, jointly and severally, appropriate compensatory damages, punitive damages against the individual defendants, along with costs and reasonable attorneys' fees as expressly provided by statute;

F. Grant any additional relief the Court deems just and equitable.


KENNETH D. MYERS [0053655]
75 Public Square, Suite 1300
Cleveland, OH 44113
(216) 241-3900
Attorney for Plaintiffs

JURY DEMAND


Plaintiffs hereby demand a trial by jury.



KENNETH D. MYERS

Attorney for Plaintiffs

VERIFICATION

I hereby swear and affirm, under penalty of perjury, that the facts stated in this Verified Complaint are true to the best of my knowledge and understanding.


TOADER OSAN, on behalf of my son
and in my own behalf


MARIANNA OSAN, on behalf of my son
and in my own behalf

SWORN TO and subscribed in my presence, this 18th day of February, 2008.


NOTARY PUBLIC

My commission does not expire.