

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

M.M., by and through her Mother, Karen Morrison,)	
)	
)	
Plaintiff,)	
)	
v.)	No. 14-1122
)	
Kansas City School District,)	
)	
Defendant.)	
)	

VERIFIED COMPLAINT

Introduction

1. In this civil rights action, pursuant to 42 U.S.C. § 1983, M.M., a student at Lincoln College Preparatory Academy (LCPA), by and through her Mother, Karen Morrison, brings this complaint against Defendant for violating her rights under the First and Fourteenth Amendments by stopping fourteen students, including M.M., from standing silently in protest during an assembly, ordering them to leave the assembly, sending them home from school, and disciplining them for their constitutionally protected expressive conduct.

2. Plaintiff asserts that there was no justification for the discipline the students received and that the student were punished in retaliation for having engaged in expressive conduct protected by the First Amendment.

3. Plaintiff seeks nominal damages, as well as declaratory and injunctive relief.

Jurisdiction and Venue

4. This action arises under the Constitution of the United States and the provisions of 42 U.S.C. § 1983.

5. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in Jackson County, Missouri.

7. Venue is proper in the Western Division pursuant to Local Rule 3.1(a)(1)(a).

Parties

8. M.M. is a resident of Missouri.

9. M.M. is a student at LCPA.

10. Karen Morrison is a resident of Missouri.

11. Karen Morrison is the parent and legal guardian of M.M.

12. Kansas City School District (“District”) is a subdivision of the State of Missouri that owns, operates, and manages LCPA.

13. Defendant acted under color of state law at all times relevant to this Complaint.

Facts

14. On August 9, 2014, Michael Brown, an unarmed teenager, was shot and killed by Darren Wilson, then a police officer for the City of Ferguson, Missouri.

15. Following Michael Brown’s death, there have been frequent protests and demonstrations on the public streets and sidewalks of towns and cities across the State of Missouri and throughout the nation. There have also been protests and demonstrations by students in public schools in Missouri and nationwide. At these protests and demonstrations, protesters are expressing their opinions about such issues of public concern as the relationship between police and the community, the frequency with which police officers shoot unarmed

black men, the militarization of local police forces, and the response of government officials and law enforcement officers to the killing of Michael Brown and the unrest that followed his death.

16. The protests and demonstrations that began after Michael Brown's death are ongoing in Missouri and across the nation.

17. There is widespread interest in the tactics of law enforcement and the response of government officials to the unrest in the community following the death of Michael Brown, which raises questions about whether the response to the protests is consistent with the values of the United States, as well as questions about the lack of transparency in the handling of the shooting investigation and response to the events and unrest that followed.

18. In the protests and demonstrations since Michael Brown's death, standing or walking with hands raised above one's head has become a common form of expressive conduct used by protesters to communicate their concerns about the relationship between police and the community, the frequency with which police officers shoot unarmed black men, the militarization of local police forces, and the response of government officials and law enforcement to the killing of Michael Brown and the unrest that followed his death.

19. Students at LCPA, including M.M., are concerned about the relationship between police and the community, the frequency with which police officers shoot unarmed black men, the militarization of local police forces, and the response of government officials and law enforcement to the killing of Michael Brown and the unrest that followed his death.

20. On November 17, 2014, Governor Nixon declared a state of emergency and activated the Missouri National Guard in anticipation of a grand jury decision as to whether Darren Wilson would be charged with a crime for causing Michael Brown's death.

21. As a result of Governor Nixon's actions and inactions related to the killing of Michael Brown and ensuing events, he has been subject to frequent public criticism.
22. On November 20, 2014, fourteen LCPA students, including M.M., attended an assembly at LCPA where Governor Nixon was scheduled to speak.
23. In order to communicate a message to Governor Nixon, the students stood silently in the back two rows of the auditorium with their hands raised above their heads as Governor Nixon began addressing the assembly.
24. The purpose of the students' action was to express the message that they stood in solidarity with the other protesters who had been active in Missouri and across the nation following the death of Michael Brown.
25. The students' protest was silent, stationary, and non-disruptive.
26. The students purposely selected seats in the back two rows of the auditorium so as to avoid causing any disruption.
27. Vice Principal Steven Evans immediately instructed the students to terminate their protest.
28. Less than thirty seconds after the students first stood in silent protest, they were all escorted by Vice Principal Evans to the LCPA's main office.
29. The students were informed by school officials, including Vice Principal Evans, that their expressive conduct made the school look bad, that they should not be expressing their personal opinions or beliefs during the assembly, and that they could go to Ferguson to address their concerns.
30. The students were told by school officials that they could receive a ten-day suspension from school as punishment and that they could be sued for disturbing the peace.

31. The students were sent home from school early.

32. On or about November 25, 2014, the students involved in the silent protest received a letter informing them that they had “been assigned Saturday School Detention on 12/06/2014 for violating the KCPS Student Code of Conduct.” The letter also stated that the detention was a result of “[t]he violation of *Defiance of Authority* ‘refused to follow directions from school personnel or comply with classroom or school rules,’ [that] occurred on Thursday, 11/20/2014.” Ex A.

33. On or about December 3, 2014, the students involved in the protest received a second letter informing them that the detention scheduled for December 6, 2014, was postponed to January 10, 2015. Ex. B.

34. The students are required to serve detention as punishment for their expressive activity.

35. The students were not materially and substantially disrupting a school activity when they stood silently in the back of the auditorium.

36. School officials forced the students to terminate their non-disruptive expressive activity, removed them from the auditorium, sent them home from school, and punished them for their expressive activity.

37. The students are now fearful of expressing their opinions and viewpoints while they are at school, even in a non-disruptive manner, because they reasonably fear they will again be punished.

38. As the direct and proximate result of the Defendant’s actions and inactions, the students, including M.M., suffered the following injuries and damages:

- a) Violation of their rights under the First and Fourteenth Amendments to be free from punishment for constitutionally protected acts of expression;
- b) Objectively reasonable chilling effect on future expressive communication at LCPA for fear of punishment.

39. Absent declaratory and injunctive relief, Plaintiff reasonably fears that the students involved in the protest, and any other similarly situated students, will be harmed if they engage in any expressive activity about the issues in Ferguson at LCPA; because of this fear, the students, including M.M., have refrained from doing so and will refrain from doing so in the future.

40. Absent prompt injunctive relief, M.M. will be punished for engaging in constitutionally protected expressive activity and, upon information and belief, the student conduct code violation and punishment will appear permanently in her LCPA student record.

COUNT I

42 U.S.C. §1983 – First Amendment First Amendment Retaliation

41. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.

42. The students' communication of a message by standing silently with their arms raised above their heads is expressive activity protected by the First Amendment, as applied to the states under the Fourteenth Amendment to the United States Constitution.

43. The students' communication did not violate any law and was not materially or substantially disruptive.

44. But for the retaliatory animus of school officials regarding the students' communication, school officials would not have disciplined the students for peacefully exercising their First Amendment rights.

45. But for the retaliatory animus regarding the students' communication, school officials would not have forced the students to terminate their non-disruptive expressive activity.

WHEREFORE, Plaintiff prays this Court:

- A. Enter judgment in favor of Plaintiff and against Defendant;
- B. Award Plaintiff nominal damages for violation of Plaintiff's constitutional rights under color of state law;
- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- D. Allow such other and further relief to which Plaintiff may be entitled.

COUNT II

42 U.S.C. §1983 – First Amendment

46. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.

47. Plaintiff challenges the constitutionality of LCPA's discipline of students from communicating their concern with the events surrounding the death of Michael Brown and the reaction of Missouri public officials to his death and the unrest that followed by engaging in silent, non-disruptive expressive activity.

48. Disciplining students for communicating their concern with the events surrounding the death of Michael Brown and the reaction of Missouri public officials to his death and the unrest that followed by engaging in silent, non-disruptive expressive activity is a content-based or viewpoint-based restriction on speech, or both.

49. Disciplining students for communicating their concern with the events surrounding the death of Michael Brown and the reaction of Missouri public officials to his death and the unrest that followed by engaging in silent, non-disruptive expressive activity is not narrowly tailored to achieve any compelling governmental interest.

50. Disciplining students for communicating their disagreement or concern with the events surrounding the death of Michael Brown and the reaction of Missouri public officials to his death and the unrest that followed by engaging in silent, non-disruptive expressive activity is unconstitutionally overbroad.

51. Disciplining students for communicating their disagreement or concern with the events surrounding the death of Michael Brown and the reaction of Missouri public officials to his death and the unrest that followed by engaging in silent, non-disruptive expressive activity fails to leave open ample alternatives for expression.

WHEREFORE, Plaintiff prays this Court:

- A. Enter an appropriate injunction to prevent the future deprivation of Plaintiff's constitutional rights, including by preventing Defendant from punishing Plaintiff or making a record of Plaintiff's discipline in school records;
- B. Award Plaintiff nominal damages for violation of Plaintiff's constitutional rights under color of state law;
- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- D. Allow such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Anthony E. Rothert

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ATTORNEYS FOR PLAINTIFF

Verification

I have the allegations of the Verified Complaint and, pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

/s/ M.M. _____

/s/ Karen Morrison _____



SATURDAY SCHOOL ASSIGNMENT LETTER

November, 25, 2014

To the Parents of [REDACTED]

Your student ([REDACTED]) has been assigned Saturday School Detention on 12/06/2014 for violating the KCPS Student Code of conduct. The violation of **Defiance of Authority** "refusal to follow directions from school personnel or comply with classroom or school rules", occurred on Thursday, 11/20/2014.

The hours of Saturday School on December 6th will be from 7am-11am. Students arriving after 7am will not be allowed to stay and will not receive credit for attending. Students should bring academic work to work on during this time. There will be a guest speaker during the Saturday School to actively engage the students.

If you wish to discuss this letter further, please contact the main office at (816) 418-3000.

Yours sincerely,

LCPA Administrative Team

1211 McGee • Kansas City, MO 64106 • (816) 418-7000

www.kcpublicschools.org



SATURDAY SCHOOL ASSIGNMENT LETTER – NEW DATE

December 3, 2014

Joe Hesman
Principal
Lincoln College Preparatory Academy

Dear student and parent or guardian,

The Saturday School that you or your child was assigned for Saturday, Dec. 6 has been postponed until Saturday, Jan. 10.

As a reminder, Saturday School was assigned in order to reinforce the importance of proper decorum at our school while also acknowledging every citizen's right to free speech and facilitating a productive conversation about the events in Ferguson, MO. My goal is always to take every opportunity to help young people become better prepared and engaged adults. I know that this can be a valuable and ultimately positive experience for our students and staff.

Here are a few important details about the Jan. 10 Saturday School: it will be from 7:00 to 11:00AM, and students arriving after 7:00AM will not be allowed to stay and will not receive credit for attending. Students should bring academic assignments to work on during this time. Failure to serve the Saturday School could result in further consequences.

If you would prefer not to wait until Jan. 10 to serve the Saturday School, the Lincoln Administrative Team is willing to provide two other options for you. You may choose to serve the Saturday School on Saturday, Dec. 13 or you could choose to serve two separate 2-hour detentions on a Tuesday and/or Thursday before Dec. 19. If you would like to choose one of the two options to be completed in December, you would need to inform one of the Lincoln Administrators (Mr. Evans, Mr. Wilson or Mr. Hesman) by Monday, Dec. 8.

I apologize for any inconvenience this change may have caused and I thank you for your cooperation throughout this process. I'm grateful to have the opportunity to serve you and look forward to the great things we will accomplish together moving forward.

With regards,

Joe Hesman
Principal

2111 Woodland Ave. • Kansas City, MO 64108 • (816) 418-3000

www.kcpublicschools.org/Lincoln

JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI****CIVIL COVER SHEET**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):**First Listed Plaintiff:**

M. M. ;

County of Residence: Jackson County**Defendant(s):****First Listed Defendant:**

Kansas City School District ;

County of Residence: Jackson County**County Where Claim For Relief Arose:** Jackson County**Plaintiff's Attorney(s):**

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Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: N/A

Defendant: N/A

Origin: 1. Original Proceeding

Nature of Suit: 440 All Other Civil Rights

Cause of Action: 42 USC 1983 - Challenge to school disciplinary action for participating in a silent, non-disruptive protest

Requested in Complaint

Class Action: Not filed as a Class Action

Monetary Demand (in Thousands):

Jury Demand: No

Related Cases: Is NOT a refiling of a previously dismissed action

Signature: /s/ Anthony E. Rothert

Date: 12/22/2014

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.