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Attorney for *Plaintiffs*
J.G. on behalf of K.C.

J.G. on behalf of K.C., <i>Plaintiffs,</i> v. HACKETTSTOWN PUBLIC SCHOOL DISTRICT, KEVIN O’LEARY, KATHLEEN MATLACK, AND JENNIFER SPUKES, <i>Defendants.</i>
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Docket No.:

COMPLAINT
JURY TRIAL DEMANDED

Plaintiff, J.G. on behalf of her minor daughter K.C., residing in the City of Hackettstown in Warren County, New Jersey, by way of complaint against Defendants, Hackettstown Public School District, Kevin O’Leary, Kathleen Matlack and Jennifer Spukes states as follows:

NATURE OF ACTION AND JURISDICTION

1. This is a civil action under the United States Constitution and 42 U.S.C. §1983 and §1988, as well as the New Jersey Constitution and New Jersey Law Against Discrimination, seeking damages and injunctive relief against defendants for committing acts, under color of law, with the intent and for purpose of depriving Plaintiff of rights secured under the Federal and State Constitution and the laws of the United States retaliating against Plaintiff for her exercise of constitutionally protected speech; and for refusing or neglecting to prevent such deprivations and denials to Plaintiff.

2. This case arises under the United States Constitution and 42 U.S.C. §1983 and §1988, as well as the New Jersey Constitution and New Jersey Law Against Discrimination.
3. This Court has jurisdiction in this matter pursuant to 28 U.S.C. Sections 1331 and 1343.
4. The Declaratory and injunctive relief sought is authorized by 28 U.S.C. §2201 and §2202, 42 U.S.C. §1983 and §1988 and Rule 57 of the Federal Rules of Civil Procedure.
5. This Court is the appropriate venue for this cause of action.
6. The actions complained of took place in this judicial district; evidence relevant to the allegations are maintained in this judicial district; and the Defendants are present and regularly conduct affairs in this judicial district.

PARTIES

7. J.G. is the mother of K.C., and presently resides at NJ 07823.
8. Plaintiff K.C. is the minor child of Plaintiff J.G.
9. K.C. was born on and is a seventeen (17) year old female student registered in the Hackettstown Public School District.
10. K.C. resides with her mother J.G. at NJ 07823.
11. Plaintiffs J.G. and K.C. (“Plaintiffs”) have, at all times relevant to this complaint, resided in Warren County, New Jersey.
12. Defendant Hackettstown Public School District (“Hackettstown” or the “District”) is the public-school system that provides education to children who live within the boundaries of Hackettstown, Warren County, N.J.
13. Defendant Kevin O’Leary (“O’Leary” and, collectively with Hackettstown, et al, “Defendants”) is the Assistant Principal at Hackettstown High School.

14. Defendant Kathleen Matlack (“Matlack” and, collectively with Hackettstown, et al, “Defendants”) is an English teacher at Hackettstown High School.
15. Defendant Jennifer Spukes (“Spukes” and, collectively with Hackettstown, et al, “Defendants”) is the Harassment, Intimidation and Bullying Specialist at Hackettstown High School.
16. Defendants maintain offices at 559 Warren Street, Hackettstown, NJ 07840.

FACTS COMMON TO ALL COUNTS

17. On or about March 8, 2017, K.C. was brought into O’Leary’s office individually, as were other students, due to an informal discussion regarding guns and violence that happened between students.
18. Mr. O’Leary asked if K.C. felt intimidated by the discussion, to which K.C. responded that she did not.
19. Mr. O’Leary asked K.C. if she had discussed the Black Lives Matter movement as part of the discussion.
20. K.C. replied that she had discussed confrontations between police and people of African-American descent.
21. Apropos of nothing, Mr. O’Leary stated his belief that “all lives matter.”
22. K.C. disagreed with the sentiment as a misunderstanding of the point and purpose of the Black Lives Matter movement.
23. Mr. O’Leary made remarks about race in regards to some people being lucky to have light enough skin to “pass.”
24. K.C. believed that this remark was a reference to herself, as a bi-racial person.

25. K.C. understood Mr. O’Leary to be saying that she was not allowed to discuss the Black Lives Matter movement in school, but did not believe herself to be in any trouble.
26. On March 13th, 2017, K.C.’s English class was reading the play “Blood Brothers” by Willy Russell. In the play, a corrupt police officer treats two suspects differently based upon their economic status.
27. In class, the students were choosing parts to read aloud and K.C. volunteered, stating she would play the “pig.”
28. The English teacher, Matlack, reprimanded K.C. for the use of the word “pig” to describe the character, and K.C. apologized.
29. Approximately half an hour later, J.G., K.C.’s mother was called by Mr. Mathew Scanlon, the principal of Hackettstown High School and told that K.C. was subject to an investigation for Harassment, Intimidation, and Bullying (“HIB”) pursuant to N.J.S.A. 18A:37-13 et seq.
30. The subject of the investigation was the use of the word “pig” to describe the fictional corrupt police officer.
31. The school contended that a student who was a member of the class, but not actually present in the room when K.C. said the word “pig,” could have been offended by the use of the word because the student’s parent is a police officer.
32. J.G. asked to be in the room during the investigation, due to her concerns over the inappropriate comments made during the March 8, 2017 meeting with Mr. O’Leary.
33. Mr. Scanlon denied J.G.’s request to be present during the “investigation.”
34. J.G. called K.C. and told her to record the “investigation,” which she did, using her cell phone.

35. The other participants did not know they were being recorded.
36. The “investigation” was attended by K.C., Ms. Jennifer Spukes the HIB investigation specialist and Mr. O’Leary.
37. The “investigation” meeting described at paragraph 36 lasted approximately 45 minutes.
38. At the beginning of the meeting, Ms. Spukes asked K.C. to write an account of what had occurred in her English class.
39. K.C. informed the two administrators that her comment was intended to be limited to the specific character in the play and was not reflective of her feelings toward all law enforcement.
40. K.C. was informed that a student in the English class may have been offended by her comment.
41. She informed her two interrogators that the student they claimed was offended was not in the class at the time the comment was made.
42. Mr. O’Leary and Ms. Spukes analogized the use of the term “pig” to the casual use of the term “nigger” and, later, the term “fag.”
43. Ms. Spukes asked K.C. how she would feel if someone called her a “nigger.”
44. Mr. O’Leary later made a similar analogy using the word “fag,” in an apparent reference to K.C.’s openly gay status.
45. Despite K.C.’s express objections to their use of these terms, the adults continued to use them.
46. Ms. Spukes informed K.C. that “other people” had been listening to her private conversations with friends regarding political issues and had reported to Ms. Spukes they had been “offended.”

47. Ms. Spukes declined to identify the specific conversations or persons to whom she was referring.
48. Ms. Spukes analogized K.C.'s private discussions with friends about politics and the "Black Lives Matter" movement to Ms. Spukes overhearing a sexually degrading conversation between two teachers in the teachers' lounge.
49. Ms. Spukes stated that she could "argue both sides of racial profiling."
50. Ms. Spukes stated "today you made a comment in your English class you made a derogatory term for certain people in your classroom. I need you to understand that you understand that what you said is wrong."
51. No derogatory term had been applied in reference to anyone in the classroom.
52. After the interrogation, Mr. O'Leary informed J.G. via phone that K.C. was found to have committed an "unintentional HIB offense," and would serve a one day in-school suspension.
53. On the day of the suspension, Mr. O'Leary asked J.G. about K.C.'s future plans, because the HIB offense would negatively impact her admission to top colleges and universities.
54. The school initially sent a letter to the parents stating that no HIB violation had been found, after the punishment had been served.
55. After repeated requests to the District for clarification, the parents were informed that the first letter stating there was no HIB offense was sent in error and that K.C. had, in fact, committed an HIB offense.
56. The HIB investigation was brought to the Board of Education's attention on March 22, 2017.

57. Despite Ms. Spukes insistence that K.C. draft a statement of the incident and that she “had a long list of things to type up” in relation to the incident, no full report was issued or made available to J.G.
58. A request for K.C.’s student records also provided little to no documentation of the investigation.
59. Since the interrogation and her parents’ objection to the school’s “HIB investigation,” K.C. has been singled out by the administration for minor infractions around the school.
60. K.C. has shown signs of school avoidance since the incident, has dropped out of extracurricular activities, and her grades have declined.
61. As a direct consequence of the above described incidents, K.C. is no longer able to access the benefit of a public-school education in Hackettstown.
62. Because of her response to the harassing and hostile actions of the school administrators/faculty, K.C. has not attended school since May of 2017.

FIRST COUNT: HOSTILE ENVIRONMENT IN VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 , Pursuant to 42 U.S.C.A. § 2000d

63. Plaintiff repeats and realleges each and every statement set forth in paragraphs 1-56 as if set forth at length herein.
64. Hackettstown receives financial assistance, directly or indirectly, from the United States Department of Education.
65. Employees of the District harassed K.C. on the basis of her race.
66. The discriminatory harassment that K.C. endured created a hostile environment for K.C.
67. All defendants had actual notice of the hostile environment as of March 22, 2017.
68. The Board of Education failed to adequately redress the racially hostile environment, thus resulting in an atmosphere that was impossible for K.C. to be properly educated.

69. K.C. suffered damages as a result of the hostile environment caused by the District and its employees.

SECOND COUNT: VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION (“NJLAD”)

70. Plaintiff repeats and realleges each and every statement set forth in paragraphs 1-60 as if set forth at length herein

71. The District is a place of public accommodation within the meaning of the New Jersey Law Against Discrimination.

72. K.C. endured severe or pervasive harassment that created an intimidating, hostile, and offensive environment.

73. **The environment created by the Defendants was severe enough that any reasonable bi-racial, homosexual woman would believe it to be hostile.**

74. The District employees were the cause of the harassment, and the Board of Education failed to take effective measure to end it, causing K.C.’s injuries.

75. K.C. suffered damages as a result of the hostile environment caused by the District and its employees.

THIRD COUNT: VIOLATION OF K.C.’s RIGHTS UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION, PURSUANT TO 42 U.S.C. § 1983

76. Plaintiff repeats and realleges each and every statement set forth in paragraphs 1-65 as if set forth at length herein

77. The March 8th meeting held by O’Leary resulted in the suppression of K.C.’s political speech.

78. While a school has a great deal of latitude in squelching speech to maintain discipline, it may not use the power of the state to target specific speech, even that which offends the sensibilities of a school official.

79. K.C.'s statements, outlined above, were protected political speech.

80. The use of the term "pig" to describe a fictional police officer is neither vulgar nor lewd.

81. The use of the term "pig" to describe a fictional police officer is not disruptive.

82. Use of the HIB statute to prohibit political speech that school administrators do not like due to their own biases is not contemplated by the United States Supreme Courts' decisions regarding First Amendment Speech and Schools.

83. The school officials were government officials who used the NJ HIB statute to disguise their actions as being under the color of state law.

FOURTH COUNT: VIOLATION OF K.C.'s RIGHTS UNDER ARTICLE ONE OF THE NEW JERSEY CONSTITUTION.

84. Plaintiff repeats and realleges each and every statement set forth in paragraphs 1-72 as if set forth at length herein.

85. K.C. did not make "any gesture, any written, verbal or physical act, or any electronic communication", that could be "reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic" as required by the HIB statute.

86. Use of the HIB statute to prohibit political speech that school administrators do not like due to their own biases is not permitted by the New Jersey Supreme Courts' decisions regarding Article One of the New Jersey Constitution.

87. Defendants used the power of the state, by and through the HIB statute, to deter K.C. from political or other protected speech.

88. K.C. has been injured, and should be compensated in an amount to be proven at trial, by the infringements on her constitutionally protected rights.

WHEREFORE, Plaintiff demands:

- A. Declaratory judgment that the manner in which Defendants applied the “HIB Law,” N.J.S.A. 18A:37-13 *et seq.*, to K.C. was unconstitutional, pursuant to the United States Constitution; and
- B. Declaratory judgment that the manner in which Defendants applied the “HIB Law,” N.J.S.A. 18A:37-13 *et seq.*, to K.C. was unconstitutional, pursuant to the New Jersey Constitution; and
- C. Compensatory and punitive damages payable by the Defendants jointly and severally, in an amount to be determined at trial;
- D. Court costs and reasonable attorneys’ fees in accordance; and
- E. Any other relief this Court deems just and appropriate.

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY OF ALL ISSUES SO TRIABLE.

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Dated: February 20, 2018