

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JOHN DOE, A MINOR, BY HIS MOTHER
AND NEXT FRIEND, JANE DOE

PLAINTIFF

vs.

CASE NO. 4:00CV00707 GH

THE PULASKI COUNTY SPECIAL SCHOOL
DISTRICT

DEFENDANT

ORDER GRANTING TEMPORARY RESTRAINING ORDER

On September 26, 2000 plaintiff filed a complaint for injunctive relief alleging defendant violated his rights under the First and Fourteenth Amendments to the United States Constitution by expelling him from school for the school year based on a letter/song plaintiff wrote. Plaintiff has requested a temporary restraining order (TRO) directing that he be allowed to return to school.

The complaint alleges that plaintiff is fourteen years of age and is an 8th grade junior high school student in the Pulaski County Special School District (PCSSD). According to the complaint, plaintiff in early August, 2000, began trying to write a "rap song" about his "break up" with his girlfriend, GK. He wrote two versions but discovered that the "songs" were not capable of being set to either music or a "rap beat" and ultimately decided that the writings would be in the form of a letter. The letter/songs are, according to plaintiff, patently offensive and profane. Both versions contain references to violence, misogyny, and suicide. Plaintiff did not intend that either version be published or delivered to GK. Furthermore, plaintiff did not deliver either version to GK at any time.

About two weeks before the beginning of the school year, plaintiff's best friend, MD, found the letter/rap songs while looking through plaintiff's book case. Plaintiff refused to provide a copy of the songs to MD. However, for the next few days, MD told at least two other persons about the

existence of the "songs" in general and also told GK that there were songs or letters about her. These conversations took place during summer vacation, prior to the beginning of the fall school semester.

On About August 17, 2000, MD spent the night at plaintiff's home and took one of the two versions of the song or letter concerning the breakup with GK without plaintiff's permission. On August 22, 2000, the day after the school year began, MD gave GK the rap song/letter he had taken from the home of plaintiff. GK turned the document over to school authorities. On or about August 22, 2000, plaintiff was expelled for one semester for one count of "Terroristic Threatening" as described in Rule 36¹ of the student handbook for PCSSD and was directed to attend Alternative School from August 29 to September 12, 2000. On August 23, 2000, the Principal at the Junior High School recommended that plaintiff's punishment be changed to expulsion for the remainder of the school year.

Plaintiff and his parents appealed the expulsion recommendation to the PCSSD Board. On September 12, 2000, the PCSSD Board upheld the expulsion for the remainder of the school year but denied plaintiff the right to participate in the Alternative School. Plaintiff is currently not attending any school or receiving any education services from the PCSSD.

A telephone conference was held on September 27th with counsel for the parties. After hearing the positions of counsel, the Court announced that this Order would be entered granting a TRO.

In determining whether to grant a preliminary injunction or a TRO, the Court must consider (1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest. Dataphase Systems, Inc. v. C.L. Systems, Inc.,

¹Rule 36, which makes Terroristic Threatening a Level Three Infraction, states: "Students shall not, with the purpose of terrorizing another person, threaten to cause death or serious physical injury or substantial property damage to another person or threaten physical injury to teachers or school employees."

640 F.2d 109, 114 (8th Cir. 1981).

Based on the complaint, plaintiff has already missed two weeks of classes. By expelling plaintiff for the remainder of the school year, and denying plaintiff the opportunity to participate in any educational programs, plaintiff will suffer irreparable harm. He will be denied any educational services for the entire school year and he will be deprived of participating in extra curricular activities. Additionally, plaintiff will be required to repeat the 8th grade, resulting in isolation from his peer group, and possible negative affects on post secondary educational desires. Thus, the Court finds that plaintiff will suffer irreparable harm if he is not permitted to return to school.

Based on the cases cited by plaintiff and the Court's own research, there is a strong probability that plaintiff will succeed on the merits. See, Emmett v. Kent Sch. Dist. No. 415, 92 F.Supp.2d 1088 (W.D. Wash. 2000) and Beussink v. Woodland R-IV Sch. Dist., 30 F.Supp.2d 1175 (E.D. Mo. 1998)(where the district courts granted preliminary injunction where a student was suspended for personal web page created on home computer with content found objectionable by school officials). Students do not shed their First Amendment rights at the schoolhouse gate. Tinker v Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969). Prohibition of expression, however, is justified only if the conduct "would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." Id. at 509.

Here, plaintiff's letter was written at home, during the summer, and was not intended by plaintiff to be shown to anyone. It only came to the knowledge of defendant through the actions of a third party who did not have permission to take the letter/song from plaintiff's home. Furthermore, based on the allegations in the complaint regarding plaintiff's desire to keep the letter/rap song private, the Court would be hard pressed to find that plaintiff could be found to have violated Rule 36.

The Court has also balanced the harm to plaintiff by not granting the TRO against the injury to defendant in granting the TRO. The Court is aware that defendant is concerned with violence in the school, and the need to impose discipline where appropriate. However, as discussed above, the

conduct here was purely private. Additionally, plaintiff, according to the School Resource Officer, has never been in trouble before. Thus, any interest defendant has in imposing discipline is of minimal importance in this instance.

The Court also recognizes that the school might be concerned with GK's safety, given the language used in plaintiff's letter/rap song. The Court notes that plaintiff has already apologized to GK at church. Moreover, the school's concern can be addressed by school officials working with the parents to ensure that plaintiff and GK do not have contact or communicate with each other once plaintiff returns to school. Furthermore, the Court directs the school to monitor plaintiff's conduct while at school to deal with any safety concerns.

Moreover, the public interest is best served by preserving the integrity of the First Amendment's right to free speech and avoiding the possibility that a student will be needlessly forced to repeat a grade.

Accordingly, the plaintiff's motion for temporary restraining order is hereby granted. Defendant is directed to immediately reinstate plaintiff to his 8th grade class, beginning September 28, 2000. This Order will remain in effect until the merged hearing on the motion for preliminary injunction with the trial on the merits commencing at 9:30 a.m. on October 6, 2000, in Courtroom 2A. The parties are directed to expedite discovery. Finally, plaintiff is directed to post a bond in the amount of \$100.00 by the close of business, September 28, 2000.

IT IS SO ORDERED this 27th day of September, 2000, at 5:12 p.m.


UNITED STATES DISTRICT JUDGE