

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

THOMAS SYPNIEWSKI, JR., MATTHEW
SYPNIEWSKI, and BRIAN SYPNIEWSKI,

Plaintiffs,

- against -

Index No. _____

WARREN HILLS REGIONAL BOARD OF
EDUCATION, PETER MERLUZZI, in his personal
and official capacity as Superintendent of the Warren
Hills Regional Board of Education, BETH GODETT,
in her personal and official capacity as Principal of the
Warren Hills Regional High School, RONALD
GRIFFITH and PHILIP CHALUPA, in their personal
and official capacity as Vice Principals of the Warren
Hills Regional High School, and ELIZABETH AMES,
MARCY MATLOSZ, RAY BUSCH, SUYLING
HEURICH, JAMES T. MOMARY, NANCY
FALLEN, WILLIAM MILLER, BRADLEY
BRESLIN and SCOTT SCHANTZENBACH, in
their official capacity as members of the Warren Hills
Regional Board of Education,

Defendants.

COMPLAINT

Plaintiffs Thomas Sypniewski, Jr., Matthew Sypniewski, and Brian Sypniewski, by their
attorneys Rosenman & Colin LLP and the Center for Individual Rights, for their complaint, respectfully
allege as follows:

NATURE OF ACTION

1. This action seeks injunctive relief prohibiting defendants from infringing plaintiffs'
right to free speech under the United States Constitution and the New Jersey Constitution. Plaintiff

Thomas Sypniewski, Jr. also seeks damages for past infringement of his constitutional rights and for being placed in a false light by defendants' actions.

2. The action arises under the First and Fourteenth Amendments to the United States Constitution, Article I of the New Jersey Constitution, and the New Jersey common law of torts.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, in that the case arises under the Constitution and laws of the United States. Further, this Court has jurisdiction over this action pursuant to 42 U.S.C. § 1343(a)(3), in that the action seeks redress for acts that deprive the plaintiffs, under color of state law, of rights guaranteed to them by the Constitution of the United States, pursuant to 42 U.S.C. § 1983. Finally, this Court has supplemental jurisdiction over the plaintiffs' state law claims pursuant to 28 U.S.C. § 1367, in that the action includes state law claims that are part of the same case or controversy as the federal claims.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b), in that all of the events giving rise to plaintiffs' claims occurred in the Northern District of New Jersey, and one of the defendants—specifically the Warren Hills Regional Board of Education—is a political subdivision of the state of New Jersey which is subject to personal jurisdiction in New Jersey and which has contacts with the Northern District of New Jersey that would be sufficient to subject it to personal jurisdiction in the Northern District if the Northern District were a separate State.

THE PARTIES

5. Plaintiff Thomas Sypniewski, Jr. (“Tom”) is a resident of the state of New Jersey. At all times relevant to this action, prior to June 15, 2001, Tom was a student of the Warren Hills Regional High School (the “High School”). He graduated on June 15, 2001.

6. Plaintiff Matthew Sypniewski (“Matthew”) is a resident of the state of New Jersey. At all times relevant to this action, Matthew has been a student of the High School. He is due to graduate in June, 2003.

7. Plaintiff Brian Sypniewski (“Brian”) is a resident of the state of New Jersey. At all times relevant to this action, Brian has been a student of the Warren Hills Regional Middle School (the “Middle School”) and the Warren County Technical School. He is due to enter the High School in September, 2001.

8. Defendant Warren Hills Regional Board of Education (the “Board”) is a political subdivision of the State of New Jersey. It operates the High School and Middle School.

9. Defendant Peter Merluzzi is a resident of New Jersey and is the Superintendent of the Board, and is being sued in his individual and official capacity.

10. Each of defendants Elizabeth Ames, Marcy Matlosz, Ray Busch, Suyling Heurich, James T. Momary, Nancy Fallen, William Miller, Bradley Breslin and the Rev. Scott Schantzenbach is a

resident of New Jersey, and each either is a member of the Board or was a member of the Board at all times relevant to this complaint. Each is being sued in his or her official capacity only. The Board, Mr. Merluzzi, Ms. Ames, Ms. Matlosz, Mr. Busch, Ms. Heurich, Mr. Momary, Ms. Fallen, Mr. Miller, Mr. Breslin and Rev. Schantzenbach are collectively referred to as the “Board Defendants.”

11. Defendant Beth Godett is a resident of New Jersey and the Principal of the High School. She is being sued in her individual and official capacity.

12. Defendants Ronald Griffith and Philip Chalupa are residents of New Jersey and the Vice Principals of the High School. They are being sued in their individual and official capacity.

**THE DRESS CODE
AND THE HARASSMENT POLICY**

13. Both the High School and the Middle School operate under a student handbook, adopted by the Board, which includes a section on prohibited clothing (the “Dress Code,” a copy of which is annexed as Exhibit A hereto). The Dress Code states, in relevant part:

School officials may impose limitations on student participation in the regular instructional program where there is evidence that inappropriate dress causes disruption in the classroom, and the lack of cleanliness constitutes a health or safety hazard or disruption of the education program. The following is considered inappropriate for school:

- a) Clothing displaying or imprinted with nudity, vulgarity, obscenity, profanity, double entendre pictures or slogans (including those related to alcohol, drugs and tobacco), or portraying racial, ethnic, or religious stereotyping.

14. In addition to the Dress Code, on March 6, 2001, the Board adopted a policy concerning racial harassment (the "Harassment Policy," a copy of which is annexed as Exhibit B hereto). The Harassment Policy states, in relevant part:

District employees and students shall not at school, on school property or at school activities wear or have in their possession any written material, either printed or in their own handwriting, that is racially divisive or creates ill will or hatred. (Examples: clothing, articles, material, publications or any item that denotes Ku Klux Klan, Arayan [sic] Nation - White Supremacy, Black Power, Confederate flags or articles, Neo-Nazi or any other "hate" group. This list is not intended to be all inclusive.)

THE T-SHIRT

15. Tom, Brian, and Matthew are fans of Jeff Foxworthy, whose first album, "You Might Be A Redneck If...", on information and belief, sold more copies than any other comedy album in history. In his routine, Mr. Foxworthy makes fun of himself and others like him for enjoying country music, having a southern accent, and driving a pickup truck – which Mr. Foxworthy, on information and belief, views as the attributes of a redneck.

16. Mr. Foxworthy is particularly popular in areas that, like Warren County, comprise primarily agricultural or undeveloped land.

17. On June 10, 2001, Mr. Foxworthy and several other country entertainers performed before President George W. Bush, at the President's invitation. This evidences the fact that Mr. Foxworthy's humor is neither divisive nor creates ill will, but is part of Americana.

18. In appreciation of Mr. Foxworthy's comedy, Tom, Brian, and Matthew each bought an identical T-shirt in a Wal-Mart store bearing a Foxworthy joke (the "T-shirt"), as follows:

Top 10 Reasons you might be a Redneck Sports Fan if . . .

10. You've ever been shirtless at a freezing football game.
9. Your carpet used to be part of a football field.
8. Your basketball hoop used to be a fishing net.
7. There's a roll of duct tape in your golf bag.
8. You know the Hooter's menu by heart.
9. Your mama is banned from the front row at wrestling matches.
10. Your bowling team has it's own fight song.
11. You think the "Bud Bowl" is real.
12. You wear a baseball cap to bed.
13. You've ever told your bookie "I was just kidding".

14. Each of the three plaintiffs wore the T-shirt to his respective school multiple times during the school year of 2000-2001. No one in either the High School's or the Middle School's administration ever objected to or even remarked on the T-shirt's content before March 22, 2001.

15. On information and belief, Wal-Mart markets itself as a family-friendly store, and refuses to sell vulgar or racially divisive or bigoted products. On information and belief, Wal-Mart has sold a large quantity of the T-shirt without any complaint that it is hostile or harassing toward any "racial, ethnic or religious" group.

16. On information and belief, Jeff Foxworthy has made and sold millions of albums using the term “redneck,” and has repeatedly used that term on broadcast media, without any complaint that it is hostile or harassing toward any “racial, ethnic or religious” group.

THE SUSPENSION

22. On March 22, 2001, Tom wore his “Redneck Sports Fan” T-shirt to school, as he had previously done on various days throughout the year. No one remarked on the T-shirt until the last period of the day. At that time, a security guard, Neil Corley, approached Tom and instructed him to go to the office of Vice Principal Griffith. Tom complied with that instruction.

23. Mr. Corley’s report (a copy of which is annexed as Exhibit C hereto) alleged that, “Tommy said something to the effect, ‘I’ve been waiting all day for someone to notice.’” In fact, Tom had said, “This is the last period of the day. I’ve been walking around all day and now you’ve noticed.”

24. The vice principal, Mr. Griffith, told Tom that his shirt was “offensive” and violated the Dress Code because of the alleged racial connotations that he believed were associated with the word “Redneck.” Specifically, Mr. Griffith stated that “redneck” is slang for a violent, bigoted person. He did not assert that anything on the T-shirt portrayed “racial, ethnic or religious stereotyping.” Mr. Griffith instructed Tom to change his shirt or turn it inside-out. Mr. Griffith also informed Tom that, if he refused to remove the T-shirt, he would be suspended.

25. Tom respectfully declined to remove the T-shirt, explaining that he considered it acceptable under both the Dress Code and the Harassment Policy. Tom also stated that he would appeal his suspension.

26. Mr. Griffith gave Tom an out-of-school suspension of three days. A discipline report (a copy of which is annexed as Exhibit D hereto) concerning the incident describes Tom's conduct as "insubordinate," and explains that "Tom refused to take off offensive shirt." The report cites the Dress Code only, and does not even mention the Harassment Policy.

27. On information and belief, other administrators participated in the decision to suspend Tom, including Dr. Godett, the High School principal, Mr. Chalupa, the High School's other vice principal, and Mr. Merluzzi, the superintendent.

THE APPEAL

28. On March 26, 2001, Tom submitted a formal appeal to the Board (a copy of which is annexed as Exhibit E hereto).

29. The Board upheld Tom's suspension. In a letter to Tom's parents dated April 20, 2001 (a copy of which is annexed as Exhibit F hereto), the Board explained that its decision was based on Tom's "insubordination in failing to follow the school's dress code." The letter did not refer to the Harassment Policy.

30. The letter further stated that the Board based its decision in part on the conclusion that Tom “intended his shirt to convey a message,” ignoring the fact that any T-shirt with writing on it must, by definition, be worn to convey the writing as a message, even if only a joke.

31. In a willful effort to disparage Tom publicly, the Board arranged to publicize its decision to uphold Tom’s suspension and to publicly and falsely label Tom as a racist before even communicating to Tom and his family its decision. Accordingly, the Board mailed the letter upholding the suspension to Mr. and Mrs. Sypniewski by United States mail, while simultaneously issuing a press release by facsimile to local newspapers (a copy of which is annexed as Exhibit G hereto). As a result, the Sypniewski family first learned of the Board’s decision when reporters contacted them for comment. Only on the following day did they receive the Board’s letter.

32. In a willful endeavor to punish Tom for defending his constitutional rights, the press release issued by the Board provided an altogether different set of findings. These findings suggested an unspecified relationship between the T-shirt and events that caused the Board to adopt the Harassment Policy, although none of those events involved Tom or the wearing of the T-shirt.

33. To that end, the Board included with its press release a “Chronology of Events Leading Up to the Adoption of the Racial Harassment or Intimidation Policy of the Warren Hills Regional Board of Education,” and it placed Tom within that “climate of racial harassment and intimidation” by stating that, “because of the history of racial intimidation, this conduct will not be tolerated.” It thus publicly and falsely equated Tom’s wearing the T-shirt with “racial intimidation.”

34. The press release concluded that, by wearing the Foxworthy T-shirt, Tom “was attempting to portray a message of racial stereotyping.” It thus publicly and falsely stated that Tom had engaged in racist conduct.

35. The Board’s press release publicly and falsely stated that Tom had said that he had been “waiting all day for someone to notice” the message displayed on his T-shirt.

36. The Board’s reasoning demonstrated its recognition that the T-shirt did not violate either the Dress Code or the Harassment Policy as written. Instead, the Board found a violation only by interpreting the Dress Code as affected by “the background and context” of the Harassment Policy.

CONSEQUENCES OF THE SUSPENSION

37. Because of his suspension, and from the date of that suspension until his graduation, Tom was no longer considered a student in good standing at this High School. While seniors with a grade of 93% or higher in any class may graduate without sitting for final examinations in that class, Tom—who has a grade of 97% and 100% in two of his classes—had to take final examinations in *all* classes.

38. On information and belief, on May 30, 2001, a member of the High School’s administration instructed Tom’s teachers that Tom must take all final examinations. This action was purely retaliatory.

39. As another consequence of Tom’s suspension, the defendants revoked his parking space in the High School. He was thus required to walk to the High School after dropping off Brian at the Middle School and parking his car at a friend’s house.

HARASSMENT OF TOM

40. As a result of the Board’s pronouncements to the press, the Sypniewski family has been subjected to hateful comments and, ironically, to ethnic/racial harassment. For example, one neighbor of the Sypniewski family falsely accused Tom of being a gang leader, due to the Board’s pronouncements.

41. A few days after the Board announced to the press its decision to uphold Tom’s suspension, Tom received an anonymous letter in the mail. The letter said only: “YOU STUPID POLLACK [*sic*].”

42. The misapprehension that Tom is part of a racist group—and the racism expressed toward him—can be traced directly to the connection that the Board drew in its press release between its findings concerning Tom’s T-shirt and the “Chronology of Events.”

UNEVEN AND ARBITRARY ENFORCEMENT OF THE DRESS CODE AND HARASSMENT POLICY

43. Neither the Dress Code nor the Harassment Policy has been enforced in a consistent manner. For example, on the day after Tom was disciplined for wearing the T-shirt, Brian wore the identical T-shirt to the Middle School. The Vice Principal of the Middle School, Robert

Griffin, discussed this matter with Mr. Merluzzi, who, on that occasion, concluded that the T-shirt was not offensive, and therefore that it did not violate the Dress Code.

44. Unable to explain how the T-shirt could be offensive on one day but inoffensive the next, the Board retreated, when this irreconcilable inconsistency was brought to its attention, to threatening that it would discipline Brian if he wore the T-shirt again.

45. In the weeks since Tom was suspended, students have worn T-shirts to school bearing messages that literally violate the Dress Code's prohibition on "double entendre pictures or slogans (including those related to alcohol, drugs and tobacco)" or its prohibition on "religious stereotyping." None of the students wearing these T-shirts was apprehended or disciplined in any way.

The T-shirts include the following messages, among others:

- i. When in doubt, pull it out – literally violating the Dress Code's prohibition on "double entendre pictures or slogans."
- ii. Budweiser – literally violating the Dress Code's prohibition on "double entendre pictures or slogans (including those related to alcohol, drugs and tobacco)."
- iii. A crucifix within a "PROHIBITED" road sign – literally violating the Dress Code's prohibition on "religious stereotyping" and the Harassment Policy's prohibition on written material that "creates ill will or hatred."
- iv. Malcolm X – literally violating the Dress Code's prohibition on "racial stereotyping" and, under one interpretation, the Harassment Policy's prohibition on written material that is "racially divisive."

v. A Confederate flag – explicitly prohibited by the Harassment Policy.

46. Another example of the arbitrary and subjective nature of enforcement is the inconsistent treatment of a bumper sticker on a student car that read “Discourage inbreeding—Ban Country music.” Mr. Chalupa stated that this message was not offensive, and therefore permissible. Only days later, two other security guards stated that they did find the sticker offensive, and forced the owner of the car to remove it.

COUNT I

FEDERAL CONSTITUTIONAL VIOLATIONS THROUGH THE DRESS CODE

47. Plaintiffs repeat and reallege, as fully as if here set forth at length, the allegations contained in paragraphs 1 through __ of this complaint.

48. The Dress Code is unconstitutional on its face to the extent that it prohibits clothing “portraying racial, ethnic, or religious stereotyping” without requiring evidence that the particular message being prohibited “causes disruption in the classroom.”

49. Moreover, the Dress Code is unconstitutionally overbroad, as it could be applied to cover a large number of communications that are constitutionally protected, such as “Black is Beautiful,” “When Irish Eyes Are Smiling,” or “Jesus—Tougher Than Nails.”

50. In addition, the Dress Code is unconstitutionally vague, as it does not give notice of what constitutes “stereotyping.” The vagueness of the Dress Code is evidenced by its uneven enforcement by various school employees and administrators on the basis of what might be “offensive.”

51. Finally, the Dress Code’s prohibition—which does not rest on any evidence that a particular message materially interferes with the operation of the school—amounts to a prior restraint, and on its face violates the First and Fourteenth Amendments to the United States Constitution.

52. In upholding Tom’s suspension, the Board Defendants stated that the T-shirt violated the Dress Code by “portraying racial, ethnic, or religious stereotyping.”

53. The defendants’ actions violated Tom’s free speech rights under the first and fourteenth amendment, and pose an imminent threat to the rights of Brian and Matthew. Plaintiffs have suffered damages as a consequence of the defendants’ actions, including injury to their reputation and emotional distress.

54. By reason of the foregoing, plaintiffs are entitled to a judgment against defendants that (i) declares that the Dress Code is unconstitutional and invalid, (ii) preliminarily and permanently enjoins defendants from enforcing the Dress Code as written, (iii) requires defendants to rescind Tom’s suspension and to remove any mention of it from his student personnel file, and (iv) awards plaintiffs their actual damages in an amount to be determined at trial, including, pursuant to 42 U.S.C. § 1988, their reasonable attorneys’ fees.

COUNT II

FEDERAL CONSTITUTIONAL VIOLATIONS THROUGH THE HARASSMENT POLICY

55. Plaintiffs repeat and reallege, as fully as if here set forth at length, the allegations contained in paragraphs 1 through __ of this complaint.

56. The Harassment Policy is unconstitutional on its face to the extent that it prohibits “written material . . . that is racially divisive or creates ill will or hatred.” Such a content- and viewpoint-based prohibition violates, on its face, the First and Fourteenth Amendments to the United States Constitution.

57. Moreover, the Harassment Policy is unconstitutionally overbroad, as it could be applied to cover a large number of communications that are constitutionally protected. *Any* message could evoke “ill will” in *someone*.

58. In addition, the Harassment Policy is unconstitutionally vague, as it does not give notice of what is considered “racially divisive” or likely to create “ill will or hatred.” The vagueness of the Harassment Policy is evidenced by its uneven enforcement by various school employees and administrators on the basis of what might be “offensive.”

59. Finally, the Harassment Policy’s prohibition—which does not rest on any evidence that a particular message materially interferes with the operation of the school—amounts to a prior

restraint, and on its face violates the First and Fourteenth Amendments to the United States Constitution.

60. In upholding Tom's suspension, the Board Defendants cited the Harassment Policy, although they did not conclude that the Tshirt violated that policy. In addition, the timing of the suspension – less than two weeks after the Harassment Policy was adopted, rather than on one of the multiple previous occasions when Tom had worn the Tshirt while the Dress Code was in effect – implicates the Harassment Policy in the Board Defendants' decision. Finally, if the Dress Code is declared facially unconstitutional, the Harassment Policy could be used as an alternative justification for arbitrary disciplinary decisions.

61. The defendants' actions violated Tom's free speech rights under the first and fourteenth amendment, and pose an imminent threat to the rights of Brian and Matthew. Plaintiffs have suffered damages as a consequence of the defendants' actions, including injury to their reputations and emotional distress.

62. By reason of the foregoing, plaintiffs are entitled to a judgment against defendants that (i) declares that the Harassment Policy is unconstitutional and invalid, (ii) preliminarily and permanently enjoins defendants from enforcing the Harassment Policy as written, (iii) requires defendants to rescind Tom's suspension and to remove any mention of it from his student personnel file, and (iv) awards plaintiffs their actual damages in an amount to be determined at trial, including, pursuant to 42 U.S.C. § 1988, their reasonable attorneys' fees.

COUNT III

FEDERAL CONSTITUTIONAL VIOLATIONS THROUGH APPLICATION OF THE DRESS CODE AND THE HARASSMENT POLICY

63. Plaintiffs repeat and reallege, as fully as if here set forth at length, the allegations contained in paragraphs 1 through ___ of this complaint.

64. The Dress Code and the Harassment Policy are unconstitutional as applied to the plaintiffs. Specifically, Tom was suspended for wearing the T-shirt even though there was *no* evidence that displaying the word *redneck* would materially interfere with the requirements of appropriate discipline in the operation of the school. The Board adopted the Harassment Policy on the basis of generalized findings concerning racial incidents that it asserted had taken place in the High School, but it made no specified findings concerning the T-shirt. Instead, Tom was suspended for wearing the T-shirt simply because Mr. Griffith found it “offensive.”

65. Nor was there *any* warning that the word “redneck” was considered “racial, ethnic, or religious stereotyping.” Indeed, all three plaintiffs had worn the identical shirt to school multiple times throughout the school year without being told that it was inappropriate in any way.

66. Moreover, Tom’s suspension was not justified by the Board’s own policies. There was no finding that the T-shirt caused “disruption in the classroom,” that it was “racially divisive,” or that it created “ill will or hatred.” There was not even a finding that the word *redneck* portrayed

“racial, ethnic, or religious stereotyping.” Thus, the Board’s findings did not establish that the T-shirt violated either the Dress Code or the Harassment Policy – and, in fact, the T-shirt violated neither.

67. By taking such arbitrary and abrupt action, the defendants violated Tom’s constitutional right to self-expression. The Board’s statements also pose an imminent threat to the rights of Brian and Matthew.

68. By reason of the foregoing, plaintiffs are entitled to a judgment against defendants that (i) declares that the Dress Code and Harassment Policy are unconstitutional and invalid as applied to the plaintiffs’ T-shirt, (ii) preliminarily and permanently enjoins defendants from enforcing the Dress Code and Harassment Policy as against the plaintiffs’ T-shirt, (iii) requires defendants to rescind Tom’s suspension and to remove any mention of it from his student personnel file, and (iv) awards plaintiffs their actual damages in an amount to be determined at trial, including, pursuant to 42 U.S.C. § 1988, their reasonable attorneys’ fees.

69. The defendants disregarded clearly established law that made Tom’s suspension unconstitutional, without, on information and belief, obtaining any legal opinion that a decision to suspend Tom was constitutionally authorized. Thus, the defendants’ deprivation of Tom’s free speech rights was malicious, willful, and/or recklessly indifferent to his rights. Accordingly, Tom is entitled to an award of punitive damages.

COUNT IV

VIOLATION OF THE NEW JERSEY CONSTITUTION

70. Plaintiffs repeat and reallege, as fully as if here set forth at length, the allegations contained in paragraphs 1 through ___ of this complaint.

71. The New Jersey Constitution states, in relevant part:

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.

N.J. Const. art. I, § 6.

72. The Dress Code and the Harassment Policy, both facially and as applied to the plaintiffs' T-shirt, violate this provision by restraining and abridging students' freedom to "publish [their] sentiments on all subjects."

73. The defendants' actions in suspending Tom violated his rights under the New Jersey Constitution. The Board's statements also pose an imminent threat to the rights of Brian and Matthew.

74. By reason of the foregoing, plaintiffs are entitled to a judgment against defendants that (i) declares that the Dress Code and Harassment Policy violate the New Jersey Constitution, both facially and as applied to plaintiffs, (ii) preliminarily and permanently enjoins defendants from enforcing the Dress Code and Harassment Policy, (iii) requires defendants to rescind Tom's suspension and to remove any mention of it from his student personnel file, and (iv) awards plaintiffs their actual damages in an amount to be determined at trial, including, pursuant to NJ ST 59:9-5, their reasonable attorneys' fees.

COUNT V

DEFAMATION

75. Plaintiffs repeat and reallege, as fully as if here set forth at length, the allegations contained in paragraphs 1 through ___ of this complaint.

76. Mr. Momary and Mrs. Fallen were not in attendance at the meeting where the Board voted to uphold Tom's suspension, and plaintiffs do not know to what extent, if any, they were involved in the press release.

77. On April 20, 2001, the Board Defendants issued a press release referring to "the student." The Board Defendants knew, or should have known, that this reference clearly identified Thomas Sypniewski, Jr., because, among other reasons, (i) Tom's suspension was well known within the High School; (ii) Washington, the town in which the plaintiffs live and in which the High School is located, is a relatively small and tight-knit town in which events such as Tom's suspension are widely known; and (iii) several articles had appeared in local newspapers naming Tom and discussing his suspension and appeal.

78. The press release stated, in relevant part:

Moreover, the statement by the student indicating he was intending to be noticed corroborates the fact that he was attempting to portray a message of racial stereotyping.

Thus, the Board Defendants falsely and publicly characterized Tom as having and communicating racist views.

79. The press release also drew a connection between the "Chronology of Events" and the decision to uphold Tom's suspension. It thus communicated to the public the false and defamatory

message that Tom, by wearing the T-shirt, was supporting white supremacist demonstrations in the High School.

80. The press release injured Tom's reputation and subjected him to a loss of the good will of his community. As a direct result of this press release, members of the community have called Tom a gang leader and a "stupid Pollack."

81. By reason of the foregoing, plaintiffs are entitled to a judgment against the Board Defendants awarding plaintiffs their actual damages in an amount to be determined at trial, including their reasonable attorneys' fees, pursuant to N.J. STAT. ANN. § 59:9-5 (West 2001).

82. The Board Defendants' conduct, including the decision to release their findings to the local press before notifying the Sypniewski family of their decision demonstrates that the defamation was malicious, willful, and/or recklessly indifferent to Tom's rights. Accordingly, Tom is entitled to an award of punitive damages.

COUNT VI

FALSE LIGHT INVASION OF PRIVACY

83. Plaintiffs repeat and reallege, as fully as if here set forth at length, the allegations contained in paragraphs 1 through __ of this complaint.

84. The press release was unreasonably and offensively intrusive to the average reasonable person, in that it portrayed Tom as a racist and as a supporter of white supremacists.

85. By reason of the foregoing, plaintiffs are entitled to a judgment against the Board Defendants awarding plaintiffs their actual damages, including, pursuant to NJ ST 59:9-5, their reasonable attorneys' fees.

86. The Board Defendants' conduct, including the decision to release their findings to the local press before notifying the Sypniewskis demonstrates that the defamation was malicious, willful, and/or recklessly indifferent to Tom's rights. Accordingly, Tom is entitled to an award of punitive damages.

WHEREFORE, plaintiffs demand judgment as follows:

- i. A declaration that the portion of the Dress Code that prohibits clothing “portraying racial, ethnic, or religious stereotyping” is facially invalid under both the United States Constitution and the New Jersey Constitution;
- ii. A declaration that the portion of the Harassment Policy that prohibits “written material...that is racially divisive or creates ill will or hatred” is facially invalid under both the United States Constitution and the New Jersey Constitution;
- iii. A declaration that the plaintiffs’ T-shirt is protected speech under both the United States Constitution and the New Jersey Constitution;
- iv. A preliminary and permanent injunction enjoining defendants from enforcing the Dress Code and Harassment Policy as currently written;
- v. A preliminary and permanent injunction enjoining defendants from enforcing the Dress Code and Harassment Policy as against the plaintiffs’ T-shirt,
- vi. An injunction requiring defendants to rescind Tom’s suspension and to remove any mention of it from his student personnel file;
- vii. Damages, both compensatory and punitive, in an amount to be determined at trial;
- viii. Interest on any damages award;

- ix. Attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and any other applicable authority; and
- x. Such other relief as is just and appropriate.

Dated: June 25, 2001

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