

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

I.B., by her mother and next friend Holly)	
Budreau,)	
)	
Plaintiff,)	
)	
v.)	No. 1:21-cv-01170
)	
MONROE CENTRAL SCHOOL)	
CORPORATION; ADRIAN MOULTON,)	
in his official capacity as Superintendent of)	
Monroe Central School Corporation and in)	
his individual capacity; and DAVID)	
REITHERFORD, in his official capacity as)	JURY TRIAL DEMANDED
Principal of Monroe Jr.-Sr. High School and)	
in his individual capacity,)	

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND DAMAGES**

Introductory Statement

1. Until recently, I.B. was a student at Monroe Jr.-Sr. High School, a school operated by the Monroe Central School Corporation. During her tenure at Monroe Jr.-Sr. High School, I.B. was repeatedly and extensively exposed to other students’ use of language—including the use of the “n-word”—that she considers to be offensive, inappropriate, and racist. Even though she is white, other students have used the “n-word” and other language to bully her, presumably because she considers herself to be an ally to persons of color and she supports the Black Lives Matter movement and racial justice. After school administrators failed to meaningfully intervene when I.B. and her family reported this bullying activity, I.B. created, on her own time and using her own electronic device, a nine-second video using the social medial platform TikTok. In this video, she superimposed writing stating “posing

as people at my school who have said the n word” over her “posing” to emulate still images of three students at her school who had used the “n-word.”

2. I.B.’s video was completely truthful and accurate, and the response by school administrators was therefore shocking: rather than attempting to meaningfully address its students’ use of racist language, administrators suspended I.B. for *sharing* the fact that several of her fellow students used racist language. This suspension violated the First Amendment to the United States Constitution, and all defendants are liable for this constitutional violation. I.B. is entitled to an injunction requiring that her suspension be expunged and/or rescinded, and is also entitled to her damages.

Jurisdiction, Venue, and Cause of Action

3. The Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
5. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
6. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

7. I.B. are the initials of a minor resident of Randolph County, Indiana. She brings this action by her mother and next friend, Holly Budreau.
8. Monroe Central School Corporation is a public school corporation that operates multiple schools in Randolph County, Indiana.
9. Adrian Moulton is the duly appointed Superintendent of Monroe Central School Corporation. He is sued in his official and individual capacities.

10. David Retherford is the duly appointed Principal of Monroe Jr.-Sr. High School, one of the schools operated by Monroe Central School Corporation. He is sued in his official and individual capacities.

Factual Allegations

11. Until recently, I.B. was a student at Monroe Jr.-Sr. High School. She is currently fourteen years old and is a freshman in high school.
12. I.B. has frequently observed persons in her community, including several students at Monroe Jr.-Sr. High School, use language that she considers to be offensive, inappropriate, and racist. This includes, but is not limited to, the use of the “n-word.”
13. I.B. has observed students with whom she attended Monroe Jr.-Sr. High School use the “n-word” in text messages and other written messages as well as in videos that either have been posted online or have been shared amongst the student body. I.B. has also observed other students use the “n-word” during in-person conversations, both in school and outside of school. Other students have directed this word toward I.B., apparently as an insult and/or as a form of bullying.
14. I.B. is white, although she considers herself to be an ally to persons of color and she publicly supports the Black Lives Matter movement and racial justice. I.B. and her family assume that the use of racist language directed toward her resulted from her support for racial justice.
15. I.B. possessed an account through TikTok, a social media platform that allows users to post short videos that may be viewed by other persons. Over the summer of 2020, many TikTok users were participating in a so-called “pose challenge,” wherein they would post videos of themselves posing like various celebrities or other persons and would intersperse the

video with still images of the persons that they were attempting to emulate.

16. In July 2020, I.B. therefore posted a short video to TikTok. In the video, she superimposed the following language: “posing as people at my school who have said the n word.” She then struck three poses emulating three different students at Monroe Jr.-Sr. High School who she has observed using the “n-word.” Interspersed between each “pose” was a still image of the student that she was emulating.
17. The entire TikTok video is nine seconds in length. I.B. created and posted the video on her own time, off of school grounds, and using her own electronic device.
18. In creating and posting the video, I.B. felt that it was important to share the extent to and ease with which students at her school used racist and highly inappropriate language. She felt that this was an important message to share in part because of the failure of school administrators to meaningfully condemn the use of this language or to teach its students that the language they were using was racist and highly inappropriate. She also felt that the message was particularly important to share given the nationwide protests that had occurred in the wake of George Floyd’s murder in Minneapolis.
19. When I.B. returned to school for the 2020-21 school year, which began in August 2020, other students at Monroe Jr.-Sr. High School again began directing racist and other inappropriate language towards I.B. In fact, several students launched a coordinated social media campaign against I.B. in which they each looked directly into a camera and stated, “Fuck [I.B.], she’s a n****r.”
20. I.B. and her family reported students’ use of the “n-word” to administrators within the Monroe Central School Corporation and provided copies of, among other things, multiple videos in which other students bullied I.B. by looking directly into the camera and stating,

“Fuck [I.B.],” she’s a n****r.” They were informed by school administrators, however, that the school could not take disciplinary action against these students insofar as the speech occurred off of school grounds.

21. After I.B. and her family reported students’ use of the “n-word” to school administrators, another student or parent provided a copy of I.B.’s nine-second TikTok video to administrators.
22. Given the bullying that she was experiencing at school and given I.B.’s family’s understanding that the school was investigating this bullying, I.B. remained home from school on August 24th and August 25th of 2020. On August 25th or August 26th, Principal David Retherford contacted I.B.’s mother by telephone. During this conversation, he explained that I.B. was being suspended for two days for posting the nine-second TikTok video in which she truthfully identified other students whom she had observed using the “n-word.” Principal Retherford further explained that I.B.’s suspension would retroactively take place on August 24th and August 25th.
23. During this conversation, Principal Retherford indicated that I.B. was being suspended because her video constituted “slander.” In reality, it did not constitute slander as it was completely truthful and accurate.
24. Principal Retherford subsequently provided I.B. and her family with a formal “Notice of Out of School Suspension.” This Notice provides the following explanation for I.B.’s suspension:

[I.B.] posted a TicToc [*sic*] video with an encryption that says “posing as people at my school who have said the n word” and then screencasted multiple students’ images into the video in an effort to call them out. It is not her role to “police” other students’ speech. As a result of her posted video, a disruption to the school environment has occurred. Action: 2 days of OSS [out-of-school suspension] on 8-24 and 8-25-20.

A true and correct copy of this “Notice of Out of School Suspension” is attached and incorporated herein as Exhibit 1.

25. After Principal Retherford informed I.B. and her family of I.B.’s suspension, I.B.’s mother contacted Superintendent Adrian Moulton in order to object to the disciplinary action taken against I.B. and to insist that he intervene and overturn Principal Retherford’s decision. Superintendent Moulton initially informed I.B.’s mother that he had participated in the investigation that resulted in I.B.’s suspension and had participated in the decision to suspend her. He subsequently informed I.B.’s mother that he did not participate in the investigation itself although he supported the decision to suspend I.B. In any event, both Principal Retherford and Superintendent Moulton were personally involved in the decision to suspend I.B.
26. On information and belief, Superintendent Moulton and Principal Retherford were the final decisionmakers for Monroe Central School Corporation and their decision to suspend I.B. represents a decision for which the corporation is liable.
27. In reality, I.B.’s expressive activity did not cause a substantial disruption to the educational environment. Indeed, even if any such disruption had occurred, it resulted not from I.B.’s speech but from other students’ use of racist language.
28. Even before I.B. posted her TikTok video, she was the subject of significant verbal bullying from other students at her school, in part because of her political views and her outspoken support for the Black Lives Matter movement. This bullying escalated following her suspension, and I.B. understandably felt that her school was refusing to protect her from abuse from her fellow students. She became extremely depressed and her grades suffered, and she experienced other emotional harm and damages.

29. Ultimately, I.B. and her family felt that I.B. would be happier if she transferred to another school, and she has since transferred to another school district.
30. I.B. intends to attend college. She would like to ensure that the disciplinary action taken against her is expunged from her record and/or rescinded by her former school.
31. At all times, the defendants have acted or refused to act under color of state law.
32. As a result of the actions or inactions of the defendants, I.B. is suffering irreparable harm for which there is no adequate remedy at law.

Legal Claim

33. I.B.'s suspension for truthful out-of-school speech violates the First Amendment to the United States Constitution.

Jury Trial Demand

34. The plaintiff demands a trial by jury on all issues so triable.

Request for Relief

WHEREFORE, the plaintiff respectfully requests that this Court:

1. Accept jurisdiction of this cause and set it for hearing at the earliest opportunity.
2. Declare that the defendants have violated the rights of the plaintiff for the reason described immediately above.
3. Issue a permanent injunction requiring the defendants to expunge and/or rescind the disciplinary action taken against the plaintiff.
4. Award the plaintiff her damages.
5. Award the plaintiff her costs and attorneys' fees pursuant to 42 U.S.C. § 1988.
6. Award all other proper relief.

Gavin M. Rose
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059
fax: 317/635-4105
grose@aclu-in.org

Attorney for the plaintiff

Monroe Central Jr.-Sr. High School

1878 North 1000 West
Parker City, Indiana 47368
765-468-7545 • 765-468-8878 FAX

FROM: David Retherford, Principal, Monroe Central Jr/Sr High School

August 26, 2020

NOTICE OF OUT OF SCHOOL SUSPENSION

Dear Parent(s)/Guardian(s) of [REDACTED] B [REDACTED]:

This notice is to inform you that your child was suspended from attendance at Monroe Central Jr/Sr High School for 2 school days beginning on **Monday, August 24, 2020**. This suspension includes participating in and/or attending extracurricular and school sponsored activities. This student should return to school at the beginning of the school day on **Wednesday, August 26, 2020**.

Prior to being suspended from school attendance, Mr. David Retherford, the High School Principal, provided this student a suspension meeting on the alleged misconduct, which included:

1. A written and an oral statement of the charge(s) against the student.
2. A summary of the evidence against the student.
3. An opportunity for the student to explain his conduct.

At this meeting, it was determined that this student:

1. in the following manner:

[REDACTED] posted a TicToc video with an encryption that says "posing as people at my school who have said the n word" and then screencasted multiple students' images into the video in an effort to call them out. It is not her role to "police" other students' speech. As a result of her posted video, a disruption to the school environment has occurred. Action: 2 days of OSS on 8-24 & 8-25-20.

2. Violated the following established, written student discipline rule(s):

Student Handbook as it addresses the disruption of the educational climate.

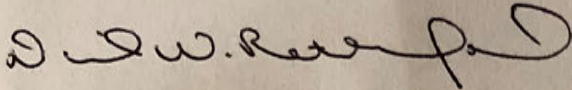
Should the student or parent/guardian fail to comply with the provisions for out-of-school suspensions, further court action may be initiated by the Prosecutor's office or, in appropriate cases, the school corporation.

Suspension from school attendance is a serious matter and we must have your assistance to assure that the conduct that led to this suspension will not occur again. If you wish to discuss the circumstances that required this suspension, please contact me at 765-468-7545 ext. 3316.

Please note that if additional facts surrounding this incident become known, which would warrant further discipline, including an expulsion, I may take further action of which you will be notified.

*I have advised the student and the student's parent(s) or guardian(s) of the above situation by means of: parent meeting and mail correspondence.

Signed,

A handwritten signature in dark ink, appearing to read "D. W. Retherford", with a stylized flourish at the end.

David Retherford
Principal
Monroe Central Jr/Sr High School