

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

M.H., a minor child, by her mother and)	
next friend, C.H.,)	
)	
Plaintiff,)	
)	
v.)	No. 3:18-cv-29
)	
NORTHEAST DUBOIS COUNTY SCHOOL)	
CORPORATION,)	
)	Jury Trial Requested
Defendant.)	

Complaint for Declaratory and Injunctive Relief and Damages

1. M.H. is a junior at Northeast Dubois High School, the Northeast Dubois County School Corporation’s high school. In the first semester of the 2017-2018 school year, she engaged in a series of expressive activities, including a school paper and internet posting that erroneously led the School Corporation to conclude that she was a threat to school safety. This has resulted in a decision, imposed without proper notice or the opportunity for a hearing before an impartial decisionmaker, that she is now indefinitely prohibited from being able to be on School Corporation grounds for any purpose, although she is allowed to continue in her education through distance learning via the internet. The actions of the School Corporation violate M.H.’s constitutional rights. Appropriate injunctive and declaratory relief should be issued and she should be awarded her damages.

Jurisdiction, venue, cause of action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. §§ 1331 and 1343.

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

Parties

6. M.H. is a minor child who is in the lawful custody of her mother, C.H., a resident of Indiana.
7. The Northeast Dubois County School Corporation is an Indiana school corporation located in Dubois, Indiana.

Factual allegations

8. M.H. is currently enrolled as a junior at Northeast Dubois High School.
9. M.H.'s parents are divorced and her mother is her legal custodian.
10. In the fall of 2017, during the first semester of the current school year, a presentation was made at the High School by Rachel's Challenge, an organization that works to reduce school violence led by the parents of a victim of the Columbine High School shooting.
11. The presentation inspired M.H, who has a history of being bullied, to write an essay in October of 2017 as to why she thought that the two students who perpetrated the Columbine High School shootings were also victims inasmuch as they were bullied prior to the shootings.

12. She gave the essay to her teacher who shared it with the Principal of the High School, as M.H.'s teacher was concerned about the essay.

13. M.H. maintains a Snapchat account that she uses to post images. Snapchat is a social media site where a user can share photos, video, texts and drawings. Whatever is sent disappears after a short period.

14. In November of 2017, M.H. posted on her Snapchat account the lyrics to the song "Pumped up Kicks," an extremely popular song by the band "Foster the People" that, among other things, spent eight consecutive weeks at number three on the *Billboard* Hot 100 chart in the United States. The song also received a Grammy Award nomination.

15. M.H. frequently posts lyrics in this manner to songs to which she is listening.

16. The song is about a young man fantasizing about shooting persons with his father's gun.

17. The author of the song has been quoted as saying that the song was designed to highlight teenage mental illness to prevent future acts of school violence.

18. M.H. posted the lyrics by using her personal phone and did not utilize any computer network or devices owned or operated by the Northeast Dubois County School Corporation.

19. Following the posting of the lyrics M.H. was summoned to the Principal's office on November 17, 2017, where she was held for approximately two hours and the Principal searched her book and locker, and made M.H. move her outer clothing to show that she was not carrying a weapon. She was not free to leave during this time.

20. The Principal asked M.H. if she had access to guns - which she does not.

21. All of this was extremely disturbing to M.H. who had done nothing wrong.
22. The Principal called C.H. and C.H. came to the school.
23. C.H. works a half hour away and after being called by the Principal, she travelled to the school and met initially with the Principal and the school counselor outside of M.H.'s presence.
24. C.H. was asked whether M.H. was in therapy and was asked if M.H. had access to weapons. She indicated that the family did not possess any weapons.
25. The Principal expressed concern that the paper that M.H. had written indicated that the students who were the shooters at Columbine were the real victims and C.H. noted that her daughter could not be punished for voicing her opinion.
26. C.H. was then escorted to M.H.'s location. M.H. was understandably upset and was in tears.
27. Law enforcement officers from the Dubois County Sheriff's Department were called by school personnel and were present when the Principal searched M.H. They were also present when C.H. spoke to the Principal and school counselor.
28. One of the officers questioned M.H. in her mother's presence with the conversation being recorded by an audio recorder. The officer asked M.H. if she had weapons or access to weapons and M.H. indicated that she did not.
29. This interrogation made M.H. even more upset.
30. This took place shortly before lunch on a Friday and because M.H. was so upset, C.H. received permission to take her home, which she did.

31. Many students at the High School were aware that police had come to question M.H. and rumors quickly spread, multiplying over the weekend, including a rumor that she had been arrested and led from the school in handcuffs.

32. Nevertheless, M.H. returned to school the following Monday, November 20.

33. However, shortly thereafter a false rumor spread through the school that M.H. had offered students money to pull a fire alarm and that she planned to shoot students as they exited the school.

34. Before Thanksgiving break the Principal suggested to M.H. that maybe everyone would be better off if she agreed to be educated remotely, away from the school, via the internet.

35. Rumors about M.H. increased over Thanksgiving break, and on the Monday after the 2017 Thanksgiving break C.H. went to the school and spoke with the Principal about the possibility of the remote, internet education for M.H.

36. M.H. is in the band and was interested in being able to continue to participate in extracurricular activities and to attend non-curricular events at school such as athletic events and prom.

37. The Principal assured C.H. that M.H. would be able to participate in band and other extracurricular and non-curricular activities at the High School; she would just take her classes remotely.

38. This was acceptable to M.H. and her mother and C.H. agreed that M.H. would begin the remote education immediately, which she did.

39. On December 2, 2017, there was a varsity and junior varsity basketball game at the High School.

40. M.H. attended to work the concessions for the junior varsity game and to play in the band during the varsity game.

41. While she was there, students, aware of the rumors about M.H., greeted her by using their hands to pantomime a gun. M.H. responded, mockingly, in kind.

42. Shortly after this M.H. posted a smiling picture of herself on Snapchat indicating that one day she would be famous. She posted this picture, which correlated to a Facebook posting, which referred to her singing, i.e. one day she would be famous because of her singing. This was posted through her telephone and did not use any equipment or networks owned or maintained by the School Corporation.

43. On December 5, 2017, while C.H. was not at home, an officer employed by the Dubois County Sheriff's Department appeared at her home and asked to look into M.H.'s room. M.H.'s 18-year old brother allowed him to do so. There was nothing untoward discovered.

44. In a letter dated December 7, 2017, and delivered by certified mail to C.H and M.H.'s home, the Principal stated that M.H.. was barred from school grounds because of "inappropriate comments and actions referencing a threat to school safety." The only exception noted is that she is allowed to go to the School Corporation's administration building to take any tests that must be proctored.

45. There is no time limit contained in the letter concerning her ban from school property and the letter did not afford C.H. or M.H. the opportunity to contest the decision to indefinitely ban M.H. from school grounds.

46. At no point has M.H. been offered a hearing before a neutral decisionmaker where she could appeal the decision to ban her from school property. Nor has anyone from the School Corporation ever specified in writing the reasons for its decision.

47. On December 13, 2017, M.H. took the first day of the ISTEP examination, a multi-day test. She was not allowed to go to the High School to take the ISTEP, but was required to take it in a conference room at the office of the Superintendent of the Northeast Dubois County School Corporation. She was the only student in the room and the officer who had been at her house on December 5 was present and observed her for the entire first day of the test.

48. C.H. did have an informal discussion with the Principal, the school counselor, and the Superintendent of the School Corporation on December 14, 2017, where the Principal noted that M.H. was being disciplined for not making good choices. This was not a hearing and did not result in any formal decision.

49. During this meeting, the Superintendent endorsed the ban imposed on M.H.

50. Students are aware that a determination has been made that M.H. is no longer allowed on school property. M.H. has had to inform the teacher leading the band and band members that she could no longer participate in this extracurricular activity, as she was no longer allowed on school grounds. Many persons at the school, both staff and students, are aware of the ban and are aware that the ban is because the School

Corporation in some way perceives M.H. as a threat. Members of the community are also aware of this.

51. Rumors about M.H.'s alleged threats to the High School have proliferated to such a great degree that when M.H. attended her church in Jasper, Indiana, congregants were aware of the rumors and spoke to her about them.

52. C.H. has considered transferring M.H. to another high school in another school corporation for the 2018-2019 school year. However, she assumes that she will have to disclose the fact that M.H. has been disciplined by being banned from the property of the Northeast Dubois High School Corporation. Moreover, there are students in that high school who are aware of M.H.'s ban from Northeast Dubois High School.

53. Because of the ban, M.H. was not able to participate in the High School's Christmas program that she was to perform in as a member of the band. She will not be able to attend prom or other non-curricular activities that are the essence of the high school experience.

54. M.H.'s younger siblings also attend schools within the Northeast Dubois County School Corporation. They have participated in, and will in the future participate in, school programs that M.H. would like to attend. However, given that the program take place on School Corporation property, she cannot attend.

55. M.H. feels trapped and this has caused her a great degree of emotional harm and injury.

56. At no point has M.H. ever made a true threat.

57. At all times defendant has acted and has refused to act under color of state law.

58. M.H. is being caused irreparable harm for which there is no adequate remedy at law.

Jury trial request

59. M.H. requests a trial by jury on all claims so triable.

Legal claims

60. The determination by the Northeast Dubois County School Corporation prohibiting M.H., a student at the Northeast Dubois High School, from entering school property because of the incorrect conclusion that she is a threat to school safety implicates interests protected by procedural due process and therefore implementing this ban without a notice or hearing violates the due process clause of the Fourteenth Amendment to the United States Constitution.

61. M.H.'s banishment from School Corporation property is the direct result of her expression protected by the First Amendment to the United States Constitution and the banishment therefore is unconstitutional.

62. M.H.'s banishment from School Corporation property is arbitrary and irrational and violates the due process clause of the Fourteenth Amendment.

Requested relief

WHEREFORE, M.H. requests that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. Enter a declaratory judgment that the actions of the defendant violated, and continue to violate, the United States Constitution for the reasons noted above.

3. Enter a preliminary injunction, later to be made permanent, lifting the ban on M.H. from entering property of the Northeast Dubois County School Corporation as set out in the letter of December 7, 2017 and requiring defendant to expunge all references in its records to the December 7, 2017 letter and the determinations expressed therein.
4. After a jury trial, award plaintiff her damages.
5. Award plaintiff her costs and reasonable attorneys' fees.
6. Award all other proper relief.

/s/ Kenneth J. Falk

Kenneth J. Falk
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/s/ Jan P. Mensz

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