

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

KATHERINE EVANS,

Case No:

Plaintiff,

v.

PETER BAYER, in his individual capacity

Defendant.

_____ /

COMPLAINT

COMES NOW, Plaintiff, KATHERINE EVANS, by and through undersigned counsel, and hereby files this complaint for damages, injunctive relief and declaratory relief against Defendant PETER BAYER for violation of her rights under the First and Fourteenth Amendments to the United States Constitution, and hereby alleges as follows:

Introduction

1. Katherine Evans, while a senior at Pembroke Pines Charter High School in 2007, was suspended for three days for engaging in protected off-campus speech. The suspension removed her from her critical senior year of Advanced Placement (“AP”) English class, stained her academic record and violated her First Amendment rights. Her only “offense” was to create a “Facebook” page that criticized one of her teachers as “the worst teacher she had ever had,” and solicited comments about that teacher. She also posted a photo of that teacher from a prior year’s school yearbook. After receiving three comments, all of which berated *her* and supported the teacher, Evans removed the page from Facebook.

2. The retaliatory and disciplinary acts taken by Defendant against Ms. Evans for the internet posting violated Evan's freedom of speech guaranteed by the First and Fourteenth Amendments. The unjustifiable three-day suspension cast a pall on Ms. Evans' academic record. Accordingly, Katherine Evans seeks declaratory and injunctive relief against Defendant Principal Peter Bayer, in his individual capacity, and asks this Court to order the redaction or expungement of her disciplinary record on this matter.

Jurisdiction

3. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for violation of her rights under the First and Fourteenth Amendments to the United States Constitution.

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and injunctive relief pursuant to Fed R. Civ. P. 65.

Parties

5. At all times material hereto, Plaintiff, KATHERINE EVANS, ("Evans") was a high school student in her senior year at Pembroke Pines Charter High School located in the City of Pembroke Pines, Florida.

6. At all time material hereto, Defendant, PETER BAYER ("Bayer") was the principal of Pembroke Pines Charter High School.

7. Plaintiff sues Defendant Bayer in his individual capacity.

Facts

8. In November 2007, Evans was a senior at Pembroke Pines Charter High School. Her AP English teacher was Sarah E. Phelps, who is not a party to this action.

9. During the evening of Friday November 9, 2007 [Veterans' Day weekend], after school hours and from her home computer, Evans posted on Facebook a photograph of Ms. Phelps, from a prior year's school yearbook. The posting sought to create a group to express students' opinions about the teacher. Evans only expressed her own opinion that Ms. Phelps was the "worst teacher" she had ever met, and invited **others** to "express their hatred." Evans used no profanities and stated no threats.

10. Evans' posting was, verbatim:

Ms. Sarah Phelps is the worst teacher I've ever met! To those select students who have had the displeasure of having Ms. Sarah Phelps, or simply knowing her and her insane antics: Here is the place to express *your feelings of hatred*.

Exhibit A (emphasis added).

11. In response, three postings appeared that supported the teacher, lauded Ms. Phelps and derided and debased Evans for creating the Facebook group. *See* Exhibit A.

12. The posting had been up for only two days, over the weekend, and was not seen by the teacher while it was on Facebook.

13. Plaintiff herself removed the posting from Facebook as soon as she was able to. Upon learning of Evan's posting on Facebook, Defendant Bayer suspended Evans for three days for the stated reasons of "Bullying / Cyber Bullying Harassment towards a staff member" and "Disruptive behavior." The suspension notice indicated that "Katie [Evans] had posted an inappropriate site regarding her teacher on Facebook. *See* Exhibit B.

15. Plaintiff's posting contained no threats of violence, veiled or explicit. Defendant only became aware of the posting after Plaintiff had removed it from Facebook. Although the posting did not disrupt school activities, Defendant's discipline of Ms. Evans forcibly removed

her from school for three days, removed her from her AP classes and forced her into the lesser-weighted honors classes.

16. Moreover, the posting gave rise to a spirited exchange of opinions by students who disagreed with Evans, who ultimately proved her wrong in her assessment of the teacher. The posting and its aftermath thereby accomplished one of the goals of the First Amendment: the free and unfettered exchange of ideas and opinions in the public arena.

17. Defendant's acts that are the subject of this complaint were taken under color of state law.

18. Defendant Bayer's three-day suspension of Evans for expressing her opinions and soliciting the opinions of others in off-campus activity and in a non-violent, non-threatening forum unjustifiably besmirched Plaintiff's academic record.

19. Plaintiff has no adequate remedy at law, because the denial of Plaintiff's Constitutional rights cannot be remedied through legal relief.

20. Unless enjoined by this Court, Defendant's suspension of Evans for three days will stand as part of her permanent school record, unjustifiably staining her academic reputation and good standing; removal of the suspension and any records relating to it is required to redress the violation of Evans' constitutional rights.

21. Plaintiff is therefore entitled to an order from this Court enjoining Defendant Bayer from maintaining any records relating to the Facebook posting and ordering Bayer to revoke, *nun pro tunc*, the three-day suspension.

CAUSE OF ACTION

22. Defendant Bayer's three-day suspension of Evans for expressing her opinions and soliciting the opinions of others in off-campus activity and in a non-violent, non-threatening public forum violated Evans' clearly established First Amendment right to freedom of speech.

23. The violation of Evans' constitutional rights may be redressed pursuant to 42 U.S.C. §1983.

Demand for Relief

WHEREFORE, Plaintiff, KATHERINE EVANS, respectfully requests this Court to:

- A. Assume jurisdiction of this matter.
- B. Declare that Defendant PETER BAYER'S action in suspending Plaintiff violated her First and Fourteenth Amendment rights.
- C. Enjoin Defendant PETER BAYER from maintaining any records relating to the suspension in Plaintiff's permanent school record and revoking, *nunc pro tunc*, the three-day suspension.
- D. Award Plaintiff nominal damages for the deprivation of her First Amendment and Fourteenth Amendment rights.
- E. Award Plaintiff her attorneys' fees and costs for bringing this action pursuant to 42 U.S.C. § 1988.
- F. Enter all other relief that the court deems just and proper.

Respectfully submitted by:



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Attorneys for Plaintiff



27 blocked 5 Check 11 blocked Send to

Profile edit Friends * Networks * IMAP *

Home account privacy logout

Ms. Sarah Phelps is the worst teacher I've ever met!

2008

Information

Group Info

Name: Ms. Sarah Phelps is the worst teacher I've ever met!
Type: Student Groups - Classes & Departments
Description: To those select students who have had the displeasure of having Ms. Sarah Phelps, or simply knowing her and her insane antics: Here is the place to express your feelings of hatred.

Contact Info

Office: Pembroke Pines Charter High School
Street: 17189 Sheridan Street
City/Town: Pembroke Pines, FL

Photos

No one has uploaded any photos.

Videos

No one has uploaded any videos.

Posted Items

No one has posted any items.

Discussion Board

There are no discussions.

Members



Join this Group

Reject Invitation

Share +

Related Groups

Mr. Cunningham is a fucking spartan
Just for Fun - Inside Jokes

I Went To Charter School.. Blitch.
Organizations - Religious Organizations

Classes of 2008 worldwide (High
School)

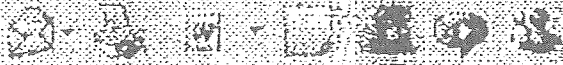
Student Groups - Classes & Departments

I Wish I Were Your Derivative So I
Could Lie Tangent To Your Curve!
Just for Fun - Facebook's Friends

I'm an honors kid. I procrastinate and
use sporadicities and don't do

PLAINTIFF'S
EXHIBIT

A

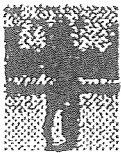


27 blocked Check My Links Send to

Members

This group has 3 members.

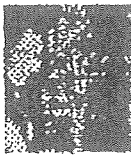
See All



Katie Evans



Fernando Yemal



Frances Velazquez

I am not a student and I am not a teacher and I use sparknotes and don't do homework
Student Group - Classes & Departments

Group Type

This is an open group. Anyone can join and invite others to join.

Admins

- Katie Evans (Pembroke Pines Charter) (creator)

The Wall

Displaying 3 wall posts.

See All



Alexia M. Andrews (FSU) wrote
at 3:26am

ok soon here's the deal.

i think that you created this group b/c phelps is the only teacher that won't give you a good grade for having your lip against his dress. she expects you to work, and yes her class might be crazy and she might do weird things but all these weird things help you remember what synecdoche is in your ENC1101 class almost 6 months later....

so quit bitching and just suck it up! not everything in life is easy....

by the way I LOVE PHILIPS!!!

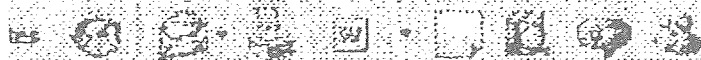
Mexxy's Report



Bianca Andrea Bazzani (FSU) wrote
at 3:21am

Seriously, was this group necessary, katie?
& putting up the school information, really?
You're only asking for trouble with this "group" of yours.

You may think she's a terrible teacher, but you could



ony > Z-blocked > Check > Autolink > Send to > Print

Message - Report



Florella Andrea Bazan (FSU) wrote
at 3:21pm

Seriously, was this group necessary, katie?
& putting up the school's information, really?
You're only asking for trouble with this "group" of
yours.

You may think she's a terrible teacher, but you could
never imagine how much she's taught me, anam, & all
her other students who are looking at this group with
disgust.

Message - Report



Anam Irmisa (Nova Southeastern University) wrote
at 1:17pm

wow katie,
the only reason i joined this group is tell you how
wrong you are.
ms.phelps is one of the most amazing teachers i've
ever had, and theres plenty of people who agree
with me.
whatever your reasons for hating her are, they're
probably very immature, and more importantly,
probably your own fault.
clearly, you cant handle a heavy workload, one
which requires REAL thinking, and if that is the case
you probably should not be taking AP classes.
so i would love to hear how you justify calling her
the "worst" teacher, besides the fact that you cant
suck up to her and get your A...?

Message - Report

Report Group

PEMBROKE PINES CHARTER HIGH SCHOOL

NOTICE OF SUSPENSION OF UP TO TEN DAYS

DATE: 11/15/07

STUDENT: Katherine Evans

ID [REDACTED] DOB 02/26/90

GRADE 12

RACE H

SEX F

Dear Parent or Guardian,

We regret to inform you that in accordance with School Board of Broward County Policy #5006: Katherine has been suspended for a period of 3 days. The reason for the suspension is as follows:

- Bullying / Cyber Bullying / Harassment towards a staff member
- Disruptive behavior

Katie posted an inappropriate site regarding her teacher on facebook.

Suspension from school days: 11/16/07 – 11/20/07

☐ Recommended For Expulsion.

☐ Pending Further Investigation A Recommendation For Expulsion May Be Forthcoming.

While on suspension a student may not attend any Pembroke Pines Charter School function or be on any school grounds. Students who are externally suspended and who attend alternatives to suspension programs are allowed to makeup classwork. Students who elect not to participate in alternatives to suspension programs will not be allowed to make up work. Classwork is due two days after the day of the student's return.

☐ With Prior Hearing (Student Conference and Parent In-School Conference)

A hearing was held pursuant to Policy 5006 during which time the student was advised of the alleged violation(s) and given an opportunity to present his/her version of the incident. At the conclusion of the hearing it was decided Board Policy was violated and the suspension was justified.

Without Prior Hearing (Student Conference)

Because of the nature of the alleged violation(s) or circumstance surrounding the violation(s) it was impossible to hold a hearing prior to the suspension.

This letter is to advise you concerning the nature of the allegation(s) and to inform you that a hearing concerning the allegation(s) has been set for _____ at _____

Time

Date

Address

to advise _____

Address

Name

concerning the nature of the allegation(s) as well as to permit him/her version of the incident. We trust that you will be able to attend the hearing with _____

Name

in order that we may work together in his/her best interests. If the above scheduled hearing date and /or time is not convenient for you please contact this office so that it may be rescheduled.

Phone Number _____

Should (name) _____ fail to appear for this hearing/conference we have no alternative but to extend the period of suspension to _____ days.

Your student will be expected to return to school on Wednesday, November 21, 2007

[Signature]
Steve Bruns, Behavior Specialist

[Signature]
Peter Bayer, Principal

☐

SRO Contact

Pembroke Pines Charter High School

ADMINISTRATION OFFICES- 17189 SHERIDAN STREET, PEMBROKE PINES, FL 33331

PLAINTIFF'S
EXHIBIT

B