

Grayson Barber (GB0034)
Grayson Barber L.L.C.

Edward Barocas (EB ____)
American Civil Liberties Union of New Jersey
P.O. Box 750
Newark, New Jersey 07101
(973) 642-2084
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RYAN DWYER, by and through his parents,)
Kevin Dwyer and Rosanne Dwyer,)
Plaintiff,)

vs.)

OCEANPORT SCHOOL DISTRICT,)
JOHN AMATO, individually and in his official)
capacity as Principal of Maple Place School,)
JAMES DIGIOVANNA, individually and in)
his official capacity as Superintendent of Schools)
for the Oceanport School District,)
MARY BULVANOSKI, individually and in her)
official capacity as a member and President of the)
Oceanport Board of Education,)
JOSEPH HENDERSON, individually and in his)
official capacity as a member and President of the)
Oceanport Board of Education,)
MARY SHARKEY, individually and in her official)
capacity as a member and Vice-President of the)
Oceanport Board of Education,)
DR. SERAFINA BANICH, individually and in her)
official capacity as a member of the Oceanport)
Board of Education, STEVEN BRISKEY,)
individually and in his official capacity as a member)
of the Oceanport Board of Education, LUCILLE)
CHAUMP, individually and in her official capacity)
as a member of the Oceanport Board of Education,)
RICK HARRISON, individually and in)
his official capacity as a member of the Oceanport)
Board of Education, ROBERT HUBER,)
individually and in his official capacity as a)
member of the Oceanport Board of Education,)

Hon.
Case No.
Civil Action

COMPLAINT

GERALYN HYLAND, individually and in her)
official capacity as a member of the Oceanport)
Board of Education, RICHARD MCKENNA,)
individually and in his official capacity as a)
member of the Oceanport Board of Education, and)
WILLIAM MCVITTY, individually and in his)
official capacity as a member of the Oceanport)
Board of Education.)
Defendants)

Plaintiff Ryan Dwyer, by and through his parents, Kevin Dwyer and Rosanne Dwyer, by way of complaint against defendants, hereby avers:

THE PARTIES

1. Plaintiff Ryan Dwyer (“Ryan”), a minor, was at all relevant times an eighth grade student at Maple Place School in the Oceanport School District. Ryan brings this action by and through his parents, Kevin Dwyer and Rosanne Dwyer.

2. Defendant Oceanport School District (the "District") is a public school district governed by a ten-person board of education (the "Board"), organized and existing pursuant to New Jersey law. The District at all relevant times acted under color of law.

3. Defendant John Amato is the Principal of Maple Place School, and employed by the District. Amato is empowered by the District, acting through its duly elected Board, to create and implement District policy. Amato at all times referred to herein acted under color of law. He is sued in his official and individual capacity.

4. Defendant James DiGiovanna is the Superintendent of the District. DiGiovanna and is empowered by the District, acting through the Board, to create and implement District policy. DiGiovanna at all times referred to herein acted under color of law. He is sued in his official and individual capacity.

5. Defendant Mary Bulvanoski was the President of the Board at all relevant times, and is still a member of the Board.

6. Defendant Joseph Henderson was a member of the Board at all relevant times, and is not President of the Board.

7. Defendant Mary Sharkey is Vice President of the Board.

8. Defendants Lucille Chaump, Rick Harrison, Robert Huber, William McVitty, and Richard McKenna are members of the Board.

9. Defendant Geralyn Hyland was a member of the Board until April 8, 2003.

10. Defendant Steven Briskey has been a member of the Board since May 2003.

11. Defendants acted under color of state law.

12. The last known addresses of the parties to this action are as follows:

Ryan Dwyer

Oceanport School District
Wolf Hill Avenue
Oceanport, NJ 07757

John K. Amato

James DiGiovanna

Mary Bulvanoski

Joseph A. Henderson, Jr.

Mary Sharkey

Dr. Serafina Banich

Steven Briskey

Lucille Chaump

Richard McKenna

Rick Harrison

Robert Huber

Geralyn Hyland

JURISDICTION

13. This is a suit for federal civil liberties violations, brought pursuant to 42 U.S.C. § 1983 and § 1988 and the First and Fourteenth Amendments to the United States Constitution, together with pendent state constitutional claims.

14. The Court has jurisdiction of this action under 28 U.S.C. § 1331, as an action arising under the Constitution of the United States, and 28 U.S.C. §1343(a)(3) to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States; and over plaintiff's pendent state law claims pursuant to 28 U.S.C. § 1367.

15. Venue is properly laid pursuant to 28 U.S.C. § 1391(b), in the District of New Jersey, because all parties reside or are located in this district, and the events giving rise to the claim occurred in this district.

SUBSTANTIVE ALLEGATIONS

16. On or about April 1, 2003, Ryan published an internet web site (the "Web Site") on servers provided by comcast.net, with whom Ryan's parents had privately contracted. The address of the Web Site was <http://www.mapleplace.20m.com>.

17. Ryan created the content of the Web Site at home entirely outside of school hours. Ryan never used school equipment or facilities to edit or access the Web Site.

18. The Web Site contained six individual pages: the home page, the "About" page, the "Favorite Links" page, the "What's New" page, the "Guest Book" page and the "Custom" page.

19. The home page of the Web Site bore the legend "Welcome to the Anti-Maple Place - Your Friendly Environment". The home page stated, among other things:

This page is dedicated to showing students why their school isn't what its cracked up to be. You may be shocked at what you find on this site.

The home page also stated: "THIS PAGE PROTECTED BY THE U.S. CONSTITUTION".

20. The "About" page of the Web Site contained opinions written by Ryan critical of his school, defendant Amato and a teacher, Mrs. Hirshfield. The home page also contained opinions praising two of the teachers in the school, and references to the First Amendment and the United States Constitution.

21. The "Favorite Links" page of the Web Site contained links to internet search engines, music groups, a site devoted to body piercing, the Web Site's Guestbook and sites devoted to the Constitutional rights of public school students.

22. The "What's New" page contained a copy of an article posted to the "Libertarian Rock" website entitled "Web page leads to student's suspension".

23. The "Guest Book" page contained an online form by which visitors to the Web Site could leave their names, e-mail addresses and comments. The page contained the following instructions:

Please sign my guestbook but NO PROFANITY AT ALL!!!!!! NO PROFANITY (thats curse words and bad words) and no threats to any teacher or person EVER. If you think it may be a bad word or it may be threatening DO NOT TYPE IT IN. Go to the links page to read the guestbook (suggestion by Brianna). Thank you.

The entries in the Guestbook were visible when a new entry was made or by a link on the "Favorite Links" page.

24. From April 1 to April 7, 2003, several visitors left comments in the Guestbook. The visitors' comments ranged from words of encouragement to Ryan to criticisms of the site to criticisms of the school and teachers. Indeed, some of the

visitors' comments were crude, sophomoric and offensive. The only comments left by Ryan, however, were comments announcing changes to the site, encouraging visitors to "tell all [their] friends" and a request to "keep the profanity out of the guestbook since profanity isn't protected by the first amendment."

25. At no time did Ryan make any threats or use profanity.

26. The Web Site was accessible to anyone on the Internet from April 1, 2003 to April 7, 2003. A true and correct copy of the Web Site as of April 7, 2003 (which includes comments and certain other materials contributed by individuals other than Ryan) is attached hereto as Exhibit 1.

27. On information and belief, employees of the District learned of the Web Site on or about April 5, 2003.

28. On the morning of April 7, 2003 Ryan was called to Amato's office. In that office, Amato and DiGiovanna confronted Ryan with a printout of portions of the Web Site and questioned him about it.

29. After Ryan admitted the Web Site was his, DiGiovanna contacted Ryan's mother, at her place of employment (another school in the District), to inform her that Ryan might have been involved in creating a website. Mrs. Dwyer informed Mr. Dwyer and he went immediately to Maple Place School. When Mr. Dwyer arrived at the school, Amato requested that Ryan take down the Web Site. Ryan and Mr. Dwyer agreed to do so.

30. At no time during the meeting with Amato and DiGiovanna did either defendant inform Ryan or Mr. Dwyer of any particular rule Ryan was alleged to have violated in connection with the Web Site. Rather, Amato and DiGiovanna objected to the

act of publishing the Web Site itself. At the conclusion of the meeting, DiGiovanna directed Mr. Dwyer to take Ryan home. Mrs. Dwyer had to leave her workplace to accompany Ryan at home, so that Mr. Dwyer could return to his work.

31. Upon arriving home on April 7, 2003, Ryan and his father took down the Web Site. It has not been published or otherwise available to the public since that date.

32. Later that day, DiGiovanna called Mrs. Dwyer and informed her that the District had decided to suspend Ryan from school for five days, to ban him from participating in school sports for one month, and to prohibit him from participating in the end-of-year class trip.

33. On the afternoon of April 7, 2003, Mr. Dwyer returned to Maple Place School to pick up a "Classroom Behavior Notice." The Classroom Behavior Notice included a number of boxes that could be checked to identify offenses of which the student may be accused. None of the boxes was checked. In the teacher comments section of the Notice, a true and correct copy of which is attached hereto as Exhibit 2, the following language appeared:

"Down with MAPLE PLACE - Web site "ANTI-MAPLE PLACE CLUB"
HIS INVOLVEMENT."

Mr. Dwyer was asked to sign the Notice in a space provided for parents to sign to acknowledge their child's misbehavior. Mr. Dwyer refused to do so.

34. After receiving the Notice, Mr. Dwyer asked DiGiovanna to acknowledge in writing that the conduct for which Ryan was being punished occurred after school hours and off school property. DiGiovanna agreed to do so, but Mr. Dwyer never received a letter. Instead, DiGiovanna revised the Classroom Behavior Notice by adding the words "not during school hours" to the teacher comments section.

35. Mr. and Mrs. Dwyer saw the revised Classroom Behavior Notice after they requested a copy of Ryan's pupil record on April 10, 2003. Mr. and Mrs. Dwyer did not sign either version of the Classroom Behavior Notice they received.

36. On April 9, 2003, Mr. and Mrs. Dwyer sent a letter to the Board, with a copy to DiGiovanna, requesting a meeting to appeal the disciplinary measures against Ryan and a stay of the enforcement of those measures pending that meeting. The next day, DiGiovanna responded with a letter denying the request for a stay and stating that a meeting with the Board would be arranged. The same day, the Board itself sent a letter to Mr. Dwyer stating that it would consider the Dwyers' request for a review of the actions taken against Ryan at a meeting on April 14, 2003.

37. Mr. and Mrs. Dwyer attended the April 14, 2003 meeting with the Board. At the meeting, the Dwyers read the following statement:

Ladies and Gentlemen of the Board: Our son, Ryan, received a Classroom Behavior Notice related to a website. The website was not constructed on school property. The website was not viewed utilizing school property. Ryan did not make any threats or use profanity. An attempt was made to prevent Profanity and/or Threats by a statement on the website. The Disclaimer states "no profanity (thats curse words and bad words) and no threats to any teacher or person Ever. If you think it may be a bad word or it may be threatening Do Not Type it in. Thank you."

It is unjust to hold Ryan responsible for the words of others. The school infringed on my sons First Amendment right of Free Speech and his right to due process. The school has no jurisdiction in this matter. What law or school rule did Ryan violate?

38. The Board replied that it would have to discuss this issue. Mrs. Dwyer stated that she and Mr. Dwyer were prepared to wait for an answer that night. The Board members asked the Dwyers to wait outside the room while the Board members discussed the Dwyers' statement. Upon being asked to return to the meeting, the Dwyers were told

that the Board would discuss the entire matter, including the request for a stay, with counsel before rendering a decision.

39. On April 16, 2003, the Board notified the Dwyers by letter that it “affirmed” the disciplinary measures taken against Ryan. The letter also stated that the Board’s attorney would contact the Dwyers regarding the questions they raised at the April 14, 2003 meeting.

40. That same day, April 16, 2003, Anthony P. Sciarrillo, Esq., attorney for the Board, sent a letter to Mr. and Mrs. Dwyer, a true and correct copy of which is attached hereto as Exhibit 3, stating that he had been asked to respond to several items on Mr. and Mrs. Dwyer's April 14, 2003 statement to the Board, and stating that he anticipated responding within ten (10) days. Mr. and Mrs. Dwyer did not receive a response to their question from Mr. Sciarillo within ten (10) days of his April 16, 2003 letter. In fact, Mr. Sciarillo has never identified the specific charges against Ryan.

41. On or about April 27, 2003, Mr. Sciarrillo informed Ryan’s counsel, Gabriel Saltarelli, that the Board would reconsider its decision regarding the disciplinary measures taken against Ryan in a closed session. Mr. Sciarrillo advised Mr. Saltarelli that the Dwyers would not be permitted to attend the closed session. Instead, Mr. Sciarrillo invited Ryan’s counsel to submit a letter to the Board stating what actions the Dwyers would like the Board to take at the April 29, 2003 meeting.

42. On April 29, 2003, Mr. Saltarelli requested by letter that the Board reverse all disciplinary action taken against Ryan and expunge all references to such discipline from Ryan’s school records. The letter specifically noted that “Ryan and his parents still

have not received notice of the specific charges against him, including what school rule or law Ryan has been accused of violating.”

43. On May 1, 2003, the Board informed Ryan by letter from Mr. Sciarrillo that, at the April 29, 2003 meeting, the Board had decided to take no action regarding the disciplinary measures taken against Ryan. A copy of the letter is attached as Exhibit 4.

44. As a result, Ryan was prohibited from attending school from April 7, 2003 through April 11, 2003; was prohibited from participating in school sports from April 7, 2003 through May 7, 2003; and was denied the opportunity to participate in the class trip. Ryan was a member of the school baseball team and missed practices and games for a month as a result of this punishment.

45. Ryan was also subject to petty harassment from Amato, DiGiovanna and the baseball coach, Keith McGough. For example, Ryan received an award from Johns Hopkins Talent Search for a high SAT score, but his name was omitted when Amato announced the names of students who won similar awards. DiGiovanna and McGough revoked Ryan’s eligibility for the baseball all-star team because he had missed practice.

46. On June 4, 2003, Mr. Dwyer hand-delivered to each member of the Board a letter making a final request that Ryan be permitted to attend his class trip on June 6, 2003. A copy of the letter is attached hereto as Exhibit 5. Defendant Henderson informed Mr. Dwyer that the Board would not permit Ryan to do so.

47. Defendants have never informed Ryan or his parents of the specific charges against him, or the school rule Ryan was alleged to have violated.

48. Ryan’s activities with respect to the Web Site were lawful and did not violate any school rule.

49. The Web Site never resulted in any disruption whatsoever at Maple Place School.

50. Defendants disciplined Ryan because his Web Site expressed opinions critical of the school and of Amato.

COUNT I

(First Amendment)

51. Plaintiff repeats and incorporates all previous paragraphs as if set forth here in full.

52. Defendants disciplined Ryan for expressing his views and for creating the Web Site, abridging his freedom of speech in violation of the First Amendment to the United States Constitution and cognate sections of the state constitution.

53. As a result of Defendants' actions in disciplining Ryan for the views he expressed in his Web Site and for creating the Web Site, Ryan was compelled to refrain from expressing his opinions, was excluded from school and from extracurricular activities, and suffered embarrassment, humiliation, frustration and mental anguish.

54. Defendants' actions in disciplining Ryan for the views he expressed in his Web Site and for creating the Web Site constitute policies of the District.

55. Defendants' ad hoc approach to disciplining Ryan, which followed no written, formal or other standards or criteria to govern the decision-making process, violated the First Amendment and the cognate provisions of the state constitution in that it allowed arbitrary and discretionary suppression of constitutionally protected speech.

56. As a proximate result of defendants' actions, Ryan suffered irreparable injury to his right to free expression as guaranteed by the First Amendment to the United States Constitution and Article I, Paragraphs 6 and 18 of the New Jersey Constitution.

COUNT II

(Due Process)

57. Plaintiff repeats and incorporates all previous paragraphs as if set forth here in full.

58. Defendants disciplined Ryan without informing him of any rule he was alleged to have broken and without giving him any opportunity to respond. Defendants arbitrarily exercised their governmental power for the purpose of suppressing Ryan's constitutionally protected speech, in violation of the Fourteenth Amendment to the United States Constitution.

59. Defendants' actions in disciplining Ryan for the views he expressed in his Web Site and for creating the Web Site constitute policies of the District.

60. Defendants' ad hoc approach to disciplining Ryan, which followed no written, formal or other standards or criteria to govern the decision-making process, violated the Due Process clause of the Fourteenth Amendment.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment in his favor and against defendants as follows:

A. Declaring that defendants violated Ryan's constitutional right to free expression and due process of law;

B. Enjoining Defendants from taking arbitrary action to discipline students in violation of the Due Process clause of the Fourteenth Amendment;

- C. For compensatory damages;
- D. For costs, attorney's fees and other appropriate relief.

Dated: November __, 2003

Grayson Barber
Edward Barocas
Attorneys for Ryan Dwyer

CERTIFICATION

I certify that there are no other known actions or arbitrations relating to this action and there are no know parties who should be joined with respect to the matter in controversy.

Grayson Barber

Dated: