IN THE CIRCUIT COURT OF CAPE GIRARDEAU COUNTY
THIRTY-SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI

A.N., A MINOR, BY AND THROUGH HER NEXT FRIEND, J.N., Plaintiff, v. JACKSON R-II SCHOOL DISTRICT, ET AL., Defendants.	Case No. 24CG-CC00328 Division No. _____

PLAINTIFF'S FIRST AMENDED PETITION FOR TRIAL DE NOVO AND DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

COMES NOW the Plaintiff, a minor, by and through her Next Friend, Jamie Nipper, and her undersigned attorney, and alleges as follows:

INTRODUCTION

1. This case is about a school district and school officials who misunderstood a message that the Plaintiff, a twelve-year-old girl worried by recent warnings of potential violence, sent to a boy who attended another school district after the Plaintiff saw another unknown person post a potential threat of school violence on social media.

2. A.N.'s message was sent in private after school hours and was not in any way connected with school activities, school transportation, or school technology.

3. The other student then publicly posted the Plaintiff's message on social media as though it was a threat *made by the Plaintiff*, without explaining that the Plaintiff had merely been sharing with him what she had seen *someone else* post.

4. In the absence of this crucial context, the District decided to cancel a day of school and school-associated activities.

5. Although the Defendants quickly became aware that the Plaintiff had not threatened anyone nor did she ask or intend for the other student to share the message publicly, the Defendants decided that they must punish *someone* for the upheaval caused by the misunderstanding.

6. The boy who actually shared the out-of-context message and caused the District's concern was outside of the Defendants' jurisdiction, so—even though they were fully aware that she had not threatened anyone nor was she responsible for the *other student's* decision to make the message public—the Defendants suspended the Plaintiff for a total of 180 school days.

7. The First Amendment bars public school employees from acting as a round-the-clock board of censors over student expression. *Mahanoy Area Sch. Dist. v. B.L. by and through Levy*, 594 U.S. 180, 189-90 (2021).

8. The Plaintiff, like every American, has a First Amendment right to ask questions and share information when trying to understand whether someone else has threatened violence.

9. The fact that the Plaintiff chose to present her concerns to another student does not nullify her First Amendment rights. Indeed, the Supreme Court has warned that "courts must be more skeptical of a school's efforts to regulate off-campus speech, for doing so may mean the student cannot engage in that kind of speech at all." *Id*.

10. A.N. brings this lawsuit to ensure that schools may not punish a student for sharing non-threatening information with other students outside of school hours, even if a misunderstanding results in others believing that the student had made a threat.

PARTIES

11. A.N. is a bright, sociable twelve-year-old girl who makes good grades and, prior to September 13, 2024, had never been the subject of any formal disciplinary action; at all times relevant to this Petition she was a minor, a resident of Cape Girardeau County, Missouri, and a student at Jackson Junior High School ("the School").

12. Jamie Nipper, A.N.'s mother and Next Friend in this action, is and at all times relevant to this Petition was an adult resident of Cape Girardeau County, Missouri.

13. Defendant Jackson R-II School District ("the District") is a public school district located in Cape Girardeau County, Missouri; it is a political subdivision of the State.

14. Defendant Bryan Austin ("the Principal") is, and at all times relevant to this Petition was, an employee of the District and the Principal of Jackson Junior High School. He is sued in his individual capacity.

15. Defendant Scott Smith ("the Superintendent") is, and at all times relevant to this Petition was, an employee of the District and Superintendent of the District. He is sued in his individual capacity.

JURISDICTION AND VENUE

16. This action accrued in Cape Girardeau County, Missouri, and the Plaintiff has suffered damages in excess of $25,000.

17. Venue is proper in this Court. § 508.010, RSMo.

18. This Court has jurisdiction to consider this Petition because Missouri law provides students who have been suspended from a public school the right to trial de novo in circuit court. § 167.161.3, RSMo.

19. This Court also has jurisdiction to consider this Petition as the Plaintiff is seeking injunctive relief, a declaration of rights, status, and other legal relations, their attorneys' fees and costs, and all other available relief. §§ 526.030, 527.010, RSMo.; 42 U.S.C. §§ 1983 & 1988.

FACTS COMMON TO ALL COUNTS

A Series of Threats Cause A.N. to Worry

20. Around the second week of September 2024 a number of posts began to circulate on social media that appeared to threaten violence against schools.

21. On the afternoon of September 11, 2024, an email from "The Jackson R-2 Leadership Team" was circulated to parents of District students.

22. The email noted that the Missouri Highway Patrol had told schools about "alleged threats of school violence" that were circulating, adding that "the threats are not deemed credible," but also that "investigators will continue to look into all sources."

23. The email specifically said, "if you see something or hear something that concerns you, please say something."

24. A.N.'s mother ("Mrs. N.") received this email and discussed it with A.N. when A.N. got home from school.

25. About an hour after that email was sent, Mrs. N. was made aware of a text alert (not associated with the school district) that had gone out noting a disturbance in the Saddlebrooke Ridge neighborhood and warning: "MALE SUBJECT IN A WHITE HONDA SUV, THREATENING TO KILL PEOPLE."

26. A.N. and her family live in the Saddlebrooke Ridge neighborhood.

27. Some of Mrs. N.'s friends recommended that she stay inside the house and lock the doors.

28. Mrs. N. explained the alert to A.N. and told her to stay inside while Mrs. N. called to check on the well-being of other neighbors.

29. Later that evening there was a concern that one of their neighbors might be missing and A.N. accompanied her mother as they looked for the neighbor, who was eventually found safe.

30. A.N. was very worried about these threats of potential violence.

31. The following evening, September 12, 2024, A.N. was on a popular social media platform called SnapChat.

32. At the time she got on SnapChat that evening, the school day had ended. A.N. was at her own home, using her family's internet connection and her own personal electronic devices. She was not on school property, she was not on District transportation, she was not using District technology, nor was she participating in any school-sponsored activity.

33. While she was on SnapChat that evening, A.N. saw images others had posted that seemed to be threats of violence against schools.

34. In particular, she saw a post with an image whose message targeted "CCS;" it listed several boys' and girls' first names and said "If you're on this list pray for yourself tomorrow Because I'm coming."

35. A.N. was worried about this message and she asked her mother about it. Mrs. N. reassured her, saying that she did not think it was real and that A.N. did not need to be worried about it.

36. As A.N. continued to use SnapChat that evening she saw another image posted by an unknown user that said something to the effect of "Pray tm I'm bout to shoot up the Jackson school."

A.N. Expresses Her Concerns to Another Student

37. A.N. wanted to know more about this threat and whether it should be taken seriously, so she sent a direct message to another SnapChat user who had been sharing images others had posted that appeared to threaten violence against schools.

38. This other SnapChat user, to whom the Plaintiff will refer as "S.C.," was not personally known to A.N., but is believed to be a minor who is a student in a nearby school district.

39. A.N. contacted S.C. because he seemed to know a great deal about these threats.

40. She asked him "Was the school shooting thing real".

41. S.C. responded "Yeah it's all around cape" and sent several related screenshots he had taken of threatening messages.

42. Recalling the safety concern in her own neighborhood from a couple of days earlier, A.N. said "There's been threats in Jackson now" and added (mistakenly) "Theres also been shootings in my neiborhood".

43. S.C. asked for screenshots of the alleged Jackson threat.

44. A.N. responded that she had not taken one, but stated "my friend sent me a snap of like a guy saying he was gonna shoot up the Jackson school but it wasn't specific".

45. In hopes of helping S.C. understand the post she had seen, she created a Snap ("the Snap") consisting of a picture of her ceiling and an approximation of the message she had seen on her SnapChat feed, then sent it to S.C., adding "That's what I found on someone's story".

46. Approximately twenty-six seconds after A.N. sent the image to him, S.C. took a screenshot of the Snap.

47. S.C. asked for the name of the person who posted it, but A.N. responded "Idk it said unknown".

48. After S.C. responded "Okay" the conversation ended; A.N. had no further contact with S.C.

49. When A.N. sent the Snap, she was attempting to discern whether *someone else* had made a threat against a school in her community.

50. The words in the Snap were not her own, but an effort to relay a message she had seen from *someone else*.

51. At the time she sent the Snap to S.C., A.N. had no intention of threatening violence against anyone.

52. A.N. contacted S.C. precisely because she did not know if the post she saw was a real threat or something otherwise to be taken seriously.

53. A.N. did not ask S.C. to share the Snap.

54. Indeed, when she sent the Snap to S.C. she had not considered the possibility that he might share it with others.

55. But S.C. *did* share the Snap with others, although he did so without providing the relevant context of his conversation with A.N.

56. The manner in which S.C. shared the Snap made it appear to be a threat that had originated with A.N.

Misunderstanding Leads to School Cancellation and Investigation

57. Throughout the evening many people in and around Jackson, Missouri, saw what S.C. had shared and they brought it to the attention of District staff.

58. On the morning of September 13, 2024, the Jackson Police Department told the District they were investigating the Snap and that as of that time they could not guarantee the safety of the District's students.

59. Given the uncertainty surrounding the situation, the District decided to cancel school and school-related activities for that day.

60. A.N. was surprised to learn that school had been cancelled. At that time she was unaware that the cancellation had anything to do with the Snap. Both she and Mrs. N. thought the cancellation might have had something to do with the "CCS" threat.

61. At some point during the day, the Jackson Police Department learned that A.N. had sent the Snap to S.C. and they asked to speak with her.

62. Mrs. N. took A.N. to the Police Department on the afternoon of September 13, 2024, and during a conversation Mrs. N. and A.N. confirmed that A.N. had sent S.C. the Snap. They also explained the broader context of A.N.'s safety concerns and how that had led to her chat with S.C.

63. After speaking with Mrs. N. and A.N., a detective with the Jackson Police Department reviewed data provided by SnapChat in response to a warrant.

64. The detective quickly came to the conclusion that A.N. had not intended to cause any harm, panic, or disruption by sending the Snap, that there was no evidence suggesting that the Snap constituted a threat to any person or place, including the District, and that A.N. had neither the means nor the capability to act on any alleged "threat."

The District's Disciplinary Policies

65. Upon information and belief, the District's student discipline policy is established in section S-170-P of its Policy Manual.

66. In relevant part, Section S-170-P states:

> The District holds students accountable for their conduct in school, on District property, including District transportation, and during District-sponsored activities in order to ensure the safety of all students and maintain an atmosphere where orderly learning is possible and encouraged.

67. Upon information and belief, the District's Policy Manual provides no notice or guidance to students or parents regarding the possibility that the District might attempt to take disciplinary action against a student for communications that *do not* take place "in school, on District property, including District transportation, and during District-sponsored activities."

68. Section S-170-S of the Handbook includes its "Student Code of Conduct," which states in relevant part:

> To ensure that school is a quality atmosphere for all students and at all times, the code of conduct and discipline policies outline consequences for misconduct *that occurs at school, during a school activity whether on- or off-campus, on District transportation, or misconduct that involves the use of District technology*. (emphasis added)

69. Section S-170-S later states that "the District may use its authority to address behavior that occurs off-campus if it interferes with the operation of the school or endangers the safety of students and staff."

70. This statement is then followed by an acknowledgement that the District might seek to "impose consequences for misconduct not specifically outlined in this document."

71. The Handbook then proceeds to identify several specific forms of "Prohibited Conduct," and for each it provides a definition and the consequences for a "First Offense" and a "Second, Subsequent Offense."

72. The Handbook defines "Disrespectful or Disruptive Conduct or Speech" as "Conduct that interferes with an orderly education process such as disobedience or defiance to an adult's direction, use of vulgar or offensive language or graphics, any rude language or gesture directed toward another person." It adds "Discriminatory or harassing conduct may be addressed under the District's policy regarding this conduct." The Plaintiff will refer to this as "the Disruptive Speech Policy."

73. The Handbook lists the penalty for a first offense under the heading of the Disruptive Speech Policy as including "Principal/Student conference, detention, in-school suspension, or 1-10 days out-of-school suspension."

74. The Handbook lists the penalty for a second or subsequent offense under the heading of the Disruptive Speech Policy as including "Detention, in-school suspension, 1-180 days out-of-school suspension, or expulsion."

75. The Handbook defines "False Alarms or Reports" as "Intentionally tampering with alarm equipment for the purpose of setting off an alarm, making *false* reports *for the purpose of* scaring or disrupting the

school environment." (emphasis added) The Plaintiff will refer to this as "the False Alarm or Report Policy."

76. The Handbook lists the penalty for a first offense under the False Alarms or Reports Policy as including "Restitution. Principal/Student conference, detention, in-school suspension, or 1-180 days out-of-school suspension, or expulsion."

77. The Handbook lists the penalty for a second or subsequent offense under the False Alarms or Reports Policy as including "Restitution. Principal/Student conference, detention, in-school suspension, or 1-180 days out-of-school suspension, or expulsion."

The Defendants Decide to Punish A.N.

78. On the afternoon of September 15, 2024, The Superintendent contacted Mrs. N. and asked to set up a meeting with A.N. to discuss the Snap; that meeting was set for the afternoon of the following day and was attended by the Superintendent and the Principal.

79. The Superintendent asserted that A.N. was responsible for the District's decision to cancel school and school activities on September 13, 2024, and he said the meeting was for the purpose of looking at things, trying to figure them out, and to give A.N. an opportunity to "tell her side of the story."

80. At the September 16, 2024 hearing, A.N. explained that she had been nervous about safety issues due to the September 11 letter from the District and the security alert in her neighborhood. She explained that she had seen a concerning post on SnapChat and that was why she reached out to S.C. She explained that because she had not taken a screenshot of the concerning post, she made the Snap to show S.C. what she had seen.

81. The Superintendent did not at any point during this meeting or afterward believe that A.N. intended to commit violence against a school.

82. The Principal understood that A.N. did not originate the words in the Snap, but that she had simply tried to approximate what she had seen in someone else's post.

83. Nevertheless, on the afternoon of September 16, 2024, the Principal suspended A.N. for ten days for the alleged violation of policies established in the Junior High Student-Parent Handbook ("the Handbook") in section S-170-S.

84. Specifically, the Principal stated that because the Snap had been "shared repeatedly throughout the community" and had led the District to cancel school and school activities for a day, A.N. had violated the "Disruptive Conduct/Speech and/or False Alarm" prohibitions from the Handbook.

85. The Principal understood (1) that A.N. contacted S.C. to ask if the school shooting threats were real, (2) that A.N. created the Snap in

response to S.C.'s request for a screenshot, (3) that the words in the Snap were merely repeating what A.N. had seen *someone else* post, (4) that there was no evidence that A.N. had sent the Snap to anyone other than S.C., and (5) that A.N. had no intent to threaten anyone by sending the Snap to S.C.

86. The Principal was also aware that A.N. was twelve years old and that she had no history of disciplinary actions against her.

87. The Principal has stated that A.N. was not suspended for the Snap itself or for sharing the Snap with S.C., but rather "[s]he was suspended from the disruption that the Snapchat [that] was sent caused."

88. The Principal made this decision to impose the maximum suspension available even after being made aware of the context in which A.N. sent the Snap to S.C. and, specifically, that A.N. had not intended to threaten anyone or to cause any disruption to the school.

89. Thus, the Principal's decision to impose the maximum suspension available was made due to the fact that others in the community had *perceived* the Snap as a threat, regardless of whether A.N. was actually threatening anyone or whether she anticipated that S.C. might cause a panic by sharing the Snap publicly.

90. A.N. and her family felt the ten-day suspension was unjust because she had only shared the Snap with one person, S.C., and she did not anticipate that he would share the Snap with others, much less that it would

lead the District to cancel school and school activities, but she served the ten-day suspension.

91. In the meantime, the Principal referred the situation to the Superintendent to determine whether he would impose an extended suspension on A.N.

92. The Superintendent decided to add another 170 days to A.N.'s suspension, justifying his decision by claiming that the Snap violated the "Disruptive Conduct or Speech, False Alarms, and/or Threats" policies as described in S-170-S of the Student-Parent Handbook.

93. The Superintendent also refused to stay the suspension until the Jackson School Board could hear an appeal because the Superintendent claimed to have determined that A.N. "poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process."

94. At the time the Superintendent made the decision not to stay the suspension he had no evidence that A.N. posed a continuing danger to persons or property or an *ongoing* threat of disrupting the academic process.

95. The Superintendent explained his decision in a letter that was sent to A.N.'s family, but the family did not immediately receive this letter and, thus, they were not immediately aware that A.N.'s suspension had been extended.

96. At the end of the ten-day suspension, A.N. returned to the School, attending for one and a half days before being made aware that the Superintendent had extended the suspension.

97. A.N.'s presence at the School after serving her ten-day suspension did not result in any significant disruption to the School's educational environment.

98. The fact that there was no significant disruption to the School's educational environment during the time that A.N. was back at the School after serving her ten-day suspension was evidence that A.N.'s presence *did not* pose "a continuing danger to persons or property or an ongoing threat of disrupting the academic process."

99. Once Mrs. N. was made aware of the extended suspension, A.N. was removed from the School and she began participating in an internet-based virtual learning alternative.

100. A.N.'s family appealed the Superintendent's decision to impose an extended suspension.

101. The Jackson School Board heard the appeal on November 12, 2024; the Principal and the Superintendent both testified at the hearing.

102. On November 15, 2024, the School Board's attorney notified A.N.'s attorney via email that the School Board had voted to uphold the extended suspension.

INJURIES TO PLAINTIFF

103. The Defendants have injured A.N. by suspending her for engaging in speech protected by the First Amendment, discussing with another student a potential threat that an unknown third person had posted on social media.

104. A.N.'s injuries are ongoing. The 180 day suspension will carry into the next school year and even when it concludes the suspension will appear on A.N.'s permanent record; it may impair her ability to gain admission to top colleges and universities because schools assess applicants' academic and disciplinary records.

105. A.N.'s injuries also continue because the Defendants' interpretation of District policy to allow them to punish any communication that disrupts the school setting—whether or not the communication took place during school hours, on District property, on District transportation, or in connection with District-sponsored activities and whether or not the student intended or reasonably could have anticipated the disruption—necessarily chills the expression of students who might otherwise communicate with each other outside of school hours, off of District property, and using their own private electronic devices about the possibility that someone might intend to do harm to others.

106. A.N. is further injured because the virtual learning alternative the District has provided is not an adequate substitute for attending the School, as A.N. does not receive in-person instruction and she is deprived of the sort of regular interaction with her classmates that typifies in-person attendance at the School.

107. Additionally, participation in the virtual learning alternative places an intense burden on Mrs. N to oversee A.N.'s work and to explain concepts that the program has not adequately conveyed to A.N.; this has required Mrs. N. to expend a substantial amount of time and financial resources that would not have been required if A.N. was attending the School.

108. As a result of the Defendants' actions against her, which have resulted in the loss of friendships and the circulation of false rumors that A.N. threatened violence against the School, A.N.'s family has had to seek counselling for her and A.N. has been diagnosed as suffering heightened anxiety that is interfering with her ability to learn.

109. In order to mitigate the ongoing harms the Defendants have caused A.N., her family may have to enroll her in a private school outside of Jackson, which would entail tremendous expense.

110. If the suspension the Defendants imposed is lifted and she is cleared of any wrongdoing, A.N. and her family believe she could return to

the School and begin the process of rebuilding the relationships the Defendants have damaged.

CLAIMS FOR RELIEF

COUNT I (Directed Against the District)
Judicial Review of School Board Decision

111. The Plaintiff incorporates the averments in the preceding paragraphs as if they were fully set forth herein.

112. The November 12, 2024 hearing was conducted under § 167.161, RSMo., which provides the right to trial *de novo* in this Court.

113. The District acted improperly in deciding to uphold the long-term suspension of A.N. due to an off-campus communication that took place on private electronic devices after school hours and without any connection to District transportation or District technology and which, understood in context, did not constitute A.N. making any threatening statement at all.

114. The decision violated A.N.'s constitutional rights to Free Speech and Due Process of Law, it exceeded the scope of the District's authority as established under Board Policy S-170-P, it exceeded the punishments specifically provided in Section S-170-S of the Handbook, and it involved an abuse of discretion due to the severity of the penalty imposed despite there being no evidence that A.N. intended to threaten anyone, nor did she

anticipate that S.C. would publicly share the Snap without providing appropriate context.

115. These defects of the November 12, 2024 appeal hearing render the District's decision unlawful.

WHEREFORE, the Plaintiff respectfully asks the Court to:

a. Enter judgment in her favor as to Count I;

b. Order the Defendants to expunge any and all education records of A.N. that reflect the events described in this Petition;

c. Award the Plaintiff her attorneys' fees; and

d. Order such other and additional relief as the Court deems just and proper.

COUNT II (Directed Against All Defendants)
Violation of the Freedom of Speech Guaranteed by the First and Fourteenth Amendments to the U.S. Constitution

116. The Plaintiff incorporates the averments in the preceding paragraphs as if they were fully set forth herein.

117. This count is brought pursuant to 42 U.S.C. § 1983 to enjoin the Defendants' suspension of A.N. and to declare that the Defendants violated A.N.'s freedom of speech by punishing her for sending the Snap to S.C.

118. The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press; or of the right of the people

peaceably to assemble, and to petition the Government for a redress of grievances."[1] U.S. Const. Amend. I.

119. The First Amendment protects the right of students to share information with each other about whether or not someone has threatened to commit violence at a school, so long as the students themselves are not making "true threats" that fall outside of the First Amendment's protections.

120. The U.S. Supreme Court has recently made clear that the First Amendment bans the government from punishing speakers based on an objective standard that considers only how observers might construe something a speaker said. *Counterman v. Colorado*, 600 U.S. 66, 78 (2023).

121. Instead, the Supreme Court concluded that at a bare minimum the First Amendment imposes a "recklessness" requirement under which the government must prove that a speaker made "a deliberate decision to endanger another;"[2] in other words, the applicable standard requires the government to prove that "a speaker is aware that others could regard his statements as threatening violence and delivers them anyway." *Id*. at 79.

122. The First Amendment does not permit the Defendants to punish A.N. where full context of her conversation with S.C. shows that the Snap was

[1] The First Amendment has been made applicable to the states through the Fourteenth Amendment.

[2] "[R]eckless defendants have done more than make a bad mistake. They have consciously accepted a substantial risk of inflicting serious harm." *Id*. at 80.

merely repeating a potentially threatening statement made by an unknown third party, and there is no suggestion that A.N. was aware the Snap could be regarded as *her* making a threat against anyone, much less that she sent the Snap in spite of such knowledge.

123. The Defendants in this case specified that their decision to suspend A.N. was based on the disruption to the school environment that occurred after S.C.—*not* A.N.—publicly shared the potentially-threatening message that A.N. had seen someone else post.

124. That "disruption" resulted from a decision the Defendants made in response to the Snap *before* they properly understood its context within A.N.'s communication with S.C.

125. At the November 12, 2024 appeal hearing the Superintendent acknowledged that (1) he had no evidence that A.N. intended to harm or to threaten anyone; (2) he was aware that the local police had concluded that A.N. did not intend to threaten anyone; (3) the District had deemed the alleged threat "not credible;" and (4) the District had told the parents that it had deemed the alleged threat "not credible."

126. Nevertheless, the Superintendent asserted that A.N. had violated school policy because the District had—based on its incomplete understanding of the context that led S.C. to publicly share the Snap—decided to cancel a school day and some school-related activities.

127. Courts are "skeptical of a school's efforts to regulate off-campus speech, for doing so may mean the student cannot engage in that kind of speech at all." *Mahanoy*, 594 U.S. at 189-90.

128. Unfortunately, students today must confront the possibility that some persons might decide to commit violence at their schools. These students need to be able to freely discuss their concerns with each other and, particularly if a student has observed or overheard someone else making a threat of violence against a school, the students must be confident that they can share what they saw or heard without fear that their school officials will decide to punish *them* for sharing that information with another student.

129. This controversy is real and substantial, and ripe for adjudication. A judicial declaration as to the constitutionality of the Defendants' suspension of A.N. will resolve the present controversy and provide conclusive relief.

130. The Plaintiff therefore seeks a declaratory judgment declaring that the Defendant's suspension of A.N. is unconstitutional, in violation of the First and Fourteenth Amendments to the United States Constitution.

131. The Plaintiff also seeks a permanent injunction prohibiting the Defendants from taking further disciplinary action against A.N. on the basis of the events described in this Petition, and a court order directing the Defendants to remove any reference to this incident from A.N.'s permanent record.

132. The Defendants' actions in suspending A.N., taken under color of law of the State of Missouri, deprived her of rights, privileges, or immunities secured by the First and Fourteenth Amendments of the United States Constitution.

133. Each of the individual Defendants' actions violated A.N.'s clearly-established constitutional right to engage in non-threatening communication with another student about a potential threat made by an unknown third person; at the time the Defendants suspended A.N. for communicating with S.C., a reasonable official would have understood that in the absence of any evidence that A.N. intended to threaten or frighten anyone by sharing the Snap with S.C. the First Amendment would not permit the Defendants to punish A.N. for that communication.

134. In the alternative, to the extent that the Defendants might assert that they believed A.N.'s communication with S.C. constituted a threat, each of the individual Defendants' actions violated A.N.'s First Amendment right, clearly established in the wake of *Counterman v. Colorado*, to communicate in a manner that the speaker would not have been aware could be regarded as threatening violence and where A.N. did not make "a deliberate decision to endanger another" and did not "consciously accept[] a substantial risk of inflicting serious harm;" at the time the Defendants suspended A.N. for communicating with S.C., a reasonable official would have understood that in

the absence of any evidence that A.N. intended to threaten or frighten anyone by sharing the Snap with S.C. the First Amendment would not permit the Defendants to punish A.N. for that communication.

135. An award of attorneys' fees is thus justified under 42 U.S.C. § 1988.

WHEREFORE, the Plaintiff respectfully asks the Court to:

a. Enter a declaratory judgment finding that the Defendants' suspension of A.N. was unconstitutional, and therefore invalid and unenforceable;

b. Enter a permanent injunction prohibiting the Defendants from taking further disciplinary action against A.N. on the basis of the events described in this Petition, and directing the Defendants to expunge any and all education records of A.N. that reflect the events described in this Petition;

c. Award the Plaintiff her attorneys' fees pursuant to 42 U.S.C. § 1988;

d. Award the Plaintiff her reasonable fees and expenses pursuant to at least Section 536.050, RSMo.; and

e. Order such other and additional relief as the Court deems just and proper.

COUNT III (Directed Against the District)

Violation of the First and Fourteenth Amendments to the U.S. Constitution Due to Vagueness

136. The Plaintiff incorporates the averments in the preceding paragraphs as if they were fully set forth herein.

137. The First and Fourteenth Amendments to the Constitution prohibit restrictions on speech which fail to provide members of the public fair notice of prohibited conduct.

138. A government policy is unconstitutionally vague if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.

139. The policy expressed in the Handbook allowing the District to punish students' off-campus speech or behavior ("the Off-Campus Behavior Policy") if, in the District's estimation, "it interferes with the operation of the school or endangers the safety of students and staff" is unconstitutionally vague because it fails to provide parents and students sufficient information to know what is restricted or required of them so that they may adjust their speech and/or behavior accordingly.

140. The Off-Campus Behavior Policy is vague because it fails to provide sufficient precision and guidance so that those enforcing the policy do not act in an arbitrary or discriminatory way.

141. The Off-Campus Behavior Policy, which fails to provide parents and students sufficient information to conform conduct to the requirements of the law, chills A.N. and other students from engaging in protected First Amendment speech because students use social media to express themselves and communicate with others but now must self-censor protected expression so-as to not violate the Off-Campus Behavior Policy.

142. A.N. is entitled to a declaration under 28 U.S.C. § 2201 that the Off-Campus Behavior Policy is unlawfully vague and therefore violates the First and Fourteenth Amendments.

143. A.N. is entitled to a declaration under 28 U.S.C. § 2201 that the District's suspension of A.N. based on the Off-Campus Behavior Policy violated the First and Fourteenth Amendments, because the Off-Campus Behavior Policy violates the First and Fourteenth Amendments both facially and as-applied to A.N. A.N. therefore is also entitled to an injunction expunging her suspension which was based on the unconstitutional policy.

144. Without declaratory and injunctive relief against the Off-Campus Behavior Policy, the District's suppression and chilling of A.N.'s freedom of speech will continue and A.N. will suffer per se irreparable harm indefinitely. WHEREFORE, the Plaintiff respectfully asks the Court to:

a. Enter a declaratory judgment finding that the Off-Campus Behavior Policy unconstitutional, and therefore invalid and unenforceable;

b. Enter a permanent injunction prohibiting the Defendants from taking further action against any student on the basis that the student has allegedly violated the Off-Campus Behavior Policy;

c. Award the Plaintiff her attorneys' fees pursuant to 42 U.S.C. § 1988;

d. Award the Plaintiff her reasonable fees and expenses pursuant to at least Section 536.050, RSMo.; and

e. Order such other and additional relief as the Court deems just and proper.

COUNT IV (Directed Against All Defendants)
Violation of the Due Process of Law Guaranteed by the Fourteenth Amendment to the U.S. Constitution

145. The Plaintiff incorporates the averments in the preceding paragraphs as if they were fully set forth herein.

146. The Fourteenth Amendment to the U.S. Constitution forbids state and local governments from depriving "any person of life, liberty, or property, without due process of law[.]" U.S. Const. Amend. XIV.

147. Both the U.S. Supreme Court and the Missouri courts have recognized that school-aged children have a property interest in attending public schools and that students may not be given lengthy suspensions without affording them the protections of due process. *Goss v. Lopez*, 419 U.S. 565 (1975); *Reasoner by Reasoner v. Meyer*, 766 S.W.2d 161 (Mo. App. W.D. 1989).

148. Although suspensions of up to ten days may require a less-stringent degree of due process, the more extensive a suspension is, the more stringent are the due process protections to which the student is entitled. *Id.*

149. The U.S. Supreme Court has also observed that students have a liberty interest in their reputations which can be damaged when a school imposes discipline, which is another reason that schools must provide students with the protections of due process when the schools accuse the students of wrongdoing. *Goss* at 574-75.

150. The Plaintiff wishes to emphasize that even if the Defendants had given her timely notice that she was accused of violating the Disruptive Speech Policy or the False Alarms or Reports Policy, the principles of Due Process Clause still required the Defendants (1) to presume her innocence, (2) to present evidence sufficient to show that she had engaged in conduct prohibited under the terms of one of those policies, and (3) to limit the

punishments imposed for any proven violations to the penalties described in the Handbook.

151. The Defendants acted under the color of state law when they suspended A.N., first for ten days and then for an additional 170 days without adequately informing her in advance of what specific policies she was accused of violating, thus depriving her of the opportunity to prepare a proper defense.

152. The Defendants acted under the color of state law when they suspended A.N., first for ten days and then for an additional 170 days without providing her the presumption that she was innocent of violating any school policies.

153. The Defendants acted under the color of state law when they suspended A.N., first for ten days and then for an additional 170 days without clearly identifying the factual basis upon which A.N. was deemed to have violated the Disruptive Speech Policy.

154. The District and the Superintendent acted under the color of state law when they imposed a punishment on A.N. for violating the Disruptive Speech Policy that exceeded the maximum ten days out-of-school suspension that the Handbook authorized for a student's first violation of that policy.

155. The Defendants acted under the color of state law when they suspended A.N., first for ten days and then for an additional 170 days without clearly identifying the factual basis upon which A.N. was deemed to have

violated the False Alarms or Report Policy, which only authorizes punishment of "*false* reports [made] *for the purpose of* scaring or disrupting the school environment." (emphasis added)

156. The District and the Superintendent acted under the color of state law when they imposed a punishment on A.N. for violating the False Alarms or Reports Policy despite acknowledging that the Defendants had no evidence that A.N. had acted "for the purpose of scaring or disrupting the school environment."

157. Each of the individual Defendants' actions violated A.N.'s clearly-established constitutional right to be free from punishment for behavior that occurred outside of the jurisdiction established under the District's own policies; at the time the Defendants suspended A.N. for communicating with S.C., a reasonable official would have understood that where District policy S-170-P only states that the District "holds students accountable for their conduct in school, on District property, including District transportation, and during District-sponsored activities," the Due Process Clause would not permit the Defendants to punish A.N. for a communication that did not take place "in school, on District property, including District transportation, [or] during District-sponsored activities."

158. Each of the individual Defendants' actions violated A.N.'s clearly-established constitutional right to be free from punishment for behavior not

clearly proscribed by the policies stated in the Handbook; at the time the Defendants suspended A.N. for communicating with S.C., a reasonable official would have understood that where the Disruptive Speech Policy only proscribes "[c]onduct… such as disobedience or defiance to an adult's direction, use of vulgar or offensive language or graphics, [or] any rude language or gesture directed toward another person," the Due Process Clause would not permit the Defendants to punish A.N. for a communication that was not substantially similar to "disobedience or defiance to an adult's direction, use of vulgar or offensive language or graphics, [or] any rude language or gesture directed toward another person."

159. Each of the individual Defendants' actions violated A.N.'s clearly-established constitutional right to be free from punishment more extensive than expressly provided for under the policies stated in the Handbook; at the time the Defendants suspended A.N. for communicating with S.C., a reasonable official would have understood that where Handbook states that the maximum penalty for a first offense under the Disruptive Speech Policy is "10 days out-of-school suspension," the Due Process Clause would not permit the Defendants to suspend A.N. for more than ten days.

160. Each of the individual Defendants' actions violated A.N.'s clearly-established constitutional right to be free from punishment for behavior not clearly proscribed by the policies stated in the Handbook; at the time the

Defendants suspended A.N. for communicating with S.C., a reasonable official would have understood that where the False Alarm and Report Policy only proscribes "[*i*]*ntentionally* tampering with alarm equipment *for the purpose of* setting off a false alarm, [or] making *false* reports *for the purpose of* scaring or disrupting the school environment," (emphasis added) the Due Process Clause would not permit the Defendants to punish A.N. for a communication that the Defendants had no basis for believing was either "false" or made "for the purpose of scaring or disrupting the school environment."

WHEREFORE, the Plaintiff respectfully asks the Court to:

a. Enter a declaratory judgment finding that the Defendants' suspension of A.N. was unconstitutional, and therefore invalid and unenforceable;
b. Enter a permanent injunction prohibiting the Defendants from taking further disciplinary action against A.N. on the basis of the events described in this Petition, and directing the Defendants to expunge any and all education records of A.N. that reflect the events described in this Petition;
c. Award the Plaintiff her attorneys' fees pursuant to 42 U.S.C. § 1988;
d. Award the Plaintiff her reasonable fees and expenses pursuant to at least Section 536.050, RSMo.; and

e. Order such other and additional relief as the Court deems just and proper.

COUNT V (Directed Against the District)
Violation of Article I, § 8 of the Missouri Constitution

155. The Plaintiff incorporates the averments in the preceding paragraphs as if they were fully set forth herein.

156. As an alternative ground for finding the suspension of A.N. unconstitutional, A.N. asserts that the protections Article I, § 8 of the Missouri Constitution provide for free expression are more extensive and more stringent than those provided under the First Amendment.

157. Article I, § 8 of the Missouri Constitution states:

> That no law shall be passed impairing the freedom of speech, no matter by what means communicated: that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject, being responsible for all abuses of that liberty; and that in all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and in suits and prosecutions for libel the jury, under the direction of the court, shall determine the law and the facts.

158. The Missouri Supreme Court has recognized the scope and significance of this constitutional limit on government, stating that "[l]anguage could not be broader, nor prohibition nor protection more amply comprehensive," *Marx & Haas Jeans Clothing Co. v. Watson*, 67 S.W. 391 (Mo. banc 1902), and clarifying that "[a]nything which makes the exercise of a right more expensive or less convenient, more difficult or less effective, impairs that right." *Ex parte Harrison*, 110 S.W. 709, 710 (Mo. 1908).

159. Properly understood, the question courts must answer when a challenge is presented pursuant to Mo. Const. Art. I, § 8 is whether the speaker against whom the government has taken action has "abused" their freedom of expression in some manner that might have justified the punishment the government imposed.

160. The facts of this case show that the District has punished A.N. due to her communicating with S.C. on the subject of a potentially-threatening message posted on social media by an unknown third person; A.N.'s communication falls within the Missouri Constitution's incredibly broad, comprehensive protection of every person's freedom "to say, write or publish, or otherwise communicate whatever he will on any subject."

161. When the suspension was imposed on A.N., the Defendants were aware of the context in which A.N. sent S.C. the Snap and that there was no evidence that A.N. intended to threaten or frighten anyone.

162. In the absence of any evidence that A.N. intended to threaten or frighten anyone by sending the Snap to S.C., there is no valid basis on which A.N.'s communication with S.C. could be considered an "abuse" of her freedom of expression.

163. Consequently, the District violated Article I, § 8 of the Missouri Constitution by suspending A.N. for her communication with S.C.

WHEREFORE, the Plaintiff respectfully asks the Court to:

a. Enter a declaratory judgment finding that the Defendants' suspension of A.N. was unconstitutional, and therefore is invalid and unenforceable;

b. Enter a permanent injunction prohibiting the Defendants from taking further disciplinary action against A.N. on the basis of the events described in this Petition, and directing the Defendants to expunge any and all education records of A.N. that reflect the events described in this Petition;

c. Award the Plaintiff her reasonable fees and expenses pursuant to at least Section 536.050, RSMo.; and

d. Order such other and additional relief as the Court deems just and proper.

COUNT VI (Directed Against the District and the Superintendent)
Violation of § 167.171.2(4), RSMo.

164. The Plaintiff incorporates the averments in the preceding paragraphs as if they were fully set forth herein.

165. Section 167.171.2(4), RSMo., states in relevant part that where a student has been suspended for more than ten days and has indicated a wish to appeal their suspension to the School Board, "the suspension shall be stayed until the board renders its decision, unless in the judgment of the

superintendent of schools, or of the district superintendent, the pupil's presence poses a *continuing* danger to persons or property or an *ongoing* threat of disrupting the academic process[.]" (emphasis added)

166. The Superintendent has acknowledged that both the local police and the School Board had concluded that A.N. did not pose a legitimate threat to her school or her classmates.

167. Particularly since A.N. did return to the School for a day and a half after her ten day suspension ended and her presence did not disrupt the academic process, there is no evidence that her presence at school posed any "ongoing threat of disrupting the academic process."

168. The Court should thus declare that the District and the Superintendent violated § 167.171.2(4) by refusing to stay the suspension against A.N. even though the Superintendent had no evidence that A.N. posed "an *ongoing* threat of disrupting the academic process."

WHEREFORE, the Plaintiff respectfully asks the Court to:

a. Enter a declaratory judgment that the District and the Superintendent violated § 167.171.2(4) by refusing to stay the suspension against A.N. even though the Superintendent had no evidence that A.N. posed "an *ongoing* threat of disrupting the academic process;"

b. Enter a permanent injunction requiring the District and its superintendent to stay any student suspensions of more than ten days unless the superintendent has evidence sufficient to support a conclusion that the suspended student "poses a *continuing* danger to persons or property or an *ongoing* threat of disrupting the academic process;"

c. Award the Plaintiff their reasonable fees and expenses pursuant to at least § 536.050, RSMo.; and

d. Order such other and additional relief as the Court deems just and proper.

Respectfully Submitted,

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