UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
WINCHESTER DIVISION

I.P., a minor, by and through B.P.,

Plaintiff,

v.

TULLAHOMA CITY SCHOOLS, a political subdivision of the State of Tennessee; JASON QUICK, in his individual capacity; and DERRICK CRUTCHFIELD, in his individual capacity,

Defendants.

Case Number: 4:23-cv-26

Hon. _____

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Darrick L. O'Dell
(BPR#26883)
SPICER RUDSTROM, PLLC
414 Union St., Ste. 1700
Nashville, TN 37219
(615) 259-9080
dlo@spicerfirm.com

Conor T. Fitzpatrick
(Mich. Bar No. P78981)*
Harrison M. Rosenthal
(Penn. Bar. No. 332452)*
FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION
510 Walnut St., Ste. 1250
Philadelphia, PA 19106
(215) 717-3473
conor.fitzpatrick@thefire.org
harrison.rosenthal@thefire.org

**Pro Hac Vice* Motions Pending

Counsel for Plaintiff

TABLE OF CONTENTS

Page:

TABLE OF AUTHORITIES

Page(s)

Cases:

Rules:

INTRODUCTION

A high school principal's ego does not trump the First Amendment. Defendant Jason Quick, the (former) principal of Tullahoma High School, suspended I.P. for three images on I.P.'s personal Instagram lampooning Quick's overly serious nature. The first image IP posted showed Quick holding a box of vegetables, the second was a repost depicting Quick as a Japanese cartoon cat in a dress, and the third post showed Quick being hugged by a cartoon bird. I.P. posted the images using his own phone, on his own time, off school property, and the posts did not disrupt school in any way.

The Supreme Court has made clear that unless a student's off-campus expression causes or may reasonably be forecast to cause substantial disruption at school, the job of policing a minor's speech falls to parents, not the government. *Mahanoy Area Sch. Dist. v. B.L., by and through Levy*, 141 S. Ct. 2038, 2046 (2021). I.P.'s off-campus posts did not cause any disruption at school, much less substantial disruption, and Quick never asserted they did. So Quick had no authority to punish I.P. for his satire. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 514 (1969); *see also Layshock ex rel. Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205, 216–19 (3d Cir. 2011) (en banc) (unanimously overturning suspension of a high school student who created a profane and unflattering parody MySpace profile of the principal because the profile did not disrupt the school).

But Quick nevertheless punished I.P. because Tullahoma High School bakes censorship of student expression into its Student Handbook. The Handbook prohibits students from posting pictures or video on social media that "result[] in the

embarrassment, demeaning, or discrediting of any student or staff . . .” Punishment for violating the policy, as with I.P., occurs *regardless* of whether the post disrupts school, occurs during the school day, or takes place on school grounds. The Constitution bars public schools from exercising 24-hour control over students’ private lives and personal expression.

Tullahoma High School’s policy is also unlawfully vague. Video of the star athlete missing a game-winning shot might “embarrass” them. Are students prohibited from posting footage of the missed shot on social media? Posts critical of a student council member might “discredit” them. Are those banned, too? Tullahoma High School provides students no way to determine how to stay out of trouble. Instead, this policy keeps students guessing and, worse, self-censoring out of caution. A separate policy prohibiting social media posts “unbecoming of a Wildcat”—the school’s mascot—suffers from the same constitutional defect. These policies restrict a staggering amount of protected expression and are repugnant to the First Amendment, where “precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.” *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603–04 (1967) (cleaned up).

The Court should enjoin these unconstitutional policies and restore the primacy of the First Amendment at Tullahoma High School. The Court should likewise enter an order expunging I.P.’s suspension from his record so he may apply to colleges and for scholarships this fall without the blemish of a suspension for his constitutionally protected expression.

STATEMENT OF FACTS[1]

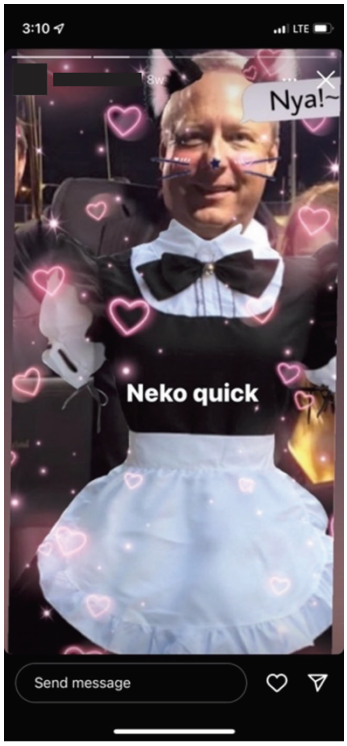
I.P. uses Instagram for personal expression and satire.

Seventeen-year-old Plaintiff I.P. is a rising senior at Tullahoma High School. (Verified Compl. ¶ 8.) He is an accomplished trombonist in the school band and a leader in his local Boy Scouts of America chapter. (*Id.* ¶ 20.) Like millions of high school students, I.P. uses social media to express himself through photos and video. I.P. has an Instagram account which he uses to share content with family and friends. (*Id.* ¶ 21.)

During his freshman and sophomore years, I.P. grew to perceive Quick as an overly stern and humorless administrator. (*Id.* ¶ 24.) So on May 22, 2022, from his father's home in Alabama during summer vacation, I.P. reposted an image showing Principal Quick holding a box of fruit and vegetables with the text "🔥My brotha🔥." (*Id.* ¶¶ 26–28.) By reposting the image and adding the text "like a sister but not a sister <33," I.P. intended to suggest, tongue-in-cheek, a friendship between Quick and I.P. and to satirize Quick's excessively serious demeanor toward students. (*Id.*) I.P. also added the text "On god" in the image to signify his firm belief in the message. (*Id.* ¶ 29.)

[1] All facts stated are from I.P.'s Verified Complaint. Plaintiff incorporates by reference all the verified factual allegations from his Verified Complaint.

On June 9, 2022, during a family vacation to Italy, I.P. reposted an image from a friend's account showing Quick as an anime (*i.e.*, Japanese cartoon) cat wearing whiskers, cat ears, and a dress. (*Id.* ¶ 30.) The image included the text "Neko quick" and "Nya!" because Neko means "cat" in Japanese and "Nya" is onomatopoeia used in anime for a cat's meow. (*Id.* ¶¶ 31–32.) I.P. did not create this image, but merely reposted it to satirize Quick's desire to be seen by students as a serious and professional academic administrator. (*Id.* ¶ 33.)



On August 2, 2022, while at home following the second day of school, I.P. posted a third image showing Quick's head superimposed on a hand-drawn cartoon meant to resemble a character from the online game *Among Us*. (*Id.* ¶ 34.) The image also shows a cartoon bird named Mordecai, from the Cartoon Network television series *Regular Show*, hugging Quick's leg. (*Id.*) I.P. posted the image to satirize Quick's desire to be seen by students as a serious authority figure by implying Quick had a relationship with a cartoon bird. (*Id.* ¶ 35.)

Quick and Crutchfield suspend I.P. from school for his Instagram posts.

Tullahoma High School distributes a Student and Parent/Guardian Handbook that contains rules regarding students' social media posts. (*Id.* ¶¶ 45–46.) Specifically, the Handbook provides the following:

> Any student who records and/or disseminates in any manner an unauthorized or misrepresented photograph, video, or recording for the purpose of embarrassing, demeaning, or discrediting the reputation of any student or staff, or that results in the embarrassment, demeaning, or discrediting of any student or staff, or results in any action or activity disruptive to the educational process shall be subject to disciplinary action up to and including suspension or expulsion at the discretion of the principal.

(Ex. A at 9, [the "Social Media Policy"].) The Handbook provides no guidance to students or parents regarding what constitutes "embarrassing," "demeaning," or "discrediting" content. (Verified Compl. ¶¶ 47–48.)

Immediately following band rehearsal on August 10, 2022 (just over a week after I.P.'s third post), after classes had been dismissed for the day, I.P.'s band teacher escorted him to the school's front office, where Quick and Assistant Principal Defendant Derrick Crutchfield were waiting. (*Id.* ¶¶ 56–58.) Quick demanded to know the meaning of I.P.'s Instagram posts and why he posted them. (*Id.* ¶ 61.) Quick also ordered I.P. to read the Social Media Policy out loud to Quick, Crutchfield, and I.P.'s band teacher. (*Id.* ¶¶ 59–60.) Quick directed I.P. into Crutchfield's office. (*Id.* ¶ 62.) There, Crutchfield told I.P. he would receive a five-day, out of school suspension. (*Id.* ¶ 64.)

On Friday, August 12, B.P., I.P.'s mother, attended meetings with Crutchfield and Quick. (*Id.* ¶ 91.)[2] When B.P. met Crutchfield, Crutchfield informed B.P. he reduced I.P.'s suspension to three days because he had "reviewed" the situation and Quick confirmed that I.P. remained suspended. (*Id.* ¶¶ 92, 94.) B.P. handed Quick and Crutchfield a letter demanding they immediately lift I.P.'s suspension pursuant to *Mahanoy* and preserve all relevant documents. (*Id.* ¶ 95.) In later correspondence, Quick confirmed that the school based I.P.'s suspension on the three Instagram posts discussed above. (*Id.* ¶¶ 96–98.)

The Handbook vaguely warns students not to engage in behavior "unbecoming of a Wildcat," or risk punishment.

The Handbook also provides that "[p]articipation in activities, groups, and teams is a privilege at Tullahoma High School. Using social media by a student 'unbecoming of a Wildcat' [*sic*] may result in discipline, including suspension or removal from the activity, group, leadership position, or team." (Ex. A at 8 [the "Wildcat Policy"].) The Handbook, however, provides no guidance to students or parents as to what makes a social media post "unbecoming of a Wildcat." (Verified Compl. ¶ 51.)

The Social Media Policy, Wildcat Policy, and I.P.'s suspension cause ongoing irreparable harm.

Fearing additional discipline, I.P. is self-censoring his speech based on the Social Media Policy and the Wildcat Policy. Since his suspension, I.P. has intentionally only posted favorable content regarding Tullahoma High School on

[2] Because the events discussed in this sub-section did not involve I.P., B.P. is swearing to their accuracy. *See* Ex. B, Decl. of B.P.

Instagram. (*Id.* ¶ 102.) But for the policies, I.P. would post additional images on social media satirizing others. (*Id.*)

Moreover, colleges and scholarship committees frequently assess applicants' disciplinary records. (*Id.* ¶ 100.) The suspension impairs I.P.'s ability to gain admission to top colleges and obtain scholarships because it remains part of I.P.'s permanent record.

ARGUMENT

I.P. is entitled to a preliminary injunction because he can demonstrate that (1) he "has a strong likelihood of success on the merits"; (2) he "would suffer irreparable injury absent the injunction"; (3) the requested injunction would not cause "substantial harm to others"; and (4) the "public interest would be served by the issuance of an injunction." *Bays v. City of Fairborn*, 668 F.3d 814, 818–19 (6th Cir. 2012).

The Sixth Circuit has made clear that "in First Amendment cases, the crucial inquiry is usually whether the plaintiff has demonstrated a likelihood of success on the merits. This is because the public's interest and any potential harm to the parties or others largely depend on the constitutionality of the state action." *ACLU Fund of Mich. v. Livingston Cnty.*, 796 F.3d 636, 642 (6th Cir. 2015) (cleaned up).

I. I.P. Is Likely to Succeed on the Merits of His First Amendment Claims Because the First Amendment Protects Nondisruptive Off-Campus Student Speech.

Students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gates." *Tinker*, 393 U.S. at 506. During school, the government may only restrict expression which causes, or may be reasonably forecast

to cause, substantial disruption, or which invades the rights of others. *Id.* at 513–14. Once students exit the schoolhouse gates, "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." *Mahanoy*, 141 S. Ct. at 2046.

Here, I.P. posted or reposted images to Instagram on his own time, away from school, from his own device, and the posts did not cause or threaten to cause material disruption, substantial disorder, or an invasion of the rights of others. I.P.'s satirical expression regarding Principal Quick therefore remained firmly within First Amendment protection.

A. Schools cannot punish students for nondisruptive, private, off-campus speech.

Defendants violated the First Amendment by suspending I.P. for protected First Amendment expression. The First Amendment protects criticizing and satirizing public officials. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 273 (1964). And the First Amendment's protections extend beyond the spoken word and include symbolism and artistic expression. *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 569 (1995). Indeed, "from the early cartoon portraying George Washington as an ass down to the present day . . . satirical cartoons have played a prominent role" in American expression. *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 54 (1988).

Schools bear the burden of demonstrating that a student's expression "would *materially and substantially interfere* with the requirements of appropriate discipline in the operation of the school" before punishing or censoring speech. *J.S. ex rel.*

Snyder v. Blue Mountain Sch. Dist., 650 F.3d 915, 926 (3d Cir. 2011) (en banc) (quoting *Tinker*, 393 U.S. at 509) (emphasis added by *J.S.*). I.P. posted the three images giving rise to his suspension away from school and outside school hours, and the imagesdid not cause disruption at school. Defendants therefore cannot meet their high burden to justify punishing I.P.'s expression. *See Layshock*, 650 F.3d at 207 (holding a school district cannot "punish a student for expressive conduct that originated outside of the schoolhouse, did not disturb the school environment, and was not related to any school sponsored event").

Public schools have leeway to regulate some on-campus student speech because schools stand *in loco parentis*, *i.e.*, in the place of parents. *Mahanoy*, 141 S. Ct. at 2046. So schools can limit on-campus speech that causes or can be reasonably forecast to cause material disorder, substantial disruption, or an invasion of the rights of others. *Tinker*, 393 U.S. at 513–14. Schools can also regulate on-campus speech bearing the school's imprimatur, containing gratuitous vulgarity, and promoting illegal drug use. *See Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271–73 (1988); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986); *Morse v. Frederick*, 551 U.S. 393, 400–01 (2007).

But a student's off-campus speech that does not cause a substantial disruption to school activities or invade the rights of others enjoys the full protection of the First Amendment. *Mahanoy*, 141 S. Ct. at 2045. Indeed, the Supreme Court explained that had the student in *Bethel*, who received a suspension for giving a sexual innuendo-laden speech during a school assembly, "delivered the same speech in a public forum

outside the school context, it would have been protected." *Morse*, 551 U.S. at 405. This is because schools "rarely stand *in loco parentis*" over off-campus speech. *Mahanoy*, 141 S. Ct. at 2046.

Mahanoy is on point. In *Mahanoy*, a high schooler disappointed at only making the junior varsity cheerleading team posted two rants to social media expressing her displeasure. One post read, "fuck school fuck softball fuck cheer fuck everything." *Id.* at 2043. The second complained that the cheer coach gave preferential treatment to another student. *Id.* In response, the school suspended the student from the junior varsity squad for the upcoming year. *Id.*

The Supreme Court held the suspension violated the First Amendment. The Court explained that the student "spoke outside the school on her own time," when her parents, not the school, were responsible for her supervision. *Id.* The Court held that the suspension violated the First Amendment because the posts had a negligible impact at school. The Court noted that "discussion of the matter took, at most, 5 to 10 minutes of an Algebra class 'for just a couple of days'" and that a few members of the cheer squad were "upset" by the posts. *Id.* at 2047–48. The Court held this minimal disturbance did not satisfy *Tinker*'s "demanding standard" of a substantial disruption to justify punishing a student for expression. *Id.* at 2048.

Likewise, here, Defendants cannot satisfy *Tinker*'s "demanding standard." As in *Mahanoy*, I.P. posted the images to social media on his own time, away from school, and the images did not disrupt school. Quick's written justification for the suspension contains no suggestion that I.P.'s posts disrupted school. (Verified Compl. ¶¶ 96–98.)

And I.P., unlike the student in *Mahanoy*, did not even use profanity in his posts. Instead, he lampooned Principal Quick's overly serious nature by showing Quick holding a box of vegetables, as an anime cat in a dress, and being hugged by a cartoon bird. I.P.'s posts would not cause substantial disruption in a *high school*.

Courts have consistently held that student social media posts criticizing and making fun of school officials constitute protected First Amendment expression. For example, in *Layshock*, the Third Circuit sitting *en banc* unanimously held that a public high school could not discipline a student for creating, on his own time and away from school, a parody MySpace profile of his school principal. 650 F.3d at 207. The parody profile referred to the principal as a "big steroid freak," a "big whore," and a "big fag"; referenced him smoking a "big blunt" and stealing a "big keg"; and listed his interests as "Transgender, Appreciators of Alcoholic Beverages." *Id.* at 208. The Third Circuit held that the student's parody profile, though abrasive, remained protected by the First Amendment since it "did not disturb the school environment and was not related to any school sponsored event." *Id.* Here, I.P.'s posts (and reposts) referring (albeit sarcastically) to Quick as "my brotha" and "like a sister" are far tamer than the fully protected epithets in *Layshock*.

Similarly, in *J.S.*, the *en banc* Third Circuit held that a student engaged in protected First Amendment expression in creating a parody social media profile of his school principal because the profile caused only minimal disruption. 650 F.3d at 930–31. The parody profile described the principal as an "oh so wonderful, hairy, expressionless, sex addict, fagass, put on this world with a small dick PRINCIPAL"

who loved "children, sex (any kind), dogs, long walks on the beach, tv, being a dick head, and . . . my darling wife who looks like a man." *Id.* at 921. The school district argued that the profile disrupted school because teachers overheard students discussing the profile in class and the school counselor had to cancel student appointments to accommodate the principal's meeting with J.S. and her parents about the profile. *Id.* at 922–23. But the Third Circuit held these minor disturbances did not satisfy *Tinker*'s demanding standard of a "substantial disruption." *Id.* at 925. Here, Defendants never claimed I.P.'s far milder posts lampooning Quick caused *any* disruption.

The Supreme Court has held squarely that "[s]peech does not lose its protected character, however, simply because it may embarrass others." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 910 (1982). True, schools may punish off-campus speech in cases of "serious or severe bullying or harassment targeting particular individuals" and "threats aimed at teachers or students," because the speech disrupts the school environment. *Mahanoy*, 141 S. Ct. at 2045. *See, e.g.*, *Kutchinski v. Freeland Cmty. Sch. Dist.*, 69 F.4th 350, 359 (6th Cir. 2023) (school could reasonably forecast that social media posts "direct[ing] sexual and violent posts at three [school] teachers and a student would substantially disrupt normal school proceedings"); *Chen through Chen v. New Albany Unified Sch. Dist.*, 56 F.4th 708, 711–13 (9th Cir. 2022) (a "substantial disruption" occurred when social media posts targeted students with violent threats and resulted in students "upset, yelling, or crying" and "too upset to

go to class"). But nothing of the sort happened here, and Defendants have never claimed otherwise.

I.P., on his own time and away from school, posted three images lampooning Principal Quick's perceived overly serious demeanor. Those posts did not substantially disrupt the school environment, nor could Tullahoma High School officials have reasonably forecast they would. I.P.'s posts are protected expression, and Defendants' decision to suspend him violated the First Amendment.

B. The Social Media Policy is unconstitutional viewpoint discrimination.

The Social Media Policy violates the First Amendment because it censors speech on the basis that some may find it offensive. "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). Indeed, "[t]he Supreme Court has held time and time again, both within and outside of [the] school context, that the mere fact that someone might take offense at the content of the speech is not a sufficient justification for prohibiting it." *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 215 (3d Cir. 2001).

It is "axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995). And the Supreme Court has held that "giving offense is a viewpoint." *Matal v. Tam*, 582 U.S. 218, 243 (2017). So the Social Media Policy, prohibiting only expression which offends another by "embarrassing,"

"demeaning," or "discrediting" them, is textbook viewpoint discrimination. "Viewpoint discrimination is an egregious form of content discrimination and is presumptively unconstitutional." *Iancu v. Brunetti*, 139 S. Ct. 2294, 2299 (2019) (internal quotation omitted). Doubtless I.P. would not have been punished under the policy if his images praised Quick and depicted him sporting Superman's cape. But public schools, too, must abide by the First Amendment's prohibition on viewpoint discrimination. *Barr v. Lafon*, 538 F.3d 554, 571 (6th Cir. 2008) ("schools' regulation of student speech must be consistent with both the *Tinker* [substantial disruption] standard and *Rosenberger*'s prohibition on viewpoint discrimination").

The Social Media Policy fails strict scrutiny . *Christian Legal Soc. Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 684–85 (2010) (explaining viewpoint discrimination is subject to strict scrutiny). It is not narrowly tailored because it censors student expression regardless of whether it is proscribable under *Tinker* and *Mahanoy*. And there is no legitimate, let alone compelling, state interest in prohibiting students from engaging in nondisruptive speech outside school hours. *See Mahanoy*, 141 S. Ct. at 2046.

The School District does not ban students from posting about school staff on social media, only from posting content which might "embarrass[]," "discredit[]," or "demean[]" them. That's viewpoint discrimination, and it is intolerable under the First Amendment. *See Fire Fighters Ass'n, D.C. v. Barry*, 742 F. Supp. 1182, 1197 (D.D.C. 1990) (invalidating as impermissible viewpoint discrimination fire department regulation prohibiting employees from having bumper stickers which

"may cause embarrassment or harassment of Department members" because "decals which support the Department's views are unlikely to be determined embarrassing or harassing").

C. The Social Media Policy and Wildcat Policy are unconstitutionally overbroad.

The Social Media Policy and Wildcat Policy are substantially overbroad under the First Amendment because they "'reach[] a substantial number of impermissible applications' relative to their legitimate sweep." *Deja Vu of Nashville, Inc. v. Metro Gov't of Nashville & Davidson Cnty.*, 274 F.3d 377, 387 (6th Cir. 2001) (quoting *New York v. Ferber*, 458 U.S. 747, 771 (1982)). The overbreadth doctrine "is predicated on the danger that an overly broad statute, if left in place, may cause persons whose expression is constitutionally protected to refrain from exercising their rights for fear" of violating the law. *Massachusetts v. Oakes*, 491 U.S. 576, 581 (1989). "Therefore, any law imposing restrictions so broad that it chills speech outside the purview of its legitimate regulatory purpose will be struck down." *Deja Vu*, 274 F.3d at 387.

The "legitimate sweep" of a school policy regulating speech starts and ends with speech that causes, or is reasonably forecast to cause, material disorder, substantial disruption, or an invasion of the rights of others. *Mahanoy*, 141 S. Ct. at 2046. The Social Media Policy and Wildcat Policy reach well beyond those shores. The Social Media Policy prohibits "embarrassing," "discrediting," and "demeaning" speech about students and staff regardless of whether the expression causes disruption. (Ex. A at 9.) Likewise, the Wildcat Policy prohibits social media posts "unbecoming of a

Wildcat," no matter the subject and no matter the impact on the school's work and discipline. These are textbook examples of overbroad restrictions on speech.

Flaherty v. Keystone Oaks Sch. Dist., is instructive. 247 F. Supp. 2d 698 (W.D. Pa. 2003). The court in *Flaherty* invalidated a student handbook rule against "student[] expression that is abusive, offending, harassing, or inappropriate, 'interferes with the educational program of the schools,' but d[id] not limit it to those circumstances that cause a substantial disruption to school operations." *Id.* at 704. The court explained that "[a]bsent said language, I can find no way to reasonably construe the Student Handbook policies to avoid this constitutional problem. Therefore, said policies are unconstitutionally overbroad." *Id; see also Saxe*, 240 F.3d at 216–17 (holding school's anti-harassment policy unconstitutional because it prohibited speech that fell short of *Tinker*'s "substantial disruption" standard).

The First Amendment protects the right to criticize and satirize public officials, including teachers. *See, e.g.*, *N.Y. Times*, 376 U.S. at 273; *Hustler Mag.*, 485 U.S. at 54; *Layshock*, 650 F.3d at 219. The First Amendment protects offensive and embarrassing criticism and satire. Indeed, "the dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information." *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 686 (6th Cir. 2002) (cleaned up). Prohibiting students from engaging in "embarrassing," "demeaning," and "humiliating" expression, as well as expression "unbecoming of a Wildcat," sweeps in a breathtaking amount of protected First Amendment speech relative to the policies' narrow legitimate sweep (i.e., expression causing *Tinker*

"substantial disruption" at school). I.P. has shown a likelihood of success on the merits and the Court should enjoin enforcement of the Social Media Policy, Wildcat Policy, and expunge I.P.'s suspension from his disciplinary record so it does not act as a hindrance to his college and scholarship applications.

D. The Handbook's Social Media Policy and Wildcat Policy are unconstitutionally vague.

The Social Media Policy and Wildcat Policy are unconstitutionally vague. A speech restriction is void for vagueness if it "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). "The void-for-vagueness doctrine is concerned with two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." *Libertarian Party of Ohio v. Husted*, 751 F.3d 403, 422 (6th Cir. 2014) (cleaned up). The doctrine "finds its roots in the Due Process Clause, as well as the First Amendment." *Smith ex rel. Smith v. Mount Pleasant Pub. Schools*, 285 F. Supp. 2d 987, 992 (E.D. Mich. 2003) (finding school's "verbal assault" policy unconstitutionally vague and overbroad).

Vague laws cause Americans to self-censor in an effort to "steer far wider of the [prohibited] zone . . . than if the boundaries of the forbidden areas were clearly marked." *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972). As a result, "laws dealing with speech are subject to stringent vagueness standards." *Boddie v. Am. Broad. Cos., Inc.*, 881 F.2d 267, 272 (6th Cir. 1989) (citing *Hynes v. Mayor & Council*

of Borough of Oradell, 425 U.S. 610, 620 (1976)). True, student policies are not held to the same standard as criminal statutes. But schools must still provide students enough information to know how to stay on the right side of the law. *See, e.g.*, *Flaherty*, 247 F. Supp. 2d at 704 (holding void for vagueness student handbook policies using terms "abuse, offend, harassment, and inappropriate" because the terms "are simply not defined in any significant manner").

The Wildcat Policy is unconstitutionally vague. The court in *T.V. ex rel. B.V. v. Smith-Green Community School Corporation*, addressed a similar student handbook policy prohibiting students from engaging in behavior "that brings discredit or dishonor upon yourself or your school." 807 F. Supp. 2d 767, 773, 789 (N.D. Ind. 2011). The court struck down the policy, explaining that "discredit" and "dishonor" are based on subjective notions of good character and thus "involve such a broad spectrum of reasonable interpretation . . . as to be insufficiently conclusive for a disciplinary standard." *Id.* So too, here, the Wildcat Policy vaguely bans speech "unbecoming of a Wildcat." (Ex. A at 8.) Tullahoma students are not warned as to what conduct is prohibited by the policy and School District officials are not given objective guidelines for enforcement.

The Social Media Policy's prohibition on "embarrassing," "discrediting," and "humiliating" expression is likewise unconstitutionally vague. Are students prohibited from posting a video showing the quarterback throwing an interception? Surely those videos "discredit" and perhaps "embarrass" the player. How about a

video of a teacher emerging from a charity dunk tank? Tullahoma students have no way of knowing whether their video is sufficiently "humiliating" as to risk suspension.

It therefore is no surprise that courts consistently strike down regulations like the Social Media Policy as void for vagueness. The court in *Flaherty* struck down school policies using undefined terms like "offend" and "inappropriate" as void for vagueness, explaining the policies did not provide students enough information to know what conduct the school prohibits and did not provide administrators sufficient guidance to avoid arbitrary enforcement. 247 F. Supp. 2d at 704. Similarly, the court in *Fire Fighters Ass'n* invalidated a prohibition on firefighters displaying bumper stickers "which may cause embarrassment . . . of department members" on the ground that the term "escape[s] objective definition" and leaves members "not sure" whether expression could subject them to discipline. 742 F. Supp. at 1197. The Social Media Policy, which also does not define or expand upon its terms, should fare no better.

The Social Media Policy and Wildcat Policy lack the "precision and guidance" necessary to ensure that "those enforcing the law do not act in an arbitrary or discriminatory way." *Libertarian Party of Ohio*, 751 F.3d at 422. Quick's actions, confirmed in writing, demonstrate what happens when the danger of a vague law leading to arbitrary and discriminatory enforcement becomes reality: those wielding enforcement power use the vague law to suppress unflattering expression.

II. I.P.'s Loss of Core First Amendment Rights Constitutes Irreparable Harm.

Having shown likely success on his First Amendment claims, I.P. is entitled to a preliminary injunction because the Supreme Court "has unequivocally admonished

that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief." *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Bays*, 668 F.3d at 825 (quoting *Elrod*, 427 U.S. at 373).

In practice, "once a probability of success on the merits [i]s shown, irreparable harm follow[s]." *McNeilly v. Land*, 684 F.3d 611, 620 (6th Cir. 2012) For the reasons above, I.P. is likely to succeed on the merits of his claims and, indeed, is actively self-censoring to avoid the potential for further punishment under the Social Media Policy and the Wildcat Policy. (Verified Compl. ¶¶ 101-02.) Therefore, I.P. has demonstrated irreparable harm.

I.P. has suffered and continues to suffer irreparable harm as a result of the suspension remaining on his record. Courts in the Sixth Circuit have consistently recognized that disciplinary suspensions cause irreparable harm due to the reputational risk and potential effect on college applications. *See, e.g.*, *Doe v. Univ. of Cincinnati*, 872 F.3d 393, 407 (6th Cir. 2017) (suspension and associated reputational harm constituted irreparable harm); *Elmore v. Bellarmine Univ.*, No. 3:18-cv-00053-JHM, 2018 WL 1542140, at *7 (W.D. Ky. Mar. 29, 2018) (damage to academic and professional reputations and potential effect on ability to enroll in other institutions of higher education or medical school from disclosure of school discipline on applications constituted irreparable harm justifying injunction against discipline); *cf. Lorillard Tobacco Co. v. Amouri's Grand Foods, Inc.*, 453 F.3d 377, 381–82 (6th Cir.

2006) (holding that an action which puts an injured party's reputation at risk may constitute "irreparable harm"). This Court should likewise recognize the immediate and irreparable harm of a suspension for protected expression on the record of I.P., a rising high school senior, just weeks away from the start of the college and scholarship application period.

III. The Balance of Harms Favors a Preliminary Injunction.

In a First Amendment injunction analysis, "any potential harm to the parties or others largely depend[s] on the constitutionality of the state action." *Livingston Cnty.*, 796 F.3d at 642 (cleaned up). Indeed, "no substantial harm [to the government] can be shown in the enjoinment of an unconstitutional policy." *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 436 (6th Cir. 2004). Because, as explained above, the School District's suspension and policies violate the First Amendment, the balance of harms favors I.P.

IV. The Public Interest in the First Amendment Favors an Injunction.

"The public interest is served by preventing the violation of constitutional rights." *Chabad of S. Ohio*, 363 F.3d at 436. Thus, "[t]he public's interest . . . largely depend[s] on the constitutionality of the state action." *Livingston Cnty.*, 796 F.3d at 642 (cleaned up). Indeed, "it is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

This is especially true in the school setting. Protecting student speech "give[s] the students at [Tullahoma] High School th[e] opportunity to see the protections of the United States Constitution and the Bill of Rights at work." *Beussink ex rel.*

Beussink v. Woodland R-IV Sch. Dist., 30 F. Supp. 2d 1175, 1182 (E.D. Mo. 1998). As the Supreme Court explained in *Mahanoy*, "America's public schools are the nurseries of democracy. Our representative democracy only works if we protect the 'marketplace of ideas.' . . . Thus, schools have a strong interest in ensuring that future generations understand the workings in practice of the well-known aphorism, 'I disapprove of what you say, but I will defend to the death your right to say it.'" 141 S. Ct. at 2046. The public interest favors protecting I.P.'s (and all public school students') core First Amendment right to criticize and satirize in a non-disruptive manner. The Court should grant I.P.'s requested injunction.

V. The Court Should Waive the Bond Requirement.

The Court should exercise its discretion to waive the bond requirement under Fed. R. Civ. P. 65. District courts "have significant discretion to waive the bond requirement in light of the public interest." *DV Diamond Club of Flint, LLC v. U.S. Small Bus. Admin.*, 459 F. Supp. 3d 943, 965 (E.D. Mich. 2020) (cleaned up) (declining to require a bond when granting preliminary injunction on First Amendment grounds against limitation on businesses eligible for PPP loan funds). And courts "routinely" grant waiver of Rule 65's bond requirement in the context of constitutional challenges to government regulations. *L.W. by and through Williams v. Skrmetti*, _ F. Supp. 3d _, 2023 WL 4232308, at *36 (M.D. Tenn. June 28, 2023) (finding bond "unnecessary" when enjoining unconstitutional statute because "[d]efendants are unlikely to sustain any costs or damages"). So too, here, the Court should decline to require a bond.

CONCLUSION

I.P. respectfully requests that the Court grant his motion.

Dated: July 19, 2023

Respectfully Submitted,

/s/ Darrick L. O'Dell
DARRICK L. O'DELL
(BPR#26883)
SPICER RUDSTROM, PLLC
414 Union St., Ste. 1700
Nashville, TN 37219
dlo@spicerfirm.com

CONOR T. FITZPATRICK
(Mich. Bar No. P78981)*
HARRISON M. ROSENTHAL
(Penn. Bar No. 332452)*
FOUNDATION FOR INDIVIDUAL
RIGHTS AND EXPRESSION
510 Walnut St., Ste. 1250
Philadelphia, PA 19106
(215) 717-3473
conor.fitzpatrick@thefire.org
harrison.rosenthal@thefire.org

**Pro Hac Vice* Motions Pending

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2023, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing upon all ECF filing Participants. I further certify that counsel for Plaintiff dispatched a process server to serve the same on all Defendants.

/s/ Darrick L. O'Dell
Darrick L. O'Dell
SPICER RUDSTROM, PLLC

Brief in Support of Plaintiff's Motion for Preliminary Injunction - Exhibit List

I.P., a minor, by and through B.P. v. Tullahoma City Schs., et al.,
Eastern District of Tennessee

Exhibit	Description
A	2022-2023 Tullahoma High School Student Handbook (excerpts)
B	Declaration of B.P.

I.P. v. Tullahoma City Schs., et al.

Exhibit A to Plaintiff's Brief in Support of Motion for Preliminary Injunction

TULLAHOMA HIGH SCHOOL

Home of the Wildcats

2022-2023

Student and Parent/Guardian Handbook

www.tullahomahighschool.net

ADMINISTRATION

- Principal - Mr. Jason Quick
- Assistant Principal - Dr. Renee Flowers
- Assistant Principal - Mrs. Jessie Kinsey
- Assistant Principal - Mr. Derrick Crutchfield

SCHOOL CONTACT INFORMATION

- Main Office - (931) 454-2620
- Counseling Office - (931) 454-2625
- Cafeteria - (931) 454-2631

TO OUR STUDENTS AND PARENTS/GUARDIANS

On behalf of our faculty and staff, we welcome you to Tullahoma High School. We look forward to assisting you in fulfilling your educational goals and becoming a lifelong learner. THS has a history of exemplary academic and co-curricular accomplishments. We expect you to meet the goals set and to carry on the tradition of excellence. We are here to make your years in school as successful yet educationally challenging as possible. YOUR GRADUATION IS OUR EXPECTATION!

This handbook has been prepared to explain and clarify the procedures, policies, and regulations at Tullahoma High School. The administration reserves the right to change programs, policies, fees, etc., as necessary and without prior notice.

The handbook is not meant to be all-inclusive of rules and expectations. It is not a substitute for common sense, honesty, and making good choices.

You are urged to contact us if you have any questions. Thank you for your support as we strive to meet the needs of all our students.

TULLAHOMA HIGH SCHOOL CORE VALUES

What we believe:

- People are responsible for their choices.
- An environment of high expectations results in higher achievement.
- Great communities are built on mutual respect and dignity for all people.
- Integrity is essential to creating and sustaining positive relationships.
- Embracing diversity contributes to the strength of a community.
- The pursuit of learning as a life-long endeavor is essential to individual and organizational success.
- Cooperation, collaboration, and communication are essential to success.

2022-2023 Quarter Breakdown

Quarter 1

July 25 - 29	Teacher Inservice
August 1	First day of school - 1:00 Student Dismissal
August 24	1:00 dismissal
September 5	NO SCHOOL - Labor Day
September 19 - 23	Parent/Teacher Conferences
September 21	1:00 dismissal
October 3 - 7	NO SCHOOL - Fall Break

Quarter 2

November 9	1:00 dismissal
November 10	Parent/Teacher conferences (3:15-7:15)
November 21 - 25	NO SCHOOL - Thanksgiving Break
December 14	1:00 dismissal
December 15	Exams (1st & 3rd) - 1:00 dismissal
December 16	Exams (2nd & 4th) - 1:00 dismissal
December 19 - 30	NO SCHOOL - Christmas Break

Quarter 3

January 2	Teacher Inservice
January 16	Teacher Inservice
January 25	1:00 dismissal
February 27 - March 3	Parent/Teacher conferences (3:15-7:15)
February 20	Teacher Inservice
March 1	1:00 dismissal
March 13 - 17	NO SCHOOL - Spring Break

Quarter 4

April 7	NO SCHOOL - Good Friday
April 19	1:00 dismissal
May 4	Sr. Exams (1st & 3rd) - 3:15 dismissal
May 5	Sr. Exams (2nd & 4th) - 3:15 dismissal
May 5	Sr. Grades entered by 3:00pm
May 10	1:00 dismissal
May 12	Graduation
May 17	Exams (4th - 1:15-3:15) - 3:15 dismissal
May 18	Exams (1st and 3rd) - 1:00 dismissal
May 19	Exams (2nd - 8:15-10:15) - 10:15 dismissal
May 19	Last day of school

Bell Schedule

	3:15 Dismissal	1:00 Dismissal
1st Bell	8:10	8:10
1st Block	8:15 - 9:30	8:15 - 9:05
2nd Block	9:37 - 10:52	9:12 - 10:02
3rd Block (4 Lunch Shifts)	10:59 - 1:00	10:09 - 12:05
PAWS	1:07 - 1:53	NO PAWS
4th Block	2:00 - 3:15	12:12 - 1:00

Lunch Times

	3:15 Dismissal	1:00 Dismissal
1st (Gym, Science Hall, Band)	11:00 - 11:25	10:25 - 10:50
2nd (Main Hall, English Hall)	11:30 - 11:55	10:50 - 11:15
3rd (Social Studies Hall, Fine Arts Hall)	12:00 - 12:25	11:15 - 11:40
4th (Fall - Math) **4th (Spring - Garrison Wing, Vocational)**	12:30 - 12:55	11:40 - 12:05

3:15 Dismissal

- Classes will be 75 minutes long.
- PAWS will be 46 minutes long.
- Students will have 7 minutes between classes.

1:00 Dismissal

- Classes will be 50 minutes long.
- No PAWS
- Students will have 7 minutes between classes.

		Chili, Soup								
Other Desserts $0.50		Extra Sandwich, Pizza			$2.75		Yogurt or Gogurt		$1.00	
Fruit Slushies $0.75		Ala Carte Sandwich, Pizza			$3.25		Chips and Snacks		$1.00	
BIG WATERS $1.50							Bottled Water		$1.00	
Cheese Slice $0.30		Extra Vegetable or Fruit			$1.00		Medium Juice		$1.00	
String Cheese $0.75		Ala Carte Vegetable or Fruit			$1.50		Small Juice		$0.75	
Switch/Envy $1.25		French Fries			$1.50		Milk, half-pint		$0.55	
G2 $1.50		Saltines or 2 small packs			$0.50		Fruit and Dip		$1.25	
Ala Carte SM Pizza $4	(THS)	Roll/Cornbread/ bread			$0.75		Ice Cup		$0.25	

VISITORS

Tullahoma High School has a NO VISITOR POLICY. Because of the possibility of school and classroom disturbances, students are not allowed to have visitors during the school day. Any parent or other visitors on school business must check in at the visitors' entrance and be issued a pass. Any student-age visitor must have the express permission of the administration. Students are not permitted to have visitors during lunch. Unauthorized visitors at lunch and school activities are subject to trespassing violations.

TECHNOLOGY

Each student will have access to a Chromebook for school use. Students who do not have access to an internet-connected device at home may be issued a school Chromebook for use at school and home. Parents of students being issued school devices must sign the TCS Computer Use Agreement. This agreement must be signed and submitted when the Chromebook is issued. Additional rules governing Chromebooks and the school network are included in the agreement.

SOCIAL MEDIA

Participation in activities, groups, and teams is a privilege at Tullahoma High School. Using social media by a student "unbecoming of a Wildcat" may result in discipline, including suspension or removal from the activity, group, leadership position, or team.

COMPUTER NETWORK

- Computer software installed on computers at Tullahoma High School is either the property of Tullahoma High School or licensed by Tullahoma High School for educational use only. Software may not be copied or otherwise taken from the computers upon which it is installed.
- Students are forbidden to add, delete, or modify operating system elements or change any hardware or software setting.
- No software will be installed on the hard disk drive by a student. If the software is to be installed on the hard drive, only an official systems operator shall do it.
- Any illegal software found on the hard disk drive will be removed; violations may result in

disciplinary actions by the school, and legal actions may be pursued at the discretion of the individual software company.
- Repair costs resulting from deliberate damage to computer equipment by the student is the student's financial responsibility.
- There is no expectation of privacy for students who use school-purchased computer equipment or media.

Anyone violating this policy loses the right to use the network for the duration of his/her time at Tullahoma High School – No Exceptions.

VIDEOS/PHOTOS

- Cameras, camera phones, and other electronic recording devices are prohibited in locker rooms at all times.
- Cameras, camera phones, and other electronic recording devices owned or operated by individuals may not be used to photograph, video, or record any student or staff without permission from the individual(s) being photographed, videoed, or recorded.
- Any student who records and/or disseminates in any manner an unauthorized or misrepresented photograph, video, or recording for the purpose of embarrassing, demeaning, or discrediting the reputation of any student or staff, or that results in the embarrassment, demeaning, or discrediting of any student or staff, or results in any action or activity disruptive to the educational process shall be subject to disciplinary action up to and including suspension or expulsion at the discretion of the principal.

Any student violating this policy's restrictions may have the device confiscated and be subject to disciplinary action at the principal's discretion. Students who record fights or other student altercations may be subject to disciplinary action. This action may include out-of-school suspension. Local authorities may also be notified, in which case the device may be entered as evidence.

**School security cameras are not included in this restriction. Any student violating this policy's restrictions may have the device confiscated and be subject to disciplinary action at the principal's discretion.

NOTE: The creation and distribution of nude photographs of minors (under 18) violates state and federal child pornography laws (even if the student possessing or distributing the material is also a minor.) Engaging in such activity can lead to serious legal and educational consequences. Cases, where sexually explicit media is acquired by making threats (extortion) or distributed with the intent to harm (revenge/cyberbullying) are considered a Category IV offense and will be dealt with accordingly.

Electronic games/CD/Tape/MP3 Players, Toys, Other Digital Music Players, Etc.

Electronic games, CD/MP3 players, collectible cards, toys, etc., should not be brought to school. These items are high theft items and tend to cause distractions from the educational process. THS assumes no responsibility for the theft or damage to personal property. Use of these items in classrooms is prohibited unless it is an educational activity under the direct supervision of the classroom teacher. These devices are allowed in the hallway as long as it does not limit the student's ability to hear announcements or teacher directives. "One ear open" is good advice.

Tullahoma High School Common Expectations

	Classroom	Hallway	Bathroom	Cafeteria	Auditorium	Library	Extracurricular	Technology and Phones
Be Respectful	Be on time Keep hands, feet, and objects to self Use appropriate language and voice level Respond to others respectfully	Keep hands, feet, and objects to self Use appropriate language and voice level Be mindful of others learning	Keep hands, feet, and objects to self Use appropriate language and voice level Allow others privacy Keep restroom clean	Keep hands, feet, and objects to self Use appropriate language and voice level Be kind and courteous to the cafeteria staff	Keep hands, feet, and objects to self Use appropriate language and voice level Follow directions Be respectful to presenters	Keep hands, feet, and objects to self Use appropriate language and voice level	Keep hands, feet, and objects to self Use appropriate language and voice level Allows others to listen and learn Listen to adults	Get permission before taking pictures and/or videos Put phones away in phone holders provided unless used for instruction
Be Responsible	Be on time Bring required materials Take care of personal needs before class Complete and turn in all assignments Be on time Follow all classroom procedures	Go directly to your destination Keep hallways and lockers clean and uncluttered Walk safely	Schedule bathroom breaks wisely Wash your hands	Clean up after yourself Keep food in the cafeteria Handle food as it was meant to be handled Walk quietly and orderly in line to and from the cafeteria	Enter quickly and quietly Clean up after yourself No food or drinks	Clean up after yourself Leave equipment the way you found it Use equipment with care	Exhibit an attitude that is a positive representation of the school Report problems to an adult Remember all school rules apply	Use equipment with care Keep up with your own technology Put phones away in phone holders provided unless used for instruction
Be Engaged	Ask for help when needed Share ideas and participate Follow all teacher directions Look at and listen to the speaker	Be mindful of others and their property Stop and listen during an announcement	Keep phones put away Use the bathroom quickly and return to class	Be aware of the time Listen and follow directions	Look at and listen to the speaker Sit in your assigned area Ask appropriate questions	Use technology for academic purposes Report inappropriate content	Participate Be aware of the rules and expectations of your environment Be aware of your surroundings	Put phones away in phone holders provided unless used for instruction Notify the teacher of emergency issues

Alternative Learning Center (ALC) - Designed to educate students who have not been successful in regular schools, often because of behavior, disciplinary, and safety concerns. The student is also banned from all other school property while assigned to the Alternative School Program.

- A student will be assigned to the ALC Program for no less than 30 days, including 5 transition days.
- Transition days:
    - Days 1 and 2, the student will meet with extra support services.
    - Day 3, the student will start the day in transition and will go to their 4th block class only.
    - Day 4, the student will start the day in transition and will go to their 3rd and 4th block classes only.
    - Day 5, the student will start the day in transition and will go to their 2nd, 3rd, and 4th block classes only.

Insubordination (Not Doing Work) (Misbehavior Level I)	• The student will receive a ZERO for the assignment.
Insubordination (Class Disruption) (Misbehavior Level II)	• **The total starts over every 9 weeks.** • 1st offense, the teacher gives a verbal warning. • 2nd offense = 1 day ISS. • 3rd offense = 2 days ISS. • 4th offense = 3 days ISS. • 5th offense = 1 day OSS, 3 day ISS. • 6th or more offenses = 2 days OSS, 3 days ISS
Dress Code (Misbehavior Level I)	• **The total starts over every 9 weeks.** • 1st offense, the student will change clothes or be given a change of clothing (exchange cell phone) • 2nd offense = Same as above plus 1 day ISS. • 3rd offense = Same as above plus 2 days ISS. • 4th offense = Same as above plus 3 days ISS. • 5th or more offenses = 1 day OSS and 3 days ISS.
Abusive Language (Profanity) (Misbehavior Level I)	• **The total starts over every 9 weeks.** • 1st offense, the teacher gives a verbal warning. • 2nd offense = 1 day ISS. • 3rd offense = 2 days ISS. • 4th offense = 3 days ISS. • 5th or more offenses = 1 day OSS, 3 day ISS.
****Classroom Tardiness (Misbehavior Level 1)**	• **The total starts over every 9 weeks.** • 3 tardies = 1 day ISS. • 6 tardies = 2 days ISS.

	• 9 tardies = 3 days ISS. • 12 or more tardies = 1 day OSS and 3 days ISS.
Cell Phone (Refusal of confiscation) (Class Disruption) (Misbehavior Level I)	• **The total starts over every 9 weeks.** • 1st offense = 1 day ISS. • 2nd offense = 2 days ISS. • 3rd offense = 3 days ISS. • 4th offense = 1 day OSS, 3 day ISS. • 5th or more offenses = 2 days OSS, 3 days ISS
Out Of Assigned Area (Misbehavior Level I)	• **The total starts over every 9 weeks.** • 1st offense = 1 day ISS. • 2nd offense = 2 days ISS. • 3rd offense = 3 days ISS. • 4th offense = 1 day OSS, 3 days ISS • 5th offense = ALC referral for no less than 30 days.
Skipping Class (Misbehavior Level 1)	• Administration and Attendance will verify the student is skipping. • 1st skip = 2 days ISS. • 2nd skip = 3 days ISS. • 3rd skip = 1 day OSS, 3 days ISS. • 4th skip = 2 days OSS, 3 days ISS • 5th skip = ALC referral for no less than 30 days.
Leaving Campus Without Permission (Misbehavior Level I)	• Administration and Attendance will verify the student is skipping. • 1st offense = 3 days ISS. • 2nd offense = 1 day OSS and 3 days ISS. • 3rd offense = 2 days OSS, 3 days ISS. • 4th offense = 3 days OSS, 3 days ISS • 5th offense = ALC referral for no less than 30 days.
E-Cigarette (Vaping)	• **1st offense**: Citation provided to the student, parent, and juvenile court by the school. The court will send a letter to the parent with a fine between $10.00-$50.00 and/or up to 50 hours of service. THS will also assign the student to 3 days of ISS and require the student to complete the following vape course http://www.everfi.com/ (note: the course MUST be completed outside of school and prior to the end of 3 days) • **2nd offense:** Citation provided to the student, parent, and juvenile court by the school. The court will send a letter to the parent with a fine between $10.00-$50.00 and/or up to 50 hours of service. THS will also assign the student to 5 days of ISS and require the student to complete the following vape course https://mededucation.stanford.edu/courses/vaping-prevention-a-self-paced-online-course-linear-version/ (note: the course MUST be completed outside of school

	and prior to the end of 5 days) ● **3rd Offense:** School Resource Officer will file a petition with the juvenile court. The court will send a letter to the parent with a fine between $10.00-$50.00 and/or up to 50 hours of service. THS will assign the student to 3 days of OSS. ● **4th Offense:** School Resource Officer will file a petition with the juvenile court. The court will send a letter to the parent with a fine between $10.00-$50.00 and/or up to 50 hours of service. THS will assign the student to 3 days of OSS. ● **5th Offense:** School Resource Officer will file a petition with the juvenile court. The court will send a letter to the parent with a fine between $10.00-$50.00 and/or up to 50 hours of service. THS will assign the student to 5 days of OSS.
Fighting **(Misbehavior Level III)**	● 1st Offense ○ Possible court petition ○ Students will do 3 days OSS, 3 days ISS, ● 2nd Offense ○ Possible court petition ○ ALC referral for no less than 30 days
Aggressive Physical Contact (Assault) **(Misbehavior Level III)**	● 1st Offense ○ Possible court petition ○ Students will do 3 days OSS, 3 days ISS, ● 2nd Offense ○ Possible court petition ○ ALC referral for no less than 30 days
Zero Tolerance ● Assault that results in bodily injury upon any teacher, principal, administrator, and any other employee of the school, or a school resource officer. ● Aggravated assault ● Possession of unauthorized substances (any controlled substance, controlled substance, or legend drug)	● Referral to the Director of Schools for expulsion for up to 1 calendar year.

****Classroom Tardies**

- When a student is tardy to 2nd, 3rd, or 4th block, a referral must be put in Skyward.
- When a student is tardy to 1st block, and you have seen the student walking the halls, a referral must be put in Skyward.
- When a student checks in late through Attendance, no referral is needed in Skyward.

- When a student checks in late through Attendance more than 3 times, notify administration to investigate.

Excessive infractions or failure to comply with administrative intervention may result in immediate suspension, referral to the Alternative School, or intervention by the SRO.

All discipline is up to the discretion of the administration.

I.P. v. Tullahoma City Schs., et al.

Exhibit B to Plaintiff's Brief in Support of Motion for Preliminary Injunction

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

I.P., a minor, by and through B.P., *Plaintiff,* v. TULLAHOMA CITY SCHOOLS, a political subdivision of the State of Tennessee; JASON QUICK, in his individual capacity; and DERRICK CRUTCHFIELD, in his individual capacity, *Defendants.*	**DECLARATION OF B.P. IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Under 28 U.S.C. § 1746, I, B.P., declare as follows:

1. I am over the age of 18 and competent to testify.

2. I am the parent of I.P., the minor Plaintiff identified in this action.

3. I have personal knowledge of the factual allegations in paragraphs 8–9, 77, 91–92, and 94–98 of the Verified Complaint and know them to be true.

4. I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 13, 2023

BP

B.P.