

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

O.J., a minor, by and through his father,
M.J.,

Plaintiff,

-against-

CHAPPAQUA CENTRAL SCHOOL
DISTRICT, CHAPPAQUA CENTRAL
SCHOOL DISTRICT BOARD OF
EDUCATION, DR. CHRISTINE
ACKERMAN, Superintendent of
Chappaqua Central School District, in her
individual capacity, and DR. SANDRA
SEPE, Principal of Horace Greeley High
School, in her individual capacity,

Defendants.

No. 24 Civ. 2830

**VERIFIED COMPLAINT
AND JURY DEMAND**

INTRODUCTION

1. Public school students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). In this case, however, Horace Greeley High School administrators suspended a student for rap lyrics spoken in his friend’s bedroom—far *outside* the schoolhouse gate. To make matters worse, the student is a member of the LGBTQ community and the administrators suspended him for rapping

the words “faggot” and “twink,” even though his lyrics were satirical and did not disrupt the school environment.

2. Plaintiff O.J. is that LGBTQ student, a junior at Horace Greeley High School. When not in school, he occasionally freestyles rap lyrics with his friends. Like stream-of-consciousness writing, freestyle rap provides a creative outlet for O.J. and other artists to be playful, satirical, or deliberately provocative.

3. On a Friday evening in the fall of 2022, O.J. recorded freestyle rap lyrics at a friend’s house. In addition to using the words “faggot” and “twink,” O.J.’s tongue-in-cheek lyrics were intentionally over-the-top parodies of rap music’s obsession with violence, crime, and sexuality—purposefully mimicking the style of a popular rap subgenre known as “meme rap.”

4. Unbeknownst to O.J. at the time, and without O.J.’s agreement, his friend later combined some of O.J.’s lyrics with those recorded by an acquaintance, creating a single song. O.J.’s friend then—again, without O.J.’s knowledge or agreement—posted the song on SoundCloud, a widely used music-streaming service open to the public.

5. The combined lyrics made no reference at all to Horace Greeley High School, nor to any of its students, its teachers, or its staff. The song caused no disruption at school. The song went all but entirely unnoticed.

6. Ten days after the gathering at O.J.’s friend’s house, Greeley administrators received two anonymous complaints containing a link to the song and naming O.J. as one of the lyricists. The song had not caused any disruption, and the

complaints provided no reason to predict it would. Nevertheless, Greeley's administrators leaped into action. They demanded O.J. submit to a psychological evaluation—which concluded he presented no threat to himself or others—and suspended him under the Student Code of Conduct's broad "hate speech" prohibition.

7. O.J. and his father, M.J.—in disbelief that Greeley administrators would or could punish O.J. for goofing around at a friend's house, when his lyrics had no impact on or relationship to the school—asked for and attended three meetings with administrators in the next week to plead O.J.'s case. They hoped to have the suspension overturned.

8. But the father and son's pleas fell on deaf ears. The administrators ultimately upheld the suspension because O.J.'s lyrics included the words "faggot" and "twink"—which they deemed "hate speech." They did not care that O.J. is a member of the LGBTQ community or that his use of these words was intentionally satirical, self-referential, and self-deprecating. They did not care that O.J.'s lyrics were performed off campus, outside of school hours, and that he played no part in producing or sharing the completed song. They did not care that the song had not caused any disruption whatsoever at Horace Greeley High School.

9. Likewise, the administrators did not care that the suspension violated O.J.'s First Amendment rights, as O.J.'s father informed them at multiple meetings. They refused to budge even after O.J.'s attorneys explained that the suspension flouted the Supreme Court's 2021 holding in *Mahanoy Area School District v. B.L.*, 594 U.S. 180 (2021). There, the Court held a public high school violated the First

Amendment when it punished a student for her off-campus social media post using profanity to complain about a school activity, even though the post caused students to become visibly upset and discussion of the matter consumed class time.

10. Because the student's speech in *Mahanoy* is protected by the First Amendment, O.J.'s is too. After all, O.J. spoke outside of school, did not reference the school, and caused no disruption to the school. He also played no role in sharing the song.

11. O.J. is now preparing to apply to college. But his suspension is jeopardizing his bright future. Without the Court's intervention, O.J. will be required to disclose on college applications that he was suspended for engaging in "hate speech," a black mark that will undoubtedly hurt his chances of acceptance.

12. Equally troubling, O.J.'s suspension and the policies underlying it continue to chill O.J.'s and his fellow students' off-campus expression. Both instill a well-founded fear of punishment for out-of-school creativity, and even idle conversation.

13. Public high schools may have some authority to police on-campus speech. But Greeley's administrators apparently believe this authority applies anywhere and at any time: They told O.J. and his father that the context and location of student speech "doesn't matter" because there are "significant limitations to free speech in this country." They are wrong. By punishing O.J. for his artistic expression, Defendants violated the First Amendment.

THE PARTIES

Plaintiff

14. Plaintiff O.J. is a seventeen-year-old student in his junior year at Horace Greeley High School in the Chappaqua Central School District in Westchester County, New York. O.J. lives with his parents and three younger siblings in Chappaqua, New York.

15. O.J. is an LGBTQ teen. He is politically active and has raised over \$10,000 to support groups dedicated to racial equality and protecting civil rights. O.J. is a strong believer in the importance of free speech and has spoken about First Amendment rights at his town's board meeting.

16. This fall, O.J. will be applying to college programs in design, education, and environmental science. The institutions he is considering require applicants to disclose, and in some cases explain the basis of, any disciplinary action in high school.

17. Defendants disciplined O.J. under a viewpoint-discriminatory, vague, and overbroad "hate speech" policy in the District's Student Code of Conduct for his constitutionally protected speech. He remains subject to this unconstitutional policy.

18. M.J. is O.J.'s father. He brings this action on behalf of O.J., his minor son.

Defendants

19. Defendant Chappaqua Central School District is a political subdivision of the State of New York located in Westchester County. The School District maintains its administrative offices at 66 Roaring Brook Road, Chappaqua, New York 10514. Horace Greeley High School is the School District's only high school.

20. The School District is authorized to impose discipline for violations of the Student Code of Conduct, including its “hate speech” policy. *See* Board Policy 5030. The School District’s employees obeyed School District policies to suspend O.J. for his protected artistic expression in violation of his First Amendment rights. The School District is a municipal entity subject to liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978). *See Roe v. Chappaqua Cent. Sch. Dist.*, No. 16 CV 7099 (VB), 2017 WL 4119655, at *7–8 (S.D.N.Y. Sept. 15, 2017).

21. Defendant Chappaqua Central School District Board of Education is a political subdivision of the State of New York located in Westchester County. The Board maintains its administrative offices at 66 Roaring Brook Road, Chappaqua, New York 10514.

22. The Board has the power to approve, amend, suspend, or rescind any policy of the Chappaqua Central School District. *See* Board Policy 2065. The School Board approved the School District policies that the School District’s employees obeyed to suspend O.J. for his protected artistic expression in violation of his First Amendment rights. The School Board approved the “hate speech” policy challenged here. *See* Board Policy 5030. The School Board is a municipal entity subject to *Monell* liability. *See Chappaqua Cent. Sch. Dist.*, 2017 WL 4119655, at *7–8.

23. Defendant Christine Ackerman is the superintendent of the School District. She has been the superintendent since July 2017, was the superintendent in October 2022 when the events described in this Complaint occurred, and she holds that position today. Superintendent Ackerman is the chief executive officer of the

School District and is responsible for its administration. *See* Board Policy 2000; Board Policy 9055. Superintendent Ackerman directed Principal Sepe to suspend O.J. and upheld O.J.’s suspension on appeal. At all times relevant to the Complaint, Superintendent Ackerman was acting under color of state law and School District policies. She is sued in her individual capacity.

24. Defendant Sandra Sepe is the principal of Horace Greeley High School. She has served as principal since August 30, 2022, was the principal in October 2022 when the events described in this Complaint occurred, and she holds that position today. The Board has empowered Principal Sepe to enforce the Student Code of Conduct and resolve discipline cases. *See* Board Policy 5030. Principal Sepe imposed and upheld the three-day suspension of O.J. for his protected speech. At all times relevant to this Complaint, Principal Sepe was acting under color of state law and School District policies. She is sued in her individual capacity.

JURISDICTION

25. This action is brought under the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988 for violations of the First and Fourteenth Amendments to the United States Constitution.

26. O.J. seeks declaratory and injunctive relief against Defendants Chappaqua Central School District and its Board of Education declaring its Student Code of Conduct’s “hate speech” policy unconstitutional under the First and Fourteenth Amendments and enjoining its enforcement. Specifically, Plaintiff seeks a ruling that the “hate speech” policy is viewpoint discriminatory, overbroad, and vague on its face.

27. O.J. seeks monetary damages against Defendants Chappaqua Central School District and Chappaqua Central School District Board of Education for violating Plaintiff's clearly established First and Fourteenth Amendment rights by maintaining a viewpoint-discriminatory, overbroad, and vague "hate speech" policy in the Student Code of Conduct.

28. O.J. also seeks monetary damages against Defendants Superintendent Ackerman and Principal Sepe in their individual capacities for violating his clearly established First Amendment rights.

29. Accordingly, this Court has original subject matter jurisdiction over O.J.'s claims under 28 U.S.C. § 1331 (federal question jurisdiction) and § 1343 (civil rights jurisdiction).

30. This Court has authority under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02 to award declaratory relief because this Complaint presents an actual case or controversy within the Court's jurisdiction.

VENUE

31. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(1) because Chappaqua Central School District and its Board of Education are located within the White Plains Division of the Southern District of New York, and, on information and belief, Defendants Sepe and Ackerman reside in the State of New York.

32. Venue is also proper in this judicial district under 28 U.S.C. § 1391(b)(2) because the events giving rise to O.J.'s claims occurred in Chappaqua, New York,

which is located within the White Plains Division of the Southern District of New York.

FACTUAL ALLEGATIONS

O.J. records “meme rap” lyrics at a friend’s house for fun, and unbeknownst to O.J. at the time, his friend posts a song online with some of O.J.’s lyrics.

33. Like many American high schoolers, O.J. spends his time outside of school hanging out with friends, watching television, and listening to music.

34. On the evening of Friday, October 7, 2022, O.J. went to his friend J.M.’s home in Chappaqua to hang out with a group of friends.

35. T., a friend of J.M.’s, was also present at J.M.’s house. T. did not attend Horace Greeley High School and is a student at a different high school.

36. O.J. and J.M. decided to play around with J.M.’s new microphone and record rap lyrics in the style of “meme rap.”

37. Meme rap is a popular subgenre of rap music that parodies elements of traditional hip-hop music. Because rhyme and rhythm are essential elements of hip-hop music, some meme-rap artists employ obvious rhymes or a lack of rhythm to create exaggeratedly “bad” hip-hop. Meme rap lyrics often parody the tropes and stereotypical language of other, more traditional forms of rap and riff on popular topics of the day, with lyrics incorporating sophomoric humor and intentionally transgressive content. The genre derives its name from social media “memes”—images, videos, or phrases that spread quickly online, often with darkly humorous elements.

38. O.J. recorded freestyle rap lyrics in J.M.'s bedroom and left the room to hang out with other friends elsewhere.

39. O.J.'s lyrics ranged from deliberately offensive to downright silly.

40. O.J.'s lyrics were intended to reference controversial topics in the public's consciousness.

41. For example, O.J.'s lyrics referenced *Dahmer*, the television show about serial killer Jeffrey Dahmer that is one of Netflix's most watched series of all time.

42. O.J.'s lyrics were also satirical and referenced his own identity as a member of the LGBTQ community.

43. O.J.'s lyrics included the following lines, that later, unbeknownst to O.J. at the time, J.M. put into a song that J.M. posted on SoundCloud:¹

[T.], fuck these fellas up.

Hey Dahmer, I'm Jeffrey Dahmer, I'm Jeffrey Dahmer.
He my fucking role model.
He just like me, you know.
We split a bottle of beer,
Fuck a couple of twink.
Faggot, fart, balls. Faggot, fart, balls.

Cocaine in my pocket, [T.] riding on a rocket.
Drop some dice and he shot it.
Osama and Dahmer, handing me these commas,
I'll shoot your fuckin' mama.
On top, yup, like the Twin Towers,
Finger a toddler in a store, call me the fuckin' Target toucher.

¹ As discussed *infra* ¶¶ 105–136, the only words that the School District ever cited as the basis for suspending O.J. that he actually spoke were “faggot” and “twink.”

44. O.J. rapped other lyrics that day that did not appear in the song produced by J.M.

45. O.J.'s lyrics did not name any student, teacher, staff member, or other individual or group at Horace Greeley High School or associated with the School District.

46. By using the word "faggot," O.J. sought to reclaim a word that has been used as a slur against him and the LGBTQ community in general.

47. As numerous scholars have noted, when members of a minority group use a slur to refer to themselves, they engage in a well-documented process called "linguistic reclamation."² "Reclaiming" slurs defangs their power and empowers members of minority groups. The speaker seeks to "reclaim" the term used against their group by redeploying it in a new way under their control.

48. The word "twink" is not a slur.

49. The Cambridge Dictionary defines "twink" as a "a gay man who is young, slim, and looks like a boy."

50. T. recorded freestyle rap lyrics with J.M. that same evening.

51. T.'s lyrics included the terms and phrases "nigga," "December's killing spree," "rape" a "Chappaqua mom," "beaner monkey I'm gonna whack," and "I'm going to kill Joe Biden and Hillary Clinton."

52. O.J. did not participate in writing or rapping any of T.'s lyrics.

² See, e.g., Gregory Coles, *The Exorcism of Language: Reclaimed Derogatory Terms and Their Limits*, 78 COLL. ENG. 424 (2016).

53. Sometime later, J.M. took some of O.J.'s lyrics (the lyrics described in ¶ 43) and compiled them with T.'s lyrics to create a song that J.M. titled "I am Jeffrey Dahmer."

54. J.M. posted this song to SoundCloud.

55. SoundCloud is a music streaming service that allows users to upload, promote, and share audio publicly. Over 150 million songs are currently available on SoundCloud. It is especially popular among amateur hip-hop artists.

56. O.J. did not participate in J.M.'s compiling, editing, or posting of the song.

57. O.J. did not at the time know of J.M.'s selection of lyrics, compilation of lyrics, or posting of the song.

58. O.J. did not agree to J.M.'s selection of lyrics, compilation of lyrics, or posting of the song.

59. The song's lyrics did not name any student, teacher, staff member, or other individual or group at Horace Greeley High School or associated with the School District.

60. The SoundCloud post of the song did not identify O.J. by name.

61. O.J. did not send, distribute, or promote the song to anyone, let alone members of the Horace Greeley High School community.

62. O.J. did not share or promote the song on any social media platforms or otherwise.

63. An edited photo of O.J. and T. was posted to accompany the song. The photo was edited and posted without O.J.'s knowledge or consent.

The School District receives two anonymous complaints about the song.

64. The School District maintains a website that allows individuals to anonymously report "any suspicious incident, activity, bullying, cyberbullying, or other student-related or staff-related issues."

65. On October 17, 2022, ten days after O.J. freestyled lyrics at J.M.'s house, the School District received two anonymous complaints about the song through its website.

66. The first complaint labeled itself as reporting "Hate Actions/Speech (Racial, Ethnic, & Hurtful Comments)." It included a SoundCloud weblink to the song with the words "CLICK ON LINK."

67. The second report was labeled "Threats or Violence." It also provided the SoundCloud weblink to the song, identified O.J. as appearing on the track and quoted a few of T.'s lyrics. The report misidentified O.J. as rapping T.'s lyrics.

68. Defendant Sandra Sepe, the principal of Horace Greeley High School, learned of the complaints that same day, October 17.

69. Principal Sepe called O.J.'s home that evening and told O.J.'s father, M.J., that the school received the complaints about the song.

70. Principal Sepe told M.J. that she had not listened to the song, but Assistant Superintendent Andrew Corsilia heard it and recognized O.J.'s voice.

71. Principal Sepe requested that O.J. and M.J. attend a "safety meeting" at the school the following morning at 8:00 A.M.

72. O.J. and M.J. readily agreed to attend the “safety meeting.”

Administrators compel O.J. to submit to a psychological evaluation and the school psychologist determines he presents no threat whatsoever.

73. On October 18, O.J. and M.J. met with Principal Sepe, Assistant Principal Lauralyn Stewart, and Guidance Counselor John Brennan.

74. Principal Sepe and the other administrators characterized the meeting as a non-disciplinary “safety meeting.”

75. As of the “safety meeting,” M.J., Principal Sepe, Assistant Principal Stewart, and Guidance Counselor Brennan had not heard the song.

76. By the time of the safety meeting, J.M. had removed the song from SoundCloud.

77. Principal Sepe asked if O.J. recorded the song.

78. O.J. explained that he had improvised lyrics at a friend’s house and that his friend must have compiled them into the song.

79. Administrators demanded O.J. undergo a psychological evaluation, known as a “Danger Assessment and Intervention Plan screening” or “DAIP screening,” performed by Greeley’s school psychologist, Dr. Stephanie Lia.

80. Assistant Principal Stewart and Guidance Counselor Brennan were also present for the screening and signed the DAIP screening form.

81. As shown on the completed six-page DAIP screening form, Dr. Lia determined O.J.’s “threat/danger level” to be “No Threat,” as opposed to the form’s other possible choices of “Low Level,” “Medium Level,” or “High Level.”

82. On the DAIP screening form, Dr. Lia noted that complaints had alleged O.J. wrote a song with disturbing lyrics, but that O.J. explained he crafted only some of the song's lyrics. The DAIP screening concluded that "[O.J.] did not write any of the disturbing lyrics except the one about men."

83. On the DAIP screening form, Dr. Lia checked the DAIP form's boxes to note that: (1) O.J. had engaged in "Artistic, written, or symbolic expression"; (2) his words contained "no threat"; (3) there was no identified target; (4) O.J. had no history of violence; (5) O.J. had no motive, plan, or ability to carry out violence; and (6) that he had several trusted adults in his life, including his parents and Dr. Lia.

84. Because O.J. presented "no threat," Dr. Lia and the other administrators declined to form an "Action and Supervision Plan," which the form recommends when there is a finding of a low, medium, or high threat level.

85. O.J. returned to class after the DAIP evaluation and completed the rest of the school day.

The same day, administrators suspend O.J. from school for three days.

86. Principal Sepe called M.J., O.J.'s father, a few hours after the DAIP evaluation. She left M.J. a voicemail informing him she was suspending O.J.

87. Principal Sepe said that the decision to suspend O.J. had been made "in speaking with [Defendant Superintendent Ackerman]." Principal Sepe explained "because there is hate speech involved in the song that [O.J.] was participating with, [O.J.] is going to have to be suspended for three days."

88. Principal Sepe did not have a copy of the song at the time she left this voicemail.

89. Principal Sepe had not heard the song at the time she left this voicemail.

90. Principal Sepe approached O.J. later that day and told him that he was suspended for three days because Superintendent Ackerman demanded it.

91. Principal Sepe had a proposed suspension letter hand-delivered to O.J.'s home later that afternoon.

92. The letter described the incident as follows:

On or about October 17th, a rap song was distributed to students that contained lyrics with the phrases, "raping Chappaqua moms", "December killing spree" and "kill Joe Biden." Hate speech such as "whacking beanie..." was also used. When [O.J.] was interviewed about the incident, he admitted that he participated in singing the song during the month of August with another student who does not attend Horace Greeley High School.

93. O.J. did not write, perform, share, or otherwise have any involvement with the lyrics "raping Chappaqua moms," "December killing spree," "kill Joe Biden," or "whacking beanie."

94. O.J. did not distribute the song to students or anyone else.

95. In her letter, Principal Sepe charged O.J. with four violations of the Student Code of Conduct:

- a. endangering the safety, morals, health, or welfare of self or others by issuing verbal, written, or electronically communicated threats;
- b. endangering the safety, morals, health, or welfare of self or others by "slandering or defaming others by making false statements or representations about an individual or identifiable group that harms the reputation of either or both";

- c. engaging in disorderly conduct and insubordination by using an electronic device to record, store, or transmit a communication that infringes on the rights of others under the Student Code of Conduct or is disruptive or otherwise inappropriate in an educational setting; and
- d. using “hate speech.”

96. The letter proposed that O.J. serve a three-day suspension from Wednesday, October 19, through Friday, October 21, pending an informal conference available to O.J. upon request.

Principal Sepe and Superintendent Ackerman base the suspension in the Student Code of Conduct’s “Hate Speech” and “Off-Campus Misconduct” Policies.

97. The School District administrators justified their punishment of O.J. on the Student Code of Conduct’s ban on “hate speech” occurring anywhere and at any time, including off campus and outside of school hours.

98. The Student Code of Conduct (Board Policy 5030) defines and prohibits “hate speech” as follows:

Making a slur or statement or drawing (through any means) a symbol about any individual or identifiable group of individuals which demeans him/her/them because of his/her/their race, color, national origin, ancestry, sex, gender (including expression), gender identity, sexual orientation, disability, age, religion, or other protected status, or a perception or belief about race (including traits historically associated with race, such as hair texture and protective hairstyles), color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (including gender identity, gender expression, and transgender status), sexual orientation, disability, age, religion or other protected status and/or which has the foreseeable effect of exposing such person or group to threats, shame

humiliation, persecution or ostracism. Whether spoken, written, in notebooks, on walls, or on a computer or mobile device, etc., incidents of this type are unprotected speech and will not be tolerated. Hate speech may or may not rise to the level of a crime.

99. The Student Code of Conduct is the established policy of the School District. The School District is authorized to impose discipline for violations of the Student Code of Conduct. *See* Board Policy 5030.

100. The Student Code of Conduct “defines individual responsibilities, describes unacceptable behavior and provides for appropriate disciplinary and remedial actions.” *Id.*

101. The Board approves the Student Code of Conduct. *See* Board Policy 2065.

102. The Student Code of Conduct “applies to any student behavior that occurs on school property, during remote instruction, at a school function (whether on or off school property), or during a school sponsored trip, *or which constitutes off-campus misconduct.*” Board Policy 5030 (emphasis added).

103. The Student Code of Conduct defines “off-campus misconduct” as:

any violation of the Student Code of Conduct which occurs beyond school property or outside of a school function that may endanger the health or safety of students within the educational system or adversely affect the educative process, in accordance with the decisional law of the Commissioner of Education.

Id.

104. Principal Sepe and Superintendent Ackerman interpreted these policies of the Student Code of Conduct to authorize punishing “hate speech” occurring

anywhere and at any time, including when the speech occurs off campus and outside of school hours, regardless of the context.

O.J. asks for an immediate informal conference and Principal Sepe explains that O.J.'s use of the words "faggot" and "twinks" justifies his suspension.

105. After receiving Principal Sepe's October 18 proposed-suspension letter, O.J. immediately requested an informal conference to defend himself from the letter's false allegations that he rapped about "raping Chappaqua moms," "December killing spree," "kill Joe Biden," or "whacking beanie."

106. On October 19, O.J. and M.J. attended the informal conference with Principal Sepe and Assistant Principal Stewart.

107. M.J. explained that the First Amendment protects O.J.'s off-campus speech.

108. M.J. asked for clarification of the proposed suspension letter. He asked whether the administrators were alleging that O.J. had actually said the phrases cited in the letter, such as "kill Joe Biden."

109. Assistant Principal Stewart instead alleged, in response, that it did not matter if Principal Sepe's letter was wrong because O.J. used the words "faggots" and the "n-word," which she said amounted to "hate speech."

110. O.J. repeatedly told the administrators that he did not use the n-word.

111. O.J. did not use the n-word in any of his lyrics.

112. O.J. questioned why he could be punished for using the word "faggot" in his lyrics when the same term had been used against him in school many times.

113. Assistant Principal Stewart then played a recording of the song for O.J. and M.J.

114. O.J. identified which lyrics from the recording were his (identifiable by O.J.'s voice, including the lyrics with the words "faggot" and "twinks") and which lyrics were not his (identifiable as a different voice, and including the lyrics cited in the suspension letter).

115. Assistant Principal Stewart claimed that, by saying the terms "twinks" and "faggot," O.J. had used homophobic slurs.

116. O.J. explained that the word "twink" is not a derogatory term.

117. Principal Sepe insisted that O.J.'s use of "faggot" and "twinks" in the song justified his suspension because those words are considered "hate speech" under the Student Code of Conduct.

118. Principal Sepe claimed that O.J.'s participation in the song warranted punishment, stating, "I recognize you are a participant. But being a participant and saying the things you did is [sic] definitely, from a principal's perspective, a principal's suspension of three days out of school."

119. Principal Sepe stated context "doesn't matter" when defining "hate speech" under the Student Code of Conduct. She explained that the school could punish students for "hate speech" regardless of when and where it occurred.

120. O.J. asked if using the word faggot "out of school" was "hate speech" under any circumstances. Assistant Principal Stewart confirmed: "Yes, it doesn't matter."

121. Assistant Principal Stewart also said that a victim is not necessary for an incident to be considered “hate speech.”

122. Principal Sepe acknowledged she was not aware of the song spreading at the school, but that she had the right to suspend O.J. due to a foreseeable disruption, even if there were no student complaints.

123. Principal Sepe said it was up to the school to determine what counts as a disruption or foreseeable disruption.

124. Assistant Principal Stewart said that the school could reasonably forecast disruption due to O.J.’s off-campus use of “faggot” and “twink” because those terms are “homophobic slurs,” “shameful,” “derogatory,” and “harmful,” and students may feel uncomfortable knowing O.J. used those terms.

125. Principal Sepe said that she “understood” O.J. and M.J.’s concerns and “underst[ood] [O.J.’s] role in the audio,” but that he would nevertheless have to be suspended.

126. M.J. expressed his shock that his son was being punished under the Student Code of Conduct’s “hate speech” policy for use of the word “faggot” when O.J. identified as a member of the LGBTQ community.

127. At the conclusion of the meeting, Assistant Principal Stewart told O.J. that they would “rewrite” the letter to reference only O.J.’s own lyrics and the associated violations of the Student Code of Conduct.

Principal Sepe reissues the suspension letter on October 21, essentially unchanged, and again refuses to rescind the suspension.

128. Principal Sepe reissued the proposed suspension letter on October 21 to note that an informal conference took place on October 19.

129. The October 21 suspension letter again identified only T.'s lyrics as the basis for punishing O.J. and made no change to the alleged violations of the Student Code.

130. On October 21, M.J. met with Assistant Superintendent Adam Pease and Principal Sepe.

131. Principal Sepe explained that she did not change the suspension letter's reference to the lyrics because she decided it was accurate as written.

132. During the meeting, M.J. told the administrators that he believed it was unconstitutional for the school to punish his son's off-campus speech, which had nothing to do with the school.

133. He further explained that he was a combat veteran who fought to protect the rights of Americans, and he was appalled that the administrators now broadly claimed the ability to take away the First Amendment rights of his son to express himself off campus.

134. Assistant Superintendent Pease responded that there were "significant limitations to free speech in this country."

135. M.J. again expressed his shock that his son was being punished under the "hate speech" policy for use of the word "faggot" when O.J. identified as a member of the LGBTQ community.

136. Principal Sepe countered that use of the word “faggot” was, in and of itself, “hate speech.”

137. Also on October 21, O.J. submitted a written statement to school administrators expressing his concern that the suspension letters falsely accused him of participating in the song—like writing or rapping T.’s lyrics, or compiling, editing, or posting the song—beyond merely rapping his own lyrics.

138. In his statement, O.J. reiterated that he did not participate in writing T.’s lyrics or compiling, editing, or posting the song.

139. O.J. again informed administrators that his lyrics were satirical, deliberately provocative, and intended to reference his own sexual identity.

140. O.J. said: “In regard to the content that I sung. It was satirical, as obviously I don’t think I am Jeffrey Dahmer, a man who died long before I was even born. I had recently watched a TV show about him so when I was freestyling, he came up and I proceeded lyrically from there.”

141. Because he had rapped other verses that day that did not appear in the song, O.J. explained: “Only the more outrageous parts that I sung that day were selected, compiled, and posted without my participation, direct consent or knowledge. Obviously, the song was meant to shock.”

142. Responding to the school administrators’ repeated accusation that his use of the word “faggot” was “hate speech,” O.J. explained that he found this accusation upsetting because he identified as a member of the LGBTQ community

and “was talking about myself in regard to the content that refers to gender, sex and sexuality.”

143. He also took issue with Principal Sepe’s characterization of the word “twinks” as “hate speech,” writing that twink “is not a derogatory word,” but rather “a word that I use and that has been used historically and in the present to describe the physical attributes of LGBTQ men by other LGBTQ men.” To further explain what the term means, O.J. analogized to similar terms used outside of the LGBTQ community: “Heterosexual men use similar descriptive expressions like curvaceous, athletic and petite blonde to describe females.”

M.J. meets with Principal Sepe and Assistant Superintendent Corsilia and also seeks information regarding the reasons for O.J.’s suspension.

144. M.J. met with Principal Sepe and Assistant Superintendent Corsilia the following week on October 26.

145. During the meeting, M.J. sought information about the anonymous complaints and about the process to appeal the suspension.

146. Assistant Superintendent Corsilia explained that the School District received only two different anonymous complaints about the song.

147. Assistant Superintendent Corsilia also said that, besides the two anonymous complaints, to his knowledge the only other complaint the School District received was from a student who approached administrators about the song on the morning of October 18.

148. During the October 26 meeting with M.J, Principal Sepe again refused to rescind the suspension.

149. In these meetings and in multiple emails to the administrators, M.J. repeatedly requested the opportunity to interview complaining witnesses in accordance with School Board policy. To date, M.J. has not received any additional evidence supporting the charge and he has been denied the opportunity to interview complaining witnesses.

O.J. appeals his suspension to Principal Sepe, Superintendent Ackerman, and the Board.

150. M.J. submitted a formal appeal of O.J.'s suspension to Principal Sepe on October 31 via email.

151. M.J. also hand-delivered a copy of the appeal to Principal Sepe, handing it to a Horace Greeley security guard on November 2.

152. Principal Sepe's assistant confirmed to M.J. on November 7 that Principal Sepe had received the appeal that morning because she had been out of the district the prior week.

153. M.J. and O.J. also submitted a formal grievance to Superintendent Ackerman on December 9 for, among other reasons, Principal Sepe's failure to respond to his appeal.

154. On November 25, in a separate process that permits appeals to the Superintendent of the School District's investigation into student conduct, M.J. and O.J. appealed the investigation to Superintendent Ackerman. On December 1, Superintendent Ackerman upheld the investigation and denied the appeal.

155. M.J. and O.J. appealed Superintendent Ackerman's decision to uphold the investigation to the Board. The Board affirmed Superintendent Ackerman's decision on March 8, 2023.

156. In June 2023, the Foundation for Individual Rights and Expression (FIRE) wrote a letter to Superintendent Ackerman and the Board on behalf of O.J. The letter requested rescission of O.J.'s suspension and revision of the "hate speech" and "off-campus misconduct" policies of the Student Code of Conduct.

157. The letter cited the Supreme Court's 2021 *Mahanoy* decision, among numerous other precedents supporting O.J.'s First Amendment protection from punishment for his off-campus, not-school-related, protected speech.

158. In response, Superintendent Ackerman contacted M.J. by email and asked if he would like her to treat FIRE's June letter as an appeal of O.J.'s suspension. M.J. agreed.

159. On June 23, Superintendent Ackerman denied the appeal of O.J.'s suspension. Her letter referenced the same justifications as Principal Sepe's suspension letters: O.J.'s use of "hate speech" and his alleged general participation in the song.

INJURIES TO PLAINTIFF

160. O.J.'s willingness to express himself freely outside of school, both in speech on issues of public concern and through artistic expression, has been substantially chilled by the ongoing threat that Defendants could punish him again if they dislike what he says.

161. O.J. is self-censoring his discussions of his sexuality for fear that Greeley administrators will again deem his speech shameful, hateful, and worthy of disciplinary action when considered devoid of context.

162. Defendants shamed O.J. by claiming that using the words “faggot” or “twinks” to express his sexuality constituted something “hateful” and deserving of a suspension.

163. Defendants have also branded O.J. as someone who engages in “hate speech.” Any time O.J. is forced to disclose this fact, he feels personal shame, and he worries that peers, teachers, and others believe it reflects poorly on his character.

164. O.J. was forced to miss three days of school as a punishment for his constitutionally protected speech. His peers noticed his absence and he has been forced to explain multiple times why he was suspended, causing him to feel shame and embarrassment.

165. O.J. felt further stigmatized by the insinuation that he was someone who used “hate speech,” even though he had never and would never direct “hate speech” or slurs at any person. To the contrary, O.J., as part of his artistic expression, was reclaiming a derogatory word that had previously been used against him.

166. The Student Code of Conduct uses a progressive form of discipline, stating “consequences will be progressive; a second violation will usually merit more severe consequences than the first, and so on.”

167. With a first offense for “hate speech” now on his record, if the School District charges him with violating the “hate speech” policy in the future, then O.J. will receive a five-day suspension and a superintendent’s hearing.

168. Even though O.J. did not intend to be hateful to anyone and did not direct any negative language at any person or group, any administrator who reviews his disciplinary history would believe he engaged in “hate speech.” And this could trigger progressive discipline under the Code.

169. In the fall of 2024, O.J. will be applying to programs in design, education, and environmental science at the State University of New York School of Environmental Science and Forestry, the Rhode Island School of Design, Brown University, Paul Smith College, and Westchester County Community College.

170. In preparation for his fall 2024 applications, O.J. has visited the websites of these institutions and learned they require him to disclose and, in some cases, explain the basis for his three-day suspension when he applies. Thus, O.J. may not be able to gain admission to these programs based upon his unconstitutional suspension.

171. O.J. may also be forced to disclose the incident on future job applications, endangering his yet-to-begin career.

CLAIMS

FIRST CAUSE OF ACTION

Violation of First Amendment – Freedom of Speech and Expression

(42 U.S.C. § 1983)

(Against Defendants Sepe and Ackerman for Damages)

172. O.J. re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

173. Principal Sepe and Superintendent Ackerman violated O.J.’s clearly established First Amendment rights when they suspended O.J. for engaging in non-disruptive off-campus expression.

174. 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.” U.S. Const. amend. I.

175. The First Amendment protects artistic expression. “[M]usic, as a form of expression and communication, is protected under the First Amendment.” *Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989).

176. In *Tinker*, the Supreme Court held that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker*, 393 U.S. at 506. It is clearly established that school administrators cannot punish students for speech that does not “materially disrupt[] classwork or involve[] substantial disorder or invasion of the rights of others” or lead school officials to reasonably forecast the same. *Id.* at 513.

177. Moreover, courts must be “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.

178. To that end, it is clearly established that schools cannot punish students for non-disruptive protected expression that occurs outside of school or a school activity. *See id.* at 192–93; *see also Thomas v. Bd. of Educ.*, 607 F.2d 1043, 1050 (2d Cir. 1979).

179. Likewise, it is clearly established that school officials cannot punish students for engaging in nondisruptive, protected off-campus expression, even if the expression contains vulgarity or sexual innuendo. *Thomas*, 607 F.2d at 1050.

180. Therefore, reasonable school officials would know that in schools, “the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.” *Tinker*, 393 U.S. at 511.

181. O.J.’s rapping is fully protected First Amendment expression because it was off-campus artistic expression that did not create material disruption, cause substantial disorder, or invade the rights of others at school.

182. The song likewise did not cause Defendants to reasonably forecast such a disruption.

183. On information and belief, administrators received no complaints about the song or O.J.’s lyrics outside of the two anonymous complaints and one student who approached administrators in person.

184. On information and belief, the School District’s teachers and administrators devoted no time in the classroom to discussing the song or O.J.’s lyrics.

185. Moreover, “[v]iewpoint discrimination is an egregious form of content discrimination and is presumptively unconstitutional.” *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019) (cleaned up).

186. It is clearly established that school administrators may not discriminate against speech based on viewpoint. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

187. It is clearly established that “giving offense is a viewpoint.” *Matal v. Tam*, 582 U.S. 218, 243 (2017).

188. Because “giving offense is a viewpoint,” *id.*, it is clearly established that school administrators cannot punish speech based on the “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint,” *Tinker*, 393 U.S. at 509.

189. Accordingly, by punishing O.J.’s satirical, self-referential, and self-deprecating speech on the basis that it offends—that it allegedly could demean someone or make them feel shame—Defendants engaged in unconstitutional viewpoint discrimination.

190. Finally, the song did not meet the standard for obscenity, a true threat, or any other category of unprotected speech.

191. Defendants only claimed that O.J.'s lyrics contained "hate speech," not that they met the standard for obscenity, a true threat, or any other category of unprotected speech.

192. Therefore, Principal Sepe and Superintendent Ackerman violated O.J.'s clearly established First Amendment rights by applying the "hate speech" policy to punish him for his protected artistic expression off campus. Prohibiting students from using profane language or violent imagery in non-disruptive artistic expression off campus on the basis that the expression may "demean," "shame," or "humiliat[e]" a "person or group" prohibits a wide range of clearly protected artistic expression.

193. Reasonable school officials would have known that O.J.'s nondisruptive rap lyrics, which were recorded off campus and outside of school hours, are protected under *Tinker*, *Mahanoy*, and their progeny.

194. There is no legitimate, let alone compelling, state interest in prohibiting students from engaging in nondisruptive artistic speech outside school hours and away from school property.

195. Principal Sepe's and Superintendent Ackerman's actions deprived O.J. of his First Amendment right to engage in nondisruptive expression outside of school.

196. As a direct and proximate cause of Principal Sepe's and Superintendent Ackerman's actions, O.J. was deprived of his rights guaranteed by the First Amendment and suffered damage to his reputation, physical and mental anguish, emotional distress, humiliation, and public embarrassment. O.J. is entitled to

monetary damages against Principal Sepe and Superintendent Ackerman in an amount to be proven at trial.

SECOND CAUSE OF ACTION
Violation of First Amendment – Retaliation
(42 U.S.C. § 1983)
(Against Defendants Sepe and Ackerman for Damages)

197. O.J. re-alleges and re-incorporates the preceding paragraphs as though fully set forth herein.

198. It is clearly established that “the First Amendment prohibits government officials from subjecting an individual to retaliatory actions” for engaging in protected speech. *Hartman v. Moore*, 547 U.S. 250, 256 (2006).

199. O.J. engaged in protected First Amendment expression for the reasons stated in his First Cause of Action.

200. Principal Sepe and Superintendent Ackerman violated O.J.’s clearly established First Amendment rights by suspending O.J. for his protected off-campus artistic expression.

201. But for O.J.’s protected expression, Principal Sepe and Superintendent Ackerman would not have suspended O.J.

202. Suspending a student for writing and recording song lyrics would deter a person of ordinary firmness from continuing to engage in that protected First Amendment activity.

203. Principal Sepe’s and Superintendent Ackerman’s actions have chilled O.J. from engaging in protected First Amendment activity because O.J. has self-censored and not recorded any artistic expression since his suspension.

204. Principal Sepe's and Superintendent Ackerman's actions have chilled O.J. from engaging in protected First Amendment activity because he fears expressing himself, including expression about his own sexuality and gender identity, will lead administrators to believe he engaged in "hate speech."

205. As a direct and proximate cause of Principal Sepe's and Superintendent Ackerman's actions, O.J. has been deprived of his rights guaranteed by the First Amendment and suffered damage to his reputation, physical and mental anguish, emotional distress, humiliation, and public embarrassment. O.J. is entitled to monetary damages against Principal Sepe and Superintendent Ackerman in an amount to be proven at trial.

THIRD CAUSE OF ACTION
***Monell* Claim for Violation of First Amendment – Freedom of Speech and**
Expression
(42 U.S.C. § 1983)
(Against Defendant Chappaqua Central School District and Chappaqua
Central School District Board of Education)

206. O.J. re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

207. O.J. engaged in protected expression for the reasons stated in his First Cause of Action.

208. Principal Sepe's and Superintendent Ackerman's actions violated O.J.'s constitutional rights for the reasons stated in his First and Second Causes of Action.

209. A local governmental entity is considered a person under 42 U.S.C. § 1983 when an employee's act represents an official policy or custom of the government. *Monell*, 436 U.S. at 694.

210. The School District and Board's "hate speech" policy in the Student Code of Conduct is the official policy of Defendants Chappaqua Central School District and Chappaqua Central School District Board of Education.

211. Defendant Chappaqua Central School District Board of Education is the final policymaker for the School District under state law and enacted the "hate speech" policy in the Student Code of Conduct.

212. The "hate speech" policy in the Student Code of Conduct is facially viewpoint discriminatory, vague, and overly broad.

213. The "hate speech" policy prohibits students from making any statement that demeans an individual, a group of individuals, or himself or herself based on a wide range of categories or perception or belief about those categories if the student's statement may have "the foreseeable effect of exposing such person or group to threats, shame, humiliation, persecution or ostracism."

214. The "hate speech" policy violates the First Amendment because it prohibits students from speaking based on the views they express about an individual, a group of individuals, or himself or herself if that speech may have "the foreseeable effect of exposing such person or group to threats, shame, humiliation, persecution or ostracism."

215. The "hate speech" policy prohibits students from engaging in protected speech outside of school even if their expression does not cause material disorder, substantial disruption, an invasion of the rights of others, or cause the school to reasonably forecast the same.

216. The “hate speech” policy violates the First Amendment because it discriminates based on viewpoint in that it permits students to express any other view towards its listed protected categories, as well as perceptions or beliefs about those categories aside from those views that “demean.”

217. By way of example, Defendants could discipline students for commenting off campus on their own religion because those comments could cause a student of a different religion to feel demeaned and shamed, regardless of whether the expression may be prohibited under *Tinker*, *Mahanoy*, and their progeny.

218. Moreover, because “giving offense is a viewpoint” that the First Amendment protects, *Matal*, 582 U.S. at 243, the First Amendment prohibits banning speech on the basis that it may “demean” another.

219. The “hate speech” policy was the moving force behind O.J.’s constitutional injury because President Sepe and Superintendent Ackerman cited it as the basis for suspending O.J. for three days.

220. Principal Sepe, among other administrators, told O.J. and M.J. that the Student Code of Conduct required them to punish his speech.

221. The Student Code of Conduct was last revised on August 31, 2022, but the School District and Board failed to update their Student Code of Conduct to reflect the holding of *Mahanoy*. The holding determined that students’ off-campus speech that does not reference or impact the school environment “normally fall[s] within the zone of parental, rather than school-related, responsibility.” *Mahanoy*, 594 U.S. at 189.

222. As a direct and proximate result of the School District's and Board's policies, O.J. was and continues to be deprived of his constitutional right to freedom of expression.

223. O.J. is entitled to a declaration under 28 U.S.C. § 2201 that the "hate speech" policy violates the First Amendment.

224. O.J. is entitled to a declaration under 28 U.S.C. § 2201 that the School District's and Board's "hate speech" policy, both facially and as applied to O.J., violates the First Amendment's prohibition on viewpoint discrimination.

225. As a direct and proximate result of the School District's and Board's policies, and Principal Sepe's and Superintendent Ackerman's accordant actions, O.J. has suffered and continues to suffer irreparable injury, including being suspended from school and having a major blemish on his record during the college application period and future employment applications, for engaging in First Amendment-protected expression.

226. O.J. has also suffered and continues to suffer irreparable harm due to the "hate speech" policy's prohibition on First Amendment-protected expression, which continues so long as the policy remains in effect.

227. The denial of constitutional rights is an irreparable injury per se. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

228. O.J. has no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to his First Amendment rights.

229. Without declaratory and injunctive relief against the School District's suspension of O.J. and the "hate speech" policy, the School District and Board's suppression of O.J.'s First Amendment expressive rights will continue, and O.J. will suffer per se irreparable harm indefinitely.

230. As a legal consequence of the School District and Board's violation of O.J.'s First Amendment rights under their unconstitutional policy, O.J. is also entitled to monetary damages, for the suspension he served and related harm, and reasonable costs of this lawsuit, including reasonable attorneys' fees.

FOURTH CAUSE OF ACTION
Violation of First Amendment – Overbreadth
(42 U.S.C. § 1983)
(Against Defendants Chappaqua Central School District and Chappaqua Central
School District Board of Education for Injunctive and Declaratory Relief)

231. O.J. re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

232. The First Amendment to the Constitution prohibits regulations that regulate substantially more speech than the Constitution allows to be regulated. *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

233. The "hate speech" policy is substantially overbroad because it reaches a significant amount of protected First Amendment speech and expressive conduct—including off-campus artistic expression with no connection to the school—in a manner which does not cause material disruption, substantial disorder, or an invasion of the rights of others.

234. The "hate speech" policy reaches a substantial amount of protected First Amendment expression relative to any legitimate sweep. *See id.*

235. For example, the “hate speech” policy could prohibit a religious student from expressing her belief that people of other faiths will be denied rewards in the afterlife, because that speech might “demean” or “shame” another on account of religion. The policy could equally prohibit an atheist from arguing that all religion is based on myth on the same basis. Some believe that the phrase “Blue Lives Matter” demeans on the basis of race; others believe the same about “Black Lives Matter.” Under the “hate speech” policy, posting either on social media could result in student discipline, depending on the opinion of the administrator enforcing it. Even worse, the “hate speech” policy’s reach extends beyond the schoolhouse gates, permitting student punishment for expressing this array of constitutionally protected speech in their homes, in places of worship, at political protests, or at gatherings with friends or family. School administrators could thus punish a budding comedian, who performs at a comedy open mic and then posts video of it on YouTube, if he makes jokes at the expense of his own race, religion, or gender.

236. To the extent the “hate speech” policy has any constitutionally permissible application in terms of maintaining school discipline, its reach is so broad that it chills a substantial amount of constitutionally protected speech—including, for example, off-campus artistic expression with no connection to the school—in a manner which does not cause material disruption, substantial disorder, or an invasion of the rights of others.

237. O.J. is entitled to a declaration under 28 U.S.C. § 2201 that the School District and Board’s “hate speech” policy is substantially overbroad on its face and

therefore violates the First Amendment's prohibition on overbroad speech regulations.

238. Without declaratory and injunctive relief against the School District's and Board's unconstitutionally overbroad "hate speech" policy, the School District and Board's suppression of O.J.'s and other students' First Amendment expressive rights will continue, causing per se irreparable harm indefinitely.

FIFTH CAUSE OF ACTION
Violation of Fourteenth Amendment – Vagueness
(42 U.S.C. § 1983)
(Against Defendants Chappaqua Central School District and Chappaqua Central School District Board of Education)

239. O.J. re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

240. The Fourteenth Amendment to the U.S. Constitution prohibits restrictions on speech which fail to provide members of the public fair notice of prohibited conduct. *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012); *see also Flaherty v. Keystone Oaks Sch. Dist.*, 247 F. Supp. 2d 698, 703 (W.D. Pa. 2003) (concluding that provision of student handbook punishing speech deemed "offensive" or "harassing" was unconstitutionally vague).

241. A government policy is unconstitutionally vague if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. *Fox*, 567 U.S. at 253.

242. The "hate speech" policy is vague because it fails to provide students sufficient information to know what is restricted or required of them so that they may act accordingly.

243. The “hate speech” 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. *Id.*

244. The “hate speech” policy, which fails to provide students sufficient information to conform their conduct to its requirements, chills O.J. and other students from engaging in First Amendment-protected speech because students express themselves off campus, including through artistic expression, but now must self-censor protected expression so as not to violate the “hate speech” policy.

245. O.J. is entitled to a declaration under 28 U.S.C. § 2201 that the “hate speech” policy is unlawfully vague and therefore violates the Fourteenth Amendment.

246. O.J. is entitled to a declaration under 28 U.S.C. § 2201 that the School District’s and Board’s “hate speech” policy, both facially and as applied to O.J., violates the Fourteenth Amendment’s prohibition on vague regulations, particularly those restricting speech.

247. Without declaratory and injunctive relief against the School District’s and Board’s unconstitutionally vague “hate speech” policy, the School District and Board’s suppression of O.J.’s and other students First Amendment rights will continue, and O.J. will suffer per se irreparable harm indefinitely.

248. As a legal consequence of the School District’s and Board’s violation of O.J.’s Fourteenth Amendment rights under their unconstitutionally vague policy, O.J. is also entitled to monetary damages, for the suspension he served and related harm, and reasonable costs of this lawsuit, including reasonable attorneys’ fees.

PRAYER FOR RELIEF

O.J. respectfully requests that this Court enter judgment against the Defendants and provide the following relief:

- A. Declare that:
 - a. O.J.'s out-of-school speech was protected expression under the First Amendment to the U.S. Constitution;
 - b. The School District's punishment of O.J. violated his First Amendment rights by suspending him for protected off-campus artistic expression;
 - c. The School District's "hate speech" policy, on its face and as applied to O.J., violates the First Amendment to the U.S. Constitution because it discriminates based on viewpoint;
 - d. The School District's "hate speech" policy on its face violates the First Amendment to the U.S. Constitution because it is overbroad;
 - e. The School District's "hate speech" policy, on its face and as applied to O.J., violates the Fourteenth Amendment to the U.S. Constitution because it is vague;
- B. Permanently enjoin the School District from enforcing the "hate speech" policy;
- C. Preliminarily and permanently enjoin the School District from any continuing or cumulative punishment or sanction against O.J. for his constitutionally protected speech;
- D. Preliminarily and permanently enjoin the School District from:

- a. maintaining any records, including but not limited to records in O.J.'s educational file, referring to the October 2022 suspension;
 - b. providing any information to any entity referring to the October 2022 suspension; or
 - c. undertaking any acts to any extent that treat the suspension as if it occurred;
- E. Award nominal, compensatory, and other damages in an amount determined by a jury;
- F. Award reasonable attorneys' fees and costs under 42 U.S.C. § 1988 and any other applicable law; and
- G. Award all other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

In compliance with Federal Rule of Civil Procedure 38, Plaintiff O.J., by and through his father, M.J., demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: April 16, 2024

/s/ Greg H. Greubel

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*Application for admission *pro hac vice*
forthcoming

Counsel for Plaintiff O.J., through his father, M.J.

VERIFICATION OF O.J.

Pursuant to 28 U.S.C. § 1746, I, O.J., declare as follows:

1. I am a minor (under 18 years old).
2. M.J. is my father.
3. I am the Plaintiff in the present case and a citizen of the United States of America.
4. I have read the foregoing Verified Complaint.
5. I have personal knowledge of the factual allegations in paragraphs 1–18, 33–46, 48, 50–67, 72–85, 90–98, 102–129, 137–43, 153–71, 191, 203–04, and 220 of the Verified Complaint and believe them to be true.
6. I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on April 14, 2024.

O.J.
O.J.

VERIFICATION OF M.J.

Pursuant to 28 U.S.C. § 1746, I, M.J., declare as follows:

1. I am over the age of 18 years old and competent to testify.
2. I am the father of O.J., the minor Plaintiff identified in the foregoing Verified Complaint, and authorize the filing of this Verified Complaint.
3. I have read the foregoing Verified Complaint.
4. I have personal knowledge of the factual allegations in paragraphs 7–9, 13, 18, 68–79, 86–89, 91–92, 95–98, 102–159, 191, 220 of the Verified Complaint and believe them to be true.
5. I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on April 14, 2024.

M.J. 