

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ELLEN HARBESON, a minor, by	:	
and through her parents, CYNTHIA	:	
HARBESON and WILLIAM	:	Civil action no. _____
HARBESON; ALICIA NOLL,	:	
a minor, by and through her parent,	:	
CINDY NOLL; ALEXANDRIA	:	
HUNT, by and through her parent,	:	
APRIL HUNT; on behalf of their	:	
children,	:	
Plaintiffs,	:	
	:	
v.	:	Electronically filed
	:	
CENTRAL DAUPHIN SCHOOL	:	
DISTRICT,	:	
Defendant.	:	

COMPLAINT

A. INTRODUCTION

1. “Free Turk” is a political slogan that was used by public high school students in the Central Dauphin School District to criticize the placement of another student in an alternative education program. The political message “Free Turk” was placed on book covers, folders, and even students’ hands. In response, school district officials disciplined the students for displaying the political message even though there was no reasonable expectation that the students’ quiet and dignified political speech would substantially and materially disrupt the educational process. This First Amendment free speech case seeks declaratory and injunctive relief, as well as

damages.

B. JURISDICTION

2. This action seeks to vindicate rights protected by the First and Fourteenth Amendments to the United States Constitution and is brought under 42 U.S.C. §1983. The Court has jurisdiction over this civil rights action pursuant to 28 U.S.C. §1331(a) and §1343(a)(3) and (4). This Court has jurisdiction pursuant to 28 U.S.C. §§2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

C. PARTIES

3. Plaintiff Ellen Harbeson (“Ellen”) is a ninth grade student at Central Dauphin High School in the Central Dauphin School District. She lives with her parents, Cynthia Harbeson and William Harbeson, in Dauphin County.
4. Plaintiff Cynthia Harbeson is Ellen’s mother. Mrs. Harbeson brings this action on behalf of her minor daughter.
5. Plaintiff William Harbeson is Ellen’s father. Mr. Harbeson brings this action on behalf of his minor daughter.
6. Plaintiff Alicia Noll (“Alicia”) is a ninth grade student at Central Dauphin High School in the Central Dauphin School District. She lives with her mother in Dauphin County.
7. Plaintiff Cindy Noll is Alicia’s mother. Ms. Noll brings this action on behalf

of her minor daughter.

8. Plaintiff Alexandria (“Alex”) Hunt is a ninth grade student at Central Dauphin High School in the Central Dauphin School District. She lives with her mother and father in Dauphin County.
9. Plaintiff April Hunt is Alex’s mother. Mrs. Hunt brings this action on behalf of her minor daughter.
10. Defendant Central Dauphin School District (“District”) is a political subdivision of the Commonwealth of Pennsylvania. The District maintains its administrative office at 600 Rutherford Road, Harrisburg, PA 17109.

D. FACTS

11. Ellen, Alicia and Alex are ninth grade students in the college preparation curriculum.
12. On February 9, 2006, Ellen and Alicia allowed a friend to write “Free Turk” on their hands.
13. “Turk” refers to a fellow Central Dauphin High School student who was placed in alternative education by school officials.
14. On information and belief, many students believe that the school’s treatment of “Turk” was unfair and they began calling for his return to school by using the slogan “Free Turk,” i.e. release Turk from the alternative placement. Students displayed the slogan on book covers, t-shirts and other property

owned by the respective students (not by writing on or vandalizing school property).

15. Shortly after the friend wrote “Free Turk” on Ellen and Alicia’s hands, a school official stopped the girls to inquire about the slogan. Ellen and Alicia were ordered to the principal’s office.
16. On the same day – February 9, 2006 – Alex was also sent to Principal Termin’s office after she and a friend were sighted by a school official in the cafeteria using markers to make “Free Turk” signs on white computer paper.
17. Alex’s interaction with school staff in the cafeteria was not her first “Free Turk” incident of the day. Earlier, during a classroom period, Alex’s teacher noticed that Alex had two (2) sheets of paper printed with the words “Free Turk.” One sheet was inside Alex’s folder, the other was outside a folder. The teacher confiscated both signs, but took no further action.
18. When Ellen, Alicia and Alex respectively reported to 9<sup>th</sup> grade Principal Mickey Termin, he told them that they would be receiving a three (3) day out-of-school suspension for displaying the slogan.
19. On the same day, the District, through Principal Termin, sent a letter informing Mr. Harbeson that his daughter would be subject to a period of three (3) days of out-of-school suspension.
20. The suspension letter listed “INAPPROPRIATE BEHAVIOR” as Ellen’s

offense. Under a section entitled “Details,” the notice went on to specify the following: “Ellen was displaying an inappropriate sign/slogan in school.” See Harbeson letter, attached and incorporated herein as Exhibit A.

21. The District outlines prohibited student behavior and correlating discipline in its 2005-2006 Student Code of Conduct. Upon information and belief, there is no offense of “inappropriate behavior” contained within the Student Code of Conduct. *See* Student Code of Conduct, available at:

<http://www.cdschools.org/542275927124319/lib/542275927124319/StudentCodeofConduct.pdf>

22. However, there is a prohibited offense of “Improper Conduct/Harassment:”

“8. Improper Conduct/Harassment

a. It is the policy of the Central Dauphin School District to maintain a working and learning environment free from all forms of intimidation, abuse, hostility, offensive behavior, sexual harassment and unlawful discrimination, hereinafter referred to either individually or collectively as “*unlawful conduct*.” By way of example, and not limitation, such improper conduct may take the form of unwarranted verbal or physical conduct, verbal or written derogatory or discriminatory statements, racial slurs, or unwelcome sexual remarks or advances. Any such behavior violates the policy of the district and is hereby prohibited. Any student in the District who engages in such improper conduct shall be subject to discipline up to and including expulsion.”

See Code of Conduct excerpt, attached and incorporated herein as Exhibit B.

23. Ellen was suspended from school on February 10, 13 and 14<sup>th</sup>, 2006.
24. During her suspension Ellen missed the spring pre-sports physicals that are

provided free during the school day. Mr. Harbeson had to take time off work and Ellen had to miss school to receive a physical from their family physician. Mr. Harbeson paid for the exam.

25. Mr. Harbeson attempted to appeal the suspension with various school officials, including Principal Termin, Defendant Mazzatesta and Assistant Superintendent Richard Miller. To date, Mr. Harbeson has received no response to his request for an appeal of Ellen's suspension.
26. Ms. Noll also received a suspension letter, informing her that her daughter would be subject to a period of three (3) days of out-of-school suspension.
27. The suspension letter listed "INAPPROPRIATE BEHAVIOR" as Alicia's offense. Under a section entitled "Details," the notice went on to specify the following: "Alicia was displaying an inappropriate sign/slogan in school." See Noll letter, attached and incorporated herein as Exhibit C.
28. Alicia was suspended from school on February 10, 13 and 14<sup>th</sup>, 2006.
29. Ms. Noll also attempted to discuss the suspension with school officials, but was unable to speak with Principal Termin.
30. Mrs. Hunt also received a suspension letter, informing her that her daughter would be subject to a period of three (3) days of out-of-school suspension.
31. The suspension letter listed "INAPPROPRIATE BEHAVIOR" as Alex's

offense. Under a section entitled “Details,” the notice went on to specify the following: “Alexandria was displaying an inappropriate sign/slogan in school.”

32. On February 6, 2006, Mrs. Hunt spoke to Mr. Termin and explained that she objected to Alex’s punishment. Mr. Termin did not rescind the punishment.
33. Alex was also given out-of-school suspension on February 10, 13 and 14<sup>th</sup> 2006.
34. Upon information and belief, some 15-20 students at Central Dauphin High School have been disciplined for displaying the slogan “Free Turk,” either with detention or out-of-school suspension.
35. Upon information and belief, the District suspended Ellen, Alicia and Alex for offenses that are not contained within the Student Code of Conduct. The absence of any rule defining the offense and the punishment allows District officials to make content-based, and even viewpoint-based, decisions on which student speech to allow and, therefore, is constitutionally flawed.
36. If, instead, the District disciplined Alicia, Alex and Ellen under the “Improper Conduct/Harassment,” this too would be constitutionally flawed.
37. The District’s “Improper Conduct/Harassment” section of the disciplinary code is unconstitutionally vague and overbroad. The provision is

unconstitutional, both on its face and as applied.

38. The District's policies, and Defendant's actions in this case, result in chilling plaintiffs' and other students' free-speech rights. Defendant's policies and actions irreparably harm plaintiffs.
39. Absent injunctive relief, plaintiffs have no adequate remedy at law.

E. CLAIMS

40. Defendant's' punishment of plaintiffs and other students for expressing a political message in school violates the free-speech clause of the First Amendment to the U.S. Constitution, as applied to the states by the Fourteenth Amendment and 42 U.S.C. § 1983.
41. Defendant's' reliance on unpublished rules to censor students' speech violates the free-speech clause of the First Amendment and the due process clause of the Fourteenth Amendment and 42 U.S.C. § 1983 by failing to give students adequate notice of prohibited conduct.
42. Defendant's' "Improper Conduct/Harassment" section of the disciplinary code is vague and overbroad, in violation of the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983.

WHEREFORE, Plaintiffs respectfully request that this Court provide the following relief:



a) Declare that the District's actions to punish students for displaying a political message, "Free Turk," violate the free-speech clause of the First Amendment to the U.S. Constitution;

b) Issue injunctive relief, enjoining Defendant and their officials, employees, agents and assigns, from punishing, or threatening to punish, students for engaging in non-violent political expression, including expression that criticizes school officials' actions and policies;

c) Issue injunctive relief directing Defendant to remove and expunge all references to the disciplinary action at issue in this complaint from the plaintiffs' student records;

d) Declare that the school district's policy on "Improper Conduct/Harassment" is unconstitutionally vague and overbroad, and enjoin enforcement of that provision.

e) Award all reasonable damages in favor of the Plaintiffs and against the Defendant in an amount to be determined at trial;

f) Award Plaintiffs' costs and attorneys' fees pursuant to 42 U.S.C. §1988;  
and

g) Grant such other relief as this Court deems just and appropriate.

Date: March 2, 2006

Respectfully submitted:

SERRATELLI, SCHIFFMAN, BROWN AND  
CALHOON, P.C.

By: \_\_\_\_\_

SPERO T. LAPPAS, Esquire

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