

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

JUSTIN LAYSHOCK, a minor, by and through)
his parents, DONALD LAYSHOCK and)
CHERYL LAYSHOCK, individually and on)
behalf of their son,) 2006-CV-_____
)
)
V.)
)
HERMITAGE SCHOOL DISTRICT; KAREN)
IONTA, District Superintendent, ERIC W.)
TROSCH, principal Hickory High School, and)
CHRIS GILL, Co-Principal Hickory High)
School, all in their official and individual)
capacities.)
_____)

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

1. Plaintiffs hereby move, pursuant to Fed. R. Civ. P. 65, for entry of a Temporary Restraining Order and/or Preliminary Injunction to enjoin defendants from any continuing punishment or sanction against Justin Layshock on account of his constitutionally protected speech, and from interfering with his education, including the following:
 - a. prohibiting Justin from attending his regular classes and instead requiring him to attend the Alternative Education Program, where he does not have access to teachers;
 - b. prohibiting Justin from participating in various school activities, including but not limited to Academic Games and middle-school tutoring; and
 - c. denying Justin full credit for his first-semester classes.

2. Plaintiffs also seek an order requiring the defendants to send letters to any university to which the District either sent notification of the disciplinary action or has received an inquiry about the action advising the schools that the discipline was in error, and that Justin continues to maintain a clean disciplinary record and is a student in good academic standing.
3. Plaintiffs incorporate herein by reference the facts alleged in the Verified Complaint.
4. Plaintiffs also incorporate herein by reference the legal arguments contained in the Memorandum in Support of Motion for Temporary Restraining Order and/or Preliminary Injunction. Plaintiffs have satisfied the four-part test for granting a preliminary injunction.
5. As is more fully set forth in the accompanying legal memorandum, plaintiffs are likely to prevail on the merits of the First Amendment free-speech claim.
6. Plaintiffs will suffer irreparable harm unless the requested injunctive relief is granted.
7. Since the Defendants are a governmental unit and its officials, they have no legally-cognizable interest in suppressing constitutionally-protected free speech.
8. Granting plaintiffs the requested preliminary relief will not result in any foreseeable, serious harm to defendants or the public.
9. Plaintiffs, through undersigned counsel, gave notice to defendants' lawyers this morning about the filing of this action and the presentment of this TRO application.
10. Plaintiffs' undersigned counsel first attempted to resolve this matter without litigation but late on Thursday, January 26, defendants' counsel indicated that the district refused the relief that is now requested in this motion.

11. Given the legally-presumed irreparable harm to First Amendment free speech rights which is at stake in this case, plaintiffs request that this Court hold an immediate hearing and issue a temporary restraining order enjoining the defendants from interfering in plaintiff Justin Layshock's education.

WHEREFORE, plaintiffs respectfully request that this Court enter a Temporary Restraining Order and/or Preliminary Injunction to enjoin defendants from any continuing punishment or sanction against Justin Layshock on account of his constitutionally protected speech, and from interfering with his education, including the following:

- (i) prohibiting Justin from attending his regular classes and instead requiring him to attend the Alternative Education Program, where he does not have access to teachers;
- (ii) prohibiting Justin from participating in various school activities, including but not limited to Academic Games and middle-school tutoring; and
- (iii) denying Justin full credit for his first-semester classes.
- (iv) Plaintiffs also seek an order requiring the defendants to send letters to any university to which the District either sent notification of the disciplinary action or has received an inquiry about the action advising the schools that the discipline was in error, and that Justin continues to maintain a clean disciplinary record and is a student in good academic standing.

Respectfully submitted,

/s/ _____
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Date: January 27, 2006

CERTIFICATE OF SERVICE

I, Witold J. Walczak, hereby certify that on this 27th day of January, 2006, a copy of the foregoing Motion for Temporary Restraining Order and/or Preliminary Injunction, along with the Memorandum in support thereof and the Verified Complaint, were faxed and e-mailed as follows:

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