

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

CORY JOHNSON,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Civil Action No. _____
	)	
NEW BRIGHTON AREA SCHOOL	)	
DISTRICT; JOHN R. OSHEKA,	)	
superintendent of New Brighton Area School	)	
District; EDWARD J. KASPAREK, JR.,	)	
principal of New Brighton Area High School;	)	
and LUCA J. PASSARELLI, assistant principal	)	
of New Brighton Area High School,	)	
	)	
<i>Defendants.</i>	)	
	)	
	)	
	)	

**COMPLAINT**

**Introduction**

Cory Johnson missed his senior prom and was suspended from school for ten days for a single spontaneous remark that he made to a friend. That remark — “If I were Osama, I would already have pulled a Columbine” — was a conditional, hyperbolic expression of frustration precipitated by a morning of teasing in which students, and even a teacher, repeatedly referred to Cory as Osama bin Laden. But the School District did not punish those who engaged in the name-calling, which was triggered by a speaker — invited by the School District — who referred to Cory as Osama bin Laden during a school-sponsored assembly the day before. Instead, the School District chose to punish Cory, claiming that his verbal expression of frustration was a “terroristic threat.” There is no

evidence, however, that Cory intended his remark to be threatening or that it was perceived as threatening by its intended audience. Considered in context, as it must be,<sup>1</sup> Cory's remark was not a true threat. It was constitutionally protected speech, and the School District violated the First Amendment by suspending him for it. Accordingly, Cory seeks declaratory and monetary relief to vindicate his constitutional right to free speech and to redress the violation thereof.

### **Jurisdiction and Venue**

1. This action to vindicate Plaintiff's rights protected by the First and Fourteenth Amendments to the U.S. Constitution is brought under 42 U.S.C. § 1983. This Court has original jurisdiction over this civil-rights action under 28 U.S.C. §§ 1331 and 1343. This Court also has jurisdiction under 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper. Finally, this Court has supplemental and pendent jurisdiction to adjudicate state law claims under 28 U.S.C. §1367(a).

2. Venue is proper in this District under 28 U.S.C. § 1391, *et seq.*

### **Parties**

3. Plaintiff Cory Johnson is eighteen years old. At all times relevant to the matters complained of herein, Cory was a high school senior at New Brighton Area High School. He graduated from New Brighton on June 2, 2006.

4. Defendant New Brighton Area School District is a political subdivision of the Commonwealth of Pennsylvania. The School District's headquarters are located at 3225 43rd Street, New Brighton, Pennsylvania.

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<sup>1</sup> See *Watts v. United States*, 394 U.S. 705, 708 (1969); *J.S. v. Bethlehem Area Sch. Dist.*, 807 A.2d 847, 858 (Pa. 2002).

5. Defendant John R. Osheka is, and at all relevant times hereafter mentioned was, the Superintendent of New Brighton Area School District. Defendant Osheka is, and at all times hereinafter mentioned was, acting under color of state law. In his capacity as Superintendent, Mr. Osheka is responsible for, *inter alia*, ensuring that the School District and its officials act in conformity with the U.S. Constitution and applicable federal and state laws. He is sued in his individual capacity.

6. Defendant Edward J. Kasparek is, and at all relevant times hereinafter mentioned was, the Principal of New Brighton Area High School. Defendant Kasparek is, and at all relevant times hereinafter mentioned was, acting under color of state law. In his capacity as Principal, Mr. Kasparek has a legal obligation to act in conformity with the U.S. Constitution and applicable federal and state laws. He is sued in his individual capacity.

7. Defendant Luca J. Passarelli is, and at all relevant times hereinafter mentioned was, the Assistant Principal of New Brighton Area High School. Defendant Passarelli is, and at all relevant times hereinafter mentioned was, acting under color of state law. In his capacity as Assistant Principal, Mr. Passarelli has a legal obligation to act in conformity with the U.S. Constitution and applicable federal and state laws. He is sued in his individual capacity.

### **Facts**

8. On April 25, 2006, New Brighton Area High School held a mandatory, school-wide assembly for students during the school day. The assembly featured former Harlem Globetrotter Melvin Adams, who was invited by School District officials to speak to students at the assembly.

9. Cory attended the April 25 assembly.

10. As part of his presentation during the assembly, Mr. Adams called students to the

stage to demonstrate basketball tricks. He referred to each of the students he called up to the stage by a nickname. He nicknamed two girls whom he called up to the stage Britney Spears and Sandra Bullock after a popular singer and a film actress, respectively. He nicknamed a boy whom he called up to the stage Chris Brown, the name of another popular singer. None of the students resembled the famous people for whom Mr. Adams named them.

11. When Mr. Adams summoned Cory to the stage, he nicknamed him Osama bin Laden.

12. Osama bin Laden is the name of the terrorist responsible for the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, which killed close to 3000 people.

13. At the time of the April 25 assembly, Cory had grown out his facial hair in a goatee style.

14. Many of the students in the audience laughed when Mr. Adams referred to Cory as Osama bin Laden. Once Cory and the other three students were on stage, Mr. Adams demonstrated basketball tricks and asked the students to mimic his performance. He continued to refer to the students by the nicknames he had given them, including referring to Cory as Osama or Osama bin Laden several more times. After the demonstration was over, Cory and the other three students returned to their seats. Mr. Adams referred to Cory as Osama bin Laden a final time in his remarks at the end of the presentation.

15. On the morning of April 26, the day after the assembly, New Brighton students repeatedly taunted Cory by calling him Osama bin Laden.

16. A New Brighton High School business teacher, referring to Cory's goatee, told Cory that someone should put a sign on his back saying "Shave, Osama."

17. Cory understood the teacher's and the students' references to him as Osama bin Laden

to be in jest.

18. But Cory was also annoyed by the repeated name-calling and did not want students or teachers to continue calling him Osama bin Laden or associate him with the notorious terrorist in any way.

19. Following his lunch period, Cory stopped by the school library to speak with a friend who was sitting alone at a table in the library. When he approached her, she asked, “Hey, what’s up, Osama?” Cory, tired of the repeated references to him as Osama bin Laden, replied, “If I were Osama, I would already have pulled a Columbine.”

20. Cory intended this remark to convey — in a humorous way — his irritation at being called Osama bin Laden.

21. Cory then gave his friend a hug and left the library to go to his English class.

22. Approximately ten minutes into his English class, Cory was summoned to Assistant Principal Luca Passarelli’s office. Cory did not know at that time why he was being called to Mr. Passarelli’s office.

23. When Cory arrived in Mr. Passarelli’s office, Mr. Passarelli told him that he had received a report that Cory had made a terroristic threat. Mr. Passarelli stated that this threat consisted of Cory stating, “If I were Osama, I would already have pulled a Columbine.”

24. Teacher Traci Mercer, who overheard Cory’s remark in the library, reported it to school administrators.

25. Cory told Mr. Passarelli that he intended the remark as a joke, not a threat. Mr. Passarelli then told Cory to return to class.

26. Fifteen minutes later, Cory was again summoned to Mr. Passarelli’s office. Mr.

Passarelli told Cory to report to Principal Kasperek's office. Mr. Kasperek asked Cory about his remark that "If I were Osama, I would already have pulled a Columbine." Cory told Mr. Kasperek that he intended the remark as a joke, not a threat.

27. Mr. Kasperek called a police officer into his office, but the officer did not question Cory.

28. After consulting with Mr. Passarelli, Mr. Kasperek told Cory that he was suspended from school for ten days for the remark.

29. At no point after learning of Cory's remark did school officials or police search Cory, his belongings, or his locker. School officials contacted Cory's mother to notify her of the suspension, but they never discussed their concerns about Cory's remark with his parents. Nor did school officials ever direct Cory to consult the school's guidance counselor or a psychologist.

30. Prior to this incident, Cory had never been suspended or expelled by the New Brighton Area School District.

31. The School District never issued a notice of suspension to the Johnsons even though such notice is required by the Pennsylvania School Code.

32. On May 1, Dr. Osheka, Mr. Kasperek, and Mr. Passarelli held a readmittance conference with Cory and his mother, Denise Johnson, and the Johnsons' attorney, Mitchell Shahan.

33. At the May 1 conference, school officials reaffirmed Cory's ten-day suspension for making "terroristic threats."

34. Cory missed his senior prom on April 28 as a result of the suspension. He had paid for a prom ticket, tuxedo rental, and flowers before he was suspended.

35. The School District has not provided any evidence supporting its determination that Cory's remark constituted a terroristic threat.

36. Cory's remark that "If I were Osama, I would already have pulled a Columbine," was not a threat, but was instead an off-hand comment that he made in jest to a friend who had teasingly referred to him as Osama bin Laden. Cory intended this remark as a joke and reasonably expected the friend to whom he had directed the remark, as well as anyone else who overheard it, to understand it as a joke.

37. Indeed, the friend to whom Cory directed the remark refused Mr. Passarelli's request to state in writing that Cory had made a "terroristic threat."

38. There is no evidence that Cory's remark caused any disruption to the school day — let alone a substantial and material disruption — and school officials have not alleged that his remark caused a disruption.

39. Cory has suffered injury as a result of Defendants' actions, including, but not limited to, financial injury, emotional and psychological pain and suffering, and injury to his reputation.

### **Causes of Action**

#### **Count I**

##### First Amendment to the Constitution of the United States

40. Defendants' punishment of Cory Johnson for his remark was a violation of his rights under the First Amendment to the Constitution of the United States, as applied to the states by the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

**Count II**

Article I, § 7 of the Constitution of Pennsylvania

41. Defendants' punishment of Cory Johnson for his remark was a violation of his rights under Article I, § 7 of the Constitution of Pennsylvania.

**Count III**

Fourteenth Amendment Due Process

42. Defendants' suspension and other sanctions imposed on Cory Johnson violated the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

**Count IV**

Pennsylvania School Code

43. Defendants' suspension and other sanctions imposed on Cory Johnson violated the Pennsylvania School Code, 22 Pa. Code § 12.6.

WHEREFORE Plaintiff Cory Johnson respectfully requests that this Court provide the following relief:

(a) Declare that the Defendants' disciplinary action against Plaintiff Cory Johnson for his remark violated his rights under the First and Fourteenth Amendments to the Constitution of the United States and Article I, § 7 of the Constitution of Pennsylvania;

(b) Declare that the Defendants' disciplinary action against Plaintiff Cory Johnson violated his right of due process under the Fourteenth Amendment to the U.S. Constitution and the Pennsylvania School Code;

(c) Award all reasonable damages in favor of Plaintiff and against Defendant in an amount to be determined at trial;

(d) Award Plaintiff's costs and attorneys' fees under 42 U.S.C. § 1988; and

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

Respectfully submitted,

/s/ Sara J. Rose

Witold J. Walczak (PA ID No.: 62976)

Sara J. Rose\*

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*Counsel for Plaintiffs*

December 19, 2006

\* Not a member of the Pennsylvania Bar. Admitted in the District of Columbia and the Commonwealth of Virginia; supervised by Witold J. Walczak, Esq., a member of the Pennsylvania Bar.