

In the United States District Court  
For The Northern District of Georgia  
Rome Division

J.U., a minor, by and through his )  
next friend Diane Upton, )

Plaintiffs, )

vs. )

CIVIL ACTION NO.

MURRAY COUNTY SCHOOL )  
DISTRICT, MARIA BRADLEY, as )  
Principal of Gladden Middle School, )  
DEAN DONEHOO, as Hearing )  
Officer of Murray County )  
Disciplinary Tribunal and SHANE )  
CLOER, as School Resource Officer )  
of Murray County School District, )  
individually and in their official )  
capacities, )

Defendants. )

**COMPLAINT**

**COME NOW** Plaintiffs and bring this action seeking declaratory and injunctive relief, as well as damages, to redress the deprivation of rights secured by the Georgia Constitution and the United States Constitution, arising out of the actions of the defendants in punishing, expelling and reporting as delinquent the young plaintiff based solely on one non-threatening poem.

## JURISDICTION AND VENUE

1.

This action seeks to enforce and to vindicate rights conferred by the First and Fourteenth Amendments to the United States Constitution and by the Constitution of the State of Georgia. (GA. Const., Art. I, § I, Para. I., V., and VII.).

2.

This Court has subject matter jurisdiction over the federal constitutional claim pursuant to 42 U.S.C. §1983, 28 U.S.C. §§ 1331 and 1343 (a) (3) and has supplemental jurisdiction over the state constitutional claims pursuant to 28 U.S.C. § 1367 (a), because it is brought to redress deprivations, under color of state authority, or rights, privileges and immunities secured by the United States Constitution. Because the Court has federal jurisdiction, it has supplemental jurisdiction.

3.

Venue rests with this court and is proper pursuant to 28 U.S.C. §1391(b).

4.

All actions, and refusals to act, of the Defendants were under color of law and with deliberate indifference to Plaintiff's rights.

## PARTIES

5.

Plaintiff J. U. is, and at all times relevant hereto was, a minor, a natural person, citizen and resident of the State of Georgia, residing within this judicial district in Murray County, Georgia. J. U. was, at the time of the events giving rise to this action, a 14 year-old student in the eighth grade at Gladden Middle School, which is a school within the Murray County School District.

6.

Plaintiff Diane Upton, is, and at all times relevant hereto was, a natural person, citizen and resident of the State of Georgia, residing within this judicial district in Murray County, Georgia, and is the mother, natural guardian and next friend of Plaintiff J.U. Ms. Upton appears herein both as a plaintiff in her own right, and on behalf of her minor son, J. U.

7.

Defendant Murray County School District ("the District") is a public school system organized and maintained under the laws of the State of Georgia and is a "person" within the meaning of 42 U.S.C. §1983.

8.

Defendant Murray County School District (“the District”) is a political subdivision of the State of Georgia that was created and is maintained pursuant to O.C.G.A. § 20-2-50 for the purpose of providing public education to school aged pupils within its geographical borders. The District is also a “person” within the meaning of 42 U.S.C. §1983.

9.

Defendant Charlotte Pipkin is a resident of the State of Georgia, residing within this judicial district in Murray County, Georgia, who, at all times relevant hereto, was the Superintendent of Murray County School District and is the Chief Executive Officer for said entity.

10.

Defendant Maria Bradley is a resident of the State of Georgia, residing within this judicial district in Murray County, Georgia, who, at all times relevant hereto, was the Principal of Gladden Middle School.

11.

Defendant Dean Donehoo is a resident of the State of Georgia, residing within this judicial district in Murray County, Georgia, who, at all times relevant hereto, was an employee of the District and the Hearing Officer for the Murray County

Disciplinary Tribunal which expelled and or indefinitely suspended Plaintiff J.U.

12.

Defendant Shane Cloer is a resident of the State of Georgia, residing within this judicial district in Murray County, Georgia, who, at all times relevant hereto, was a School Resource Officer for the Murray County School District.

### **FACTUAL ALLEGATIONS**

#### **The Poem**

13.

After viewing a documentary special on television with his mother sometime in late January, J.U. began thinking about the subject of violence in schools. On or about January 27, 2005, J.U. wrote a fictional rhyming poem about violence visiting his school. The poem envisioned a deadly attack that leads J.U. to “live in horror terror and fear.”

14.

The poem was entitled “The Little Game.” It is a first person fictional scenario that includes the author warning fellow classmates about danger (“I feel like I must do something like Paul Reveare (sic)”) and includes violent imagery, consistent with images found in popular videos, movies and music (“I hear guns go off, bodies drop, I just wish this little game would stop.”).

15.

Proud of his poem, J.U. showed his mom, who did not think the poem was threatening.

16.

At school, J.U. showed the poem to his friends, including his best friend “Loni,” who is mentioned in the poem. None of his friends thought the poem was threatening or complained to any school officials that they felt threatened.

17.

At school, J.U. showed his notebook filled with poetry to his teacher, Mr. Bob Wilson. Mr. Wilson pointed out that the poem entitled “The Little Game” might be objectionable to some people, however; Mr. Wilson did not think the poem was threatening.

18.

J.U. voluntarily showed his notebook, containing numerous poems and including “The Little Game,” to his English teacher, Ms. Amy Lambert.

19.

Ms. Lambert asked J.U. if there were any poems that she would find objectionable. J.U. told Ms. Lambert to skip the poem entitled “The Little Game.”

20.

Apparently, Ms. Lambert did not follow J.U.'s instructions and read "The Little Game." She then showed the poem to Defendant Cloer, the School Resource Officer.

21.

Later that day, Plaintiff Ms. Upton was informed that the school was concerned because of a poem J.U. wrote. Ms. Upton made an appointment with Defendant Bradley to discuss the school's concerns the following Monday.

22.

No disruption occurred as a result of J.U.'s poem.

23.

The poem, which is attached hereto as Exhibit A, reads in entirety:

Something bad is going to happen at school,  
Maybe to you, maybe to Loni,  
I'm not very sure, but I know it'll haunt me.  
For the rest of my life, and for the rest of my days,  
all I will see is a red bloody haze.  
From Death to Desire,  
I have to find a heart that I truly admire.  
From blondes to brunets, reds and browns,  
their screams provide me a crisp, clean sound.  
I live in horror, terror and fear  
I feel like I must do something like Paul Reveare.  
I hear guns go off, bodies drop

I just wish this little game would stop.  
Your heart beats, Your goin in shock,  
you reach for the glock but tha music stops...

### **The Expulsion**

24.

The following Monday, on or about January 31, 2005, Ms. Upton met with Defendant Cloer and Defendant Bradley, who informed her that her son was suspended indefinitely because of the poem he had written. Defendants informed the Plaintiff that J.U. would not be readmitted to school until he was evaluated by someone in the mental health field.

25.

Plaintiff Doe immediately transported her son to the mental health facility recommended by Defendants in the meeting. The facility admitted J.U. for observation at or around 7p.m. in the evening.

26.

Ms. Upton received a phone call from a doctor and or mental health professional who informed her that J.U. was not a danger to himself or others and did not need to remain in a mental health facility. Ms. Upton brought her traumatized son home the next morning.

27.

Ms. Upton telephoned school officials on or about February 02, 2005 and informed them that her son was evaluated as required and determined to be mentally stable and not a threat to himself or others. She was informed that a Disciplinary Tribunal would be convened the next day where her son's fate would be determined.

28.

A Disciplinary Tribunal was held on or about February 03, 2005 resulting from allegations that J.U.'s poem violated school rules.

29.

During the tribunal, J.U. was asked why he wrote the poem. J.U answered truthfully that he was inspired to write the poem after seeing a television show that revealed U.S. soldiers in Iraq had uncovered documents suggesting that American schools were possible targets of terrorists.

30.

After the tribunal, Plaintiffs were informed that J.U. was suspended for the remainder of the year from all schools in Murray County because of his poem.

31.

Prior to the Disciplinary Tribunal referenced in Paragraph 26, J.U. had received only one minor disciplinary infraction in the eight years that he had been a student in Murray County schools, for roughhousing with a friend.

32.

No specific school rules were cited in the "Decision of the Murray County Disciplinary Tribunal," which revealed that the "tribunal" found him guilty of "violat[ing] terms and conditions of the Student Disciplinary Code as it relates to acts of a threatening or violent nature."

33.

At all times relevant to this action, the Murray County Board of Education Code of Conduct listed Rule 6.8 for the Middle School and Rule 7.8 for the High School as relating to "acts of a threatening or violent nature." Both rules are identically worded.

34.

Both Rule 6.8 of the Murray County Board of Education Middle School Code of Conduct and Rule 7.8 of the Murray County Board of Education High School Code of Conduct prohibit "Acts of a threatening nature or verbal abuse directed toward staff/school employee including vulgar, offensive or profane

language.”

35.

Listed discipline for violating Rule 6.8 of the Murray County Board of Education Middle School Code of Conduct and Rule 7.8 of the Murray County Board of Education High School Code of Conduct is “First Offense: 5 days Suspension, Parent Contact, possible Police Action[;] Second offense: 10 days Suspension, Parent Contact, possible Tribunal Hearing, possible Police Action.”

36.

J.U. was suspended from the Murray County Schools for “the remainder of the 2004-2005 school.”

37.

There were more than 3 months remaining in the 2004-2005 school year at the time J.U. was expelled from Murray County schools.

38.

The conditions that had to be met before the school would even *consider* readmitting J.U. into Murray County Schools were listed as “1) J.U. is enrolled in a mental health program that is designed to evaluate the students present metal (sic) health status; 2) J.U. and his family are cooperating in any treatment plan prescribed as a result of the mental health evaluation; 3) A mental health

professional certifies that in his/her best medical opinion, J.U. does not pose a significant danger to himself or others; 4) If reinstated in the regular school setting on review, J.U. and his family continue to cooperate in any treatment plan prescribed; 5) That J.U. and his family cooperate in allowing the Murray County School District verify, through mental health providers that the conditions herein stated are being met.”

39.

Ms. Upton immediately attempted to cooperate with Defendants and asked the Murray County Middle School social worker, Ms. Bagget, exactly what was required of her in order for her child to continue his education.

40.

Ms. Bagget told her that, after speaking with school officials, J.U. was required to be readmitted to Behavioral Mental Health Facility for “further treatment and evaluation” before they would consider allowing him to be admitted to Murray County Schools.

41.

As J.U. had already been evaluated as not needing mental health treatment by Behavioral Mental Health Facility, Ms. Upton requested other options. She was given the name of another acceptable mental health facility, but was told that

there would be a three week wait before he could be seen.

42.

Since J.U. was barred from attending public schools in his county, and could not get an appointment with a school approved mental health facility for a minimum of three weeks, Ms. Upton began home schooling J.U. in order for him to continue his education.

### **The Delinquency Petition**

43.

On or about February 01, Defendant Cloer filed a delinquency petition with the Juvenile Court of Murray County against J.U. The reason provided was that on January 28, 2005, J.U. wrote "a poem of a threatening nature and gave it to his teacher to read."

44.

Defendant Cloer listed "16-11-37(a) Terroristic threats and acts" as the offense J.U. allegedly committed.

45.

O.C.G.A §16-11-37(a) provides, in relevant part that

A person commits the offense of a terroristic threat when he or she threatens to commit any crime of violence, to release any hazardous substance, as such term is defined in Code Section 12-8-92, or to burn

or damage property with the purpose of terrorizing another or of causing the evacuation of a building, place of assembly, or facility of public transportation or otherwise causing serious public inconvenience or in reckless disregard of the risk of causing such terror or inconvenience.

46.

Ms. Upton was forced to hire an attorney to defend her son against the criminal charges of “terroristic threats and acts” made by Defendant Cloer and premised solely on J.U.’s poem.

47.

On or about May 25, 2005, Dr. Stevens, a Clinical Psychologist at The Stevens Clinic, determined that J.U. “does not represent a credible or significant danger to himself or others” based upon observation, clinical interviews, psychological testing, psychometric feedback, and a review of the poem at issue.

48.

According to Dr. Stevens, “the context in which [J.U.] wrote the poem, the manner in which he distributed it to various adults, and the actual content of the poem itself are not consistent with the allegations of intentionally making terroristic threats.”

49.

On September 20, 2005, the juvenile case against J.U. was dismissed.

**The Aftermath**

50.

As a direct and proximate result of the disciplinary and other actions of the Defendants complained of herein, J.U. has suffered, and will continue to suffer, harms including but not limited to diminished academic performance, reduced grades, lost academic opportunity, a permanent disciplinary record, the chill of and punishment for the lawful exercise of his rights under the First Amendment, emotional distress, shame, humiliation, loss of enjoyment of life, and mental anguish.

51.

As a direct and proximate result of the disciplinary and other actions of the Defendants complained of herein, Plaintiff Ms. Upton has suffered and will continue to suffer, and financial costs that are ongoing, and will be specified in detail before trial, including without limitation the cost of counsel, counseling and the loss of income, associated with protecting his child and her child's interests.

52.

As a result of J.U.'s suspension, he was unable to pass some of his classes upon returning to Murray County schools and has since been home schooled in an effort to help him catch up with his peers and compensate for the expulsion.

53.

J.U. would like to re-enroll in Murray County High School but fears that the policies which resulted in his expulsion will continue to affect his ability to exercise his freedom of expression.

54.

The poem at issue was the sole reason for the disciplinary actions taken against J.U. and ensuing damages suffered by the Plaintiffs.

**COUNT I**  
**CLAIM FOR DAMAGES FOR VIOLATION OF THE FIRST AND**  
**FOURTEENTH AMENDMENTS TO THE UNITED STATES**  
**CONSTITUTION AND 42 U.S.C. §1983**

55.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim, allegation and averment set forth in Paragraphs 1 through 54 inclusive, of this Complaint above.

56.

In imposing, approving, ratifying and enforcing the disciplinary actions, initiating delinquency proceedings, and expelling J.U. from county schools, Defendants were at all times relevant hereto acting under color and authority of state law.

57.

In writing a non-threatening poem and sharing those words with others, Plaintiff J.U. was engaged in the lawful exercise of his First Amendment rights.

58.

In imposing, upholding and maintaining disciplinary sanctions, as well as initiating delinquency proceedings, and expelling and or indefinitely suspending J.U. from Murray County schools, based - in whole or in part - upon the poem at issue, Defendants violated the right to free expression secured to J.U by the First and Fourteen Amendments to the United States Constitution.

59.

In imposing, upholding and maintaining disciplinary sanctions, as well as initiating delinquency proceedings, and expelling J.U. from county schools, Defendant acted wantonly, willfully, maliciously and with a reckless disregard

for the rights of J.U.

60.

In voting to sustain the expulsion at issue, and further in failing to train, supervise, discipline or otherwise restrain staff and those serving on the “Disciplinary Tribunal” from imposing upon J.U. the discipline complained of in this case, Defendants, by and through their actions and culpable inaction, adopted, sanctioned, ratified and approved the violation of the First and Fourteen Amendment rights of J.U.

61.

As the direct and proximate result of these actions and inactions by the Defendant complained of herein, Plaintiffs have suffered and will continue to suffer the harms and damages complained of herein.

62.

The Murray County Board of Education Code of Conduct and the policies described therein that “relates to acts of a threatening or violent nature” are official sets of rules and regulations adopted by the District for the conduct of students with respect to the subject matter treated therein, and as such represents the official policies, practices, customs and usages of Defendant District and the

Board.

63.

J.U. was disciplined, expelled and or indefinitely suspended for the remainder of the 2004-2005 school year, for expressive activity under the auspices and in keeping with the Murray County Board of Education Middle School Code of Student Conduct.

64.

The provisions of the Murray County Board of School Code of Student Conduct including without limitation Murray County Middle School Rule 6.8 and Murray County High School Rule 7.8, are unconstitutionally vague in that they fail to define with sufficient particularity what activities, including expressive activities and protected speech, might subject a student to punishment.

65.

The provisions of the Murray County Board of School Code of Student Conduct including without limitation Murray County Middle School Rule 6.8 and Murray County High School Rule 7.8, are unconstitutionally over broad, in that they proscribe activities and expression wholly protected by the First

Amendment to the United States Constitution, and proscribe substantially more conduct and expression than necessary to achieve their lawful aims.

66.

Upon information and belief, J.U. will continue to be subject to the provisions of the Murray County Board of School Code of Student Conduct including without limitation Murray County High School Rule 7.8.

67.

The past and continued application of the provisions of the Murray County Board of Education Code of Student Conduct including without limitation Murray County Middle School Rule 6.8 and Murray County High School Rule 7.8 and related policies to J.U. has violated, and continues to violate, their rights under the First Amendment to the United States Constitution.

68.

As the direct and proximate result of these actions and inactions by the Defendant complained of herein, Plaintiffs have suffered and will continue to suffer the harms and damages complained of herein.

69.

The actions of the defendant as afore described were taken pursuant to the

policies of the Murray County School District pursuant to the defendants' policies and rules.

70.

The actions of the defendants were motivated and taken because of J.U.'s expressive conduct and speech that is and was protected by the First and Fourteenth Amendments to the United States Constitution and for which redress, in the form of damages, is provided in 42 U.S.C. §1983. The conduct of the defendants were further calculated to, and had the effect of, suppressing, chilling, and punishing expressive conduct and speech that was so protected.

71.

As a direct and proximate result of the actions of the defendants afore so described, plaintiffs have suffered damages as follows: Plaintiff J.U. was compelled to curtail activity and speech that is protected by the First and Fourteenth Amendments to the United States Constitution; Plaintiff J.U., who was merely 14 years old at the time and was aggressively punished for exercising free speech, is emotionally scarred and fearful of expressing himself; Plaintiff J.U. was suspended from school for nearly four months and branded a "terrorist," resulting in his being penalized in the loss of school time and

suffering performance and social difficulties upon his return to school.

72.

The record of suspension and discipline on J.U.'s academic record will have severe and irreparable negative consequences on his future as he seeks admission to college, the military, or seeks to enter the work-force. Plaintiff has suffered and will continue to suffer pain, suffering, consternation and emotional distress over the deprivation of his constitutionally protected rights, over the suspensions that he was forced to serve, over the disruption of his school career, over the negative effect on his school record, and over the continued threat of retaliation by the school for any subsequent, yet minor, disciplinary violation.

73.

Pursuant to 42 U.S.C. §1988, Plaintiffs are entitled to reasonable attorney fees if they are the prevailing parties herein.

## COUNT II

### CLAIM FOR DAMAGES FOR VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

74.

By this reference, Plaintiffs incorporate each and every allegation and

averment set forth in paragraphs 1 through 73 supra, of this Complaint as though fully set forth herein.

75.

In imposing, approving, ratifying and enforcing the disciplinary actions, initiating delinquency proceedings, and expelling and or indefinitely suspending J.U. from Murray County schools, Defendants were at all times relevant hereto acting under color and authority of state law.

76.

In holding a "Disciplinary Tribunal" without notifying plaintiffs in writing of the specific rules and charges against J.U., or providing sufficient time and information to enable them to enlist an attorney or provide a defense, defendants violated plaintiffs' procedural and or substantive due process rights as guaranteed by the Fifth Amendment to the United States Constitution as incorporated against the states by the Fourteenth Amendment to the United States Constitution.

77.

By failing to follow the discipline provided for in the school rules, in expelling and or indefinitely suspending J.U. from all Murray County schools

based on his first offense in allegedly violating Rule 6.8, which provides the maximum punishment of 5 days suspension, defendants violated plaintiffs procedural and or substantive due process rights as guaranteed by the Fifth Amendment to the United States Constitution as incorporated against the states by the Fourteenth Amendment to the United States Constitution.

78.

By failing to provide an objective tribunal comprised of more than one person, defendants violated plaintiffs procedural and or substantive due process rights as guaranteed by the Fifth Amendment to the United States Constitution as incorporated against state action by the Fourteenth Amendment to the United States Constitution.

79.

Defendants policies “relating to acts of a threatening or violent nature” for which J.U. was expelled and or indefinitely suspended from Murray County schools are vague, arbitrary and allow government officials unbridled discretion in violation of the protections guaranteed by the Fifth Amendment to the United States Constitution as incorporated against state action by the Fourteenth Amendment to the United States Constitution.

COUNT III  
INJUNCTIVE RELIEF

80.

By this reference, Plaintiffs incorporate each and every allegation and averment set forth in paragraphs 1 through 79, supra, of this Complaint as though fully set forth herein.

81.

By the acts afore described, defendants have violated and continue to violate the rights of plaintiffs (and other students in said Defendant's school district) protected by the First, Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983, causing great, immediate and irreparable harm to plaintiffs. Defendant's intentional and willful disciplining of Plaintiff J.U. for having made constitutionally protected expression has and continues to greatly damage plaintiff and will greatly damage plaintiff in the future if permitted to continue.

82.

Unless and until defendants are restrained, prevented and enjoined from the continuing violation of Plaintiff J.U.'s First Amendment rights and continued endorsement on Plaintiff J.U.'s records of the discipline imposed therefore, the

Plaintiffs will continue to be immediately, irreparably and exponentially harmed by defendants' intentional and willful wrongdoing.

83.

Plaintiffs have no adequate remedy at law for defendants' violation of their constitutionally protected rights and expungement from J.U.'s records of the disciplinary actions taken against him by defendants.

84.

Plaintiffs show that an Order for declaratory and permanent injunctive relief to enjoin defendants from continuing to enforce their rules and policies in suppression of the rights guaranteed by the First and Fourteenth Amendments to the Constitution of the United States of America.

85.

Plaintiffs show that an Order should issue requiring Defendant to strike, expunge and eliminate any and all record of suspension and allegation of threatening acts and or violence and expunge J.U.'s records of any actions taken by the Defendant referenced herein.

86.

The Plaintiffs further show that they are entitled to an award of reasonable

attorneys' fees and costs pursuant to 42 U.S.C. §1988; and for other such declaratory, equitable and injunctive relief as the Court deems just and proper.

**VIOLATION OF RIGHTS CONFERRED BY THE CONSTITUTION  
OF STATE OF GEORGIA**

87.

Plaintiffs restate, as if rewritten here in their entirety, each and every claim, allegation and averment set forth in Paragraphs 1 through 86, inclusive, of this Complaint above.

88.

To the extent that the actions complained of herein violate the First Amendment to the United States Constitution, they also *per se* violate Article I, Section I, Para I, V & VII of the Georgia State Constitution.

89.

As the direct and proximate result of these actions and inactions by the Defendants complained of herein, Plaintiffs have suffered and will continue to suffer the harms and damages complained of with greater particularity herein.

**PRAYER**

**WHEREFORE**, having fully stated their claims against the defendants, these complaining plaintiffs demand judgment against each of the defendants as

follows:

- A. A declaration that the disciplinary actions taken by the defendants against Plaintiff J.U. violated his right to free expression under the First Amendment to the United States Constitution as incorporated against the states by the Fourteen Amendment to the United States Constitution, and his rights under Article I, Section I, Para II, III, V, VII, & IX, of the Constitution of the State of Georgia.
- B. A declaration that the provisions of the Murray County School District Student Code of Conduct policies, including without limitation Murray County Middle School Rule 6.8 and Murray County High School Rule 7.8, are unconstitutionally vague and overbroad, and in violation of the First Amendment to the United States Constitution as incorporated against the states by the Fourteen Amendment to the United States Constitution, and a permanent injunction against the further enforcement thereof;
- C. A mandatory injunction requiring defendants to clear and expunge the disciplinary records of J.U. of all offenses and punishments complained of herein; to amend his grades to ameliorate any academic disability suffered as a result of the punishments

complained of herein; to provide such tutoring and compensatory education as is necessary to offset the academic effects of the punishments complained of herein; to dissolve and expunge from his records the expulsion now in place; and to remove from his files all references to any discipline complained of herein;

- D. An award of compensatory damages against the defendants in an amount to be proven at trial;
- E. An award of punitive damages against individual defendants in an amount to be proven at trial;
- F. An award of attorney fees and costs of suit pursuant to 42 U.S.C. Section 1988 and Fed.R.Civ.P. 54, and;
- G. Such other legal and equitable relief as this Court shall, in the sound exercise of its discretion, deem just.

This the 24<sup>th</sup> day of March, 2006.

Respectfully submitted,

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Elizabeth Littrell  
Georgia Bar No. 454949  
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