UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LG, BY AND THROUGH HIS NATURAL FATHER AND NEXT FRIEND, JEROME GLOVER,	)	
Plaintiff,	)	
v.	)	
	)	Case No.
ROCKWOOD SCHOOL DISTRICT, KIRTI MEHROTRA, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY, JODI DAVIDSON, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY, AND JOHN SHAUGHNESSY, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

This matter is before the Court on Plaintiffs' Motion for a Temporary Restraining Order ("TRO"). For the reasons stated below, Plaintiffs fail to prove the elements required to obtain a Temporary Restraining Order and thus the request should be denied.

ARGUMENT

Whether a preliminary injunction should issue involves consideration of (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest. Dataphase Systems, Inc. v. C.L. Systems, Inc., 640 F.2d 109 (8th Cir. 1981).

Injunctive relief functions to "preserve the status quo until, upon final hearing, a court may grant full, effective relief. Kansas City Southern Trans. Co., Inc. v. Teamsters Local Union # 41, 126 F.3d 1059, 1065 (8th Cir. 1997). No one factor is dispositive of the request for injunction; the Court considers all of the factors and decides whether "on balance, they weigh in towards granting the injunction." Dataphase, 640 F.2d at 113. The burden of establishing that preliminary relief is warranted is on the party seeking the injunction. Id. Plaintiff is currently serving the second ay of a three day suspension. Status quo is to maintain the suspension.

The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies. Branstad v. Glickman, 118 F.Supp. 2d 925, 938 (N.D. Iowa 2000) (citing Beacon Theatres, Inc v. Westover, 359 U.S. 500, 506-07 (1959). Injunctive relief is only appropriate where the party seeking the relief has no adequate remedy at law. In this case, Plaintiff may, and in fact, is seeking damages for constitutional violations, and he has an adequate remedy at law. Thus, injunctive relief is not appropriate.

I. Plaintiffs Are Not Likely to Succeed on the Merits

The first element for a preliminary injunction to issue is to show probability of success on the merits. Plaintiffs are unlikely to succeed on the merits of their claim, and thus this Court should deny the preliminary injunction on this ground.

The Missouri Statutes authorize school districts to suspend students for conduct which is prejudicial to good order and discipline in the schools or which tends to impair the morale or good conduct of the pupils. Mo. Rev. Stat. § 167.161 (2000). Section 160.261 of the Missouri Revised Statutes requires school districts to establish a written

discipline policy. Mo. Rev. Stat. § 160.261.1, 5 (Supp. 2006). As required by Section 160.261, the Rockwood Board of Education ("Rockwood" or "Board") has adopted a written discipline policy. The Board's discipline policy is implemented through Board policies, regulations and administrative guidelines. As part of its written discipline policy, the Board publishes and distributes a booklet entitled Policies, Regulations, Procedures and Consequences discussing student misconduct and consequences for such misconduct. A copy of the booklet is attached hereto as Exhibit A.

Among other things, this booklet prohibits disruptive speech or conduct --conduct or verbal, written or symbolic language, which materially and substantial disrupts classroom work, school activities or school functions. The first offense is punishable by up to ten (10) days out-of-school suspension. See Ex. A at 50.

Plaintiff surreptitiously took a series of photos of a classroom teacher without her knowledge, without permission and without authority. See Affidavit of John Shaughnessy, attached hereto as Exhibit 1 at ¶ 5, 6. Two other students that were aware the photographs were being taken positioned themselves near the teacher and acted out and posed for the photographs. Id. at ¶ 5. This conduct occurred during class time. Id. The students' were off-task and joking around rather than paying attention. Such conduct is disruptive to the educational environment. Id.

Plaintiff subsequently posted several of the photos on the Facebook website. Id. at ¶ 7. A student reported seeing the photos on Facebook to the classroom teacher while in class. Id. at ¶ 8. Classroom instruction time was lost because of discussions that ensued about the photographs being taken. Id. at ¶ 8. The teacher has reported difficulty in teaching the class, difficulty in focusing on her lessons as a result of the incident. Id.

at ¶ 9, 10. She is very upset and worried over the photographs and believes her trust has been violated. Id. at ¶ 10. She has met with two grade-level principals, the Human Resources Office, the National Education Association, and a family attorney. Id. at ¶ 10. The student who reported seeing the photos has been harassed in class causing further classroom disruption. The student discussion over the photographs has spread to other classrooms. Id. at ¶ 11.

The booklet also prohibits portable communication devices being used as a camera during regular school hours and prohibits such devices being used to substantially disrupt the school environment. Ex. A at 48.

Plaintiff was disciplined for taking the photos in class and the disruption caused by taking such photos. He was disciplined for his in-school misconduct. Students may engage in activities at school that convey their ideological viewpoints unless such activities materially and substantially disrupts the work and discipline of the school or interferes with the rights of others. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 513 (1969). Here, the misconduct that caused the disruption is in-school, on-campus behavior. See Requa v. Kent Sch. Dist. No. 415, 492 S.Supp.2d 1272, 1281 (W.D. Wash. 2007) (First Amendment does not extend its coverage to disruptive, in-class activity of this nature).

Courts should defer to school administrators' determinations regarding whether student behavior within their supervision merits punishment. Tinker, 393 U.S. at 507. Here, the suspension is appropriate for the in-school misconduct.

The Tinker standard has also been applied where students post on internet sites such as Facebook or Myspace. See e.g., Layshock v. Hermitage Sch. Dist., 496

F.Supp.2d 587, (W.D. Pa. 2007). Defendants do not believe it necessary to analyze this case under the emerging Facebook type cases. However, even doing so, the discipline imposed by Defendants is still proper. Applying the same Tinker standard it was reasonably foreseeable that posting the photographs would come to the attention of school authorities and other students and it posed a reasonably foreseeable risk that the photos would materially and substantially disrupt the work and discipline of the school. Morse v. Frederick, ---U.S. ---, 127 S.Ct. 2618,2625, 168 L.Ed.2d 290 (2007) (quoting Tinker, 393 U.S. at 513). For such conduct, Tinker affords no protection against school discipline. See Wisniewski v. Bd. of Education of the Weesport Central Sch. Dist., 494 F.3d 34, 38-39 (2nd Cir. 2007).

The Court should not grant the relief sought as Defendants suspension of Plaintiff was proper and Plaintiff will not prevail on the merits.

II. The Harm to the Public Interest Weighs Decisively in Favor of Denying the Preliminary Injunction

A trial court will not order injunctive relief without first considering how the public interest will be best served. Troske v. Martigney Creek Sewer Co., 706 S.W.2d 282, 285 (Mo. Ct. App. 1986).

It is against the public interest to grant the relief sought. The public has an interest in not permitting students to surreptitiously take photographs of others during class time and have such conduct disrupt the classroom instruction. The public has a right to expect learning to take place in school.

Schools must be able to maintain the good order and discipline of its students and its classrooms and enforce its rules. Teachers have the right to be able to concentrate on teaching: and not fear that their privacy will be violated and pictures of them performing

their job placed on the internet. The public interest clearly lies in ensuring that Plaintiff's suspension be upheld and such misconduct not be permitted. Such is in the best interest of the public, including other students and classroom teachers.

III. Balancing the Harm to the Movants if the Preliminary Injunction is Not Issued Against the Injury to the Other Parties if the Preliminary Injunction is Issued Weighs Decisively in Favor of Denying the Preliminary Injunction.

To obtain a preliminary injunction, Plaintiffs must also prove that the balance between their alleged irreparable harm and the injury that the injunction's issuance would inflict on other interested parties weighs in favor of issuance of the injunction.

As set forth above, the Plaintiffs will suffer only a three-day suspension if the injunction is not granted. On the other hand, as discussed above, if the injunction is granted, significant harm will be done to the Board of Education's ability to maintain discipline within the schools. When balanced against each other, the scales fall decisively in favor of denying the relief sought.

IV. Plaintiffs' Claim Fails To Establish Irreparable Harm

A preliminary injunction can only issue upon proof by the movant that irreparable harm is likely and that it has no adequate legal remedy. Some courts have held that "[t]he movant's failure to sustain its burden of proving irreparable harm ends the inquiry and the denial of the injunctive request is warranted." Glenwood Bridge, Inc. v. City of Minneapolis, 940 F.2d 367, 371 (8th Cir. 1991) (internal citations omitted).

What constitutes irreparable harm generally is decided on a case-by-case basis. 42 Am. Jur. 2d, Injunction, 49, p. 789 (1969). However, the injury must be substantial and not small or technical in nature. Hubert v. Magidson, 243 S.W.2d 337 (Mo. 1951). Plaintiffs have not shown any threat of irreparable harm.

Plaintiffs claim irreparable harm because he is suspended for three days from school. However, a three-day suspension is a minimal disciplinary measure compared to the scope of discipline permitted by Missouri Statutes. The school principal was authorized to suspend Plaintiff for up to ten (10) school days and the Superintendent of Schools is authorized to suspend for up to 180 school days. See Mo. Rev. Stat. § 167.171.1 (Supp. 2006). Moreover, Plaintiff may continue to receive his homework assignments during the three days.

CONCLUSION

Because Plaintiffs cannot prove the elements necessary to obtain a Temporary Restraining Order, Plaintiffs' Motion should be denied. No one factor is dispositive of the request for injunction; the Court considers all of the factors and decides whether "on balance, they weigh in towards granting the injunction." Dataphas, at 113. The burden of establishing that preliminary relief is warranted is on the party seeking the injunction. Id.

Kenneth C. Brostron #24094
Lawrence J. Wadsack #46917
LASHLY & BAER, P.C.
714 Locust Street
St. Louis, Missouri 63101
(314) 621-2939
(314) 621-6844/Fax
brostron@lashlybaer.com
lwadsack@lashlybaer.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 11th day of December, 2007, a true and correct copy of the foregoing was hand-delivered to: Mark Sableman, Esq., Michael Nepple, Esq., Thompson Coburn, LLP, One U.S. Bank Plaza, St. Louis, Missouri 63101, Attorneys for Plaintiffs.