

FILED

SEP 01 2009

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

DAVID CREWS, CLERK
BY *[Signature]* Deputy

J.W., individually and on behalf)
of her minor son, R.W.,)
PLAINTIFFS,)
v.)
DESOTO COUNTY SCHOOL DISTRICT,)
UNNAMED DESOTO COUNTY SCHOOL)
DISTRICT EMPLOYEE, in his individual)
and official capacities, COACH JOHN)
STEVENSON, in his individual and official)
capacities, COACH KENNETH WALKER, in his)
individual and official capacities, CITY OF)
SOUTHAVEN, MISSISSIPPI, and SOUTHAVEN)
POLICE SERGEANT NICHOLAS KENNEDY, in)
his individual and official capacities,)
DEFENDANTS.)

CIVIL ACTION NO.: 2:09CV155-M-S

COMPLAINT
JURY TRIAL DEMANDED

PRELIMINARY STATEMENT

1. R.W. brings this civil rights lawsuit under the First, Fourth, and Fourteenth Amendments to the United States Constitution and the Mississippi Constitution of 1890. He seeks declaratory relief, injunctive relief, and compensatory and punitive damages.

2. R.W. was attending school at Southaven Middle School in Southaven, Mississippi, in the Desoto County School District, when he was caught using his cell phone to review a text message sent to him by his father during football period. Rather than follow school policy concerning a violation of the rule against possession of electronic equipment/devices during school, R.W.'s coach opened the cell phone in violation of R.W.'s rights under the Fourth Amendment and Article 3, Section 23 of the Mississippi Constitution, and viewed R.W.'s private and personal photographs stored on the phone. As a result of the unlawful search of R.W.'s

phone, the Desoto County School District expelled R.W. from school for allegedly violating an overly broad and vague school policy in violation of R.W.'s rights under the First and Fourteenth Amendments and Article 3, Sections 13-14 of the Mississippi Constitution. The enforcement of said policy vested unfettered discretion in the hands of the individual defendants in violation of R.W.'s rights to free speech and expression under the First Amendment and Article 3, Section 13 of the Mississippi Constitution. R.W. and his mother J.W. were denied due process under law in violation of their rights under the Fourteenth Amendment and Article 3, Section 14 of the Mississippi Constitution, also as a result of the exercise of unfettered discretion by school staff and administrators and Sergeant Kennedy of the City of Southaven Police Department.

3. Plaintiffs' claims arise under 42 U.S.C. § 1983, the First Amendment to the United States Constitution, the Fourth Amendment to the United States Constitution, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the Mississippi Constitution of 1890.

4. Pursuant to Rule 8.1 of the Uniform Local Rules of the United States District Court of the Northern District of Mississippi, this Complaint abbreviates Plaintiffs' names, as well as the names of nonparty minors.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1343(a) because this action seeks a remedy under 42 U.S.C. § 1983, the First Amendment to the United States Constitution, the Fourth Amendment to the United States Constitution, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

6. This Court has jurisdiction to declare the rights of the parties and to award any further necessary and proper relief pursuant to 28 U.S.C. §§ 2201 and 2202. Rule 65 of the Federal Rules of Civil Procedure authorizes injunctive relief. This Court has authority to award costs and attorney's fees under 42 U.S.C. § 1988.

7. Venue is proper in this action pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to Plaintiffs' claims occurred in Southaven, Mississippi, which is within the Northern District of Mississippi, Delta Division.

THE PARTIES

8. Plaintiff J.W. appears individually and on behalf of her African American minor son, R.W. Plaintiff R.W., who was twelve years old at all times relevant to the facts of this case, lives with his mother in Savannah, Georgia. At the time of the incident giving rise to this action, R.W. lived with his mother in Southaven, Mississippi and was a student in the seventh grade at Southaven Middle School (hereinafter "SMS") which is part of the DeSoto County School District.

9. Defendant DeSoto County School District is a school district operating in Mississippi under color of state law and is located in DeSoto County, Mississippi. It may be served with process through its superintendent, Milton Kuykendall at 5 East South St., Hernando, Mississippi 38623.

10. Defendant Unnamed DeSoto County School District Employee (hereinafter "Unnamed DCS Employee"), upon information and belief, is a coach and teacher of a football period at SMS and an employee of the DeSoto County School District. He is sued in his individual and official capacities. He may be served with process in his official capacity through

Superintendent Milton Kuykendall at 5 East South St., Hernando, Mississippi 38623, and in his individual capacity at his place of business.

11. Defendant Coach John Stevenson, upon information and belief, is a coach and teacher at SMS and an employee of the DeSoto County School District. He is sued in his individual and official capacities. He may be served with process in his official capacity through Superintendent Milton Kuykendall at 5 East South St., Hernando, Mississippi 38623, and in his individual capacity at his place of business.

12. Defendant Coach Kenneth "Dixie" Walker is the Seventh Grade Principal at SMS and an employee of the DeSoto County School District. He is sued in his individual and official capacities. He may be served in his official capacity through Superintendent Milton Kuykendall at 5 East South St., Hernando, Mississippi 38623, and in his individual capacity at his place of business.

13. City of Southaven is a political subdivision of the State of Mississippi and at all relevant times operated under color of state law. Defendant City of Southaven is responsible for the City of Southaven Police Department and for the actions of its officers acting under color of state law. The City of Southaven may be served with process through Mayor Greg Davis at 8710 Northwest Drive in Southaven, Mississippi 38671.

14. Defendant Sergeant Nicholas Kennedy is an officer of the Southaven Police Department. He is sued in his individual and official capacities. He may be served with process in his official capacity through Mayor Greg Davis at 8710 Northwest Drive in Southaven, Mississippi 38671, and in his individual capacity at his place of business.

FACTS GIVING RISE TO THIS ACTION

15. DeSoto County is located in the northwest corner of Mississippi, across the state line from Memphis, Tennessee. It is part of the Memphis metropolitan area and consists of several towns and cities, including Southaven, Mississippi.

16. Prior to August 15, 2008, R.W. had been an honor student at SMS and had never been suspended or expelled from school for any reason. At no point has R.W. ever been, nor is he now, a member of any gang or involved in any gang activities.

17. On Friday, August 15, 2008, R.W. received a text message on his cell phone from his father, who resides in South Carolina, while he was in class. He thought the message might indicate that there was an emergency. After R.W. arrived at football for his next period, he flipped open the cell phone to read the message. His football coach, Defendant Unnamed DCS Employee, saw him looking at the phone and told R.W. to hand him the phone. R.W. shut the cell phone and handed it to the teacher.

18. It is common practice in SMS for cell phones to be seized when students are caught using them during school hours. Seized cell phones are turned in to the school office and can be picked up by parents after paying a fee. Desoto County School District Policy, as set forth in the 2008-09 Southaven Middle School Student Handbook (hereinafter "SMS Handbook"), which was distributed to students at the beginning of the 2008-09 school year, states in provision 10 of the general Student Behavior section, "Students using cell phones during school will have them taken by the teacher and turned in to the office."

19. At SMS, possession of a cell phone without prior approval of the school administration is a Level II offense: "2-6 Possession of electronic equipment/device (beepers, telephone, etc.) without prior approval of the administration." The SMS Handbook Code of Discipline states that any Level II violation can result in the following Disciplinary Action:

First Violation:

Minimum: Administrator-Student Conference, ALC, in school suspension, home suspension, corporal punishment

Maximum: School suspension (one to three days)

...

Additional disciplinary action for possession of electronic equipment/devices:

1st offense – School will keep the device 5 school days; or a parent may pay a \$25 fine to regain possession of the device.

20. Possession of the cell phone in violation of SMS Rule 2-6 was R.W.'s first offense at SMS.

21. Rather than turn R.W.'s seized cell phone in to the office as proscribed by SMS school policy, Unnamed DCS employee opened the phone and began viewing R.W.'s private and personal photos which were stored on the phone. Upon information and belief, Unnamed DCS employee had no suspicion that R.W. was in violation of any school policy other than the policy prohibiting possession of a cell phone in school without the prior approval of the school administration.

22. Among the digital photographs that Defendant Unnamed DCS Employee viewed were digital photographs depicting R.W. dancing in the bathroom of his home and one of B., another SMS seventh-grade student, holding a BB gun across his chest, which was also taken at R.W.'s home.

23. After viewing the private, digital photographs stored on R.W.'s cell phone, Defendant Unnamed DCS Employee gave the cell phone to Defendant Coach John Stevenson. Rather than turn the cell phone in to the office, Defendant Stevenson took the cell phone and searched its contents by flipping it open and viewing R.W.'s photos, which were stored on the phone. Upon information and belief, Defendant Stevenson had no reasonable belief that R.W. had violated any school policy other than possessing a cell phone in violation of Rule 2-6.

24. Defendant Stevenson then took R.W. to the office of the Seventh Grade Principal, Defendant Coach Kenneth “Dixie” Walker.

25. Defendant Stevenson gave R.W.’s phone to Defendant Walker, who, along with Defendant Sergeant Kennedy, an officer of the Southaven Police Department, conducted a search of R.W.’s cell phone by flipping it open and viewing his private and personal digital photographs. Upon information and belief, prior to searching R.W.’s phone, Defendant Walker and Defendant Kennedy had no basis to believe that R.W. had violated any school policy besides possessing the cell phone in violation of Rule 2-6.

26. After viewing the photographs, Defendants Kennedy and Walker questioned R.W. about whether he was in a gang. R.W. had never previously been questioned about gang involvement. R.W. stated that he was not in a gang, had never been involved with any gang, and lacked knowledge of any gangs at SMS.

27. At no point did Defendant Unnamed DCS Employee, Defendant Stevenson, Defendant Walker, or Defendant Kennedy indicate to R.W. the reason for the repeated searches of his cell phone.

28. Defendant Kennedy concluded that the photographs constituted “gang signs” and “indecent pictures.” Defendant Kennedy gave no basis for his conclusions and conducted no further inquiry into R.W.’s possible involvement with gangs.

29. Coach Walker issued R.W. a Suspension Notice, which indicated that R.W. was suspended for three days, referred him for a Disciplinary Hearing on August 21, 2008, and charged him with a violation of Rule 5-3 of the SMS Handbook Code of Discipline.

30. Rule 5-3 provides: “Students are prohibited from wearing or displaying in any manner on school property or at school sponsored events clothing, apparel, accessories,

drawings, or messages associated with any gang or social club that is associated with criminal activity, as defined by law enforcement agencies.” The other two Level V offenses are: “5-1 Weapon(s) possession and/or use” and “5-2 Sale or distribution or conspiring to sell counterfeit drugs, illegal drugs/alcohol, narcotics or controlled substance(s).”

31. The SMS Handbook Code of Discipline states that the following Disciplinary Actions will accompany a Level V violation:

Minimum: Possession, other than guns – Assignment to the Desoto County Alternative Center and a report will be made to the appropriate law enforcement agencies.

Maximum: Possession of fire arm [sic]/gun or use of other weapon will result in expulsion from the school for a period of not less than one year. (under certain circumstances can be from the students’ assigned school to the DCAC)

32. The section of the 2008-09 SMS Handbook that outlines disciplinary action for Level V offenses only addresses the disciplinary action given in response to a student’s possession or use of a firearm or other weapon. It does not indicate the disciplinary action that will accompany a student’s violation of Rule 5-3 and provides no guidance to parents and students as to the disciplinary action to expect for such an infraction.

33. The offense identified as a Rule 5-3 offense in the 2008-09 SMS Handbook Code of Discipline was listed in the 2007-08 SMS Handbook Code of Discipline as a Level II offense, Rule 2-7, and the maximum disciplinary action prescribed was a school suspension for one to three days.

34. After being issued the Suspension Notice, R.W. spent the rest of the day in school and returned home as usual. No measures were taken that would indicate that school officials perceived R.W. to be a threat to school safety.

35. On Monday, August 18, 2008, J.W. and R.W. met with Principal Levi Williams and Defendants Walker and Kennedy at SMS. Defendant Walker stated that the digital

photographs on R.W.'s cell phone were "gang pictures." Defendant Kennedy agreed and stated that he was a "gang specialist" with "certified training." Defendant Kennedy never provided J.W. anything to substantiate his claimed training or certification.

36. After the meeting, J.W. paid \$25 and retrieved R.W.'s cell phone.

37. R.W. did not attend school Monday, August 18 through Wednesday, August 20, 2008.

38. On Thursday, August 21, 2008, DeSoto County School District Disciplinary Hearing Officer Donald Corey convened a hearing to review R.W.'s case. The hearing was attended by R.W., J.W., Defendant Walker, and J.W.'s friend, Percy Garrett. The hearing officer recorded the hearing. Defendant Walker indicated that R.W. was a threat to school safety. When J.W. asked Hearing Officer Corey whether Defendant Walker was a gang specialist, the hearing officer turned off the recording device and sent someone to search for Defendant Kennedy. At no time did Defendant Walker explain how R.W. posed a threat to school safety.

39. J.W. offered to show the photographs to Hearing Officer Corey, who declined to view them. Defendant Kennedy arrived and stated that he recognized the gang signs in R.W.'s digital photographs and that he knew the student who was holding a BB gun in one of the photos. However, Defendant Kennedy did not provide any information as to what formed the basis of his belief that R.W. showed gang signs in the pictures on his cell phone. Hearing Officer Corey imposed an indefinite suspension and recommended that R.W. be expelled from the school district.

40. Upon information and belief, despite Defendant Kennedy's assertion that he knew the student holding the BB gun in the photo found on R.W.'s phone, B., the student in the picture, was never disciplined.

41. An August 21, 2008 letter from the hearing officer to J.W. confirmed the hearing officer's recommendation to suspend R.W. from school and expel him from the school district and stated that it was based on R.W.'s violation of Rules 2-6 and 5-3.

42. J.W. appealed the decision. She received a phone call from DeSoto County School District Appeals Officer Mike Smith, who told her that the next DeSoto County Board of Education (hereinafter "DCBE") meeting would take place on September 15, 2008, and invited her to attend.

43. J.W. received two letters from Appeals Officer Smith. The first was a September 2, 2008 letter affirming the decision of Hearing Officer Corey for the following reason: "Brian [sic] openly defying the school safety announcement." It is currently unknown who "Brian" is. The second was a September 3, 2008 letter notifying J.W. that the DCBE would meet on September 15, 2008. The letter notifying J.W. of the board meeting indicated that she and R.W. could attend and bring representation at their own expense.

44. On Monday, September 15, 2008, the DCBE met and considered R.W.'s case. Defendant Walker, R.W., J.W., and Tony Nicholson, a public affairs monitor with a Memphis area radio station, attended the hearing. R.W. denied any gang affiliation or involvement in any gang related activity. Defendant Walker stated that R.W.'s digital photographs depicted gang signs and that Defendant Kennedy was a gang specialist and had determined that R.W.'s photographs communicated gang signs, symbols, and/or messages.

45. Defendant Kennedy was not at the hearing. At no point was any information or evidence provided to the DCBE to substantiate the claim that Defendant Kennedy was a gang "specialist" or "expert," or that he had any materials upon which he based his determination that R.W.'s photographs conveyed gang-related signs, symbols, or messages.

46. Even though J.W. brought R.W.'s cell phone containing the digital photographs to the hearing, no member of the DCBE asked to view them.

47. The next morning, the DCBE expelled R.W. for the remainder of the 2008-09 school year for violating Rules 2-6 and 5-3. This was confirmed via a letter dated September 16, 2008 from Charlie Alexander to J.W.

48. Following the decision to expel R.W. and in response to media attention about the expulsion, DeSoto County School District Community Relations Director Katherine Nelson issued a statement to local media stating that “[s]tudents know that if they break the rules, their cell phone will be confiscated and that school officials reserve the right to look through the cell phone to see if they were cheating on a test or conducting illegal activities related to gangs or drugs.” This policy was not made known to students or parents prior to the confiscation of R.W.'s phone.

49. As a result of this incident, R.W. has suffered and continues to suffer ongoing harm, including, but not limited to, missed school, a permanent negative report on his school record, and emotional distress. J.W. has also suffered emotional distress because of this incident, as well as inconvenience, disruption of her work schedule, and other continuing harm and suffering.

50. Since his expulsion from SMS, R.W. has been chilled from engaging in constitutionally protected activities, including taking photographs on his cell phone.

51. As a result of his expulsion, R.W. was forced to enroll in Oakhaven Middle School in Memphis, Tennessee, a school plagued by serious gang problems, which posed a constant threat of harm to R.W. while he was in attendance.

52. In order to remove R.W. from the constant exposure to harm he faced at Oakhaven Middle School, J.W. and R.W. moved from Southaven, Mississippi to Savannah, Georgia after the end of the 2008-09 school year.

CLAIMS FOR RELIEF COUNT ONE: FIRST AMENDMENT (42 U.S.C. § 1983)
(Overbreadth)

53. Plaintiff repeats and realleges paragraphs one through 52, as if set forth fully herein.

54. Defendants DeSoto County School District, Unnamed DCS Employee, Coach Stevenson, Sergeant Kennedy, City of Southaven, and Coach Walker are liable to Plaintiff R.W. for violating his rights to free speech and expression pursuant to 42 U.S.C. § 1983 and the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment to the United States Constitution by promulgating, implementing, and enforcing regulations in the 2008-09 SMS Student Handbook that are overbroad because they prohibit speech and expression protected by the First Amendment. Rule 5-3 of the SMS Handbook is overbroad in its prohibition of the display of “messages associated with any gang or social club.” The Student Behavior section of the SMS Handbook also contains an overbroad provision that prohibits student possession of “symbols of gangs.” Neither provision defines operative terms, thereby permitting the prohibition of constitutionally protected speech and expression in violation of students’ First Amendment rights. Defendant DeSoto County School District is liable to Plaintiffs pursuant to 42 U.S.C. § 1983 and the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.

55. The actions of Defendants DeSoto County School District, Unnamed DCS Employee, Coach Stevenson, Coach Walker, City of Southaven, and Sergeant Kennedy were

intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiff R.W.'s First Amendment rights.

COUNT TWO: FIRST AMENDMENT (42 U.S.C. § 1983)
(Excessive Delegation)

56. Plaintiff repeats and re-alleges paragraphs one through 55, as if set forth fully herein.

57. Defendant DeSoto County School District violated Plaintiff R.W.'s rights to speech and expression guaranteed by the First Amendment to the United States Constitution by promulgating, implementing and enforcing Rule 5-3, which unconstitutionally delegates to "law enforcement agencies" complete authority and discretion to determine the nature and scope of activity that is prohibited by Rule 5-3. Defendant DeSoto County School District is liable to Plaintiff pursuant to 42 U.S.C. § 1983 and the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment to the United States Constitution.

58. The actions of Defendants DeSoto County School District were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiff R.W.'s First Amendment rights.

COUNT THREE: FIRST AND FOURTEENTH AMENDMENTS (42 U.S.C. § 1983)
(Vagueness)

59. Plaintiffs repeat and re-allege paragraphs one through 58, as if set forth fully herein.

60. Defendant DeSoto County School District violated Plaintiff R.W.'s rights to speech and expression guaranteed by the First Amendment to the United States Constitution and

Plaintiffs' right to due process under law guaranteed by the Fourteenth Amendment to the United States Constitution by promulgating, implementing, and enforcing Rule 5-3, an unconstitutionally vague regulation. Rule 5-3 fails to give adequate notice to students and their parents of what constitutes prohibited student conduct in violation of their due process rights and unconstitutionally delegates to "law enforcement agencies" complete authority and discretion to determine the nature and scope of activity that is prohibited by Rule 5-3. Defendant DeSoto County School District is liable to Plaintiffs pursuant to 42 U.S.C. § 1983, the Fourteenth Amendment to the United States Constitution, and the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.

61. The actions of Defendants DeSoto County School District were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiff R.W.'s First Amendment rights and Plaintiffs' Fourteenth Amendment rights.

COUNT FOUR: FOURTH AMENDMENT (42 U.S.C. § 1983)
(Search and Seizure)

62. Plaintiff incorporates paragraphs one through 61 herein by reference.

63. Defendants DeSoto County School District, Unnamed DCS Employee, Coach Stevenson, Coach Walker, City of Southaven, and Sergeant Kennedy, are liable to Plaintiff R.W. for the unlawful search of R.W.'s cell phone pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment. Defendant DeSoto County School District is also liable to Plaintiff R.W. pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, for supporting a policy permitting automatic and overly invasive searches of student cell phones confiscated on school grounds, as expressed in a

statement by its community relations director to the press, and for failing to give parents and students notice of this apparent policy prior to the confiscation of R.W.'s cell phone.

64. The actions of Defendants DeSoto County School District, Unnamed DCS Employee, Coach Stevenson, Coach Walker, City of Southaven, and Sergeant Kennedy were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiff R.W.'s Fourth Amendment rights.

COUNT FIVE: FOURTEENTH AMENDMENT (42 U.S.C. § 1983)
(Substantive Due Process)

65. Plaintiffs incorporate paragraphs one through 64, as if set forth fully herein.

66. Defendants DeSoto County School District, Unnamed DCS Employee, Coach Stevenson, Coach Walker, City of Southaven, and Sergeant Kennedy, by their actions and omissions as alleged in this Complaint, violated Plaintiffs' rights to substantive due process guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, which prohibits arbitrary state conduct. Defendants are liable to Plaintiffs pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution.

67. Defendants DeSoto County School District, Unnamed DCS Employee, Coach Stevenson, Coach Walker, City of Southaven, and Sergeant Kennedy's actions were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiffs' Fourteenth Amendment rights.

COUNT SIX: ARTICLE 3, SECTION 13 OF THE
MISSISSIPPI CONSTITUTION OF 1890
(Overbreadth)

68. Plaintiff repeats and realleges paragraphs one through 67, as if set forth fully herein.

69. Defendants DeSoto County School District, Unnamed DCS Employee, Coach Stevenson, Coach Walker, City of Southaven, and Sergeant Kennedy are liable to Plaintiff R.W. for violating his rights to free speech and expression, guaranteed by Article 3, Section 13 of the Mississippi Constitution of 1890 by promulgating, implementing, and enforcing regulations in the 2008-09 SMS Student Handbook that are overbroad because they prohibit speech and expression protected by the First Amendment. Rule 5-3 of the SMS Handbook is overbroad in its prohibition of the display of “messages associated with any gang or social club.” The Student Behavior section of the SMS Handbook also contains an overbroad provision that prohibits student possession of “symbols of gangs.” Neither provision defines operative terms, thereby permitting the prohibition of constitutionally protected speech and expression in violation of students’ First Amendment rights. Defendant DeSoto County School District is liable to Plaintiffs pursuant to 3, Section 13 of the Mississippi Constitution of 1890.

70. The actions of Defendants DeSoto County School District, Unnamed DCS Employee, Coach Stevenson, Coach Walker, City of Southaven and Sergeant Kennedy were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiff R.W.’s rights under Article 3, Section 13.

COUNT SEVEN: ARTICLE 3, SECTION 13 OF THE
MISSISSIPPI CONSTITUTION OF 1890
(Excessive Delegation)

71. Plaintiff repeats and re-alleges paragraphs one through 70, as if set forth fully herein.

72. Defendant DeSoto County School District violated Plaintiff R.W.’s rights to speech and expression guaranteed by Article 3, Section 13 of the Mississippi Constitution of 1890 by promulgating, implementing and enforcing Rule 5-3, which unconstitutionally delegates

to “law enforcement agencies” complete authority and discretion to determine the nature and scope of activity that is prohibited by Rule 5-3. Defendant DeSoto County School District is liable to Plaintiff pursuant to Article 3, Section 13 of the Mississippi Constitution of 1890.

73. The actions of Defendant DeSoto County School District were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiff R.W.’s rights under Article 3, Section 13.

COUNT EIGHT: ARTICLE 3, SECTIONS 13-14 OF THE
MISSISSIPPI CONSTITUTION OF 1890
(Vagueness)

74. Plaintiffs repeat and re-allege paragraphs one through 73, as if set forth fully herein.

75. Defendant DeSoto County School District violated Plaintiff R.W.’s rights to speech and expression, guaranteed by Article 3, Section 13 of the Mississippi Constitution of 1890, and Plaintiffs’ right to due process under law, guaranteed by Article 3, Section 14 of the Mississippi Constitution of 1890 by promulgating, implementing and enforcing Rule 5-3, an unconstitutionally vague regulation. Rule 5-3 fails to give adequate notice to students and their parents of what constitutes prohibited student conduct in violation of their due process rights and unconstitutionally delegates to “law enforcement agencies” complete authority and discretion to determine the nature and scope of activity that is prohibited by Rule 5-3. Defendant DeSoto County School District is liable to Plaintiffs pursuant to Article 3, Sections 13-14 of the Mississippi Constitution of 1890.

76. The actions of Defendant DeSoto County School District were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiff R.W.’s rights under Article 3, Sections 13 and Plaintiffs’ rights under Article 3, Section 14.

COUNT NINE: ARTICLE 3 SECTION 23
OF THE MISSISSIPPI CONSTITUTION OF 1890
(Search and Seizure)

77. Plaintiff incorporates paragraphs one through 76, as if set forth fully herein.

78. Defendants Desoto County School District, Unnamed DCS Employee, Coach Stevenson, Coach Walker, City of Southaven and Sergeant Kennedy, are liable to Plaintiff R.W. for the unlawful search of R.W.'s cell phone pursuant to Article 3, Section 23 of the Mississippi Constitution of 1890. Defendant DeSoto County School District is also liable to Plaintiff R.W. pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, for supporting a policy permitting automatic and overly invasive searches of student cell phones confiscated on school grounds, as expressed in a statement by its community relations director to the press, and for failing to give parents and students notice of this apparent policy prior to the confiscation of R.W.'s cell phone.

79. The actions of Defendants DeSoto County School District, Unnamed DCS Employee, Coach Stevenson, Coach Walker, City of Southaven, and Sergeant Kennedy were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiff's rights under Article 3, Section 23.

COUNT TEN: ARTICLE 3, SECTION 14 OF THE
MISSISSIPPI CONSTITUTION OF 1890
(Substantive Due Process)

80. Plaintiffs incorporate paragraphs one through 79, as if set forth fully herein.

81. Defendants DeSoto County School District, Unnamed DCS Employee, Coach Stevenson, Coach Walker, City of Southaven, and Sergeant Kennedy, by their actions and omissions as alleged in this Complaint, are liable to Plaintiffs for violating their rights to

substantive due process guaranteed by Article 3, Section 14 of the Mississippi Constitution of 1890, which prohibits arbitrary state conduct.

82. Defendants DeSoto County School District, Unnamed DCS Employee, Coach Stevenson, Coach Walker, City of Southaven, and Sergeant Kennedy's actions were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiffs' Article 3, Section 14 rights.

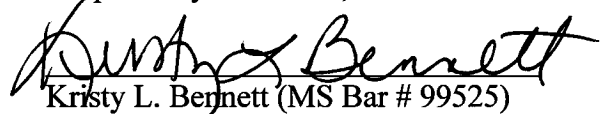
PRAYER FOR RELIEF

WHEREFORE the Plaintiffs respectfully pray for the following relief:

1. A finding that Defendants violated Plaintiffs' rights;
2. Compensatory damages, to be determined by a jury, against all Defendants;
3. Punitive damages against the individual Defendants in their individual capacities;
4. Expungement of all law enforcement, academic, or discipline records of the Plaintiff child related to this incident;
5. Such injunctive relief as the Court deems necessary and proper;
6. Reasonable attorneys' fees and costs under 42 U.S.C. § 1988, including the fees and costs of experts that are incurred in prosecuting this action; and
7. Any other relief to which Plaintiffs may be entitled.

DATED: August 31, 2009

Respectfully submitted,



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**Pro Hac Vice Motions to Follow*

Attorneys for Plaintiff