

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

HANNAH ROBERTSON, INDIVIDUALLY AND ON BEHALF OF
HER MINOR CHILD, R.R.S.

Plaintiffs,

vs.

ANDERSON MILL ELEMENTARY SCHOOL, SPARTANBURG
COUNTY SCHOOL DISTRICT #6 AND ELIZABETH FOSTER,
INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS
PRINCIPAL

Defendants.

Civil Action No: 7:19-cv-00668-TMC

**PROPOSED SECOND AMENDED COMPLAINT
(JURY TRIAL REQUESTED)**

Plaintiffs Hannah Robertson and her minor child R.R.S., by and through their undersigned attorneys,
and for their **Second Amended Complaint** state as follows:

PARTIES

1. Plaintiffs Hannah Robertson and her minor child R.R.S. were citizens and residents of Spartanburg County, South Carolina at all times relevant to the events complained of.
2. Upon information and belief, Defendant Spartanburg School District #6 operates Defendant Anderson Mill Elementary School which is located in Spartanburg County where the events giving rise to this action occurred.
3. Upon information and belief, Defendant Principal Elizabeth Foster was a citizen and resident of Spartanburg County, South Carolina at all times relevant to the events complained of.

JURISDICITON AND VENUE

4. Plaintiffs bring this matter in large part under 42 U.S.C. Section 1983 for violations of civil rights under the First and Fourteenth Amendments to the U.S. Constitution.
5. Jurisdiction is proper pursuant to 28 U.S.C. Sections 1331, 1343 and 1367.
6. Venue is proper pursuant to 28 U.S.C. Section 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district, specifically the Spartanburg division.

FACTS

7. The minor child Plaintiff, R.R.S., attends Defendant Anderson Mill Elementary School and is ten (10) years old and in the 4th grade.

8. Upon information and belief, several weeks prior to the filing of the original Complaint, Plaintiff R.R.S. was given an assignment by her teacher, Ms. Anna Parham, to write a paper on any topic addressed "to society."

9. As Plaintiff R.R.S.'s maternal grandfather (Plaintiff Hannah Robertson's father) is a homosexual active in the LGBTQ community, both Plaintiffs are proud advocates of LGBTQ rights. Therefore, Plaintiff R.R.S. decided that she wanted her paper to help society learn to treat members of the LGBTQ community equally. About a week prior to the filing of the original Complaint, and after two written drafts of her paper, Ms. Parham allowed Plaintiff R.R.S. to type out and submit the following paper (verbatim):

"To society,

I don't know if you know this but peoples view on Tran's genders is an issue.

People think that men should not drees like a women, and saying mean

things. They think that they are choosing the wrong thing in life. In the world

people can choose who they want to be not being told that THEIR diction is

wrong. I hope people understand that people can hurt themselves from

others hurting their feelings. People need to think before they speak because

one word can hurt someone's feelings. We need to fix this because this is

getting out of hand!"

10. Upon information and belief, all 4th graders at Anderson Mill Elementary School were given this assignment with the end goal being that all the papers would be combined, published and sent home with the students.

11. Upon information and belief, Defendant Principal Elizabeth Foster reviewed all of the papers and directed Ms. Parham to tell Plaintiff R.R.S. the school would not publish her paper as it was not an

appropriate topic. Plaintiff R.R.S. was forced by Defendant Principal Elizabeth Foster to instead type and submit the following paper about bullying (verbatim):

“To society,

I don't know if you know this but peoples view on bullying is an issue. People think that saying mean things is ok and saying mean things. They think that they are choosing the wrong thing in life. In the world people can choose who they want to be not being told that THEIR diction is wrong. I hope people understand that people can hurt themselves from others hurting their feelings. People need to think before they speak because one word can hurt someone's feelings. We need to fix this because this is getting out of hand!”

12. Within the week preceding the filing of the original Complaint, and through a series of increasingly abusive, harassing, emotionally distressful and/or clearly unwarranted communications with Plaintiff Hannah Robertson, Defendant Principal Elizabeth Foster religiously defended her decision by consistently raising her voice and making loud statements, including but not limited to the following: that the original paper would “make other parents upset,” “would create a undesirable situation at the school,” was “not acceptable” and that it was “not age-appropriate to discuss transgenders, lesbians and drag queens outside of the home.” Defendant Principal Elizabeth Foster further proclaimed that “due to the type of school this is, the people that work here and the students and families of the students that go here, the topic would be disagreeable.”

13. At this time, Plaintiff R.R.S. is extraordinarily fearful of encountering Defendant Principal Elizabeth Foster at school and is in a state of severe emotional distress and confusion.

14. At this time, Plaintiff Hannah Robertson has terminated all communication with Defendant Principal Elizabeth Foster due to an inability to continue enduring the aforementioned emotionally distressful persecution.

15. Since the filing of the original Complaint, and by way of mailing multiple, identical letters (one requiring Plaintiff Hannah Robertson to drive to two (2) different post offices to locate the letter and sign for it) dated March 15, 2019 and ostensibly sent from Defendant Principal Elizabeth Foster (though signed by a “Rebecca K. Foster, Principal”), Defendant Principal Elizabeth Foster continued to harass Plaintiff Hannah Robertson in the face of a specific request from Plaintiff Hannah Robertson to Defendant Principal Elizabeth Foster that she cease communications with her. The content of this letter attempts to memorialize a blatantly false and/or highly misleading “timeline of events” via a method and by way of language extremely similar to that employed by attorneys. The practice of mailing multiple, identical letters with one requiring a signature is also a method very often employed by attorneys.

16. Based upon reasonable suspicion, this letter was, at least to some extent, drafted and mailed by or with the assistance of counsel for Defendants. The practical effect of this letter was to circumvent Plaintiffs’ attorney and contact Plaintiff Hannah Robertson directly.

17. In the above-stated letter from Defendant Principal Elizabeth Foster, Defendant Principal Elizabeth Foster also indicated that both of Plaintiff R.R.S.’s papers would be published. This unilateral decision runs in direct contradiction to Plaintiff Hannah Robertson’s request that the original paper not be published. Furthermore, the publishing of both papers would serve to expose Plaintiff R.R.S. as being the student involved in the present lawsuit, thus destroying the anonymity of a minor child plaintiff.

18. On March 20, 2019, immediately after tracking down and signing for what ended up being the identical letter she received only a few days prior, Plaintiff Hannah Robertson scheduled an emergent, same-day appointment with her primary care physician in order to seek immediate treatment for the emotional distress exacerbated by this letter.

19. Since the events complained of in the original Complaint and restated in the present Amended Complaint, Plaintiffs have been seeking a family therapist and are in the process of scheduling their first therapy session. However, as is very often the case, they may not be able to set an appointment for some time.

20. Subsequent to the filing of the Amended Complaint, on April 8, 2019, minor R.R.S. released a video on Facebook in which she identified herself, discussed her side of the story, and asked the public for support in the face of many hurtful (and sometimes threatening) online comments on the various news articles and Facebook posts that had been published regarding this case. It was the sole decision of R.R.S. to “out” herself by way of recording and publishing this video. There was no script or direction given to R.R.S. as to what to say; in terms of the content of the video, it was purely improvisation. This video was reported on by WSPA, the local news network, as well as by various other news networks in the Upstate. Additionally, PFLAG, the United States’ first and largest organization uniting families and allies with members of the LGBTQ community, wrote an article on the video and the case in general.

21. In the video, and as reported by various media outlets, R.R.S. asked that people wear purple, her favorite color, on April 12, 2019, to show support for both her and the LGBTQ community. Upon information and belief, Principal Foster and the other school administrators were well aware of this request.

22. On April 10, 2019, Ms. Robertson and Jacob Stephens, R.R.S.’s father, went to Anderson Mill Elementary School to have lunch with R.R.S. They asked R.R.S.’s teacher, Ms. Parham, if it would be acceptable for them to bring cupcakes for the 4th grade level on Friday, April 12, 2019 during lunch (to prevent disruption), and Ms. Parham stated that it was. In order to find out the total number of 4th grade students, Plaintiffs spoke with the front desk and were given further confirmation that bringing these cupcakes during lunch was completely acceptable. In reliance on what she was told, Ms. Robertson ordered cupcakes for the entire 4th grade level that same day after leaving school.

23. On the following day, April 11, 2019, Ms. Robertson received a call from Assistant Principal Kerrie Kish at 10:48am. Ms. Kish alleged to Ms. Robertson that it was against school rules and therefore unacceptable for Plaintiffs to bring cupcakes for the 4th grade level. Ms. Robertson informed Ms. Kish that doing so would not violate any guidelines/policies/procedures/etc. in the student 2018-2019 handbook for Anderson Mill Elementary School. Ms. Kish then oddly retorted that Ms. Robertson would have to go through Rachel Beckwith, the PTO President, to get approval, because bringing cupcakes for an entire grade level would be

considered an “event.” Ms. Kish continued to dismiss Ms. Robertson’s arguments/questions and told Ms. Robertson that Plaintiffs could only bring cupcakes for R.R.S.’s class.

24. A few minutes after her conversation with Ms. Kish ended, Ms. Robertson called her back to figure out how to get in touch with Ms. Beckwith. She was given Ms. Beckwith’s name but no contact information. Ms. Kish claimed they do not give such information to students’ parents. Confused, Ms. Robertson asked Ms. Kish to try and have Ms. Beckwith reach out to her instead, and Ms. Kish said she would try but could not promise anything. Before the ending of the conversation, Ms. Robertson begged Ms. Kish to please “help get this all worked out” because Plaintiffs were both excited about being able to do something kind for the entire 4th grade level and because the cupcakes had already been ordered and prepared.

25. Ms. Robertson asked for Ms. Kish to put into writing how bringing cupcakes for a class is acceptable but not an entire grade level per any school guidelines/policies/procedures/etc. Fortunately for Plaintiffs, Ms. Kish’s emailed response actually served to confirm that no guidelines/policies/procedures/etc. would be violated by bringing cupcakes for the entire 4th grade level.

26. Ms. Robertson had to leave work early that day (April 11th) due to distress and anxiety. When she returned home, she reached out to the Superintendent and was connected with Associate Superintendent Gregory Cantrell, EdD. Dr. Cantrell, seeming suspiciously prepared for the call, was so quick to state that he was backing the decision of Anderson Mill Elementary School that Ms. Robertson didn’t even have time to explain her side of the story or provide any other relevant information of which Dr. Cantrell may not have been aware. After stating he was backing the school’s decision, Ms. Robertson asked Dr. Cantrell where in the student handbook it indicates that a PTO President would need to approve actions including the bringing of cupcakes for an entire grade level. Dr. Cantrell responded that there would be no guidelines/policies/procedures/etc. listed in the handbook because “we don’t have to put every rule in the student handbook but you, Ms. Robertson, have to abide by it!” Ms. Robertson pleaded with Dr. Cantrell to help find some solution or to at least reach out to Ms. Kish, but Dr. Cantrell stated he would stand by the school’s decision regardless of what Ms. Kish or anyone else had to say. Ms. Robertson then asked why the

school has allowed students' parents to do these types of things in the past, but Dr. Cantrell refused to answer the question. Instead, out of the blue, he stated that this decision was actually a way to control the sugar intake of the students. When reminded that he is talking about a school that serves \$1 ice cream every day at lunch, occasionally provides its students with cupcakes, and often also offers cookies at lunch, Dr. Cantrell indicated he had "no comment" and the conversation was soon ended. About an hour later, Ms. Robertson received a call back from Dr. Cantrell, reiterating that he was standing behind the school's decision and that there was no negotiating or appealing it. Ms. Robertson would simply have to "deal with it."

27. By the time the conversations with Dr. Cantrell ended and the final decision had been made, enough cupcakes for the entire 4th grade level had already been prepared and Ms. Robertson was unable to cancel or change the order.

28. Shortly after ending the second call with Dr. Cantrell, Ms. Robertson received an email from Ms. Kish alleging that the PTO President had reached out to Ms. Robertson "numerous times and left numerous voicemail messages." This was untrue, as Ms. Robertson had not been contacted by the PTO President by any means of communication. Ms. Robertson replied and asked Ms. Kish if she could verify the phone number given to the PTO President to make sure Ms. Beckwith had the correct phone number.

29. Not long after speaking with Ms. Kish (at or around 6:00pm), Ms. Robertson finally received a call from Ms. Beckwith, the PTO President, who was extremely apologetic and indicated that she did not understand why she was even having to make this phone call to Ms. Robertson. Ms. Beckwith stated that in all of her years serving on the Board, even when other parents had offered to do things similar to what Plaintiffs offered but which actually did violate the guidelines/policies/procedures/etc., "exceptions would be made" as necessary to accommodate these other parents' wishes. Ms. Beckwith apologized numerous times and indicated that she does not have any power to contest the decision that had been made by the school.

30. The following day, Friday, April 12, 2019, the same day that R.R.S. had very publicly requested that people wear purple, her favorite color, to show support for her and the LGBTQ community, all Anderson Mill Elementary School teachers and administrators were wearing Anderson Mill and/or District 6 T-Shirts,

none of which were purple. This was extraordinarily unusual and not previously announced or related to any school event.

31. Since they weren't able to hand out all the cupcakes to the 4th grade level, R.R.S. thought it would be kind to offer the extra cupcakes to the teachers and administrators. The extra cupcakes were received by the front desk with much gratitude and appreciation.

32. While having lunch with her daughter in the cafeteria on the 12th, Ms. Robertson observed what she had never seen during any of her many lunches with R.R.S.: the student resource officer present in the cafeteria for the entire lunch period in addition to Principal Foster and both Assistant Principals, Ms. Kish and April Timms. Plaintiffs received repeated, unquestionably aggressive looks from Principal Foster throughout the entire lunch period. These individuals were not merely just present in the cafeteria, they stood within 10-20 feet of Plaintiffs for absolutely no logical reason other than intimidation. The President of PFLAG Spartanburg, Deb Foreman, was present during the lunch period and witnessed these events.

33. As a result of the horribly distressing lunch and the fact that all the adults in the building were wearing Anderson Mill and/or District 6 T-Shirts, R.R.S. told her mother that she was too scared to be at school and begged to be taken home. Ms. Robertson, of course, immediately withdrew R.R.S. from school.

34. As has been the case far too many times throughout this relentless, increasingly blatant harassment campaign by Principal Foster, the events of the day caused R.R.S. to break down in tears when she got home and ask her mother "why am I being bullied by all the adults?" R.R.S. told her mother that she was very scared to return to school because she felt "targeted" by the teachers and administrators. "I thought school was supposed to be a safe zone, mom!" cried R.R.S.

35. Since the original events giving rise to the Complaint occurred, Principal Foster has remained a continual, threatening presence for R.R.S. at school. Principal Foster appears to be doing nothing to avoid encountering R.R.S. and, in fact, has repeatedly acted passive aggressively toward R.R.S. by giving her smirks or other intimidating looks in the school hallways.

FOR A FIRST CAUSE OF ACTION
(Violation of First Amendment Right to Freedom of Speech)

36. Plaintiffs hereby incorporate by reference all previously stated paragraphs.

37. Acting under color of state law, and by forcing Plaintiff R.R.S. to change the topic of her paper, Defendant Principal Elizabeth Foster in her official capacity did deprive Plaintiff R.R.S. of her right to engage in protected speech in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. Section 1983.

38. By and through the aforementioned acts of Defendant Principal Elizabeth Foster, as employee and/or agent of Defendant Anderson Mill Elementary School and/or Defendant Spartanburg School County District #6, all Defendants are liable, either directly or vicariously, for the aforementioned Constitutional violation.

39. This restriction on Plaintiff R.R.S.'s speech is content and viewpoint-based in violation of the Free Speech Clause of the First Amendment.

40. Defendants' true purpose was to silence speech supportive of LGBTQ rights in violation of the Free Speech Clause of the First Amendment.

41. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, Plaintiff R.R.S. has suffered irreparable harm, including but not limited to emotional distress and trauma, public and private humiliation, embarrassment, social anxiety, extreme confusion, depression and the loss of her constitutional rights, entitling her to compensatory, punitive, declaratory and injunctive relief and nominal damages.

42. Furthermore, as a direct and proximate result of the malicious, intentional, reckless and callous indifference to Plaintiff R.R.S.'s protected First Amendment rights by Defendant Principal Elizabeth Foster in her individual capacity, Plaintiff R.R.S. is entitled to punitive damages.

FOR A SECOND CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

43. Plaintiffs hereby incorporate by reference all previously stated paragraphs.

44. By and through the acts of Defendant Principal Elizabeth Foster, in her official and/or individual capacities, and as employee and/or agent of Defendant Anderson Mill Elementary School and/or Defendant Spartanburg School County District #6, Defendants did intentionally or recklessly inflict severe emotional distress, or was/were certain, or substantially certain, that such distress would result from Defendant Principal Elizabeth Foster's treatment of Plaintiffs as previously described.

45. The aforementioned conduct to which Plaintiffs were subjected was so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

46. The actions of Defendants, by and through Defendant Principal Elizabeth Foster, caused Plaintiffs emotional distress which was so severe that no reasonable person could be expected to endure it.

47. As a direct and proximate result of Defendants' intentional infliction of emotional distress upon Plaintiffs, Plaintiffs are entitled to recover compensatory and punitive damages for emotional pain and suffering, as well as other damages as deemed appropriate by the Court.

FOR A THIRD CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)

48. Plaintiffs hereby incorporate by reference all previously stated paragraphs.

49. By and through the acts of Defendant Principal Elizabeth Foster, in her official and/or individual capacities, and as employee and/or agent of Defendant Anderson Mill Elementary School and/or Defendant Spartanburg School County District #6, Defendants did negligently engage in conduct which, at differing times, caused each Plaintiff to suffer serious, distress-related physical injury while the other Plaintiff, from close proximity, contemporaneously perceived the serious, distress-related physical injury sustained by the other. The aforementioned emotional distress suffered by each Plaintiff at various times manifested itself by physical symptoms capable of objective diagnosis which will be established by expert testimony. Of course, both Plaintiffs are closely related.

50. As a direct and proximate result of Defendants' negligent infliction of emotional distress upon Plaintiffs, Plaintiffs are entitled to recover compensatory damages for emotional pain and suffering, as well as other damages as deemed appropriate by the Court.

WHEREFORE, Plaintiffs demand a trial by jury and pray for judgment against Defendants in the amount of actual damages, punitive damages, declaratory and injunctive relief and nominal damages, for reasonable attorneys' fees, the costs of this action, and for such other relief as the Court may deem just and proper. As it relates specifically to Plaintiffs' request for declaratory and injunctive relief, Plaintiffs respectfully request that the Court enter judgment against Defendants and provide Plaintiffs with the following declaratory and injunctive relief:

- (a) A declaratory judgment that Defendants, by and through the actions of Defendant Principal Elizabeth Foster, did indeed violate the First and Fourteenth Amendment rights of Plaintiff R.R.S.;
- (b) A preliminary and permanent injunction prohibiting the Defendants, their agents, officials, servants, employees and any other persons acting on their behalf from violating the First and Fourteenth Amendment rights of Plaintiff R.R.S. as well as every current and future student of Defendant Spartanburg School District #6; and
- (c) All other further declaratory and injunctive relief to which Plaintiffs may be entitled.

Respectfully submitted,

s/Eric C. Poston

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