

**FILED**

OCT 19 2009

DAVID CREWS, CLERK  
BY *[Signature]* Deputy

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

**D.G., individually, and on behalf of her minor son  
A.S.;**

**PLAINTIFFS**

**V.**

**CIVIL ACTION NO. 2:09CV187-P-A**

**DESOTO COUNTY SCHOOL DISTRICT;  
PRINCIPAL KYLE BRIGANCE,  
individually and in his official capacity;  
ASSISTANT PRINCIPAL TODD NICHOLS,  
individually and in his official capacity; CITY OF  
OLIVE BRANCH, MISSISSIPPI; OLIVE BRANCH POLICE  
SGT. TONI LESURE, individually and in her official capacity;  
and OLIVE BRANCH POLICE OFFICER DOUG STANEK,  
individually and in his official capacity.**

**DEFENDANTS**

**JURY TRIAL DEMANDED**

**PRELIMINARY STATEMENT**

1. Four days after resolving a federal civil rights lawsuit filed four months prior against Defendant DeSoto County School District, fifteen-year old A.S. was expelled on the first day of ninth grade at Olive Branch High School. Defendants claimed that A.S. was being expelled not because of the lawsuit, but rather because his conduct --- consisting of nothing more than quietly singing to himself during a high school assembly while bopping his head and bumping his fists to the beat --- constituted "gang activity" in violation of the district's disciplinary rules.

2. Plaintiffs A.S. and his mother challenge this expulsion as unlawful retaliation for filing the prior civil rights suit against Defendant DeSoto County School District. They further challenge the anti-gang policy pursuant to which A.S. was expelled as void for vagueness and in

violation of free expression rights under federal and state constitutional law. They seek A.S.'s immediate reinstatement into Olive Branch High School and other forms of relief.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331, 1343(a) because they raise questions regarding the First and Fourteenth Amendments under the United States Constitution, and Plaintiffs seek a remedy pursuant to 42 U.S.C. § 1983. This Court has jurisdiction of state law claims under 28 U.S.C. § 1367.

4. 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 attorneys' fees under 42 U.S.C. § 1988.

5. 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 Olive Branch, Mississippi, which is within the Northern District of Mississippi, Delta Division.

### **PARTIES**

6. Plaintiff D.G. appears individually and on behalf of her minor son, A.S. A.S. was fifteen years old at all times relevant to the facts of this case and lives with his mother in Olive Branch, Mississippi. At the time of the incident, he was enrolled in the ninth grade at Olive Branch High School.

7. Defendant DeSoto County School District is a school district operating under color of state law and located in DeSoto County, Mississippi. It may be served with process through Superintendent Milton Kuykendall at 5 East Street in Hernando, Mississippi.

8. Defendant Principal Kyle Brigance is the principal for Olive Branch High School.

Pursuant to Mississippi Code of 1972, § 37-9-69, he has responsibility over student discipline matters. He may be served in his official capacity with process at 5 East Street in Hernando, Mississippi, and in his personal capacity at his place of business at Olive Branch High School, 9366 E. Sandidge Road, Olive Branch, Mississippi.

9. Defendant Assistant Principal Todd Nichols is the vice principal for Olive Branch High School. Pursuant to Mississippi Code of 1972, § 37-9-69, he has responsibility over student discipline matters. He may be served in his official capacity with process at 5 East Street in Hernando, Mississippi, and in his personal capacity at his place of business at Olive Branch High School, 9366 E. Sandidge Road, Olive Branch, Mississippi.

10. Defendant City of Olive Branch is a political subdivision of the State of Mississippi and at all relevant times operated under color of state law. Defendant City of Olive Branch is responsible for the City of Olive Branch Police Department and for the actions of its officers acting under color of state law. The City of Olive Branch may be served with process through Mayor Sam Rikard at 9200 Pigeon Roost Road, Olive Branch, Mississippi.

11. Defendant Officer Doug Stanek is an officer of the Olive Branch Police Department. On information and belief, he is deployed full-time to Olive Branch High School. He is sued in his individual and official capacities. He may be served with process in his official capacity through Mayor Sam Rikard at 9200 Pigeon Roost Road, Olive Branch, Mississippi, and in his individual capacity at his place of business at the Olive Branch Police Department, 9245 Pigeon Roost Road, Olive Branch, Mississippi.

12. Defendant Sergeant Toni Lesure is an officer of the Olive Branch Police Department. On information and belief, she is deployed full-time to Olive Branch High School. She is sued in her individual and official capacities. She may be served with process in her

official capacity through Mayor Sam Rikard, 9200 Pigeon Roost Road, Olive Branch, Mississippi, and in her individual capacity at her place of business at the Olive Branch Police Department, 9245 Pigeon Roost Road, Olive Branch, Mississippi.

### **FACTS GIVING RISE TO THIS ACTION**

13. On April 9, 2009, A.S. and his mother D.G., along with five other students and their parents, filed a civil rights lawsuit in this Court, styled *D.P. v. City of Southaven*, No. 2:09-cv-068-M-A, against DeSoto County School District and other defendants. The Complaint alleged that A.S. had been unlawfully disciplined and arrested for smiling on a DeSoto County School Bus.

14. Three weeks after the lawsuit was filed, Defendant DeSoto County School District retaliated against one of A.S.'s co-plaintiffs, D.S., who was suspended and arrested for allegedly "hollering" at a school principal and teacher. Plaintiffs notified Defendant DeSoto County School District of this retaliatory incident by letter dated April 27, 2009.

15. On August 6, 2009, the parties to *D.P. v. City of Southaven* participated in a settlement conference before Magistrate Judge Jerry A. Davis. The parties were able to reach a resolution to the case that day.

16. Four days after the parties resolved *D.P. v. City of Southaven*, the following Monday, August 10, 2009, was the first day of school for DeSoto County School District.

17. On that day, A.S. entered the ninth grade at Olive Branch High School, a high school within the district. A.S. was excited about starting high school and was looking forward to a year of athletic and academic success.

18. During a ninth grade assembly convened the morning of the first day of class, A.S. was sitting with his classmates in the bleachers of the gym.

19. A.S. was quietly singing to himself while bopping his head and bumping his fists to the beat.

20. A.S. was not disrupting anyone with his conduct.

21. A.S. has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). Defendant DeSoto County School District is aware of A.S.'s condition and has identified him as a student with special needs entitled to receive special education services.

22. A.S. frequently sings to himself while bopping his head and bumping his fists to the beat. Such conduct is related to his ADHD. No one has ever commented about such conduct before.

23. Defendant Officer Stanek, a member of the Olive Branch Police Department who, on information and belief, is assigned to work full-time at Olive Branch High School, singled out A.S. and ordered him off the bleachers and into the hallway outside the gymnasium.

24. Once in the hallway, A.S. was met by Defendant Principal Brigance, Defendant Assistant Principal Nichols, and Defendant Sergeant Lesure, also a member of the Olive Branch Police Department who, on information and belief, is assigned to work full-time at Olive Branch High School. Assistant Principal Nichols instructed the officers to search A.S.'s backpack and escorted A.S. to his office.

25. Once in Assistant Principal Nichols's office, Defendants accused A.S. of throwing "gang signs."

26. At no point did Defendants Principal Brigance and Assistant Principal Nichols ask Defendants Stanek or Lesure to describe the gang signs that A.S. had allegedly thrown.

27. None of the Defendants asked A.S. any questions about his conduct. No one asked him exactly what he had been doing with his head or his hands when he was singled out in

the gym, no one asked him about the alleged gang signs, no one asked him about any gang activity or gang affiliations.

28. A.S. is not and has never been associated with any gang or gang activities. His conduct during the assembly was in no way connected to gang activity.

29. After the incident, school officials called A.S.'s mother, D.G., at work and told her she needed to pick A.S. up from school because he had been suspended. It was several hours before D.G. could get away from work to go to the school.

30. When D.G. arrived, Defendant Assistant Principal Nichols told her that A.S. would be suspended because he had been throwing gang signs during the ninth grade assembly.

31. Defendant Assistant Principal Nichols handed D.G. a notice of suspension imposing a three-day suspension and that, after the three days, A.S. would need to report for a disciplinary hearing on August 14, 2009. The form listed the specific charge against A.S. as "5-3 -- Throwing gang signs in 9th grade assembly." The notice also states that A.S. had not been suspended prior to this incident and that he is a special education student whose Individualized Education Plan, required by federal law, is pending.

32. DeSoto County School District Code of Disciplinary Rule 5-3 reads as follows: "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."

33. The District provides no further indication of what kind of conduct will be considered gang-related or lead to punishment.

34. On August 14, 2009, A.S. attended the scheduled disciplinary hearing before

Disciplinary Hearing Officer Donald Corey. Hearing Officer Corey recommended that A.S. be subject to indefinite suspension with a recommendation for expulsion for violating “Rule 5-3 Gang signs in assembly.” No further documentation or rationale was provided.

35. On August 17, 2009, A.S.’s mother, D.G., submitted a timely appeal of the Hearing Officer’s decision to the DeSoto County Board of Education.

36. By letter dated August 25, 2009, District Appeal Officer Mike Smith, “after reviewing the oral and written record of the hearing” below, affirmed A.S.’s indefinite suspension and expulsion. No further documentation or rationale was provided.

37. By another letter, dated the same day, District Appeal Officer Smith informed A.S.’s mother that the DeSoto County School Board would hear the appeal of A.S.’s expulsion during the next scheduled board meeting, on September 8, 2009.

38. On September 8, 2009, when the scheduled appeal before the Board was to take place, A.S. and his mother D.G. were present and accompanied by counsel. DeSoto County School District requested that the appeal be delayed two weeks until the next board meeting, scheduled for Monday, September 21, 2009, to allow the District an opportunity to resolve the situation amicably. In good faith, A.S. and D.G. agreed.

39. Via email dated September 18, 2009, Defendant DeSoto County School District informed Plaintiffs not to appear before the board meeting as scheduled because the board would not be discussing A.S.’s appeal from his expulsion.

40. Defendants have ignored Plaintiffs’ repeated requests to reinstate A.S. in Olive Branch High School and expunge the incident from A.S.’s school record, or to meet with Plaintiffs to discuss amending the anti-gang policy.

41. Since the first day of school, August 10, 2009, A.S. has been excluded from Olive

Branch High School, as well as all services and extracurricular activities offered at the High School.

42. At no point have Defendants suggested that A.S.'s conduct at the school assembly disrupted any school activities.

43. At no point have Defendants suggested that A.S.'s presence in Olive Branch High School would interrupt or disrupt school activities.

44. At no point have Defendants suggested that A.S. is affiliated with any gang or criminal activity.

45. The gang-policy pursuant to which A.S. was suspended and expelled is the subject of another civil rights case filed on September 1, 2009, against DeSoto County School District and other Defendants. The Complaint in that case, *J.W. v. DeSoto County School District*, No. 2:09-cv-155, alleges that Plaintiff J.W. was expelled pursuant to Disciplinary Rule 5-3 for alleged gang activity on the basis of pictures he had taken on his cell phone of himself dancing at home. The Complaint alleges, among other things, that Disciplinary Rule 5-3 is void for vagueness in violation of due process and overbroad in violation of the First Amendment.

**COUNT I: VOID FOR VAGUENESS UNDER FEDERAL LAW**

46. Plaintiffs incorporate paragraphs 1 through 45, as if set forth fully herein.

47. Defendants DeSoto County School District, Principal Brigrance, and Assistant Principal Nichols are liable under to 42 U.S.C. § 1983 for suspending and expelling A.S. pursuant to Disciplinary Rule 5-3, which is void for vagueness under the Due Process Clause of the Fourteenth Amendment and the Free Expression Clause of the First Amendment of the United States Constitution.

48. Defendants are liable for promulgating, implementing, and enforcing Disciplinary 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 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 the Rule. Disciplinary Rule 5-3 further prohibits a substantial amount of First Amendment protected expression.

49. The actions of Defendants DeSoto County School District, Principal Brigance, and Assistant Principal Nichols were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiffs' Fourteenth and First Amendment rights.

#### **COUNT II: VOID FOR VAGUENESS UNDER STATE LAW**

50. Plaintiffs incorporate paragraphs 1 through 49, as if set forth fully herein.

51. Defendants DeSoto County School District, Principal Brigance, and Assistant Principal Nichols are liable under Article 3, Sections 13 and 14 of the Mississippi Constitution for promulgating, implementing and enforcing Disciplinary 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 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 the Rule.

52. The actions of Defendants DeSoto County School District, Principal Brigance, and Assistant Principal Nichols were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiffs' rights under Article 3, Sections 13 and 14.

#### **COUNT III: FREEDOM OF EXPRESSION UNDER FEDERAL LAW**

53. Plaintiffs incorporate paragraphs 1 through 52, as if set forth fully herein.

54. Defendants DeSoto County School District, Principal Brigance, Assistant Principal Nichols, City of Olive Branch, Sergeant Lesure, and Officer Stanek are liable 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, for promulgating, implementing, and enforcing rules that are overbroad because they prohibit a substantial amount of speech and expression protected by the First Amendment. Disciplinary Rule 5-3 prohibits the display of “messages associated with any gang or social club” without defining any of its operative terms, thereby permitting the prohibition of constitutionally protected speech and expression in violation of students’ First Amendment rights.

55. The actions of Defendants DeSoto County School District, Principal Brigance, Assistant Principal Nichols, City of Olive Branch, Sergeant Lesure, and Officer Stanek were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiffs’ First Amendment rights.

#### **COUNT IV: FREEDOM OF EXPRESSION UNDER STATE LAW**

56. Plaintiffs incorporate paragraphs 1 through 55, as if set forth fully herein.

57. Defendants DeSoto County School District, Principal Brigance, Assistant Principal Nichols, City of Olive Branch, Sergeant Lesure, and Officer Stanek are liable pursuant to Article 3, Section 13 of the Mississippi Constitution by promulgating, implementing and enforcing rules that are overbroad because they prohibit a substantial amount of protected speech. Disciplinary Rule 5-3 prohibits the display of “messages associated with any gang or social club” without defining any of its operative terms, thereby permitting the prohibition of constitutionally protected speech and expression in violation of students’ rights under Article 2,

Section 13 of the Mississippi Constitution.

58. The actions of Defendants DeSoto County School District, Principal Brigance, Assistant Principal Nichols, City of Olive Branch, Sergeant Lesure, and Officer Stanek were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiffs' rights under Article 3, Section 13 of the Mississippi Constitution.

#### **COUNT V: RETALIATION UNDER FEDERAL LAW**

59. Plaintiffs incorporate paragraphs 1 through 58, as if set forth fully herein.

60. Defendants DeSoto County School District, Principal Brigance, Assistant Principal Nichols, City of Olive Branch, Sergeant Lesure, and Officer Stanek are liable under to 42 U.S.C. § 1983 and the First Amendment to the United States Constitution for singling out A.S. in retaliation for the filing of the civil rights action in *D.P. v. City of Southaven*. The fact that only four days elapsed between the settlement and renewed disciplinary action against A.S. and the fact that A.S. was barely allowed to begin ninth grade before his expulsion suggests that the earlier lawsuit was a substantial or motivating factor in the retaliation against him.

61. The actions of Defendants DeSoto County School District, Principal Brigance, Assistant Principal Nichols, City of Olive Branch, Sergeant Lesure, and Officer Stanek were intentional, malicious, willful, wanton, callous, and showed reckless disregard for Plaintiffs' rights under 42 U.S.C. § 1983 and the First Amendment to the United States Constitution.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray for the following relief:

1. A declaration that Defendants violated Plaintiffs' rights;
2. Immediate reinstatement of A.S. at Olive Branch High School;
3. Compensatory education services for A.S. for the time he was excluded from Olive

Branch High School;

4. An injunction requiring Defendants to amend their anti-gang policy to satisfy constitutional standards;
5. Compensatory damages, to be determined by a jury, against all Defendants;
6. Punitive damages against the individual Defendants in their individual capacities;
7. Expungement of all law enforcement, academic, or discipline records of the Plaintiff child related to this incident;
8. 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
9. Any other relief to which Plaintiffs may be entitled and which the Court deems necessary and proper.

DATED: October 16, 2009

Respectfully submitted,



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*\*Pro Hac Vice Motion to Follow*

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