

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

JONATHON THOMAS OLBRYNS and
CASANDRA OLBRYNS, both
individually, and as parents and NEXT
FRIENDS of their minor Child, **J.O.**,

Plaintiffs,

v.

LAKEVIEW PUBLIC SCHOOLS,
KARL D. PAULSON, individually, and
in his official capacity as Superintendent
of Lakeview Public Schools, **TRACY
VAN PEEEREN**, individually and in her
official capacity as Deputy
Superintendent of Lakeview Public
Schools, **AMANDA MICHALOWICZ**,
individually and in her official capacity as
Principal of Jefferson Middle School, and
JASON TOWNSEND, individually and
in his official capacity as Vice-Principal of
Jefferson Middle School,

Defendants.

Case No.

Hon.

COMPLAINT
[42 U.S.C. § 1983]

JURY DEMAND

**DECLARATORY &
INJUNCTIVE
RELIEF**

Plaintiffs, Jonathon Thomas Olbrys, individually and as father and Next Friend of his minor child J.O., and Casandra Olbrys, individually and as mother and Next Friend of her minor child, J.O., by and through their counsel, bring this civil rights complaint under 42 U.S.C. § 1983 against the above-named Defendants, their

employees, agents, and successors in office, and in support thereof allege the following:

INTRODUCTION

1. This civil rights action seeks to protect and vindicate fundamental constitutional rights under the Fourteenth Amendment to the United States Constitution, of J.O., a sixth-grade public school student who on January 18, 2023, based on a video which neither he nor his parents have ever been allowed to view, was found guilty of student misconduct, given a five-day out-of-school suspension and banned from stepping foot on or participating in after-school functions for an additional ten days. J.O.’s parents also seek to protect and vindicate their fundamental constitutional rights to direct the upbringing and education of J.O.

2. The United States Supreme Court, in the seminal civil rights decision of *Brown v. Board of Education*, 347 U.S. 483 (1954) noted, “education is perhaps the most important function of state and local governments.” *Id.* at 493.

3. Plaintiffs’ case is supported by several significant and well settled constitutional principles. First, children who attend public school, do not shed their constitutional rights “at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506. “They are possessed of fundamental rights which the State must respect[.]” *Tinker* at 511. Second, a student’s entitlement to a public

education is a property interest protected by the Fourteenth Amendment's Due Process Clause "which may not be taken away for misconduct without adherence to the minimum procedures required by that clause." *Goss v. Lopez*, 419 U.S. 565, 574 (1974). And third, "Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under the law." *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 179 (1951).

4. Defendants Lakeview Public Schools, Karl D. Paulson, Tracy Van Peeren, Amanda Michalowicz, and Jason Townsend, in dereliction of their official responsibilities, willfully, maliciously and with deliberate indifference and conscious disregard for Plaintiffs' constitutional rights and the specific rights afforded to Plaintiffs by the Lakeview Public Schools' own District Handbook, suspended sixth-grader J.O. from all classes for several days in violation of his procedural due process rights. The injustice to Plaintiffs was exacerbated when an appeal hearing, specifically provided for by the School District's Handbook, was *fabricated* without giving Plaintiffs any notice about an appeal hearing until after the decision was made.

5. Property interests under the Fourteenth Amendment are not created by the Constitution, but defined by existing rules or understandings that stem from an independent source such as state law, rules or understandings that secure certain

benefits and claims of entitlement. Accordingly, references herein are made not only to the United States Constitution, but also to the Family Educational Rights and Privacy Act of 1974 (“FERPA”), the State of Michigan’s Constitution and State laws and School Codes, as well as provisions of the Lakeview Public Schools’ District Handbook for Parents and Students. *Goss v. Lopez*, 419 U.S. 565, 572 (1975).

6. Defendant school officials violated the fundamental liberty rights of J.O.’s parents to direct the upbringing and education of J.O. Defendants have refused to provide them with a complete unredacted copy of J.O.’s educational record, to which they have every right under the Federal Education Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g (1974) and the Lakeview Public Schools’ District Handbook. In Defendants’ rush to judgment, Defendants misidentified and confused the child who was the aggressor for J.O. Defendants are aware that the aggressor fully admits culpability for his actions.

7. Yet, instead of correcting their mistake, Defendants have refused to provide the single most important piece of evidence in this case—the video of the incident. Defendants’ intentional suppression of all transparency and due process is a quintessential example of an “arbitrary deprivation[] of liberty.” *Goss v. Lopez*, 419 U.S. 565, 574 (1975).

8. The fundamental constitutional rights guaranteed to Plaintiffs by the Fourteenth Amendment's Due Process Clause, which provides that no state may deprive "any person of life, liberty or property without due process of law." U.S. Const. amend. XIV, § 1, is enforceable under 42 U.S.C. § 1983.

9. The Fourteenth Amendment's procedural due process claims brought herein involve both the liberty and property interests of J.O. "Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect[.]" *Tinker v. Des Moines Indep. Cmty. Sch. Dist.* 393 U.S. 503, 511 (1969). Indeed, "[t]he Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures -- Boards of Education not excepted." *West Virginia v. Barnett*, 319 U.S. 624, 637 (1943).

10. Undergirding and defining the dimensions of procedural due process claims herein are the Constitution and laws of the State of Michigan, the Family Education Rights and Privacy Act ("FERPA") and the rights of students and parents promulgated in the "Lakeview Public Schools' District Handbook for Students and Parents/Guardians 2022-2023" (hereinafter referred to as the "District

Handbook”).¹ Jonathon Thomas Olbrys and Casandra Olbrys bring this case as the parents of J.O., a minor, and on their own behalf pursuant to their fundamental Constitutional liberty to direct the upbringing and education of their children. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

11. On January 18, 2023, J.O. was a sixth-grade student at Jefferson Middle School (“JMS”). JMS falls under the jurisdiction and operational control of the Lakeview Public Schools (“School District”) located in St. Clair Shores, Macomb County, Michigan. As more fully explained in the succeeding paragraphs, Vice-Principal Jason Townsend found J.O. guilty of misconduct stemming from a gym class basketball game, punished him with a five-day out-of-school suspension, and banned him from stepping foot or participating in after-school functions for an additional ten days. The Vice-Principal claimed his findings were based on what he saw on a videotape from a single camera which the School District had installed in the gym and which school officials claimed captured the entire misconduct incident. J.O.’s parents’ immediate and subsequent requests to see the video have been denied.

12. Both Vice-Principal Townsend and Principal Michalowicz determined

¹ Lakeview Public Schools’ District Handbook for Students and Parents/Guardians 2022-2023, is available in full at: https://www.lakeviewpublicschools.org/apps/pages/index.jsp?uREC_ID=933302&type=d&pREC_ID=1379367

J.O. was guilty of misconduct based on the video of the incident. Nevertheless, both refused to allow Plaintiffs or their attorney the opportunity to view the video, despite Plaintiffs' repeated oral and written requests, including the immediate request by Casandra Olbrys as soon as Vice-Principal Townsend informed her of her son's suspension during a phone conversation on January 18, 2023.

13. To further exacerbate Defendants' arbitrary and unconstitutional actions, Principal Amanda Michalowicz, without notice, or giving Plaintiffs an opportunity to prepare for an appeal or obtain representation by counsel, informed Mrs. Olbrys that she considered an informal office meeting as a verbal appeal and denied it.

14. Defendants have attempted to alter or may have already altered the video which, in all probability, would exonerate J.O.

15. The Defendant School District and its officers and employees have refused to provide Plaintiffs with an unedited copy of the video despite at least a dozen oral and written demands by Mr. and Mrs. Olbrys and their attorney beginning on January 18, 2023. This refusal constitutes a blatant violation of their duties and obligations under the Fourteenth Amendment's Due Process Clause, FERPA and their School District's own written policies.

16. Defendants deprived J.O. of his Fourteenth Amendment rights to

procedural due process implicating both his liberty and property interests by: refusing to produce the video they claimed was the basis of the charges against J.O., failing to notify J.O. of the charges against him either orally or in writing and failing to give him an opportunity to explain his position, failure to allow J.O. and his parents to appeal his misconduct and punishment, failure to allow time to present evidence and witnesses to support his claim of innocence, failing to notify him and his parents of his time for appeal, and failing to give a reasonable time to prepare his appeal, including his right to be represented by an attorney of his choosing.

17. Defendants have refused Plaintiffs and their attorney the opportunity to view the video of the incident captured by Defendants' own installed video camera under their sole possession and control.

18. Defendants' arbitrary refusals to allow Plaintiffs or their attorney the opportunity to view the video footage of the incident that would likely exonerate J.O. from any misconduct, violates Defendants' own policies and the rules of FERPA incorporated by Defendants in the District Handbook.

19. Defendants have refused to allow Plaintiffs the opportunity to review and receive a copy of all of J.O.'s educational records in violation of their rights under the Fourteenth Amendment's Due Process Clause, FERPA rules, Michigan Constitution and State laws and the District Handbook.

20. As a result of Defendants' combined actions or refusal to act, Plaintiffs J.O. and his parents have suffered a deprivation of their property and liberty interests guaranteed by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

21. J.O.'s due process rights forbid an arbitrary deprivation of liberty when his recorded misconduct could seriously damage his standing with fellow students, teachers, good name, and reputation, and ultimately interfere with later opportunities for higher education and employment.

22. J.O.'s due process rights also guarantee him a right to an education every day of the school year and the right to correct an erroneous educational record in accordance with the District Handbook and FERPA.

23. Plaintiffs seek a declaration that Defendants violated Plaintiffs' rights under the Fourteenth Amendment; that the Court enter an emergency order and/or authorize Plaintiffs to obtain and serve a Subpoena Duces Tecum on Defendants directing Defendants to provide Plaintiffs immediate possession of J.O.'s complete educational record, including a copy of the unaltered video which captured the entire incident in question, and all statements from students and school staff relating to the incident; that the Court enter an order allowing Plaintiffs to amend J.O.'s educational record to comport with the actual facts, including a total removal of his

suspension; that Plaintiffs be awarded nominal damages. Moreover, because Defendants' actions were willful, wanton, and malicious, and showed a complete and deliberate indifference to and conscious disregard for Plaintiffs' rights, Plaintiffs seek an award of punitive damages in the amount of \$50,000.00 dollars, or an amount a jury deems sufficient to punish and deter Defendants and other similar entities from like conduct in the future. Plaintiffs also seek an award of the reasonable costs of litigation, including attorney fees and costs, pursuant to 42 U.S.C. § 1988 and other applicable law.

JURISDICTION AND VENUE

24. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this court pursuant to 28 U.S.C. §§ 1331 and 1343.

25. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this court.

26. Plaintiffs' claims for damages are authorized under 42 U.S.C. § 1983 and by the general legal and equitable powers of this court. Plaintiffs' claim for costs, including reasonable attorneys' fees is authorized by 42 U.S.C. § 1988.

27. Venue is proper under 28 U.S.C. § 1391(b) and E.D. Mich. L. R. 83.10 because a substantial part of the events or omissions giving rise to Plaintiffs'

claims occurred in St. Clair Shores, Macomb County, Michigan, which is within this judicial district.

PLAINTIFFS

28. J.O. is a sixth-grade student at the Jefferson Middle School (“JMS”), which is located in the City of St. Clair Shores, Macomb County, Michigan. J.O. is an exemplary student enrolled in accelerated academic courses and, prior to the incident, which is the subject matter of the claims herein, was without any history of school disciplinary action.

29. Before January 18, 2023, J.O. had never been subjected to school intervention short of administrative action, or to the disciplinary step system described in the District Handbook.

30. Plaintiffs, Jonathon Thomas Olbrys and Casandra Olbrys, are the parents of J.O. and bring this lawsuit on behalf of J.O. as his Next Friends.

31. Plaintiffs, Jonathon Thomas Olbrys and Casandra Olbrys, also bring this lawsuit on their own behalf for violation of their fundamental parental rights to control the upbringing and education of their children, including J.O.

32. Plaintiffs seek nominal and punitive damages.

DEFENDANTS

33. Defendant Lakeview Public Schools (“School District”) is a duly

constituted school district established and organized pursuant to the laws of the State of Michigan with the authority to sue and be sued in its own name. It is governed by a Board of Education, which has ratified all the acts and refusals to act of the other Defendants sued herein, Jason Townsend, Amanda Michalowicz, Tracy Van Peeren, and Karl D. Paulson.

34. Jefferson Middle School (“JMS”) is a public secondary school operated by, and within, the Lakeview Public School District.

35. Lakeview Public Schools and its officials are responsible for creating, adopting, approving, ratifying, overseeing, and enforcing the policies, practices, customs and/or final decisions, including the policies, decisions, practices, customs, and/or procedures set forth in this Complaint.

36. Lakeview Public Schools and its administrators and officials have a duty to adequately supervise, control, and train its employees responsible for enforcing the Student Code of Conduct in accordance with the Family Educational Rights and Privacy Act (“FERPA”), the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the Michigan Constitution and Michigan State School Code relating to the rights of students and their parents, and all applicable provisions of the School District Handbook. Nevertheless, it failed to adequately supervise, control or train its employees, including substitute gym

teacher Jane Doe, Vice-Principal Jason Townsend, Principal Amanda Michalowicz, Deputy Superintendent Tracy Van Peeren, and Superintendent Karl D. Paulson. These failures were a direct and proximate cause of the Constitutional and statutory violations set forth in this Complaint and reflects a deliberate indifference to the Constitutional rights of Plaintiff J.O. relating to the due process that must be followed when depriving him of his right to a public education afforded to all Michigan public school students.

37. Lakeview Public Schools and the individual members of the Board of Education are aware of the policies governing the duties and actions of the teachers, and district officials which they adopted and promulgated in the District Handbook. They were also aware of the questionable circumstances surrounding the decisions relating to the alleged misconduct and punishment of J.O. Yet, they refused to act or callously and intentionally remained indifferent to the intentional decisions of school administrators, officials and employees including substitute gym teacher Jane Doe, Vice-Principal Jason Townsend, Principal Amanda Michalowicz, Deputy Superintendent Tracy Van Peeren, and Superintendent Karl Paulson, which deprived Plaintiff J.O. of his liberty and property interests in violation of the Fourteenth Amendment to the U.S. Constitution. The Board of Education approved, ratified, and condoned those school policies, actions, and decisions.

38. At all relevant times, Defendant Lakeview Public Schools and its officials, administrators and employees acted within the course and scope of their duties and under the color of state law.

39. Lakeview Public Schools is a person within the meaning of 42 U.S.C. § 1983.

40. Jane Doe (real name unknown at this time) was at all relevant times a substitute gym teacher at JMS charged with the responsibility of overseeing the gym class in which J.O. was enrolled when the January 18, 2023, incident occurred.

41. Defendant Jason Townsend was at all relevant times the Vice-Principal of JMS charged with the duty of primary disciplinarian enforcing the Student Code of Conduct contained in the District Handbook. At all relevant times he acted within the course and scope of his duties and under the color of law. He conducted the “investigation” of the incident and arbitrarily issued a snap decision on the varying degrees of punishment meted to the three students he believed were involved in the incident: the lightest being a half-day in-school suspension, the next being a three-day out-of-school suspension. He reserved the harshest punishment for J.O., a five-day out-of-school suspension in addition to other restrictions. He is sued in his individual and official capacity.

42. Defendant Amanda Michalowicz is the Principal of JMS. She is

responsible for adopting, implementing, and enforcing the policies, practices, customs, and final decisions that govern the operation of JMS, including acting as the final appellate review of the misconduct and corresponding punishment determinations made by Vice-Principal Townsend. At all relevant times she acted within the course and scope of her duties and under the color of law. She is sued in her individual and official capacity.

43. Defendant Superintendent Tracy Van Peeren is the Deputy Superintendent of Lakeview Public Schools. She oversees disciplinary procedures to ensure that due process is followed before a student is removed because of that student's behavior. She handles complaints dealing with violations of a student's civil rights. She failed to act when informed of J.O.'s parents' complaints of violation of his due process rights. At all relevant times she acted or failed to act within the scope of her duties and under the color of law. She is sued in her individual and official capacity.

44. Defendant Karl Paulson is the Superintendent and Chief Administrator of Lakeview Public Schools. He oversees and supervises the actions of the substitute gym teacher Jane Doe, Principal Michalowicz and Vice-Principal Townsend, and Deputy Superintendent Van Peeren. At all relevant times he ratified the actions of the other Defendants, acted or refused to act within the course and

scope of his duties and under the color of law. He is a person within the meaning of 42 U.S.C. § 1983.

STATEMENT OF FACTS

January 18, 2023, “The Incident”

45. On January 18, 2023, at 10:53 am, J.O. began his regularly scheduled sixth-grade gym class. The students divided themselves into two groups, those who wanted to play a game of basketball and those who wanted to practice alone. J.O. and several of his classmates decided to play a game of basketball and informally divided into two teams. The game was what would more appropriately be characterized as “street ball” with no supervision.

46. Jane Doe (a substitute gym teacher) did not supervise the gym class, and more particularly the basketball game in progress, in accordance with her responsibilities: no referee was assigned, no rules were enforced, no score was kept, and no oversight was provided by Jane Doe or anyone else.

47. As a result, the basketball game began to devolve. Players were blocking each other, bumping, boxing-out, and engaged in other normal forms of contact common in basketball. However, without the supervision of a teacher and no calming hand from any staff member present or in charge, the players were left to call their own fouls, as in normal pick-up games, causing an increase in

competitive intensity. The substitute gym teacher, Jane Doe, failed to exercise reasonable supervision and control, to tamp down the enthusiasm and competition that should have reasonably been expected of 12-year-old boys under the circumstances.

48. As a result of Jane Doe's failure to perform her duties as a teacher, one player was allegedly pushed to the floor and another was allegedly punched several times. These actions would have been captured by the video camera installed in the gym.

49. J.O. did not punch any player, as alleged by Defendants.

50. J.O. did not push any player to the floor, as alleged by Defendants.

51. Jane Doe, who had not been paying attention to the game for most of the class, eventually looked up from her laptop and saw the tail-end of what was happening or what had just happened. She then directed the three players, including J.O., to take seats on the sidelines away from each other while the game continued for the remaining fifteen minutes of gym class. She used a phone to call a JMS football coach, Todd Pichierri, to escort the three boys from the gym. The coach instructed the three boys to each write a statement about what happened.

52. J.O. was never made aware of the charges of misconduct he was facing.

53. Vice-Principal Jason Townsend apparently interviewed each boy allegedly involved in the incident, separately. When J.O. was escorted by Coach Pichierri into the Vice-Principal's office, and when he was about to seat himself in a chair next to Townsend's computer, Townsend instructed J.O. to switch chairs, with the apparent intention of preventing J.O. from viewing a video, which the Vice-Principal purportedly intended to play on his computer. After purportedly viewing the video for a couple of minutes, the Vice-Principal accused J.O. of lying to him. He did not explain to J.O. how he had arrived at that conclusion that J.O. was a liar. J.O., shocked and indignant about the Vice-Principal's accusation, remained silent in order to maintain his composure. J.O. was then escorted out of the Vice-Principal's office by the coach.

54. Vice-Principal Townsend, an adult clothed with the mantle of authority, maliciously bullied and verbally abused a 12-year-old child. He did not treat J.O. "based on the humanitarian principles and ideals" and/or recognizing "the dignity and worth of each student." He did not conduct an objective investigation. He conducted an inquisition. (Exhibit 2, District Handbook, page 57).

55. J.O. was brought back to the Vice-Principal's office a second time. The Vice-Principal, for a second time, accused J.O. of lying and being disrespectful. He informed J.O. that he was being given a five-day out-of-school suspension in

addition to other restrictions.

56. J.O. was never informed of the charges he was facing or what provisions of the Student Code of Conduct he was violating. Nor was he given any explanation of any charges against him or a reasonable opportunity to respond to those charges as a requirement of due process imposed on public schools by the United States Supreme Court:

due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him, and if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.

Goss v. Lopez at 581; See also *Buchanan v. City of Bolivar*, 99 F.3d 1352, 1359 (1996 6th Cir.).

Acts of Misconduct for which students may be suspended are inapplicable and vague for governance of students engaged in contact sports

57. Misconduct provisions in the Student Code of Conduct which Defendants claim govern students engaged in contact sports are so vague that they would have to speculate moment by moment at their own peril of being suspended or expelled, whether a particular physical contact, normal to the game of basketball, was a violation.

58. Defendant Amanda Michalowicz, in a January 23, 2023 email to Plaintiffs Jonathon and Casandra Olbrys, for the first time, set forth the specific

provisions of the Student Code of Conduct which she alleged J.O. violated:

- i. Failure to follow approved school and classroom rules which are consistent with Board policies and administrative procedures.
- ii. 3. Open, persistent defiance of the authority of a staff member.
- iii. 7. Assault and/or battery (Verbal and/or non -verbal threats and/or acts of physical violence). * Law enforcement authorities may be notified in cases of this misconduct
- iv. 13. B. Spontaneous incident (Fighting)”

(Exhibit 6, Email Chain, page 7).

59. Vice-Principal Townsend never informed J.O. of those alleged violations while J.O. was in his office on January 18, 2023, and thus, he was never given the opportunity to defend himself or provide any explanation for his conduct. Not informing J. O. of the accusations against him was a violation of the Due Process Clause of the Fourteenth Amendment.

60. The misconduct provisions in i.-iv. in paragraph 58 are so incomprehensibly vague when applied to contact sports that no person of common intelligence would be able to understand what he is forbidden to do, or the accusation he must defend against in the context of a basketball game, where bodily contact is normal to the game. Such ambiguity violates the Due Process Clause because no reasonable person could predict which contact normal to the game of basketball or any other athletic sport which includes physical contact, would be considered as

misconduct by school authorities subjecting the student athlete to suspension or expulsion. Without specificity in the Student Code of Conduct directly relating to contact sports, authorities have free rein to act arbitrarily, as was done in this case.

Plaintiff Casandra Olbrys Gets Involved

61. On January 18, 2023, at 12:30 pm, Plaintiff Casandra Olbrys listened to a detailed *voicemail message* left by the Vice-Principal Jason Townsend, in which he indicated that J.O. “got involved in a fight,” “shoved that student to the ground,” “wasn’t completely honest with me,” “started punching the student,” and that he had punished him with a five-day out-of-school suspension. A full transcript of the message is provided here:²

“Hi.

This message is for the parents of [J.O.].

This is Jason Townsend, the assistant principal at Jefferson Middle School. I’m calling because unfortunately [J.O.] got involved in a fight in gym class. Long story short, they were playing basketball and [J.O.] and another student kind a were shoving a little bit during the game. Neither student went and got the staff member. However, *another student, [J.O.] felt, bumped into him. [J.O.] then shoved that student to the ground, so the original student, which apparently they are friends together, but the original student then intervened, and [J.O.] then started punching the student, and the student then started retaliating back. When talking to [J.O.], he wasn’t completely honest with me, and*

² All pauses, hesitations, fillers and vocal disfluencies have been omitted. J.O. is used in place of the minor’s actual name used in the voicemail.

then he also refused to answer any of my questions; he was not happy apparently with me.

So, any type of fight typically is a five-day suspension. And then there's instigating and all that stuff. Which means he could be looking at seven days with the instigating and all that stuff. However, **well, sometimes it's hard to decipher who the instigator is and everything, but, in this situation, he did put his hands physically on somebody first, and threw the punch first.** So, he's going to have a five-day suspension, so he will be out of school for Thursday and Friday, this week and Monday, Tuesday, Wednesday, next week; he can return to school on Thursday. If you have any questions, feel free to give me a call at area code (586) 445-4130, my extension is 2609. Thank you." (emphasis added)

62. Mrs. Olbrys immediately returned Vice-Principal Townsend's call.

63. Mr. Townsend explained that he had called J.O. to his office, that J. O. was being disrespectful and refused to talk to him.

64. During this discussion with the Vice-Principal, Mrs. Olbrys immediately requested to see the video of the incident mentioned by Mr. Townsend in their phone conversation. Mr. Townsend said he did not believe that he could show her the video and that he would have to ask the Principal.

65. After the phone call with Vice-Principal Townsend, Mrs. Olbrys had the opportunity to speak to two individuals concerning the incident. One of the individuals, a friend of J.O.'s who was in the gym class during the incident, told Mrs. Olbrys that a student came at J.O. and that J.O. was not the aggressor. The other student, not in the gym class, said that is what she had heard as well, and further

stated that she heard that J.O. did not do anything wrong.

66. Indeed, J.O. has steadfastly maintained that he has never punched anyone or pushed anyone to the floor during the incident of January 18, 2023.

67. Plaintiff Casandra Olbrys subsequently called Mr. Townsend for more clarification but had to leave a voicemail. He has never responded.

68. Not satisfied with the Vice-Principal's inconsistent reporting of the facts and anxious for clarification, on January 18, 2023, at approximately 3:50 pm, Plaintiff Casandra Olbrys placed a phone call to Principal Michalowicz. The Principal returned her call at approximately 4:20 pm. She informed the Plaintiff, Mrs. Olbrys, that she needed time to talk to the Vice-Principal, view the video, and get acquainted with what had happened. Plaintiff Casandra Olbrys again asked to review the video. Principal Michalowicz responded that because of FERPA she had to see if all the students in the video had "media consents" on file. Plaintiff Casandra Olbrys agreed to meet with Principal Michalowicz, in person, at the Principal's office the next day, January 19, 2023, at 1:30 pm, in order to get more details regarding what had occurred.

69. "Media consents" have nothing to do with a waiver of a student's privacy rights in order to allow a third party to view information in a student's educational record. Media consents relate to media recording of students' images

for reporting on school activities such as sports, band, and cheerleading.

70. Also, in what appeared to be a form-letter dated January 18, 2023, and signed by Defendants Townsend and Michalowicz, J.O.'s parents were informed that Defendants issued J.O. a five-day out-of-school suspension. The letter claimed that the decision to suspend J.O. was made *after* considering several specific factors required by Michigan's School Code before administrative action can be taken. The letter, however, does not match the known timetable of events. According to Principal Michalowicz's January 18, 2023, 4:20 pm phone conversation with Plaintiff Casandra Olbrys, she had not yet spoken to Vice-Principal Townsend concerning the incident; nor had she yet viewed the video of the incident; and most problematic, Vice-Principal Townsend had already hurriedly issued a snap suspension of J.O. by 12:30 pm on January 18, 2023, long before Vice-Principal Townsend or Principal Michalowicz had had an opportunity to consider the factors they misleadingly claim they had considered in the letter.

Thursday, January 19, 2023 at 1:30 pm, Casandra Olbrys' meeting with JMS Principal

71. On January 19, 2023, at 1:30 pm, J.O.'s mother along with the mother of a student involved in the gym class incident, met with Principal Michalowicz. The Principal informed the Plaintiff that it appeared on the video that the boys were

playing basketball, and *there was no audio*. The Principal then said that the kids could very well have been “smack-talking,” but there was no way of knowing. The Principal then falsely claimed that J.O. shoved a kid so hard he flew back and fell with his feet off the ground. This conflicted with the Vice-Principal’s false conclusion the day before that J.O. punched another child and was in trouble for punching.

72. Because J.O. stated to Mrs. Olbrys that he never punched another student nor did he push another student with such force that the child flew back onto the floor, and because a different student, who was the aggressor admits to being the one who threw the punches, Plaintiff Casandra Olbrys again requested to see the video. The Principal again refused on the grounds that she could not guarantee that all the students in the video had “media consents” on file.

73. J.O. and his parents, Plaintiffs Jonathon Thomas Olbrys and Casandra Olbrys, were informed that J.O. was forbidden to be on any Lakeview Public Schools’ properties during his out-of-school suspension. J.O. was also prohibited from participating in or attending any after-school activities for an additional ten days after his suspension was served.

74. Toward the end of their meeting Plaintiff Casandra Olbrys asked Principal Michalowicz about how she should begin the process of appealing the

suspension decision. Principal Michalowicz replied something to the effect of “I took this meeting as a verbal appeal and your appeal is denied due to the “malicious intent of J.O.”

75. Plaintiff Casandra Olbrys was given no previous notice that this meeting was for the purpose of appealing the out-of-school suspension of her son, J.O. Had she been made aware that the meeting was the appeal, she would have prepared differently, including bringing her husband as well as her attorney to that meeting on January 19, 2023.

76. Because J.O.’s classes were scheduled to have midterm exams the week he was suspended, Plaintiff Casandra Olbrys expressed concerns that her son would not be able to properly study for exams with the rest of his classmates, and that he would miss taking his exams which were scheduled to occur during the week of his suspension.

77. During the January 19, 2023, meeting, Principal Michalowicz was critical of the Vice-Principal for leaving a voicemail about the suspension and for not attempting to first reach J.O.’s father.

78. The Declaration of Casandra Olbrys is marked as Exhibit 1, attached hereto and incorporated herein by reference.

J.O. was Misidentified—He is Not the Aggressor

79. J.O. has steadfastly denied he was guilty of any violation of the Student Code of Conduct.

80. One of the other students involved in the incident admitted that he was the one who threw the punches—not J.O.

81. According to Defendants Townsend and Michalowicz, the entire basketball game, including the incident between the three students where shoving and punching is *supposed* to have occurred, was captured on video by a camera installed in the gym by the School District.

82. At no time did the Vice-Principal show J.O. the video, which he used as the basis to find J.O. guilty of misconduct and punish him with the five-day out-of-school suspension.

83. At no time did the Vice-Principal show J.O. the video which he used as the basis to accuse J.O. of lying.

84. At no time did the Vice-Principal show or read to J.O. the statements written by the other two players or other witnesses to the incident, used as a basis to accuse J.O. of lying.

85. That video and all witness statements, including J.O.'s own statement and any reports relating to the January 18, 2023 incident, are a part of J.O.'s

educational record which he and his parents are entitled to review and copy.

Defendants Have Failed to Provide Plaintiffs with J.O.’s Educational Record

86. Defendants have refused to allow Plaintiffs the opportunity “to review and receive copies of all educational records,” including the unaltered video of the incident in violation of their unambiguous right enshrined in the District Handbook: **“Students and parents have the right to review and receive copies of all educational records.”** (emphasis added) Exhibit 2, District Handbook, pg. 31).

87. Plaintiff Casandra Olbrys made her first oral request to view the video within approximately an hour after the January 18, 2023 incident during a phone conversation with Vice-Principal Townsend.

88. Plaintiff Casandra Olbrys made her first oral request to view the video to the Principal during her initial phone call with Principal Michalowicz, also on January 18, 2023.

89. Plaintiff Casandra Olbrys again verbally requested to view the video during her in-person meeting with Principal Michalowicz on January 19, 2023.

90. On January 20, 2023, at approximately 12:39 pm, Jonathon Thomas Olbrys, after several calls and left-messages, received a return call from Principal Michalowicz. He asked her to explain the disparity in punishment and what his son did to deserve a five-day out-of-school suspension. She responded that it was

because of the “malicious intent behind the punches that J.O. threw.” In reality, J.O. never threw any punches, nor did the students involved in the gym class incident accuse him of doing so.

91. Plaintiff Jonathon Thomas Olbrys also demanded to see the video of the January 18, 2023 incident, during his phone call with Principal Michalowicz.

92. In the phone conversation with Ms. Michalowicz on January 20, 2023, when J.O.’s father asked whether his son’s silence would be used against him, the Principal replied, “absolutely not.” And yet, Mr. Townsend used J.O.’s silence against him, not only in establishing J.O.’s alleged misconduct, but also in determining his five-day out-of-school suspension.

93. Defendant Michalowicz reiterated that Plaintiffs could not see the video of the incident because it would violate FERPA because other students were in the video. This statement was a gross misrepresentation of FERPA rules. She also informed Plaintiff Jonathon Thomas Olbrys that she had spoken to “Brock” (a Lakeview Public Schools’ police liaison) to confirm that she could not allow Plaintiffs to see the video.

94. The full name of “Brock” is Brock Bowen. He is married to Angela Bowen, a JMS secretary. Officer Brock is not responsible for the determination of FERPA violations at JMS.

95. Plaintiffs' undersigned counsel subsequently demanded a copy of the video and J.O.'s educational record in letters sent to Defendants via email and FedEx, one letter dated February 17, 2023, and two letters dated March 20, 2023. (Exhibits 3-5).

96. Defendants Townsend, Michalowicz and Paulson failed to refer the matter to Deputy Superintendent Tracy Van Peeren, whose specific responsibility is to ensure that due process is followed before a student is removed because of his behavior. (Exhibit 2, District Handbook, page 14).

97. Deputy Superintendent Van Peeren was copied on two letters dated March 20, 2023 by undersigned counsel, one to the Defendants Michalowicz and Paulson, and one to the individual members of the Board of Education, both complaining about violations of FERPA. She was also copied on several emails from Mr. and Mrs. Olbrys to Principal Michalowicz and Superintendent Paulson on February 1, 3, and 9, 2023. (Exhibit 4, Follow-Up Letter to Principal and Superintendent; Exhibit 5, Letter to BOE members; Exhibit 6, Email Chain, pages 1-4).

98. Defendant Van Peeren failed to respond or take any action in response to those letters or emails.

99. Defendants' policy, based on the BOE's ratification of the actions of

school officials in this matter, that they can punish a student based on a video which they will not allow him or his parents to see because of the purported privacy rights of peripheral students in the background, violates the Due Process Clause, and the specific FERPA Rules concerning videos.

100. The Declaration of Jonathon Thomas Olbrys is marked as Exhibit 7, attached hereto and incorporated herein by reference.

101. J.O. missed classroom instruction, classroom review for the midterm exams, and missed mid-term exams which he had to take once he returned to school, in addition to make-up work and to catch-up with the rest of the class.

102. Because of J.O.'s suspension, Plaintiff Casandra Olbrys had to take personal time off from work to investigate and challenge the Defendants' apparent lack of transparency concerning the actions taken against her son.

103. Moreover, to ensure that the five-day out-of-school suspension had the least amount of negative impact on J.O.'s academic performance, Plaintiff Casandra Olbrys checked Schoology³ every morning. She would then print the worksheets,

³ "Schoology" is an online learning management system (LMS) that supports curriculum management, mobile learning, and district-wide communication. Teachers use Schoology to design and implement their lesson plans, assign classwork, and disseminate grades. Teachers also use Schoology to post updates regarding their class, share content, and communicate with parents.

For parents/guardians, Schoology provides a one-stop place to keep track of a child's calendar, projects, assignments, and day-to-day activities. Parents are able to see what their children are working on as well within the platform through a Schoology parent account.

homework, and study guides for J.O. to do when she got home from work that day. After work, she would go through each course on Schoology and help J.O. with the assignments/skills assessments homework and tests he was missing for that day. She took pictures of the homework/assignments/skills assessments (front and back) on her phone and emailed them to J.O. Once he received the email, he downloaded the pictures to his laptop. He then uploaded the completed assignments onto Schoology and submitted the material to the appropriate teacher. This process followed all five days of J. O.'s out-of-school suspension.

104. The Fourteenth Amendment to the U.S. Constitution provides in part, "... nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

105. The Mich. Const. art. VIII, § 1, provides, "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

106. The Mich. Const. art. VIII, § 2, provides that "The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin."

107. Michigan Compiled Laws, Section 380.10, provides that "[I]t is the

natural, fundamental right of parents and legal guardians to determine and direct the care, teaching, and education of their children. The Public schools of this state serve the needs of the pupils by cooperating with the pupil’s parents and legal guardians to develop the pupil’s intellectual capabilities and vocational skills in a safe and positive environment.”

108. Michigan Compiled Laws, Section 380.1561 governing compulsory attendance requires a parent of a child “age 6 to 16 to send the child to school **during the entire school year** except under the limited circumstances. (emphasis added)

109. The Michigan Revised School Code provides that:

- (1) Before suspending or expelling a pupil under section 1310, 1311(1), 1311(2), or 1311a, The board of a school district, or a superintendent, school principal, or other designee under 1311(1), shall consider each of the following factors:
 - (a) The pupil’s age.
 - (b) The pupil’s disciplinary history.
 - (c) Whether the pupil is a student with a disability.
 - (d) The seriousness of the violation or behavior committed by the pupil.
 - (e) Whether the violation or behavior committed by the pupil threatened the safety of any pupil or staff member.
 - (f) Whether restorative practices will be used to address the violation or behavior committed by the pupil.
 - (g) Whether a lesser intervention would properly address the violation or behavior committed by the pupil.

MCL § 380.1310d(1)

110. Moreover, for a suspension of ten or fewer days, the Board of Education, or its designee, “**shall**” consider each of the factors listed above, under MCL § 380.1310d(1). (emphasis added)

111. Lakeview Public Schools violated its own published policies relating to the individualized punishment of students which were designed to provide fairness and a systematic consistent approach to handling violations of their policies. The immediate objective of school discipline is to provide for student growth in abilities, attitudes, and habits essential to acceptable and self-controlled behavior of life—not to call them liars and destroy their self-worth.

112. Prior to the incident in question, Lakeview Public Schools notified and made a written commitment to parents and students concerning the School District’s commitment and obligation to follow FERPA when dealing with allegations of student misconduct.

113. According to the District Handbook, parents have the right to review their child’s educational records (which includes videos), make amendments to inaccurate, misleading, or information otherwise in violation of a student’s rights, and obtain a copy of the District’s policy and administrative guidelines on student records. Yet, Defendants have arbitrarily refused to abide by those commitments and obligations relating to Plaintiffs. (Exhibit 2, District Handbook, page 20).

114. Defendants arbitrarily denied Plaintiffs their right to review and obtain a copy of J.O.’s educational records, including a copy of the unedited video footage of the alleged incident which would be an objective record of what happened during the January 18, 2023, gym class basketball game.

115. According to the District Handbook, students and parents have the right to “**review and receive**” copies of all their child’s educational records. (emphasis added) (Exhibit 2, District Handbook, page 31).

116. Moreover, “**Parents . . . have the right to amend a student record when they believe that any of the information contained in the record is inaccurate, misleading, or violates the student's privacy.**” (emphasis added) (Exhibit 2, District Handbook, page 31).

117. J.O.’s Educational Record is a permanent record. It will play an important part in his future educational and employment history. For example, “**School records must be sent directly to a new school upon the request of the receiving school when a student transfers.**” (emphasis added) (Exhibit 2, District Handbook, page 20).

Denial of consideration of Interventions Short of Administrative Action

118. Lakeview Public Schools considers classroom teachers to be the first line of discipline in their classrooms. They are given a great degree of discretion to

informally correct student misbehavior without triggering formal administrative actions involving suspensions and expulsions.

119. According to the School District Handbook, suspension should be considered, ***only after*** attempted corrective measures have been ineffective. (emphasis added) (Exhibit 2, District Handbook, page 57).

120. Yet, Defendants did not give J.O. a chance to correct any alleged misbehavior by informal on-the-spot counseling. (Exhibit 2, District Handbook, Page 57).

121. The School District encourages a teacher to utilize various strategies short of a suspension or expulsion placed in a student's permanent educational record to correct student misconduct. Some of those strategies are mentioned in the District Handbook. (Exhibit 2, District Handbook, page 57).

Disciplinary Step System

122. The District Handbook, pages 57-59, provides what disciplinary steps ***shall be followed***, ranging from lenient to severe, when administrative action is taken.

- Step 1 Administrative conference with the student to include review of the disciplinary policy and procedures and notification that the next infraction of rules will result in action on at least the second step. The students parents shall be notified of the conference, and a copy of the step system and related penalties shall be sent to the parents.

Step 2 Student/parent/administrative conference
(can be done by phone)

Step 3 One-day (short term) suspension

Step 4 Two-day (short term) suspension

Step 5 Three-day (short-term) suspension

Step 6 Five-day (short term) suspension

(Exhibit 2, District Handbook, pages 57-59).

123. In the event a student and/or parent requests a review of the issuance of a student suspension, that review shall be held before the building principal. Generally, the building principal is the final level of review on short term suspensions. (Exhibit 2, District Handbook, page 71, III A).

124. A review at the building level shall be held within three school days of suspension unless the parents request a delay. A delay may be granted for as long as one week. If a review does not occur within a week, the disciplinary action will go into effect. (Exhibit 2, District Handbook, page 71, III B).

125. Sixth-grade public school administrative disciplinary proceedings constitute state action within the terms of the Fourteenth Amendment.

126. Public school students in the State of Michigan have a legitimate claim of right and entitlement to education free from an arbitrary exclusion from school

which was created by provisions in the State Constitution, and State Compulsory Attendance Laws, and thus have a Fourteenth Amendment Due Process protection of their “liberty” and “property interests.”

127. Students facing suspensions of ten days or less have due process protection requiring an oral or written notice of charges against him and an opportunity to present his side of the story:

Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.

Goss v. Lopez, 419 U.S. 565 at 581 (1975).

128. State laws creating free education to all residents between five and twenty-one years of age coupled with a compulsory attendance law, created a claim of entitlement to public education which may not be withdrawn on grounds of misconduct absent fundamentally fair procedures to determine whether the misconduct has occurred. *Id.* at 574.

129. Defendants’ actions were willful, wanton, reckless, and malicious, and showed a complete and deliberate indifference to and conscious disregard for, the rights of Plaintiffs. Therefore, Plaintiffs are entitled to an award of punitive or exemplary damages in the amount sufficient to punish Defendants or deter

Defendants and other entities from like conduct in the future.

130. Vice-Principal Townsend's suspension of J.O. for five days is based on his rash (and incorrect) determination that J.O. repeatedly punched one of the other students during an informal basketball game in gym class. His conclusion is clearly contradicted by another student who admitted that he was the one who actually threw punches. A video of the incident and the events leading up to the incident captured by a camera which Lakeview Schools installed in the gym where the incident occurred, would show the dynamics of the game being played and answer the question of which student, if any, threw punches. The School District claims that it has the video but refuses to provide a copy to the Plaintiffs and their counsel, thus suppressing likely exculpatory evidence.

131. In a January 23, 2023 email from Principal Michalowicz to Plaintiff parents, Mr. and Mrs. Olbrys, Defendants admit that the video of the incident is a part of J.O.'s student record:

“d. Camera Footage

ii. I also spoke to our superintendent in regards to your question of viewing the footage and he states that **the video is student record** and because there are other students within the video it would violate their FERPA rights.” (emphasis added).

(Exhibit 6, Email Chain, pages 6-8).

132. Nevertheless, Defendants illegally refused J.O.'s parents' and

undersigned counsel's repeated requests to see a copy of the video in violation of the Due Process Clause of the Fourteenth Amendment and provisions of FERPA.

133. On January 18, 2023, Casandra Olbrys made an oral request to Vice-Principal Townsend to see a copy of the video, to no avail.

134. On January 18, 2023, Casandra Olbrys made an oral request to Principal Michalowicz to see the video, to no avail.

135. On January 19, 2023, Mrs. Olbrys made an oral request to Principal Michalowicz to see a copy of the video, to no avail.

136. On January 20, 2023, Mr. Olbrys made an oral request to Ms. Michalowicz to see a copy of the video, to no avail.

137. In addition to their oral requests, the Plaintiffs sent several written requests to Defendants to see J.O.'s complete educational record, including a copy of the video, on January 25 and 27, 2023, and the following month on February 1, 3, and 9, 2023—all to no avail. (Exhibit 6, Email Chain, pages 1-6).

138. On February 17, 2023, in an attempt to amicably resolve the violations of Plaintiffs' rights under the U.S. Constitution and FERPA, undersigned counsel for Plaintiffs sent a letter to the Principal and Vice-Principal via email and FedEx requesting, among other things, a copy of the video of the incident. (Exhibit 3, Demand letter).

139. On March 20, 2023, undersigned counsel sent a letter to the Principal and to the School Superintendent with copies to the Vice-Principal and members of the Board of Education via email and FedEx requesting, among other things, a copy of the video of the incident. (Exhibit 4, Follow up letter to Principal and Superintendent).

140. Also, on March 20, 2023, undersigned counsel sent a letter to the Lakeview Public Schools, and each individual member of the Board of Education, via email and FedEx requesting a copy of the video tape of the incident. (Exhibit 5, Letter to BOE Members).

141. Members of the Board of Education, knowing about the unconstitutional and illegal actions of school officials against J.O. reflected in the letters of March 20, 2023, nevertheless remained silent and refused to take any steps to correct the actions of school officials under their control. The United States Supreme Court understood that a school board member's failure to act is to act. *Wood v. Strickland*, 420 U.S. 308 (1975). A school board member, who has voluntarily undertaken the task of supervising the operation of the school and the activities of the students, must be held to a standard of conduct based not only on permissible intentions but also on knowledge of the basic, unquestioned constitutional rights of his charges. The Court made clear:

we hold that a school board member is not immune from liability for damages under section 1983 if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of the constitutional rights or other injury to the student.

Wood at 322.

142. On February 2, 2023, Principal Michalowicz emailed Plaintiff parents stating that the school staff *was preparing the video* with software that will allow her to view her son, “but not reveal other students in the video.” The Principal further stated that she would “**provide a date of review as soon as we have the prepared video ready for your viewing.**” (emphasis added) (Exhibit 6, Email Chain, pages 2-3).

143. On February 10, 2023, the Principal responded to Plaintiffs’ follow-up email, claiming that the video was not yet “*available to view.*” No explanation was given as to why it was taking so long or when it would be available. This leads to several possible reasonable conclusions: that there is no video, that the video is unusable, or the video disproves the Defendants’ allegations against J.O. (Exhibit 6, Email Chain, page 1).

144. A full two months later, on April 10, 2023, the Principal emailed undersigned counsel stating that “[t]he requested video footage cannot be shared at this time due to our technology being unable to edit out the faces of other

students in the footage.” (emphasis added)

145. Defendants’ refusal to provide access to all of J.O.’s educational record is a violation of their own policy, **“Students and parents have the right to review and receive copies of *all* educational records.”** (emphasis added) (Exhibit 2, District Handbook, page 31).

146. From the outset, Mr. and Mrs. Olbrys offered to pay for a program that would block out any other student’s image not involved in the incident. They are interested only in that portion of the video which captures all three students involved in the incident and the events leading up to the incident. That portion of the video which Mr. and Mrs. Olbrys were told directly involves their son and the two other students, is considered a part of all three students’ educational records. (Exhibit 6, Email Chain pages 4 and 7).

147. Moreover, according to Lakeview School District’s policy, **“Parents/guardians and adult students have the right to amend a student record when they believe that any of the information contained in the record is inaccurate.”** Thus, Defendants’ refusal to allow Plaintiffs to obtain crucial information in J.O.’s educational record, substantially restricts their right to amend J.O.’s record in violation of the Due Process Clause of the U.S. Constitution. (emphasis added) (Exhibit 2, District Handbook, page 31).

148. On January 23, 2023, the Principal indicated in an email that the Superintendent would not allow Plaintiffs to view video footage of the incident because there were other students in the video and “it would violate their FERPA rights.” (Exhibit 6, Email Chain, page 7).

149. Defendants flagrantly violated FERPA when on February 2 and again on February 10, 2023, the Principal emailed Mr. and Mrs. Olbrys stating that they would only be allowed to view their son in an *edited* version of the video that would not “reveal other students” involved and that they would not be allowed to view the written statements of the other students as “they are the other students’ records.” That is because the Defendants have already determined that the unedited video of the entire incident involving all three participants and the written statements of other students concerning the incident, are all a part of J.O.’s educational record.

150. Defendants have failed to give J.O.’s parents the opportunity to review their son’s educational record, including but not limited to, a copy of the unedited video of the incident which Defendants admitted is a part of their son’s educational record, in violation of 34 CFR §99.10(a).

151. Defendants’ repeated refusal to provide Plaintiffs the opportunity to view or obtain copies of the video capturing the incident of January 18, 2023, on the grounds that it violates the FERPA rules is a gross misrepresentation. According to

the U.S. Department of Education's website, <https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa>, last visited on June 6, 2023, (Protecting Student Privacy) under the title FAQs on Photos and Videos under FERPA, paragraph 4:

If a video is an education record for multiple students ... it would not violate FERPA for an educational agency or institution to non-consensually disclose to an eligible student or to his or her parents copies of education records that the eligible student or his or her parents otherwise would have the right to inspect and review under FERPA.

152. Furthermore, Plaintiffs' attorney, in his February 17, 2023 letter to Defendants Michalowicz and Paulson, disclosed portions of the 2017 Letter to Wachter, often referenced by FERPA, which states that:

FERPA requires the District to allow an individual parent of a student who was disciplined for the incident (or the student if the student is an eligible student) to inspect and review his or her child's (or his or her) education records upon request ...

In providing access to the video, the District must provide the parents of a disciplined student (or the student if the student is an eligible student) with the opportunity to inspect and review the video so long as the video cannot be segregated and redacted without destroying its meaning.

In providing access to the witness statements, the District similarly must provide the parents of a disciplined student (or the student if the student is an eligible student) with the opportunity to inspect and review those portions of the witness statements that are about the disciplined student and other students if they cannot be segregated or redacted without destroying their meaning.

(Exhibit 3, Demand Letter).

153. Defendants have failed to give J.O.'s parents access to their son's educational record within 45 calendar days after Defendants received the request, in violation of 34 CFR §99.10(b).

154. Defendants have failed to give J.O.'s parents notice of the date, time and place of the hearing reasonably in advance of the hearing, in violation of 34 CFR §99.22(a).

155. Defendants have obstructed J.O.'s parents' ability to obtain a full and fair opportunity to present evidence showing that J.O.'s educational record was inaccurate and should be amended, in violation of 34 CFR §99.22(d).

156. Defendants have failed to allow the parents of J.O. to be represented at the hearing by their own attorney, in violation of 34 CFR §99.22 (d).

157. Defendants have violated Lakeview Public Schools' own policy which states that, "Students and parents have the right *to review and receive copies of all educational records.*" (emphasis added) (Exhibit 2, District Handbook, page 31).

158. Defendants have violated Lakeview Public Schools' own policy regarding the rights of parents which states that, "Parents/guardians and adult students have the right to amend a student record when they believe that any of the information contained in the record is inaccurate . . ." (Exhibit 2, District Handbook, page 31).

159. To date, neither Mr. and Mrs. Olbrys nor the Thomas More Law Center have received a date or dates to review and receive J.O.'s educational record in full, including the video which the School District claims to have.

160. Since January 18, 2023, at least 12 requests have been made for a copy of the video of the incident in possession of the Lakeview Public School District and their officials and administrators, including the Vice-Principal, Principal, Superintendent and members of the Board of Education. All the requests have been ignored.

161. Thus, Defendants' refusal to allow J.O.'s parents to obtain crucial information in J.O.'s educational record, substantially restricts their right to amend their son's educational record in violation of his Constitutional rights under the Due Process Clause of the Fourteenth Amendment and the statutory provisions and regulations of FERPA, and Lakeview Public Schools' own policies.

FIRST CLAIM FOR RELIEF

Fourteenth Amendment Due Process Clause - Deprivation of Property

162. Plaintiffs reallege and incorporate by reference all allegations of the preceding paragraphs as if fully set forth herein.

163. By reason of the aforementioned acts, decisions, policies, omissions, training, supervision, practices, customs and/or procedures created, adopted, and

ratified and enforced under the color of law, Defendants have unconstitutionally trampled on J.O.'s right to due process in violation of the Fourteenth Amendment to the United States Constitution.

164. Defendants, through their acts, decisions, policies, practices, and ratification of the acts of its employees and administrators, customs and/or procedures have refused to provide an unedited copy of the video of the incident and events leading up to the incident which Plaintiffs believe: would most likely exculpate J.O., thus preventing J.O. from pursuing his public education *every day* of the school year, restricting J.O.'s ability to prepare for his midterm exams which took place during his suspension, conducted a sham investigation by the Vice-Principal, denied Plaintiffs a proper appeal by not giving prior notice and an opportunity for Plaintiffs to prepare and be represented by an attorney.

165. As a direct and proximate result of Defendants' violation of Plaintiffs' rights, Defendants caused Plaintiffs to suffer irreparable harm, including the loss of their constitutional rights. Plaintiffs seek nominal damages.

166. Because Defendants' actions were willful, wanton, and malicious, and showed a complete and deliberate indifference to and conscious disregard for Plaintiffs' rights, Plaintiffs seek an award of punitive damages in the amount of \$50,000.00 dollars, or an amount a jury deems sufficient to punish and deter

Defendants and other similar entities from like conduct in the future.

Therefore, Plaintiffs request the appropriate relief under 42 U.S.C. § 1983 for violation of their civil rights as set forth in the prayer for relief below.

SECOND CLAIM FOR RELIEF

Fourteenth Amendment Due Process Clause - Deprivation of Liberty

167. Plaintiffs reallege and incorporate by reference all allegations of the preceding paragraphs as if fully set forth herein.

168. Defendants violated J.O.'s liberty interest under the Fourteenth Amendment Due Process Clause by charging him with misconduct resulting in a five-day out-of-school suspension, and an additional ten-day prohibition against participation in any after-school activities after the period of suspension was completed. This punishment was detrimental to J.O.'s Due Process Clause liberty interest, namely his good name, reputation, honor and integrity. Because of his out-of-school suspension, teachers and classmates became aware of the disciplinary action.

169. "For where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Bd. of Regents v. Roth*, 408 US 564, 573 (1972) (Internal citations omitted).

170. Indeed, after J.O. had served the five-day out-of-school suspension and while he was working in class with a group of students, the classroom teacher approached him and within earshot of the other students said something to the effect of “So you don’t get suspended again, you should control your anger, and next time take a break.” His out-of-school suspension was widely known to his classmates. Scores of fellow students made comments to him about it.

171. By reason of the aforementioned acts, decisions, policies, ratification of acts of School District employees and officials, omissions, training, supervision, practices, customs and/or procedures created, adopted, and enforced under the color of law, Defendants have unconstitutionally deprived J.O. of his Fourteenth Amendment Due Process Clause liberty interest.

172. As a direct and proximate result of Defendants’ violation of Plaintiffs’ rights, Defendants caused Plaintiffs to suffer irreparable harm, including the loss of their constitutional rights. Plaintiffs seek nominal damages.

173. Because Defendants’ actions were willful, wanton, and malicious, and showed a complete and deliberate indifference to and conscious disregard for Plaintiffs’ rights, Plaintiffs seek an award of punitive damages in the amount of \$50,000.00 dollars, or an amount a jury deems sufficient to punish and deter Defendants and other similar entities from like conduct in the future.

Therefore, Plaintiffs request the appropriate relief under 42 U.S.C. § 1983 for Defendants' violation of their civil rights as set forth in the prayer for relief below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Honorable Court to:

- A) Declare that Defendants have violated J.O.'s Fourteenth Amendment Due Process Clause property interest as set forth in this Complaint;
- B) Declare that Defendants have violated J.O.'s Fourteenth Amendment Due Process Clause liberty interest as set forth in this Complaint;
- C) Declare that provisions 1, 3, 7, 13, and 13B in the Student Code of Conduct describing acts of student misconduct for which suspension may be appropriate, violate the Fourteenth Amendment Due Process Clause as set forth in this Complaint;
- D) Enter an Order directing Defendants to immediately provide Plaintiffs with J.O.'s entire educational record, including an unedited copy of the School District video capturing the entire incident of January 18, 2023, all unredacted statements of the three basketball players involved, all other statements of witnesses to the incident, as well as all School District employees and staff statements concerning the incident as set forth in this Complaint;

E) Enter an Order allowing Plaintiffs to amend J.O.'s educational record to comport with the actual facts as set forth in this Complaint;

F) Enter a permanent Injunction prohibiting Defendants from refusing to provide parents of minors who are charged with student misconduct carrying a possible penalty of out-of-school suspension or expulsion, copies of all information including videos and other documents in the students' educational record as set forth in this Complaint;

G) Enter a preliminary and permanent Injunction prohibiting the enforcement of provisions i through iv of the Student Code of Conduct as set forth in this Complaint;

H) Award nominal damages against all Defendants;

I) Award punitive damages against all Defendants in an amount to be determined at trial;

J) Award Plaintiffs' reasonable attorneys' fees and litigation costs; and

K) Grant any such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury of all issues triable of right by a jury.

Date: June 6, 2023

Respectfully submitted,

THOMAS MORE LAW CENTER

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