

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KARI BAUBLIT, :
CHARLES BAUBLIT, :
W.FB., by his next best friend : **CASE NO.: 2:11-cv-1077**
KARI BAUBLIT, :

PLAINTIFFS, : **JUDGE**
: **Magistrate Judge**

v. :

EAST KNOX LOCAL SCHOOL :
DISTRICT, :
MATTHEW CAPUTO, Superintendent :
RYAN GALLWITZ, :
High School Principal; :
District’s Complaint Coordinator :
LISA BROWN, Middle School Principal, :
RENEE McDANIEL, :
School Board President, :
CRAIG CAMPBELL, :
School Board Vice-President, :
LARRY CAMPBELL, :
School Board Member, :
BOB DURBIN, :
School Board Member, and :
KOREY KIDWELL, :
School Board Member, :

DEFENDANTS. :

COMPLAINT

JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 to enforce rights protected by the Fourteenth Amendment to the Constitution 42 U.S.C. § 1983 and 20 U.S.C. § 1681 (Title IX). This Court also has supplemental jurisdiction to hear state law claims pursuant to 28 U.S.C. § 1367.

PARTIES

2. Plaintiffs Kari and Charles Baublitz live in Howard, Knox County, Ohio with their three children, of whom the youngest is 12-year old W.F.B. At all times relevant to this Complaint, W.F.B. was a student in the East Knox Local School District (“District”) at East Knox Middle School. All of the Plaintiffs are citizens of the United States.

3. Defendant Matthew Caputo is the Superintendent of the East Knox Local School District. At all times relevant to this Complaint Matthew Caputo served as the Superintendent of the East Knox Local School District. Defendant Caputo is being sued in both his individual and official capacities.

4. Defendant Ryan Gallwitz is the East Knox High School Principal and the East Knox Local School District’s Complaint Coordinator. At all times relevant to this Complaint Ryan Gallwitz served as the East Knox High School Principal and the East Knox Local School District’s Complaint Coordinator. Defendant Gallwitz is being sued in both his individual and official capacities.

5. Defendant Lisa Brown is the East Knox Middle School Principal. At all times relevant to this Complaint Lisa Brown served as the East Knox Middle School Principal. Defendant Brown is being sued in both her individual and official capacities.

6. Defendant Renee McDaniel is the President of the East Knox Local School District Board of Education. At all times relevant to this Complaint, Renee McDaniel served as the President of the East Knox Local School District Board of Education. Defendant McDaniel is being sued in both her individual and official capacities.

7. Defendant Craig Campbell is the Vice-President of the East Knox Local School District Board of Education. At all times relevant to this Complaint, Craig Campbell served as

the Vice-President of the East Knox Local School District Board of Education. Defendant Campbell is being sued in both his individual and official capacities.

8. Defendant Larry Campbell is a member of the East Knox Local School District Board of Education. At all times relevant to this Complaint, Larry Campbell served as a member of the East Knox Local School District Board of Education. Defendant Campbell is being sued in both his individual and official capacities.

9. Defendant Bob Durbin is a member of the East Knox Local School District Board of Education. At all times relevant to this Complaint, Bob Durbin served as a member of the East Knox Local School District Board of Education. Defendant Durbin is being sued in both his individual and official capacities.

10. Defendant Korey Kidwell is a member of the East Knox Local School District Board of Education. At all times relevant to this Complaint, Korey Kidwell served as a member of the East Knox Local School District Board of Education. Defendant Kidwell is being sued in both is individual and official capacities.

11. At all times relevant to this Complaint, each Defendant acted under color of state law.

FACTS

12. The stated “job” of the East Knox Local School District Board of Education, according to the District’s website “is to represent the ‘moral ownership’-- that is, the residents of the East Knox District - in determining and demanding appropriate organizational performance within the school district.”

13. At all times relevant to this Complaint, the East Knox Local School District had an established policy in place that expressly prohibited the harassment and/or bullying of

students. The policy, as stated in the Student Code of Conduct handbook, provides that “[t]he harassment and/or bullying of other students or members of staff, or *any other individuals* is not permitted. This includes any speech or action that creates a hostile, intimidating, or offensive learning environment.” The policy further states that “[a]ny student who believes that s/he is the victim of any of the above actions . . . should contact the District’s Complaint Coordinator: Ryan Gallwitz, High School Principal. * * * The Complaint Coordinator will promptly compile a written summary of each such report that will be forwarded to the Superintendent.” The policy further states that “[t]he student may report his/her concerns to the Complaint Coordinator by a written report or by telephone or personal visit.” Finally, East Knox Local School District’s Harassment and/or Bullying Policy states that “[e]ach report will be investigated in a timely manner and as confidentially as possible. * * * If an investigation reveals that a harassment/bullying complaint is valid, appropriate remedial and/or disciplinary action will be taken promptly to prevent the continuance of the harassment/bullying or its recurrence.”

14. For more than one year, Plaintiff W.FB. suffered severe, persistent, pervasive bullying and harassment by numerous East Knox Local School District students. The students’ bullying and harassment was based on W.FB.’s perceived sexual orientation.

15. W.FB. was intimidated and threatened daily, forcing W.FB to endure an abusive educational environment.

16. The bullying and harassment heaped upon W.FB. included both verbal and physical assaults. The bullying and harassment perpetrated against W.FB. by numerous East Knox students and at least one parent of an East Knox student was sustained, severe, persistent and pervasive.

17. The bullying and harassment perpetrated against W.FB. caused W.FB. mental and physical harm. Each and every day that W.FB. attended East Knox Middle School, W.FB. was unceasingly called “gay,” “queer,” “faggot,” and “girl.” W.FB. was repeatedly taunted by East Knox students who on multiple occasions demeaned W.FB. with statements such as “he takes it in the asshole,” “he has sex with boys every night,” and that “he has no testicles.” W.FB. endured regular and consistent threats from East Knox Middle School students. The threats directed at W.FB., from different East Knox Middle School students, included “I’ll bust [W.FB.’s] head open” and “I’ll smash your [W.FB.’s] head with a hammer.” W.FB. was tripped in the hallway, had his books knocked out of his hands, and at an East Knox Local School District sponsored football game in October, 2010, W.FB. was physically assaulted by group of East Knox Middle School students who kicked and punched W.FB. while yelling at him that he was “a faggot” and that he was “gay.” The bullying and harassment by East Knox students was because W.FB. did not conform to the students’ sexual stereotypes of how they believed that a male should behave.

18. W.FB. routinely and consistently reported each incident of bullying and harassment to East Knox faculty, staff and administrators. W.FB. also routinely and consistently reported each incident of bullying and harassment to his parents, Plaintiffs Kari and Charles Baublitz. The Baublitz in turn, met with East Knox faculty, staff and administrators on numerous occasions and demanded the administrators take effective action to stop the ongoing and continual bullying and harassment of W.FB.

19. Plaintiff Kari Baublitz spoke personally with Defendant Ryan Gallwitz on no less than ten (10) occasions specifically requesting that he take effective action to stop the ongoing

and continual bullying and harassment of W.FB. Defendant Ryan Gallwitz failed to take effective action to stop the ongoing and continual bullying and harassment of W.FB.

20. Plaintiff Kari Baublitz and W.FB. spoke personally with Defendant Lisa Brown on no less than twenty (20) occasions specifically requesting that she take effective action to stop the ongoing and continual bullying and harassment of W.FB. Defendant Lisa Brown failed to take effective action to stop the ongoing and continual bullying and harassment of W.FB.

21. Plaintiff Kari Baublitz spoke personally with Defendant Matthew Caputo on at least one occasion specifically requesting that he take effective action to stop the ongoing and continual bullying and harassment of W.FB. Defendant Matthew Caputo failed to take effective action to stop the ongoing and continual bullying and harassment of W.FB.

22. Plaintiff Kari Baublitz spoke personally with Defendant Renee McDaniel on at least one occasion specifically requesting that she take effective action to stop the ongoing and continual bullying and harassment of W.FB. Defendant Renee McDaniel failed to take effective action to stop the ongoing and continual bullying and harassment of W.FB.

23. Plaintiff Kari Baublitz and W.FB. spoke personally with numerous faculty, staff, and administrators of the East Knox Local School District specifically requesting that they take effective action to stop the ongoing and continual bullying and harassment of W.FB. East Knox Local School District faculty, staff and administrators failed to take effective action to stop the ongoing and continual bullying and harassment of W.FB. by East Knox Local School District students.

24. As a direct result of the ongoing and continual bullying and harassment of W.FB. by East Knox Local School District students and the failure of District faculty, staff and administrators to take effective action to stop the bullying and harassment directed toward

W.FB., Plaintiff Kari Baublitz withdrew W.FB. from East Knox Middle School and began homeschooling him on November 3, 2011.

25. But for the failure of the faculty, staff and administrators of East Knox Local School District to take effective action to stop the ongoing and continual bullying of W.FB., W.FB. would still be enrolled and attending East Knox Middle School.

26. The failure of the East Knox Local School District faculty, staff and administrators to take effective action to stop the ongoing and continual bullying and harassment of W.FB. permitted the bullying and harassment to continue uninterrupted. Defendants' conduct has caused Plaintiffs to suffer fright and severe emotional and mental distress.

CLAIMS FOR RELIEF

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, et seq., Sex-Based Discrimination

27. The conduct of the East Knox Local School District violates Title IX of the Education Amendments of 1972 ("Title IX"), 86 Stat. 373, as amended 20 U.S.C. § 1681, *et seq.* because as a recipient of federal financial assistance, the District acted with deliberate indifference to the known acts of sex-based harassment detailed above in paragraphs 14 through 17 of this Complaint, which occurred at East Knox Middle School and during programs and activities sanctioned and sponsored by the East Knox Local School District. The sex-based harassment suffered by Plaintiff W.FB. and detailed above in paragraphs 14 through 17 of this Complaint was so severe, pervasive, and objectively offensive that W.FB. was effectively barred from access to the educational opportunities and benefits provided by the East Knox Local School District, as evidenced by the necessity of W.FB. to withdraw from East Knox Middle School.

Fourteenth Amendment Equal Protection

28. The conduct of Defendants violates the Fourteenth Amendment to the Constitution and 42 U.S.C. § 1983 because Defendants deprived Plaintiff W.FB. of his guaranteed right to Equal Protection under the law by intentionally treating him differently than other similarly situated East Knox Local School District students, based on his perceived sexual orientation and because he did not behave in accordance with students' stereotypical beliefs as to how a male should behave, without a compelling, legitimate, or rational basis for the difference. The Defendants treated W.FB. differently by failing to take effective action to stop the ongoing and continual bullying and harassment detailed above in paragraphs 14 through 17 of this Complaint, thereby denying W.FB. the educational opportunities the District provides to all other East Knox Local School District students. Under available information and belief, it is the custom, policy, and practice of the East Knox Local School District to disregard, ignore, or otherwise fail to take effective action to stop known acts of bullying and harassment perpetrated by District students against other District students.

Fourteenth Amendment Procedural Due Process

29. The conduct of Defendants violates the Fourteenth Amendment to the Constitution and 42 U.S.C. § 1983 because Defendants deprived Plaintiff W.FB. of his right to procedural due process by abridging his liberty interest in a public education without the appropriate process established by the East Knox Local School District's Student Code of Conduct. The District's Student Code of Conduct requires that "[t]he Complaint Coordinator [] promptly compile a written summary of each such [harassment and/or bullying] report that will be forwarded to the Superintendent. Each report will be investigated in a timely manner and as confidentially as possible." Under available information and belief Defendant Ryan Gallwitz

failed to investigate the Baublits' and W.F.B.'s numerous complaints of bullying and harassment, detailed above in paragraphs 14 through 17 of this Complaint, as required by the District's Harassment and/or Bullying Policy. Further, under available information and belief, Defendant Ryan Gallwitz failed to compile a written summary of each, or any, of the harassment and/or bullying incidents detailed above in paragraphs 14 through 17 of this Complaint which were reported to Defendant Gallwitz by the Baublits and W.F.B. Under available information and belief, Defendant Gallwitz further failed to forward any reports or investigations into the bullying and harassment of W.F.B. to the Superintendent, as required by the District's Harassment and/or Bullying Policy. Defendant Ryan Gallwitz's failure to investigate or compile and forward to the Superintendent the Baublits' and W.F.B.'s numerous complaints of bullying and harassment violated W.F.B.'s Fourteenth Amendment right to procedural due process and 42 U.S.C. § 1983.

Negligent Supervision

30. Defendants had a duty to supervise students at East Knox Local School District so that students, including W.F.B., would have an educational environment that was free of bullying, harassment, physical threats and physical harm. Defendants breached this duty owed to W.F.B. by failing to take effective action to stop the ongoing and continual bullying and harassment of W.F.B. detailed above in paragraphs 14 through 17 of this Complaint. Defendants acted in a wanton and reckless manner in their intentional failure to investigate the numerous complaints of bullying and harassment reported to East Knox Local School District faculty, staff and administrators and in their failure to take effective action to stop the ongoing and continual bullying and harassment of W.F.B. Defendants were fully conscious that their failure to investigate the numerous complaints reported to District faculty, staff and administrators and

their failure to take effective action to stop the ongoing and continual bullying and harassment of W.FB. would in all probability result in injury to W.FB.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- A. Declare that Defendants, jointly and severally, have violated Plaintiffs' civil rights;
- B. Order such equitable relief as will make Plaintiffs whole for Defendants' unlawful conduct;
- C. Order Defendants to stop engaging in all unconstitutional and unlawful acts, and to develop appropriate policies and procedures for ending such acts and for countering the hostile and intolerant environment that has lead to brutal attacks on Plaintiff W.FB. and is likely to result in future attacks on W.FB. and other students similarly situated if not so ordered. Such Order should include but not necessarily be limited to the following:

- (1) Require Defendants to implement mandatory training programs for District faculty, staff and students on issues relating to bullying, harassment, diversity, homophobia, and methods to intervene and stop students from harassing other students who are, or who are perceived to be, lesbian, gay, bisexual or transgender (LGBT), or otherwise gender non-conforming;

- (2) Require Defendants to adopt new policies, or, if applicable, to revise existing policies, for instructing

teachers, security guards, administrators, and other District personal on how to address complaints by or about students who have been taunted, harassed, discriminated against, or otherwise disadvantaged because they are, or are perceived to be, LGBT or otherwise gender non-conforming, and to actually enforce and comply with those new or revised policies;

(3) Require Defendants to assign a peer mediator and/or other staff member to each District School to provide for active monitoring for the school and to address immediately instances of discrimination or harassment that arise at the school;

(4) Require Defendants to maintain statistical data and other documentation concerning each instance or complaint of harassment based on actual or perceived sexual orientation and/or gender identity, specifically including the details of the specific action taken by District personnel to resolve the instance or complaint;

(5) Require Defendants to take no reprisal or retaliatory action against Plaintiff W.FB., his friends or family, or any District administrator, teacher or staff member who speaks out in support of Plaintiff W.FB; and

- (6) Require Defendants to conduct an assembly or other appropriate program for all District middle and high school students addressing issues of diversity, homophobia, and tolerance, during which students are instructed about laws, procedures and policies prohibiting harassment and discrimination based on actual or perceived sexual orientation and/or gender identity;
- D. Order Defendants to adhere to the “Harassment and/or Bullying Policy” established in the District’s Student Code of Conduct handbook;
- E. Order Defendants to provide to Plaintiffs, in writing, assurances that should W.FB. re-enroll at East Knox Middle School, the educational environment shall be non-hostile, non-threatening, non-retaliatory and bullying and harassment free;
- F. Award compensatory damages and pre and post-judgment interest;
- G. Award punitive damages;
- H. Award attorneys fees and costs; and
- I. Grant such other relief as the Court may deem appropriate.

/s/C. Raphael Davis-Williams
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