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(SPACE BELOW FOR FILING STAMP ONLY)

5 Attorneys for Defendants
6 MCSWAIN UNION ELEMENTARY SCHOOL
DISTRICT; TERRIE ROHRER; C.W. SMITH, and
7 MARTHA HERNANDEZ

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 T.A., a minor (by and through next friend),
ANNA AMADOR,

12 Plaintiff,

13 v.

14 MCSWAIN UNION ELEMENTARY
15 SCHOOL DISTRICT; TERRIE ROHRER,
Principal of McSwain Elementary School,
16 individually and in her official capacity;
C.W. SMITH, Assistant Principal of
17 McSwain Elementary, individually and in
his official capacity, and MARTHA
18 HERNANDEZ, Office Clerk for McSwain
Elementary School, Individually and in her
19 official capacity,

20 Defendants.

Case No. 1:08-CV-01986-OWW-DLB

**ORDER ON DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT, OR IN THE
ALTERNATIVE, MOTION FOR PARTIAL
SUMMARY JUDGMENT**

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22 This matter came on for hearing on June 22, 2010, on the duly noticed Motion for
23 Summary Judgment, Or in the Alternative, Motion for Partial Summary Judgment filed by
24 Defendants MCSWAIN UNION ELEMENTARY SCHOOL DISTRICT; TERRIE ROHRER;
25 C.W. SMITH, and MARTHA HERNANDEZ ("Defendants"). Attorneys Anthony N. DeMaria
26 and Marisa L. Balch of McCormick, Barstow, Sheppard, Wayte & Carruth LLP appeared on
27 behalf of Defendants and argued in support of the Motion. Attorney William J. Becker, Jr. of The
28 Becker Law Firm appeared on behalf of Plaintiff and argued in opposition to the Motion.

1 The court has read the papers submitted in support and in opposition of the motion, and
2 considered the arguments of counsel and the authorities cited to the court.

3 The court has concluded that Defendants' request for summary judgment on Plaintiff's
4 Fourth Claim for Relief for Due Process- Fourteenth Amendment (42 U.S.C. § 1983) is
5 appropriate, and should be granted, on the grounds that, given the school context, Defendants'
6 dress code policy does not violate substantive due process. Additionally, the court has concluded
7 that Defendants' request for summary judgment on Plaintiff's Second Claim for Relief for
8 Unreasonable Seizure-Fourth Amendment (42 U.S.C. § 1983), as to the unreasonable seizure of
9 Plaintiff's property (the t-shirt), is appropriate and should be granted as to all Defendants. The
10 Court has further concluded that Defendants' request for summary judgment on Plaintiff's
11 Second Claim for Relief for Unreasonable Seizure – Fourth Amendment (42 U.S.C. §1983) as to
12 the alleged seizure of Plaintiff's person is appropriate and should be granted, as to all Defendants
13 except Defendant MARTHA HERNANDEZ, on the grounds that an issue of fact remains with
14 regard to only Defendant MARTHA HERNANDEZ's alleged grabbing of Plaintiff. All other
15 requests for summary judgment are denied at this time on the grounds that material issues of fact
16 remain in connection with Plaintiff's First Claim for Relief for Freedom of Speech- First
17 Amendment and Plaintiff's Third Claim for Relief for Equal Protection- Fourteenth Amendment
18 (42 U.S.C. § 1983). Therefore,

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20 IT IS HEREBY ORDER THAT:

- 21 1. Defendants' request for summary judgment on Plaintiff's First Claim for Relief for
22 Freedom of Speech- First Amendment (42 U.S.C. § 1983) is DENIED;
- 23 2. Defendants' request for summary judgment on Plaintiff's Third Claim for Relief
24 for Equal Protection- Fourteenth Amendment (42 U.S.C. § 1983) is DENIED;
- 25 3. Defendants' request for summary judgment on Plaintiff's Second Claim for Relief
26 for Unreasonable Seizure-Fourth Amendment (42 U.S.C. § 1983), as to the
27 unreasonable seizure of Plaintiff's property (the t-shirt), is GRANTED as to all
28 Defendants; and Defendants' request for summary judgment on Plaintiff's Second

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Claim for Relief for Unreasonable Seizure – Fourth Amendment (42 U.S.C. §1983), as to the alleged seizure of Plaintiff’s person, is GRANTED as to all Defendants except Defendant MARTHA HERNANDEZ; and
4. Defendants’ request for summary judgment on Plaintiff’s Fourth Claim for Relief for Due Process- Fourteenth Amendment (42 U.S.C. § 1983) is GRANTED.

IT IS SO ORDERED.

Dated: July 22, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE