

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA**

J.S., et al.

Plaintiffs,

v.

**BLUE MOUNTAIN SCHOOL
DISTRICT;
DR. JOYCE E. ROMBERGER,
Superintendent Blue Mountain School
District; and JAMES S.
MCGONIGLE, Principal Blue
Mountain Middle School, both in their
official and individual capacities,**

Defendants.

**: CIVIL ACTION NO.
: 07-CV-585
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: JUDGE:
: JAMES M. MUNLEY
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: ELECTRONICALLY FILED
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DEFENDANTS’ STATEMENT OF UNCONTESTED FACTS

Defendants, Blue Mountain School District (“District”), Dr. Joyce Romberger (“Romberger”), and James McGonigle (“McGonigle”) (collectively referred to as “Defendants,”) by and through their counsel, Sweet, Stevens, Katz & Williams, LLP., hereby submit the following Statement of Uncontested Facts pursuant to Local Rule of Civil Procedure 56.1.

I. Parties Involved

1. At the time this action was filed, minor Plaintiff, J.S., was a fourteen-year old eighth grade student at Blue Mountain Middle School. (Dkt. #14, ¶ 1; Dkt. #21, ¶ 1)

2. Plaintiffs, Terry Snyder and Steven Snyder, are the parents to J.S. (Dkt. #14, ¶¶ 4-5; Dkt. #21, ¶¶ 4-5)

3. Defendant, James McGonigle, is the Principal of Blue Mountain Middle School. 43. (Dkt. #14, ¶¶ 7, Dkt. #21, ¶ 7)

4. Defendant, Dr. Joyce Romberger, is the Superintendent of the Blue Mountain School District. (Dkt. #14, ¶ 8, Dkt. #21 ¶ 8)

5. Defendant, Blue Mountain School District is a political subdivision of the Commonwealth of Pennsylvania in which Blue Mountain Middle School (“Middle School”) is located. Approximately 720 students attend the Middle School. (Dkt. #14, ¶ 6, Dkt. #21, ¶ 6; Ex. “F,” p. 8, ln. 2-3)

II. A Profile Of Defendant McGonigle Is Created On The Internet Website MySpace.com

6. J.S., along with her friend, K.L., created an internet profile of McGonigle on the popular website MySpace.com (“MySpace”). (Ex. “A,” pp. 9-10; Ex. “B.”)

7. MySpace is communication network used for, among other things, social reasons and meeting people. (Ex. “E,” pp. 9-10)

8. K.L. and J.S. are currently friends and were friends while in eighth grade. (Ex. “M,” p. 6, ln. 11-13; p. 7, ln. 22-24)

9. K.L. considered J.S. to be her best friend in eighth grade. (Ex. “M,” p. 9, ln. 7-9)

10. The MySpace profile of McGonigle was created at the home of J.S on Sunday, March 18, 2007. (Ex. "A," p. 11, ln. 7-12; p. 13, ln. 4-8)

11. The MySpace profile of McGonigle was created with the intent that other students would see it. (Ex. "M," p. 31, ln. 17-19)

12. J.S. and K.L. created the MySpace profile of McGonigle because they thought it would be comical. (Ex. "A," p. 11, ln. 16-24)

13. K.L.'s involvement in the creation of the MySpace profile was limited to her "copying and pasting" McGonigle's official school picture, which was on the District website, onto the MySpace profile. (Ex. "A," pp. 15-16; Ex. "M," pp. 11-12; p. 15, ln. 12-25)

14. K.L. was at her own house on her own computer when she put McGonigle's picture on the MySpace profile. (Ex. "A," pp. 15-16; Ex. "M," pp. 11-12; p. 15, ln. 12-25)

15. K.L. did not write any on the language contained on the MySpace profile. (Ex. "M," pp. 17-18; p. 34-35)

16. When the MySpace profile of McGonigle was first created on March 18, 2007, it was available for the entire world to view. (Ex. "A," p. 20, ln. 18-21)

17. Individuals viewing MySpace could find the profile of McGonigle simply by performing a search in the database. (Ex. "A," p. 20-21)

18. The entire profile of McGonigle would be accessible to the general public if the search criteria matched the information contained in his profile. (Ex. “A,” p. 21, ln. 2-18)

19. The “MySpace URL” was www.MySpace.com/kidsrockmybed. (Ex. “A,” p. 21, ln. 21-23; Ex. “B”)

20. There is no indication on the profile of McGonigle that the information contained on the website was intended to be a joke or that the information on the website was some sort of parody. (Ex. “A,” pp. 22-23; Ex. “B”; Ex. “G,” p. 14, ln. 10-14)

21. J.S. admits the written information contained on the MySpace profile of McGonigle is not true. (Ex. “A,” p. 23, ln. 17-18; Ex. “G,” p. 10, ln. 21-24)

22. In fact, J.S. knew at the time she created the MySpace profile of McGonigle that the information she wrote about him was not true, with the exception being that the profile contained his actual picture and accurately described him as a Principal. (Ex. “A,” p. 23, ln. 17-23; p. 24, ln. 17-20; Ex. “E,” p. 40, ln. 10-15)

23. Approximately a day after J.S. created the MySpace profile of McGonigle, she set the website to “private.” (Ex. “A,” p. 26, ln. 14-17)

24. J.S. offered no reason as to why she decided to set the MySpace profile of McGonigle to private. (Ex. “A,” p. 28, ln. 1-3)

25. By setting the website to “private,” access to the body of the website is limited to “friends,” which limits who can view the contents of the website. However, one can still view McGonigle’s picture and selective personal information even when the website was set to private. (Ex. “A,” p. 26, ln. 4-8; Ex. “G,” p. 15, ln. 5-8)

26. While the MySpace profile of McGonigle was set to private, J.S. and K.L. granted permission to 22 friends to view the website. (Ex. “A,” p. 26, ln. 4-8; p. 29, ln. 21-23; Ex. “B”)

27. While at school, J.S. had numerous friends come up to her to discuss the MySpace profile of McGonigle after it was created. (Ex. “A,” p. 28, ln. 21-23)

28. The day after helping to create the website, K.L. told approximately 5-8 students at school about MySpace profile of McGonigle. (Ex. “M,” pp. 27-28)

29. Additionally, approximately 5-6 students came up to K.L. and inquired about the MySpace profile of McGonigle. (Ex. “M,” p. 37, ln. 23-25)

30. The day after J.S. created the MySpace profile of McGonigle, people and students in the school were already talking about the website. (Ex. “A,” p. 37, ln. 20-23)

31. Discussion of the MySpace profile of McGonigle continued throughout the day after it was created. (Ex. “A,” p. 44, ln. 23-24)

32. Overall, there existed a general “buzz” in the Middle School regarding the MySpace profile as “quite a few people knew about it.” (Ex. “M,” p. 38, ln. 4-11; p. 42, ln. 12-17; Ex. “A,” p. 37, ln. 14-23)

III. McGonigle Learns About The Profile On MySpace

33. McGonigle first heard of the existence of the MySpace website on Monday, March 19, 2007. (Ex. “F,” p. 32, ln. 12-13; p. 63, ln. 16-19)

34. McGonigle was informed on Tuesday, March 20, 2007 by another student that the MySpace website contained very disturbing comments about him. (Ex. “F,” pp. 34-35)

35. McGonigle was approached by two teachers on March 20, 2007 who indicated to him that students were discussing the MySpace profile in class. (Ex. “F,” pp. 39-41)

36. McGonigle first learned that J.S. and K.L. were involved in the creation of the MySpace profile on Wednesday, March 21, 2007. (Ex. “F,” p. 32, ln. 18-19)

37. McGonigle was provided a printout of the website by another student during the morning of March 21, 2007. (Ex. “F,” pp. 32-33; p. 46, ln. 7-13)

38. J.S. was absent from school on March 21, 2007. (Ex. “F,” p. 47, ln. 1-24)

IV. J.S. Admits To Creating The MySpace Profile After Meeting With McGonigle

39. On Thursday, March 22, 2007, McGonigle called J.S.'s homeroom and requested that she proceed down to his office. (Ex. "F," p. 71, ln. 20-24)

40. J.S. proceeded to meet with McGonigle and guidance counselor Michelle Guers. (Ex. "F," p. 74, ln. 1-19)

41. After originally denying any involvement in the creation of the MySpace profile, J.S. eventually admitted to McGonigle that she created it. (Ex. "F," pp. 79-80)

42. J.S. also informed McGonigle that K.L. was involved in the creation of the MySpace website. (Ex. "F," p. 82, ln. 5-9)

43. McGonigle called the parents of both J.S. and K.L after they admitted to creating the MySpace website and informed them about the situation. (Ex. "F," p. 105, ln. 17-23)

44. McGonigle contacted MySpace and had them remove or take down the profile created by J.S. and K.L. (Ex. "F," pp. 166-69)

V. The MySpace Profile Of Defendant McGonigle Violated Two Separate School Policies

45. At the beginning of the school year, J.S. signed a CIS Acknowledgment and Consent form regarding the use of information and technology equipment and associated property of the Middle School and received a

copy of the District internet policy entitled “Acceptable Use of Computers, Network, Internet, Electronic Communication Systems, and Information. (Ex. “A,” p. 51, ln. 13-18; p. 52, ln. 3-12; Ex. “C”; Ex. “D”)

46. J.S. received instruction on the Acceptable Use Policy in a library research project in which the librarian reviews copyright laws, plagiarizing and internet issues. Specifically, students are informed directly that they cannot get copyrighted material without permission from the agency or the website. (Ex. “K,” p. 49, ln. 1-21; p. 34, ln. 7-23)

47. A violation of the Acceptable Use Policy can result in punishments ranging from in school suspension to expulsion. (Ex. “K,” p. 39, ln. 17-23)

48. The Blue Mountain Middle School Student Parent Handbook (“Handbook”) was also in effect at the time J.S. and K.L. created the MySpace profile of McGonigle. (Ex. “K,” p. 72, ln. 14-19; Ex. “J”)

49. According to Handbook, making false accusations about staff members is a level four violation. (Ex. “K,” p. 73, ln. 3-17; Ex. “J”)

50. A Principal of a District school is in charge of determining the appropriate punishment for a student that violates the discipline code. (Ex. “K,” p. 71, ln. 1-3)

51. McGonigle determined that J.S. violated the school discipline code because the MySpace profile contained false accusations against District staff and

because it was a violation of the computer use policy. (Ex. “F,” pp. 59-60; Ex. “G,” pp. 27-28)

52. A disciplinary notice was prepared in accordance with this incident. (Ex. “F,” pp. 138-39; Ex. “I”)

53. Ms. Morgan, the Director of Technology for the District and the individual that is in charge of overseeing the Acceptable Use policy, also determined that the MySpace profile of McGonigle violated the District’s Acceptable Use Policy as she found the profile to be a violation of the copyright and plagiarism sections of the Policy since the District has the sole permission to use and display the photographs contained on the District website. (Ex. “N,” pp. 7-8; pp. 11-12; Ex. “K,” p. 35, ln. 5-12)

VI. J.S. Received A Ten Day Out-Of-School Suspension

54. McGonigle prepared a letter to the parents of J.S. outlining the situation and the ten day out-of-school suspension imposed on J.S. (Ex. “F,” pp. 129-130; Ex. “H”)

55. K.L. also received a ten day out-of-school suspension for her actions in the creation of the MySpace profile. (Ex. “F,” p. 25, ln. 7-10)

56. An informal hearing regarding J.S.’s suspension was conducted in McGonigle’s office on March 28, 2007. (Ex. “F,” p. 134, ln. 10-22)

57. While on suspension, J.S. had all her school assignments brought home to her. (Ex. "A," p. 60, ln. 13-18)

58. Academically, J.S. was at the same point as her fellow classmates when she returned to school. (Ex. "A," pp. 61-62)

59. J.S. admits that her studies or grades have not been affected at all as a result of the suspension. (Ex. "A," p. 76, ln. 5-17)

VII. District Superintendent Romberger Supported McGonigle's Decision To Suspend J.S.

60. Terry Snyder voiced her displeasure and objections to the punishment handed out to J.S. the day after to Dr. Romberger. (Ex. "E," p. 19, ln. 8)

61. Dr. Romberger supported the punishment handed out by McGonigle. (Ex. "E," p. 19, ln. 11-12)

62. Plaintiffs had had the opportunity to appeal the discipline given by McGonigle to the Superintendent as well as the Board of School Directors. (Ex. "F," p. 173, ln. 17-20)

63. Dr. Romberger concurred with the appropriateness of the ten day suspension McGonigle issued to J.S. (Ex. "K," p. 39, ln. 13-23)

64. School Administrators must abide by a code of professional conduct which is mandated by the Department of Education. (Ex. "K," p. 41, ln. 14-20; p. 45, ln. 16-23)

65. As the MySpace profile of McGonigle was available for the entire world to view for a period of time and due to the code of professional conduct, McGonigle's current or future employment opportunities could have been affected. (Ex. "K," pp. 41-44; Ex. "A," p. 71, ln. 22-24)

VIII. Plaintiffs Admit That The MySpace Profile Was Vulgar, Lewd, and Offensive And That The MySpace Profile Depicted McGonigle As A Sexual Predator

66. J.S. admits that the MySpace profile of McGonigle was specifically directed towards children and students. (Ex. "A," pp. 24-25)

67. J.S. admits that the MySpace profile of McGonigle is offensive and vulgar. (Ex. "A," p. 25, ln. 2-7)

68. J.S. admits that the MySpace URL implies that McGonigle is a pedophile. (Ex. "A," p. 22, ln. 7-12; p. 23, ln. 3-5; p. 24, ln. 4-6)

69. J.S. admits that the MySpace profile of McGonigle portrays him as a sexual predator of young students. (Ex. "A," p. 71, ln. 4)

70. J.S. admits the information contained on the MySpace profile of McGonigle would affect his ability to deal with students if somebody who viewed it took it seriously. (Ex. "A," p. 24, ln. 14-16)

71. Terry Snyder admitted that the MySpace profile created by her daughter was offensive, vulgar and lewd. (Ex. "E," p. 14, ln. 5-16)

72. Terry Snyder admitted that if someone took the MySpace profile of McGonigle seriously, one could think that he is a sexual predator. (Ex. "E," p. 15, ln. 3-8)

73. Terry Snyder admitted that J.S. made false accusations about McGonigle. (Ex. "G," p. 11, ln. 5-9)

IX. The MySpace Profile Caused Actual Disruptions In School And Would Have Caused Further Substantive Disruptions Had The District Not Taken Appropriate Action

74. J.S. admits that the MySpace profile of McGonigle could cause a disruption in the Middle School. (Ex. "A," p. 25, ln. 20-24)

75. Terry Snyder admitted that the MySpace profile of McGonigle could cause disruptions at school because things "could get out of control." (Ex. "E," p. 41, ln. 2-12)

76. The respective schedules of the Middle School's guidance counselors were disrupted as a result of the MySpace website. (Ex. "F," pp. 158-160; Ex. "G," pp. 26-27)

77. As a result of the MySpace profile, McGonigle experienced changes to his health such as chest pains and an inability to sleep. (Ex. "F," p. 166, ln. 17-19)

78. The day before J.S. was suspended, Mr. Nunemacher, a math teacher at the Middle School, experienced a disruption in his class when six or seven

students continued talking and discussing the MySpace profile of McGonigle despite repeated warnings by Mr. Nunemacher to get back to their classwork. (Ex. “O,” p. 11-12; p. 13, ln. 10-16; p. 16, ln. 7-9)

79. Two days before J.S. was suspended, Mr. Nunemacher overheard two students discussing the MySpace profile of McGonigle. (Ex. “O,” p. 17, ln. 3-22)

80. Mr. Nunemacher heard continued “rumblings” from students discussing the MySpace profile of McGonigle. (Ex. “O,” pp. 18-19; p. 23, ln. 9-11)

81. As a result of hearing the students’ comments regarding the MySpace profile of McGonigle, Mr. Nunemacher formed the belief that the students thought McGonigle could not impose discipline on them. (Ex. “O,” p. 30, ln. 8-21)

82. Angela Warner, a seventh and eighth grade teacher at the Middle School, was also approached by a group of students who were concerned about the MySpace profile of McGonigle prior to McGonigle actually viewing the website. (Ex. “L” p. 11, ln. 11-20; p. 13, ln.7-12; p. 17, ln. 17)

83. After the ten day suspensions were over and J.S. and K.L. returned to school, the discipline in the Middle School severely deteriorated. (Ex. “F,” pp. 152-155)

X. J.S. Was Disciplined By Her Parents

84. J.S.'s parents grounded her "for a very long time" as punishment for her role in creating the MySpace profile of McGonigle. (Ex. "A," p. 14-18)

85. The Snyder's disciplined J.S. for her actions by restricting her phone and computer usage for an indefinite period of time. (Ex. "E," pp. 24-25; Ex. "F," pp. 6-7; Ex. "G," pp. 7-8)

SWEET, STEVENS, KATZ & WILLIAMS LLP

Date: November 21, 2007

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