

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

**J.S., a minor, by and through
her parents, TERRY SNYDER and
STEVEN SNYDER, individually and
on behalf of their daughter,**

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
:
:
: JUDGE:
: JAMES M. MUNLEY**

: ELECTRONICALLY FILED

**DEFENDANTS, BLUE MOUNTAIN SCHOOL DISTRICT, DR. JOYCE
ROMBERGER AND JAMES MCGONIGLE’S,
RESPONSE TO PLAINTIFFS’ STATEMENT OF MATERIAL FACTS**

AND NOW, come Defendants Blue Mountain School District, Dr. Joyce Romberger and James McGonigle, by and through their attorneys, Sweet, Stevens, Katz & Williams LLP, to submit the following Response to Plaintiffs’ Statement of Material Facts, and aver the following:

- 1. Admitted.
- 2. Admitted.
- 3. Admitted.
- 4. Admitted.

5. Admitted.
6. Admitted. By way of further answer, Ms. Werner is in charge of overseeing the District's student assistance drug and alcohol program.
(Werner Dep. pp. 6-7)
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted in part. It is only denied that MySpace is "private." The website is accessible by anybody in the world that has access to the internet.
11. Admitted. By way of further answer, MySpace also contains profiles of prior sex offenders and pedophiles.
[http://abclocal.go.com/ktrhlstory?section=local&id=5690471;](http://abclocal.go.com/ktrhlstory?section=local&id=5690471)
[http://www.consumeraffairs.com/news04/2006/10/pa_myspace.html.](http://www.consumeraffairs.com/news04/2006/10/pa_myspace.html)
12. Admitted in part. It is only denied that the information contained on wikipedia is necessarily correct as the contents of a wikipedia entry is "written collaboratively by volunteers from all over the world."
<http://en.wikipedia.org/wiki/wikipedia:about>
13. Admitted.
14. Admitted.

15. Admitted in part, denied in part. It is only admitted that J.S. and K.L. created a profile of Mr. McGonigle on MySpace on Sunday, March 18, 2007. It is specifically denied that the profile was a parody or that when she created the profile, J.S. was attempting to be funny. To the contrary, J.S. created the knowingly untrue profile because she was mad and upset at Mr. McGonigle for issuing a dress code violation. Moreover, J.S. did not “make up” the facts about McGonigle, rather she wrote down what she overheard her friends say about him in school. (TRO Hearing, pp. 12, 16-17, 21)
16. Denied. It is specifically denied that the profile was a parody. It is also denied that J.S. testified she used a “MySpace template” to create the website. J.S. created the content of the website. (J.S. Dep. p.17, ln. 6-8)
17. Admitted. By way of further answer, the profile also identified Mr. McGonigle as a Principal. (Defendants’ Exhibit B)
18. Admitted in part, denied in part. It is specifically denied that the profile was intended to be a parody. (TRO Hearing, p. 12, 16-17, 21)
The remaining averments in this paragraph are admitted.
19. Admitted.

20. Admitted. By way of further answer, the profile also indicated that Mr. McGonigle's interests included "fucking in my office," "hitting on students and their parents," and "watching the playboy channel on Directv." The profile also was specifically directed toward "children" and indicated that Mr. McGonigle came to MySpace to "pervert the minds of other principals to be just like me." (Defendants' Exhibit B)
21. Admitted.
22. Admitted in part, denied in part. It is admitted that on March 20, 2007, a student approached Mr. McGonigle to report a bus incident and informed him about the forged MySpace profile. The quotation offered by Plaintiffs is inadmissible hearsay and should not be considered by this Court.
23. Admitted.
24. Admitted.
25. Admitted in part, denied in part. It is admitted that Mr. McGonigle testified to the disruptions stated in this paragraph. It is denied that the Plaintiffs have listed all the disruptions Mr. McGonigle testified to. By way of further answer, Mr. McGonigle testified that the MySpace profile caused him to perform an investigation and that the MySpace profile adversely effected his health. (McGonigle Dep. p. 166, ln. 16)

26. Denied. Mr. Nunemacher testified he heard continued “rumblings” from students about the MySpace profile. (Nunemacher Dep. p. 18-19, p. 23, ln. 9-11) Moreover, a general “buzz” existed in the Middle School regarding the MySpace profile as quite a few people knew about it. (J.S. Dep. p. 37, ln 14-23)
27. Admitted.
28. Admitted.
29. Admitted
30. Admitted.
31. Admitted.
32. Admitted. By way of further answer, Mr. Nunemacher heard “rumblings” from numerous kids talking about the profile in other classes prior to March 22, 2007. (Nunemacher Dep. pp. 18-19)
33. Admitted.
34. Admitted. By way of further answer, Mr. Nunemacher testified that he believed the students were going to talk about the profile the rest of the period and that because of the profile, the students thought that they could not be disciplined. (Nunemacher Dep. p. 13, ln. 12-16)
35. Admitted. By way of further answer, Mr. Nunemacher had to instruct the group of students to get back to work at least four (4) times. (Nunemacher Dep. p. 13, ln. 19-21)

36. Admitted.
37. Admitted.
38. Admitted.
39. Admitted.
40. Admitted.
41. Admitted.
42. Admitted.
43. Denied. Mr. Nunemacher testified that he believed the “rumblings” were related to the profile of Mr. McGonigle. (Nunemacher Dep. p. 19, ln 5-7)
44. Admitted.
45. Admitted.
46. Admitted.
47. Admitted.
48. Admitted.
49. Admitted.
50. Admitted.
51. Admitted.
52. Admitted.
53. Admitted.
54. Admitted.
55. Admitted.

56. Admitted. By way of further answer, Mr. McGonigle also decided to discipline the students on that day to avoid further disruption in the school day. (McGonigle Dep. p. 177, ln 5-8)
57. Admitted.
58. Admitted in part, denied in part. It is admitted that Mr. McGonigle listed several concerns that he believed to be false accusations. To the extent Plaintiff attempts to misconstrue Mr. McGonigle's testimony to reflect some distinction or difference between false accusations and untrue statements, such assertions are denied. Mr. McGonigle testified he believed the entire profile contained "false accusations" (McGonigle Dep. p. 60, ln. 5) and J.S. testified she knew the contents of the profile to be untrue. (J.S. Dep. p. 23)
59. Admitted.
60. Admitted.
61. Admitted.
62. Admitted.
63. Admitted.
64. Admitted.
65. Admitted. By way of further answer, in response to Mr. McGonigle's question, J.S. stated, "I didn't create the MySpace account." (McGonigle Dep. p. 79, ln 7-8)

66. Admitted in part, denied in part. It is denied that Mr. McGonigle stated the quotation used in this paragraph. The record only reflects he remembers this. (McGonigle Dep. p. 85, ln. 20-24) The remaining averments in this paragraph are admitted.
67. Admitted.
68. Admitted.
69. Admitted.
70. Admitted.
71. Admitted.
72. Admitted.
73. Admitted in part, denied in part. Mr. McGonigle never testified that Terry Snyder showed a lack of remorse. The remaining factual averments are admitted.
74. Admitted in part, denied in part. It is denied that J.S. testified she tried to remove the profile. The remaining averments of facts are admitted.
75. Admitted.
76. Admitted.
77. Admitted.
78. Admitted. By way of further answer, the profile describes Mr. McGonigle as “Principal”. (Romberger Dep. p. 42, ln. 16)

79. Admitted. By way of further answer, Dr. Romberger also testified that the profile could effect Mr. McGonigle's current position because of the teacher code of professional conduct and the educational statute involving the morality of teachers. (Romberger Dep. p. 74)
80. Admitted.
81. Admitted. By way of further answer, the Defendants note that Romberger did not receive a report of sexual conduct between McGonigle and a student in this case. Moreover, the Defendants note that no investigation was needed in this case as J.S. admitted to creating the baseless MySpace profile.
82. Admitted. By way of further answer, Romberger stated as such only after being previously informed by McGonigle that the profile was written by a student. (McGonigle Dep. p. 31-32)
83. Admitted.
84. Admitted.
85. Admitted.
86. Admitted.
87. Admitted. By way of further answer, J.S. testified that the police officer indicated her actions were criminal. (J.S. Dep., p. 66, ln. 14-17)

88. Admitted.
89. Admitted.
90. Admitted.
91. Admitted.
92. Denied. The Blue Mountain School District's policies have specific geographic limitations and incorporates all relevant State and Federal laws. (Ex. "J," pp. 29-30; Ex. "D," p. 17)

Respectfully submitted,

SWEET, STEVENS, KATZ & WILLIAMS LLP

Date: January 7, 2008

By: /s/ Jonathan P. Riba

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CERTIFICATE OF SERVICE

I, Jonathan P. Riba, Esquire, counsel for Defendants Blue Mountain School District, Dr. Joyce Romberger and James McGonigle, hereby certify that a true and correct copy of the foregoing Response to Plaintiffs' Statement of Material Facts is available through the Court's ECF filing system and was also served by U.S. First Class Mail this day upon:

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Date: January 7, 2008

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