IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

T.W., a minor, by her mother, E.W., Plaintiff,	:	CIVIL ACTION
v.	:	
SCHOOL DISTRICT OF PHILADELPHIA, Defendant.	:	No. 02-8862

MEMORANDUM AND ORDER

J. M. KELLY, J. **APRIL , 2003**

Presently before the Court is a Joint Motion for a Final Disposition filed by Plaintiff T.W., a minor, by her mother, E.W., and Defendant School District of Philadelphia ("the District"). On November 5, 2002, T.W., an eleventh-grade student enrolled in the District, was transferred from Carver High School of Engineering and Science ("Carver"), one of the District's highly selective magnet schools, after T.W. violated the District's "off school grounds" or "24/7" disciplinary provision of the Student Code of Conduct ("the Code") by engaging in a physical altercation with another Carver student off school property and off school hours. The "off school grounds" provision allows the District to discipline students for "conduct [that] may reasonably be expected to undermine the proper disciplinary authority of the school, the safety of students or staff, or [cause] disruption within the school." T.W.'s claim, brought pursuant to 42 U.S.C. § 1983 ("Section 1983"), avers that

the District violated her First Amendment freedoms when it transferred her from Carver for alleged threats attributed to her and challenges the District's "off school grounds" provision as being unconstitutionally vague under the Due Process Clause of the Fourteen Amendment, and in violation of Pennsylvania state law.

On February 25, 2003, this Court conducted a hearing on T.W.'s Motion for a Preliminary Injunction, in which T.W., her mother and Carver's principal testified. On February 27, 2003, we denied T.W.'s Preliminary Injunction Motion, concluding that she was unlikely to prevail on the merits of her Complaint and that returning T.W. to Carver would undermine the District's interest in protecting its students against school violence. T.W.'s appeal of this decision is currently before the United States Court of Appeals for the Third Circuit.

On March 6, 2003, the parties submitted a Joint Motion for Final Disposition that requested this Court to either rule on the Districts' Motion to Dismiss filed on December 23, 2002, or, consider the February 25, 2003 preliminary injunction hearing as a full and final hearing on the merits of all claims contained in T.W.'s Complaint and enter judgment accordingly. We chose the latter option presented to us. The following represents the Court's findings of fact and conclusions of law based upon the evidence presented to us at the February 25, 2003 hearing, the

pleadings and motions proffered by both parties and joint stipulation of facts.

I. FINDINGS OF FACT

1. T.W., a 16-year old girl, is an eleventh-grade student in the District. (Joint Stipulation, p. 2.) T.W. attended Carver from September 2000 until her expulsion from the school in November 2002. (Stipulation, p. 2; Ex. 18.) Carver is a highly selective magnet high school that bases its admissions decisions on the student's academic and behavioral record. (Stipulation, p. 2.) Carver offers a superior academic program, including a wide range of advanced placement courses. (Stipulation, Ex. 2.)

2. As a result of her expulsion, T.W. entered her neighborhood high school, Simon Gratz High School ("Gratz"), where she currently remains enrolled. (Tr., pp. 33-34.) Unlike Carver, Gratz is not a magnet school and does not appear to offer as challenging an academic curriculum. (Tr., p. 39.)

3. The District is a public school district created under Pennsylvania state law. (Compl., p. 2.)

4. On the evening of Saturday, October 26, 2002, T.W. and several of her friends, most of whom were Carver students,

attended a “Sweet Sixteen” party held at a local restaurant by S.H., a fellow Carver student. (Stipulation, p. 12.) T.W. and her friends attended the party fully knowing that they were not invited since neither T.W. nor her friends received an invitation and S.H. had expressly told one of T.W.’s friends not to come. (Tr., p. 54.)

5. Upon her arrival, T.W. and her friends were told by both S.H. and S.H.’s mother to leave the party. (Tr., p. 59.) However, T.W. and her friends did not promptly leave. (Tr., p. 60.)

6. As a result, a physical altercation ensued wherein two friends who had accompanied T.W. to the party assaulted S.H.’s mother. (Tr., pp. 60, 62.) One of the girls involved in the fight had allegedly harassed S.H. the previous year. (Tr., pp. 48-50.) When S.H. attempted to defend her mother, T.W. intervened and engaged in a fight with S.H. (Stipulation, p. 3; Tr., pp. 61-62.)

7. After another student separated T.W. from S.H. and the fight ended, T.W. proceeded outside the restaurant with her friends who had accompanied her to the party. (Tr., p. 64.) At this time, S.H. and her mother remained inside the restaurant. (Tr., p. 64.)

8. While outside the restaurant, S.H.'s father urged T.W. and her friends to leave. (Tr., p. 65.) However, instead of leaving the scene, T.W. and one of her friends called their respective mothers to pick them up from the restaurant. (Tr., p. 65.) After the parents arrived, the Philadelphia Police were called. (Stipulation, p. 3.)

9. After the Police arrived, T.W., who was still angry at S.H., wanted to continue the physical altercation and ordered S.H. to come out of the restaurant. (Tr., p. 67.) S.H. did not leave the restaurant and no more fighting between the girls transpired that night. (Tr., p. 67.)

10. After talking with S.H. and her parents as well as T.W. and her friends, the Police issued a report. (Stipulation, pp. 4, 18.) The Police report describes the incident as a "physical altercation (kicking, pushing, pulling and punching each other), minor injury to all (bumps and marks)." (Stipulation, Ex. 8.)

11. T.W. and two of her friends that had accompanied her to the party signed a protective order requiring them to stay away from S.H. (Tr., p. 69.)

12. On Monday, October 28, 2002, S.H.'s parents reported

Saturday night’s events to the principal of Carver and notified her that since they feared for their daughter’s safety, S.H. would not attend school that day. (Stipulation, p. 4; Tr., p. 94.) The principal also heard reports about the fight from other Carver students. (Tr., p. 95.) According to both T.W. and the principal, accounts of Saturday night’s events were known throughout the school on Monday. (Tr., pp. 31, 95.) The principal asked those students with any knowledge of the events taking place on Saturday night to provide her with a written, signed statement. (Stipulation, p. 4.)

13. The principal subsequently suspended T.W. and her friends, all of whom the principal determined were involved in the Saturday night fight, for five days. (Stipulation, Ex. 16.)

14. On Friday, November 1, 2002, the principal and a District hearing officer met with T.W., her mother and her sister to discuss the matter further. (Stipulation, p. 9.) The principal provided the hearing officer with the written statements she had collected from other students concerning Saturday night’s events. (Stipulation, p. 5.) Portions of the written statements were read to T.W. at that hearing, including reports that, after the party, T.W. and her friends had threatened to harm S.H. on the following Monday. (Tr., p. 102.)

15. The principal recommended transferring T.W. from Carver to another public high school because of her involvement in the Saturday night fight with S.H. and “because of the history I had with this gang of girls that was continuously harassing. . . [S.H.].” (Stipulation, pp. 3, 55; Tr., p. 103.)

16. During the hearing, T.W. presented her own version of Saturday night’s events, and alluded to the fact that she wanted to continue fighting with S.H. on Saturday night so she would not have to fight her at school. (Tr., pp. 101-03.) The hearing officer followed the principal’s recommendation that T.W. should be assigned to another high school. (Stipulation, p. 5.)

17. The “off school grounds” disciplinary provision in the Code was the authority for the hearing officer’s determination. (Stipulation, p. 6.)

18. The “off school grounds” disciplinary provision states, in pertinent part, that the Code’s disciplinary rules apply to any behavior “off school grounds when the conduct may reasonably be expected to undermine the proper disciplinary authority of the school, the safety of students or staff, or [cause] disruption within the school.” (Stipulation, Ex. 6, p. 12.)

19. T.W. received a copy of the Code in September 2002. (Stipulation, Ex. 5.)

20. In her Complaint, T.W. alleges that the District's "off school grounds" policy, as applied to her, is unconstitutionally vague, in violation of the Due Process Clause of the Fourteenth Amendment. Additionally, T.W. contends that since she did not threaten to injure S.H. after Saturday night's events, the District violated her rights under the Free Speech Clause of the First Amendment by punishing her for speech attributed to her. T.W. also avers that the District lacked authority under Pennsylvania state law to discipline T.W. for conduct that did not occur on school grounds.

21. On December 6, 2002, T.W. filed a Motion for Preliminary Injunction and requested that this Court order the District to readmit T.W. to Carver immediately, and allow her to continue her studies there pending a final determination by this Court of her underlying Complaint. On February 25, 2003, this Court held a hearing to address T.W.'s motion for injunctive relief. On February 27, 2003, we denied T.W.'s motion. T.W. appealed that decision to the Third Circuit.

22. On March 6, 2003, the parties submitted a Joint Motion for

Final Disposition in which the parties requested that the Court proceed to final disposition of T.W.'s suit by either ruling on the District's Motion to Dismiss filed on December 23, 2002, or treating the February 25, 2003 hearing as a full and final hearing on the merits of T.W.'s Complaint and entering judgment accordingly.

II. CONCLUSIONS OF LAW

A. Void for Vagueness Challenge

1. T.W. brings her Fourteenth Amendment vagueness claim pursuant to Section 1983,[1] a statute enacted to vindicate federally protected rights. To set forth a cognizable Section 1983 action, a plaintiff must demonstrate that: (1) an individual acting under color of state law (2) deprived the plaintiff of a right protected by the United States Constitution or federal law. West

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[1] Section 1983 provides, in pertinent part:

> Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

v. Atkins, 487 U.S. 42, 48 (1988); Nicini v. Morra, 212 F.3d 798, 806 (3d Cir. 2000).

2. The District argues that T.W. cannot set forth her due process claim pursuant to Section 1983 since the right to attend a specific public school is not protected by the Constitution or federal law. The District is correct insomuch as the United States Constitution does not provide a fundamental right to public education, let alone the right to attend a specific public school. See Goss v. Lopez, 419 U.S. 565, 573 (1975); San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 35 (1973).

3. Although the right to a public education is provided under Pennsylvania state law,[2] we find no case law supporting the proposition that Pennsylvania law also affords students the right to attend a specific public school. See, e.g., Everett v. Marcase, 426 F. Supp. 397, 400 (E.D. Pa. 1977) ("There is no inherent right of the pupil to attend the school of his or her choice, or the choice of the parents, within the school district.").[3] Since T.W. admits that she does not have a

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[2] See 24 Pa. Cons. Stat. § 13-1301; see also O'Leary v. Wisecup, 364 A.2d 770, 773 (Pa. Commw. Ct. 1976)

[3] T.W. contends that the doctrine of issue preclusion bars the District from arguing that she has no property interest sufficient to support her due process claim. T.W. reasons that since the Everett Court already determined that a property

fundamental right to remain at Carver, the issue of whether T.W.'s substantive due process rights under the Fourteenth Amendment were violated is not before this Court and, therefore, will not be addressed.

4. The District also argues that any challenge to the procedural due process afforded T.W. in connection with her transfer is similarly unfounded. Federal law provides that public school students are entitled to minimal procedural protections of the Due Process Clause of the Fourteenth Amendment. See Goss, 419 U.S. at 572-73 (requiring procedural due process protections for students expelled from public school); Everett, 426 F. Supp. at 400 (stating that disciplinary transfers trigger due process

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interest is implicated when a student is transferred from one public high school to another, the District cannot litigate this issue before another federal court.

Issue preclusion is appropriate provided that: (1) the issue sought to be precluded is identical to that involved in the prior litigation; (2) the issue was fully litigated; (3) a final and valid judgment was reached on the issue; and (4) the determination was essential to the prior judgment. Delaware River Port Authority v. Fraternal Order of Police, 290 F.3d 567, 572 (3d Cir. 2002). Although the District was the defendant in the Everett case and had an opportunity to litigate the issues in Everett fully, we do not construe the issues discussed in Everett as identical to those in the instant case. The Everett Court concluded that a property interest is implicated when a student is transferred from one public school to another, thus affording the student with procedural due process protections, such as a hearing and opportunity to appeal. Everett, 426 F. Supp. at 401. Since the District does not dispute that T.W. is afforded procedural due process protection pursuant to Everett, issue preclusion is not proper in the instant case.

protections). Since Pennsylvania law creates a right to a public education, a property interest arises that entitles a student to procedural due process protection. See Goss, 419 U.S. at 572-74; Everett, 426 F. Supp. at 400 (stating that disciplinary transfers create a property interest sufficient to warrant due process protections); see also Hammock v. Keys, 93 F. Supp. 2d 1222, 1227 (S.D. Ala. 2000) (asserting that since Alabama creates a right to a public education, a property interest arises for procedural due process purposes). Thus, T.W.'s transfer from Carver is subject to procedural due process protections, including the right to a hearing before a fair and impartial hearing officer and an opportunity to appeal the disciplinary decision. Everett, 426 F. Supp. at 401-03.

5. However, T.W. does not present a purely procedural due process claim, as she does not challenge the sufficiency of her hearing or the adequacy of the procedural protections provided to T.W. before the District transferred her from Carver.[4] Rather,

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[4] Testimony presented by T.W. at the February 25, 2003 hearing addressed whether T.W.'s mother knew that the conference held with the hearing officer and Carver principal was a due process hearing and if, at that hearing, T.W. was afforded an opportunity to review the written statements from Carver students collected by the principal. Although this testimony appears to question the procedural due process protections the District provided, T.W.'s Complaint does not aver any such claim, and, therefore, we do not address any pure procedural due process argument implied in testimony.

T.W. argues that the District's "off school grounds" disciplinary policy is so broad it fails to provide fair notice as to what it prohibits. Thus, we understand T.W.'s Complaint as setting forth a procedural due process violation under the void for vagueness doctrine, and not any pure procedural or substantive due process claim as the District suggests.

6. The void for vagueness doctrine under the Fourteenth Amendment Due Process Clause arose in the context of challenges to the clarity of criminal statutes. See Kolender v. Lawson, 461 U.S. 352, 357 (1983); Coover v. Saucon Valley School Dist., 955 F. Supp. 392, 401 (3d Cir. 1997). A penal statute is unconstitutionally vague if it: (1) fails to adequately define a criminal offense "with sufficient definiteness that ordinary people can understand what conduct is prohibited," and (2) is not of sufficient clarity to prevent arbitrary and discriminatory enforcement. Kolender, 461 U.S. at 357. By failing to articulate the proscribed conduct fully, unconstitutionally vague laws offend notions of fair warning, a fundamental aspect of due process protection. City of Chicago v. Morales, 527 U.S. 41, 56 (1999); Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972); San Filippo v. Bongiovanni, 961 F.2d 1125, 1135 (3d Cir. 1992). The United States Supreme Court explained that:

> Vague laws offend several important values. First, because we assume that man is free to steer between

> lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

Grayned, 408 U.S. at 108-09.

7. Since the same fairness concerns arise in the course of civil litigation, the void for vagueness doctrine also applies to civil cases. See generally A.B. Small Co. v. American Sugar Refining Co., 267 U.S. 233 (1925); San Filippo, 961 F.2d 1125. However, since penalties are not as severe in the civil context, a lesser degree of specificity in the construction of civil codes and regulations is permissible. See Village of Hoffman Estates v. Flipside, 455 U.S. 489, 498-99 (1982); Coover, 955 F. Supp. at 401.

8. Given the unique concerns confronting school administrators and the greater flexibility afforded to the state to regulate the conduct of children, school disciplinary regulations are not required to be drafted as narrowly or with the same precision as criminal statutes. See Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 686 (1986); Alex v. Allen, 409 F. Supp. 379, 384 (W.D. Pa. 1976). Thus, a school regulation is not

unconstitutionally vague provided an individual of ordinary intelligence would be on notice that certain behavior could put them at risk for disciplinary action, and would not have to guess at the regulation's meaning and application. See Grayned, 408 U.S. at 104.

9. Although students are not stripped of due process protections once they enter a public school, our review of Carver's disciplinary regulations is guided by the observation that "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures...." New Jersey v. T.L.O., 469 U.S. 325, 340 (1985). Given a federal court's limited role in school disciplinary matters, and our refusal to "set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion," we are reluctant to second-guess a school official's decisions. Wood v. Strickland, 420 U.S. 308, 326 (1975); see also T.L.O., 469 U.S. at 342-43 n.9; Fuller v. Decatur Public School Bd. of Educ., 78 F. Supp. 2d 812, 821 (C.D. Ill. 2000).

10. "[V]agueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand." United States v. Mazurie, 419 U.S. 544, 550 (1975). Since T.W. does not contend that the "off

school grounds" provision violates her First Amendment rights, but, rather, alleges only that the provision, as applied to her, is unconstitutionally vague, we consider only: (1) whether the "off school grounds" provision was sufficiently clear to provide T.W. with adequate warning that her involvement in Saturday night's events could result in disciplinary action, and (2) whether the provision failed to set out adequate standards for preventing arbitrary and discriminatory enforcement.

11. To succeed on an "as applied" vagueness challenge, a plaintiff is required to demonstrate that the statute or regulation at issue is impermissibly vague in all of its applications. Hoffman Estates, 455 U.S. at 497. A vagueness claim is defeated if the court determines that the plaintiff engaged in conduct clearly proscribed by the regulation. Id. at 495.

12. Considering the constitutional standards of specificity required for public school regulations, and the Court's reluctance to interfere with matters best reserved for school administrators, we conclude that the District's "off school grounds" disciplinary provision, as applied to T.W., is not unconstitutionally vague.

13. The “off school grounds” provision disciplines Carver students for conduct off school grounds that “may reasonably be expected to undermine the proper disciplinary authority of the school, the safety of students or staff, or [cause] disruption within the school.”

14. However, T.W. claims that, since her fight with S.H. occurred off school grounds, a reasonable person in her position would not have understood that engaging in a physical altercation off school grounds with a fellow Carver student would constitute a violation of the District’s disciplinary Code. We disagree. T.W. greatly minimizes both the severity of the fight between the girls and Carver’s interest in the Saturday night altercation, which could have continued in school. Although neither T.W. nor S.H. were injured as a result of the fight and no criminal charges were brought against either party, this altercation, which started when two students attacked an adult, was serious enough that the Police were called. We do not characterize this altercation as a mere scuffle. Considering the history of animosity between S.H. and T.W.’s friends and the fact that they were clearly not invited, we believe T.W. and her friends attended this party fully knowing that some kind of confrontation or argument would likely occur.

15. Moreover, we do not agree, as T.W. suggests, that the only connection between Saturday night's fight and Carver was that it involved Carver students. The altercation occurred at an event hosted by a Carver student and was witnessed by other Carver students. Accordingly, by Monday, the school was inundated with accounts of the fight, prompting the principal to elicit reports from students of what happened. Moreover, this fight could have continued at school, as T.W. threatened.[5] (See Tr., p. 102.) Considering the increase in school violence, the need for school administrators to prevent this kind of activity by taking appropriate disciplinary action is a paramount concern. Thus, we are not persuaded by T.W.'s suggestion that the physical altercation was not connected to the District and would not trigger the District's concern for the safety of its students and prompt them to act accordingly.

16. Clearly, had T.W. engaged in a physical altercation with another student or made threats of violence on school property, she would be in clear violation of the Code.[6] Even though the

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[5] Although T.W. denies this characterization and we do not have the hearing transcript to validate the principal's statements, we find the principal's testimony presented at the hearing credible and find that during the due process hearing, T.W. explained that she wanted to continue fighting on Saturday night to prevent fighting S.H. at school.

[6] Rule 10 of the Code prohibits harassment of any student, staff member, or school visitor, and lists examples of proscribed

physical altercation did not carry over into school, it is clear that T.W.'s actions on Saturday and her threat of continuing violence after the altercation may have reasonably been expected to undermine the disciplinary authority of school officials and jeopardized the safety of S.H., as well as other Carver students.

17. Moreover, the events of Saturday night, which were witnessed by Carver students and "all over school" by Monday, caused disruption throughout the school, prompting the principal to solicit written statements from all students who had knowledge of the event. Thus, we conclude that the "off school grounds" disciplinary provision, as applied to T.W., sufficiently warned her that engaging in a physical altercation at an event hosted by a Carver student to which she was not invited, with a fellow Carver student, and threatening to continue the fight at school could invite disciplinary action under the Code.

18. Additionally, we conclude that the Code provides adequate

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behavior. (Stipulation, Ex. 6, p. 16.) The Code also explains that fighting, as defined in the Code's glossary, is subject to disciplinary action. (Stipulation, Ex. 6, p. 12.) The Code divides offenses into two "levels" of conduct and specifies the disciplinary action warranted for each. T.W. does not dispute the specificity with which these terms are defined.

standards to prevent arbitrary and discriminatory enforcement. Although the decision to take disciplinary action is ultimately one within the discretion of school administrators, the Code provides sufficient guidelines and procedures to ensure fair and nondiscriminatory enforcement by school administrators. The Code fully defines the types of behavior that violate disciplinary provisions, which T.W. does not appear to dispute. Moreover, the Code provides sufficient procedures to ensure fair treatment of students facing disciplinary action by affording the student "a conference between the teacher and/or principal or designee and the student, followed by notification to the parent(s) or guardian," and a right to appeal the final disciplinary decision. (Stipulation, Ex. 3, p. 10.) Additionally, the Code includes a set of mitigating factors that school administrators must consider prior to disciplinary action.[7]

19. Thus, we find that the "off school grounds" provision conveys a sufficiently definite warning to notify T.W. adequately that her behavior on Saturday night could result in

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[7] The Code mandates that staff members must consider mitigating factors including, but not limited to: "age, health maturity, and academic placement of a student; prior conduct; attitude of student; cooperation of parent/guardian; willingness to make restitution; seriousness of offense; willingness of student to enroll in a student assistance program." (Stipulation, Ex. 6, p. 11.)

disciplinary action under the Code, and, therefore, deny T.W.'s void for vagueness claim.

B. First Amendment Claim[8]

20. T.W. avers that, by relying on the statement accusing "'the girls' of making a threat, during the Saturday night incident, that the matter would be followed up 'on Monday,'" the District violates her First Amendment rights by punishing her for threats attributed to her.[9] (Compl., ¶ 32.)

21. T.W. contends that if the District does not claim that she made this threat and that this threat was not a basis for her punishment, her "First Amendment claim will never come into play." (T.W. Resp. to District's Mot. to Dismiss, p. 13.) The principal and hearing officer were supplied with written statements that purported to hear T.W.'s friends making such a threat. Although no evidence was offered to explain what

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[8] T.W. did not address her First Amendment claim in her Motion for Preliminary Injunction, or at the February 25, 2003 hearing. Consequently, our review of her First Amendment claim focuses only on the few statements in her Complaint and her Response to the District's Motion to Dismiss.

[9] The Joint Stipulation submitted to this Court includes written statements from S.H.'s father and Carver students that witnessed the fight that make reference to threats of continued violence made by "the girls." Although T.W. fails to identify which of the statements support her First Amendment claim, we consider all of the statements included in the Joint Stipulation in assessing her claim.

factors supported the hearing officer's decision, the principal testified that her recommendation to transfer T.W. was based on T.W.'s involvement in the altercation and the history that the principal had "with this gang of girls that was continuously harassing...[S.H]." (Tr., p. 103.) At the injunction hearing, T.W. did not ask the principal if she or the hearing officer relied on the written statements in formulating their decision or otherwise offer evidence that would lead this Court to suspect that T.W. was punished for these statements. Since we are not presented with evidence sufficient to conclude that the alleged statements attributed to T.W. formed a basis for her transfer, T.W. fails to plead a cognizable First Amendment claim.

22. Moreover, we observe that although T.W. is prevented from attending Carver, a more desirable school, she remains at a non-disciplinary academic school. Thus, we do not consider T.W's transfer so much as a form of punishment, but, rather, as a remedial measure taken to ensure the continuing safety of Carver students.

23. Notwithstanding this determination, we nevertheless conclude that the comments attributed to T.W. do not implicate First Amendment concerns since true threatening speech does not

fall within the ambit of First Amendment protection. The First Amendment protects the freedom of speech by preventing "government from proscribing speech . . . because of disapproval of the ideas expressed." R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992).

24. Although free speech is a passionately guarded interest, it is clear that freedom of speech "is not absolute at all times and under all circumstances." Chaplinsky v. New Hampshire, 315 U.S. 568, 571 (1942). See, e.g., Perry Education Assoc. v. Perry Local Educators' Assoc., 460 U.S. 37, 44 (1983). Thus, certain categories of speech, such as obscenity, fighting words and defamation, are not within First Amendment protection. R.A.V., 505 U.S. at 383.

25. First recognized by the Supreme Court in Watts v. United States, threats of violence that constitute "true threats" are of such slight social value that First Amendment protection is not warranted. 394 U.S. 705, 708 (1969); United States v. Kosma, 951 F.2d 549, 553-55 (3d Cir. 1991). Although "true threats" were initially addressed in the context of a criminal case, consideration of what constitutes a "true threat" similarly applies in the civil context. See generally Doe v. Pulaski County Special School District, 306 F.3d 616 (8th Cir.

2002); Coover, 955 F. Supp. at 401; Lovell v. Poway Unified School Dist., 90 F.3d 367 (9th Cir. 1996).

26. The Third Circuit has not yet addressed the First Amendment protection afforded to "true threats" in the civil context or provided a definition of such a threat. However, other circuits have identified "true threats" under an objective test that focuses on whether "a reasonable person would interpret the purported threat as a serious expression of an intent to cause a present or future harm." Doe, 306 F.3d at 622; see also United States v. Fulmer, 108 F.3d 1486, 1490-91 (1st Cir. 1997); United States v. Malik, 16 F.3d 45, 49 (2d Cir. 1994); United States v. DeAndino, 958 F.2d 146, 148 (6th Cir. 1992); United States v. Schneider, 910 F.2d 1569, 1570 (7th Cir. 1990). Although the Circuits are split as to whether this objective standard views the nature of the alleged threat from the perspective of a reasonable recipient or a reasonable speaker, we would reach the same result, in the instant case, under either standard. Compare Doe, 306 F.3d at 624 (focusing on whether a reasonable recipient would have deemed the statement a true threat) and United States v. Maisonet, 484 F.2d 1356, 1358 (4th Cir. 1973) (same), with United States v. Orozco-Santillan, 903 F.2d 1262, 1265 (9th Cir. 1990) (viewing alleged threat from the speaker's viewpoint) and United States v. Welch, 745 F.2d 614, 620 (10th

Cir. 1984) (same).

27. Considering factors such as the context in which the alleged threats were made, the actions of the speaker and the reactions of the listeners, we conclude that T.W.'s comments fall well beyond the ambit of First Amendment protection. The alleged threat that "the matter would be followed up 'on Monday,'" taken in the context of Saturday night's events and the effect it had on Carver students and S.H., particularly, is, therefore, a "true threat." Unlike J.S. v. Bethlehem Area School Dist., a case T.W. relies exclusively upon, we cannot characterize T.W.'s statements as a "misguided attempt at humor or parody." 807 A.2d 847, 859 (Pa. 2002). Thus, we conclude that it was reasonable for school officials to consider her statements as a "serious expression of intent to inflict harm," and take immediate action to respond to the perceived threat. We conclude that T.W. fails to present a cognizable First Amendment claim and, accordingly, enter judgment in favor of the District.

C. Pennsylvania State Law Claims

28. In addition to her federal claims, T.W. also contends that the "off school grounds" disciplinary provision is in excess of the District's statutory power created pursuant to Pennsylvania state law, and requests this Court to hear these claims under

the doctrine of supplemental jurisdiction. See 28 U.S.C. § 1367. Since we have ruled that T.W.'s federal claims are no longer viable, we decline to exercise supplemental jurisdiction over her Pennsylvania state law claims.

29. "Supplemental jurisdiction is designed to permit the parties to resolve, in one judicial proceeding, all claims arising out of a common nucleus of operative fact, without regard to their federal or state character. The purpose of supplemental jurisdiction is to promote convenience and efficient judicial administration." Mullen v. Thompson, 155 F. Supp. 2d 448, 454 (W.D. Pa. 2001).

30. Although there is no bright-line rule for determining whether a federal district court should exercise supplemental jurisdiction for the remaining state law claims when the federal law claims have been denied, we examine factors such as "judicial economy, convenience, fairness, and comity." Id. at 454. Based on these considerations, and since T.W.'s federal law claims have been denied, we believe that the Pennsylvania state courts, who have not yet assessed the viability of the newly enacted "off school grounds" disciplinary policy, would be the best forum for T.W.'s state law claims. Therefore, T.W.'s state law claims will also be denied, but without prejudice to her right to refile them in state court.

Accordingly, the Court will enter judgment in favor of the District and against T.W.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

T.W., a minor, by her mother, E.W., Plaintiff,	:	CIVIL ACTION
v.	:	
SCHOOL DISTRICT OF PHILADELPHIA, Defendant.	:	No. 02-8862

O R D E R

AND NOW, this day of April 2003, in consideration of the Joint Motion for Final Disposition filed by Plaintiff T.W., a minor, by her mother, E.W., and Defendant School District of

Philadelphia ("the District") (Doc. No. 15), requesting this Court to provide a final judgment based on the parties pleadings (Doc. Nos. 1-2, 6-7, 9-11), joint stipulation of facts (Doc. No. 12) and testimony presented at a February 25 preliminary injunction hearing, it is **ORDERED** that judgment is **ENTERED** in favor of the District and against T.W. All outstanding motions, including the District's Motion to Dismiss, are **DISMISSED AS MOOT**.

BY THE COURT:

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JAMES McGIRR KELLY, J.