

IN THE COUNTY COURT OF JACKSON COUNTY, MISSISSIPPI

MARK PRIMO MILLER

PLAINTIFF

VERSUS

CAUSE NO. 2012-20,671

PASCAGOULA SCHOOL DISTRICT AND WAYNE RODOLFICH

DEFENDANT

COMPLAINT

COMES NOW, the Plaintiff, MARK PRIMO MILLER, individually and on behalf of all similarly situated persons, brings forth the following causes of action and alleges the following:

1. Defendant enacted a school policy which unreasonably deprived the Plaintiff of his cell phone for the remainder of the school year, resulting in financial damages. Plaintiff argues that the policy unduly deprived him of his fundamental right to his property and the policy should be more narrowly tailored to achieve the government's goal of maintaining class order.
2. Plaintiff is an individual and resident of Jackson County since 1972; he is a graduate of Pascagoula High School and resides at 4500 Scarlet Oaks Drive, Gautier, MS 39553 with his wife Pam of 23 years and 3 sons, Ben (18), Paul (17), and Luke (15), who all attend school within the Pascagoula School District.
3. Defendant includes a municipal body politic charged with oversight of the education of the children residing within the Pascagoula School District Community and can be contacted at 1006 Communny Avenue, PO Box 250, Pascagoula, MS 39568-0250, 228-938-6491, www.psd.ms. The individual, Wayne Rodolfich, named in his official capacity as part of the PSD has been approached for remedy. Plaintiff holds him and the PSD accountable for the damages suffered because of both their actions and inactions.
4. On or about Wednesday February 8, 2012, Math Teacher Janene Thweatt confiscated an iPhone 4s from Plaintiff's son Paul, which was in his possession during class. The property was owned legally by Plaintiff and legally in the possession of his son Paul.
5. The PSD, based upon a policy never agreed to or signed by the Plaintiff, refused to return Plaintiff's property until after the school year ended.
6. The iPhone is a computer with phone and camera capability built-in so that only one device needs to be carried. Plaintiff loans his son the device for educational reasons, for communication reasons, and for parental reasons to monitor his son's activities and whereabouts.

- a. While Plaintiff recognizes the procedural right of the PSD to maintain order within the classroom, their policy of confiscating his property for the entire school year is substantively too oppressive a measure that hinders his efforts to be a good parent.
 - b. The PSD policy interferes with Plaintiff's ability to communicate with his child after school hours, such as regarding transportation to extracurricular activities.
 - c. The PSD policy hinders Plaintiff's ability to monitor his son's activities, whether during school hours or after school hours. Plaintiff installs monitoring software into the device that enables him to monitor his son's activities and communications.
 - d. The PSD policy creates a serious safety concern for his children. After the Columbine shootings in Colorado, the school systems there and many other places started allowing phones at school, because in the event of an emergency, such as a school shooting or destructive storm, it can be used to contact authorities for assistance and to communicate with parents.
 - e. The iPhone serves educational purposes in regards to accessing information, such as access to the internet, e-books, audio books, and the like. Therefore, ironically, the PSD's policy runs contrary to their public mandate regarding education.
 - f. The iPhone also has calendar and reminder capabilities that assist the Plaintiff's student with scheduling school homework and projects.
7. Plaintiff is obligated by a long term contract to pay for voice & data services for this iPhone device, even if the device is lost or stolen. Plaintiff is subject to a \$395 early termination fee if he cancels his service, but must pay much more if he chooses to replace the device if it is lost or stolen.
 8. Although the iPhone has telephone functionality, it is primarily a computer that has been marketed as a phone to draw attention to its small size. If the device were treated as a computer, music player, or video game, school policy would have directed that it be returned to the Plaintiff at the end of the day. Plaintiff believes that the defendants unnecessarily caused the damages because they treated the device as a phone rather than a computer, music player, or video game, which are all functions which the device performs.
 9. Unlike many other Districts, The PSD Student Handbook omits any legal disclaimer for damages caused by their policy.
 10. The PSD neglects to enforce their policy using readily available technology. Students regularly violate the policy and violations are not equitably enforced. The District needs

to create a policy that everyone involved can live with and one that is followed and enforced, such as the neighboring Ocean Springs School District.

11. Many school districts that do not allow phones, such as neighboring Ocean Springs School District, return them at the end of the day. Although Plaintiff believes that a policy of allowing phones for safety and educational reasons would be a better policy, at the very least, the property of parents, especially those under which they have contractual obligations, should be returned to them in a more timely fashion.
12. Plaintiff has exhausted all known procedures within the PSD to resolve this matter, including an appeal to the Board of Trustees which heard this matter both in public meeting during visitor comment time and in closed-door Executive Session. Unfortunately, the PSD has proved negligent. The PSD refused to even vote on the matter, and they did not even acknowledge Plaintiff's ownership of the device. The Defendants also did not respond to requests for the phone case to be returned or allow the Plaintiff to backup the device to transfer contents to a new device. This would not have violated policy. Such inaction causes the Plaintiff to feel disrespected by the Defendants, and to feel that there is no accountability by the Defendants to anyone.
13. Plaintiff has been informed that the Defendant has revised the cell phone policy for the upcoming year. Reportedly, the school will still keep the property for 45 days on the first offense instead of the remainder of the school year. While Plaintiff is pleased by this admission by the Defendant that the previous policy was too oppressive, Defendant maintains that 45 days is still too long. The courts have ruled that when a fundamental right is violated, the government must not only show a compelling reason for the violation, but it must narrowly tailor its policy to use the least restrictive means possible to accomplish their goals. Keeping the phone for 45 days does not further their goal any better than keeping the phone for 1 day. It only serves to cause financial damages to the parents of the students, and to hinder their parenting abilities, such monitoring student location, communicating for transportation to school activities, and setting up calendar reminders pertaining to homework and school projects. Furthermore, the Plaintiff is disappointed that the Defendant has not addressed the unequal enforcement of the policy whereby many blatant possession violations go unenforced. In addition, written requests for a copy of the policy have gone unanswered, neither has Plaintiff received a response to a letter that offered free Engineering Services (See Exhibit "A") to eliminate the devices from the School District. Defendant shows complete disrespect to the Plaintiff and Parents of the PSD. They do whatever they want, without accountability to anyone. Government should not act so capriciously and oppressively towards its citizens.
14. Plaintiff recognizes the authority of the PSD to establish constitutionally valid policies and would not seek to usurp that authority. However, Plaintiff would suggest to the PSD the following as a more reasonable, less restrictive policy, which would still accomplish the goals of the PSD. The policy should allow phones and handheld computers at school, but require that they generally be turned off or muted during school time. They would be allowed on if a teacher or school official specifically allowed it. This would basically be the same policy the school board uses in their own school board meetings and it's

Faculty. If a disruption occurs because of the device, it may be confiscated, but it should be returned upon request at the end of the school day. Parents should be notified by the school of the infraction. Repeated violations by the same student should be handled through normal disciplinary procedures outlined in the Student Handbook.

WHEREFORE, Plaintiff seeks compensatory damages in the amount of \$890.45 and a determination by this court that the PSD policy is unconstitutional because it is too over-reaching in its attempt to maintain class order. The Plaintiff asks the court for an injunction for the PSD to stop enforcement of the portion of its policy which deprives parents of their legal property. This is for the good of the entire community, for parents everywhere who are using these devices to maintain communication with their children. Handling this problem properly at the local level will prevent the need to seek relief in federal court under U.S. Title 42 USC Section 1983 for the violation of constitutionally protected liberties secured by the Fourteenth Amendment.

Dated this 13th day of July, 2012

Mark P. Miller, P.E., Plaintiff
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and accurate copy of the foregoing document was served on the persons listed below, via certified U.S. Mail, return receipt requested, at the addresses indicated below on the date indicated.

Date: July 13, 2012
A. Kelly Sessoms
Phelps Dunbar LLP
2901 Magnolia St
PO Box 30
Pascagoula, MS 39568

Mark P Miller