

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

**C.C., and J.C., as next friend(s) of the
minor child M.C.,**

Plaintiff(s),

v.

Civil Action No:

Judge:

**THE HARRISON COUNTY
BOARD OF EDUCATION,**

Defendant.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

NOW COMES, the Plaintiffs C.C. and J.C. as next friend(s) of the minor child, M.C. by and through their counsel Teresa C. Toriseva, Esq., and Toriseva Law, and Loree Stark, Esq. of the American Civil Liberties Union Foundation of West Virginia, for their Complaint against the Defendant does so state and allege the following:

PARTIES

1. Plaintiffs C.C. and J.C. (hereinafter referred to as "Plaintiffs") are adult individual residents of Harrison County, West Virginia, and is the next friend of M.C.
2. The minor child M.C. is a minor child residing in Harrison County, West Virginia who attends Liberty High School.
3. Defendant Harrison County Board of Education (hereinafter "HCBE") is a corporation authorized and organized under West Virginia Code §18-5-5.

JURISDICTION AND VENUE

4. All allegations contained herein occurred in Harrison County, at Liberty High School in Clarksburg, West Virginia.
5. Harrison County Board of Education is a corporation authorized and organized under West Virginia Code §18-5-5 with its principal place of business located at 445 W. Main St., Clarksburg, West Virginia 26301.

FACTS

6. The minor child M.C. is currently a junior at Liberty High School.
7. Prior to his freshman year at the school, M.C. and his parents met with members of the administration of the school so that the school and faculty would be informed that M.C. was a transgender boy, that he preferred to be referred to by his chosen name, that his pronouns were “he”, “his”, and “him”, and that he planned to use the boys’ restroom.
8. On or about Tuesday, November 27, 2018, M.C. needed to use the restroom after school but prior to a scheduled trip with the school band to Morgantown.
9. On this day, M.C. went to use the boys’ restroom near the cafeteria. After checking to make sure no one else was in the restroom, he went into a stall.
10. Moments later, Mr. Lee Livengood, an assistant principal at Liberty High School, followed M.C. into the restroom and began berating M.C. while he was in the stall regarding M.C.’s choice of bathroom.
11. M.C. explained that he was a boy and that is why he was using that restroom and that the restroom was empty when he entered.
12. Mr. Livengood, then challenged M.C. to “come out here and use the urinal” in front of him if he was really a boy.

13. Mr. Livengood demanded that M.C. expose his private area in front of and in the presence of Mr. Livengood.
14. M.C. explained to Mr. Livengood that he was assigned as a female at birth, but that he identifies as a male.
15. As M.C. exited the stall, Mr. Livengood blocked the exit of the restroom preventing M.C. from leaving the restroom.
16. Mr. Livengood is a fully grown adult male and is much larger than M.C.
17. Mr. Livengood confined M.C. in the restroom and verbally assaulted M.C. which frightened M.C. and made him fear for his safety and well-being.
18. When M.C. escaped from the restroom, he was met by a parent of another child in the band. M.C. broke down into tears and began crying uncontrollably.
19. Mr. Livengood, in the presence of this other parent then stated, "I'm not going to lie, you freak me out."
20. Mr. Livengood's tirade and assault of M.C. was so loud it could be heard down the hallway and into the cafeteria.
21. C.C. and her husband J.C. spoke with members of the administration at Liberty High School as well as an assistant superintendent within 24 hours following this incident.
22. Despite being assured that an investigation would take place, Mr. Livengood has continued to be at the school daily and no one from the school or the Harrison County Board of Education contacted C.C. in the weeks following the incident to take M.C.'s statement or to update the family.
23. In the time following the incident, M.C. has suffered from severe anxiety associated with his education and his extracurricular activities.

24. C.C., J.C., and the minor child M.C. received no meaningful response from the Harrison County Board of Education until the ACLU-WV became involved.
25. In the interim, Mr. Livengood continued to overtly attempt to intimidate/harass both C.C. and the minor child M.C.
26. On December 6, 2018 C.C. offered to help at the concession stand for the North Marion and Fairmont basketball game held at Liberty High School.
27. Upon arrival at this game C.C. and M.C. were informed that Mr. Livengood was present.
28. C.C. instructed M.C. to stay in the concession stand with her until he was to perform with the drumline.
29. C.C. reports that as soon as Mr. Livengood came into the cafeteria and noticed M.C. was there, he got into line at the concession stand to purchase something.
30. When Mr. Livengood was ordering and getting his items from the concession stand C.C. and M.C. turned their back while C.C. hugged her son M.C. to comfort him.
31. Mr. Livengood continued to intimidate M.C. by walking back in forth in front of the concession stand without reason.
32. Mr. Livengood then sat close by the concession stand and sat at a table facing the concession stand while staring at C.C. and M.C.
33. Finally, once M.C. left the concession stand to play with the drumline, Mr. Livengood took it upon himself to walk directly in front of the band as if he was chaperoning them into the gym. The actions of Mr. Livengood, made M.C. extremely uncomfortable and anxious.
34. After the November incident, Mr. Livengood was suspended and then later reinstated.

35. On or about the week of March 20, 2019, the HCBE voted not to renew Mr. Livengood's contract at the end of the school year.
36. Soon after, with full knowledge of the afore-described incident, the HCBE reversed itself and voted to renew the contract of Mr. Livengood.
37. Throughout the remainder of the school year, despite an agreement between C.C. and Defendant HCBE that Mr. Livengood would never intentionally share the same spaces as M.C., Mr. Livengood would continuously appear and remain present during M.C.'s lunch period.
38. At all times relevant hereto, Mr. Livengood was an Assistant Principal of Liberty High School, employed by Defendant HCBE and acted as an agent and representative of Defendant HCBE.

Count 1: False Imprisonment

39. Plaintiffs incorporate by reference in this count all other material allegations set forth elsewhere in this complaint.
40. Mr. Livengood and other employees named and not named were acting as the agents, representatives, and employees of the Harrison County Board of Education when they committed the acts herein.
41. An actor is subject to liability for false imprisonment if (a) he acts intending to confine the other or third person within boundaries fixed by the actor and (b) his act directly or indirectly results in such a confinement of the other, and (c) the other is conscious of the confinement or is harmed by it. Restatement 2d of Torts §35 (2nd 1979).
42. When M.C. exited the stall in the restroom, Mr. Livengood blocked the exit of the restroom and prevented M.C. from escaping the restroom without M.C.'s consent.

43. Mr. Livengood intended to block M.C. in the restroom in order to intimidate, scare, and assault M.C.

44. M.C. was aware he was being confined and knew of no other means of escape except the single entrance to the restroom which Mr. Livengood physically barricaded with his body.

45. As a direct and proximate result of Defendant HCBE's liability through its employee, agent, and representative Mr. Livengood, M.C. suffered personal injuries and damages, including but not limited to suffering and mental anguish, past and future lost enjoyment of life, past and future humiliation, embarrassment, indignity, and shame, economic damages, diminished earning capacity, and future lost wages.

Count 2: Assault

46. Plaintiff incorporates by reference in this count all other material allegations set forth elsewhere in this complaint.

47. Mr. Livengood and other employees named and not named were acting as the agents, representatives, and employees of the Harrison County Board of Education when they committed the acts herein.

48. Mr. Livengood is an adult fully grown male. M.C. is a minor child.

49. While imprisoned in the restroom, Mr. Livengood berated M.C. demanding that M.C. expose himself and use the urinal in front of him.

50. Mr. Livengood further placed M.C. in the reasonable fear of an immediate and nonconsensual touching.

51. As a direct and proximate result of Defendant HCBE's liability through its employee, agent, and representative Mr. Livengood, M.C. suffered personal injuries and damages,

including but not limited to suffering and mental anguish, past and future lost enjoyment of life, past and future humiliation, embarrassment, indignity, and shame, economic damages, diminished earning capacity, and future lost wages.

Count 3: Sexual Harassment

52. Plaintiff incorporates by reference in this count all other material allegations set forth elsewhere in this complaint.

53. Conduct of a sexual nature may include, but is not limited to, verbal or sexual advances.... comments regarding physical or personality characteristics of a sexual nature; sexually-oriented “kidding,” “teasing,”.... And any harassing conduct to which an employee or student would not be subjected but for such person’s sex. *Harry v. Marion Cty. Bd. of Educ.*, 203 W. Va. 64, 65 (1998).

54. Sexual harassment by employees, such as an assistant principal, is automatically imputed to the employer, Harrison County Board of Education, when the harassment results in tangible harm to the student such as M.C.

55. As a direct and proximate result of Defendant HCBE’s liability through its employee, agent, and representative Mr. Livengood, M.C. suffered personal injuries and damages, including but not limited to suffering and mental anguish, past and future lost enjoyment of life, past and future humiliation, embarrassment, indignity, and shame, economic damages, diminished earning capacity, and future lost wages.

Count 4: Intentional Infliction of Emotional Distress

56. Plaintiff incorporates by reference in this count all other material allegations set forth elsewhere in this complaint.

57. The student-school administrator relationship should entitle a student to a greater degree of protection from insult and outrage than if he were a stranger to a defendant.
58. The conduct of Defendant HCBE by and through its agent, representative, and employee Mr. Livengood was atrocious, intolerable and so extreme and outrageous that it exceeded the bounds of decency.
59. The Defendant HCBE by and through its agent, representative, and employee Mr. Livengood acted with the intent to inflict emotional distress, and/or acted recklessly when it was certain or substantially certain emotional distress would result from Mr. Livengood's conduct of imprisoning a student in the bathroom, demanding that student expose himself, scaring and frightening the student, and stating that the student freaked the assistant principal out.
60. As a direct and proximate result of Defendant HCBE's liability through its employee, agent, and representative Mr. Livengood, M.C. suffered personal injuries and damages, including but not limited to suffering and mental anguish, past and future lost enjoyment of life, past and future humiliation, embarrassment, indignity, and shame, economic damages, diminished earning capacity, and future lost wages.

Count 5: Negligence Per Se

61. Plaintiff incorporates by reference in this count all other material allegations set forth elsewhere in this complaint.
62. W. Va. Code § 18-2C-1 states "[t]he Legislature finds that harassment, intimidation or bullying, like other disruptive or violent behavior, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe, nonthreatening

environment. The Legislature further finds that students learn by example. The Legislature charges school administrators, faculty, staff and volunteers with demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation or bullying.”

63. W. Va. Code § 18-2C-3(b) states “[e]ach county board policy shall, at a minimum, include the following components:

- (1) A statement prohibiting harassment, intimidation or bullying of any student on school property, a school bus, at a school bus stop or at school sponsored events;
- (2) A definition of harassment, intimidation or bullying no less inclusive than that in section two [§ 18-2C-2] of this article;
- (3) A procedure for reporting prohibited incidents;
- (4) A requirement that school personnel report prohibited incidents of which they are aware;
- (5) A requirement that parents or guardians of any student involved in an incident prohibited pursuant to this article be notified;
- (6) A procedure for documenting any prohibited incident that is reported;
- (7) A procedure for responding to and investigating any reported incident;
- (8) A strategy for protecting a victim from additional harassment, intimidation or bullying, and from retaliation following a report;
- (9) A disciplinary procedure for any student guilty of harassment, intimidation or bullying;
- (10) A requirement that any information relating to a reported incident is confidential, and exempt from disclosure under the provisions of chapter twenty-nine-b [§§ 29B-1-1 et seq.] of this code; and
- (11) A requirement that each county board shall input into the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in section twenty-six [§ 18-2-26], article two of this chapter, and compile an annual report regarding the means of harassment, intimidation or bullying that have been reported to them, and the reasons therefor, if known. The West Virginia Department of Education shall compile the information

and report it annually beginning July 1, 2012, to the Legislative Oversight Committee on Education Accountability.

64. Upon information and belief, Defendants policy regarding bullying, harassment and intimidation either does not exist or if it exists, is woefully inadequate in violation of West Virginia Law.
65. Further, the Defendant, if it has a policy regarding bullying, harassment and intimidation, violated that policy when Mr. Livengood as its agent, employee, and representative committed the acts as aforementioned.
66. At all times material and relevant herein, Mr. Livengood was the assistant principal of Liberty High School;
67. Defendant Harrison County Board of Education was aware that this incident of harassment, bullying, and intimidation occurred between Mr. Livengood and M.C.
68. Defendant was negligent *per se* in that the actions of its employee Mr. Livengood were the exact type of atrocious, inexcusable actions that W.Va. Code §18-2C-1 *et seq.* was intended to prevent.
69. Defendant breached its duty by failing to immediately act to address and remedy this situation.
70. As a direct and proximate result of Defendant HCBE's liability through its employee, agent, and representative Mr. Livengood, M.C. suffered personal injuries and damages, including but not limited to suffering and mental anguish, past and future lost enjoyment of life, past and future humiliation, embarrassment, indignity, and shame, economic damages, diminished earning capacity, and future lost wages.

Count 6: Negligent Retention Hiring and Supervision

71. Plaintiff incorporates by reference in this count all other material allegations set forth elsewhere in this complaint.
72. Defendant HCBE possessed a duty to use reasonable care in the selection and retention of its respective employees.
73. W.Va. Code §18-2-1 states that the Legislature finds that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. The Legislature finds that harassment, intimidation or bullying, like other disruptive or violent behavior, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe, nonthreatening environment. The Legislature further finds that students learn by example. The Legislature charges school administrators, faculty, staff and volunteers with demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation or bullying.
74. Defendant HCBE, knew or should have known that retaining and renewing the contract of an employee who falsely imprisoned, assaulted, sexually harassed, sexually abused, bullied, and further intimidated a student and minor child could result in harm to the child.
75. After Mr. Livengood committed the November incident, Defendant HCBE reversed its earlier vote to allow Mr. Livengood's contract to expire and renewed Mr. Livengood's contract.
76. Subsequent to Defendant HCBE's vote to renew his contract, Mr. Livengood violated an would continuously appear during M.C.'s lunch period to further intimidate, harass, and bully M.C.

77. Instead of protecting a student who suffered a traumatic event at the hands of an employee, Defendant HCBE tolerated and rewarded Mr. Livengood with a new contract and enabled Mr. Livengood's ability to intimidate, harass, and bully M.C.
78. As a direct and proximate result of Defendant HCBE's negligent hiring, retention, and supervision, M.C. suffered personal injuries and damages, including but not limited to suffering and mental anguish, past and future lost enjoyment of life, past and future humiliation, embarrassment, indignity, and shame, economic damages, diminished earning capacity, and future lost wages.

Count 7: Punitive Damages- Harrison County Board of Education

79. Plaintiff incorporates by reference in this count all other material allegations set forth elsewhere in this complaint.
80. In their failure to act on behalf of J.C., C.C., and protect M.C., the Harrison County Board of Education acted with malice, oppression, or wanton, willful, or reckless conduct with indifference to civil obligations affecting the rights of J.C., C.C., and M.C. which gives rise to punitive damages.

WHEREFORE, Plaintiffs pray for judgment against the Defendant, for compensatory damages for their special and general injuries as herein alleged, including, but not limited to, permanent physical injuries, past and future pain, suffering and mental anguish, past and future lost enjoyment of life, past, and future humiliation, embarrassment, indignity, and shame, economic damages, diminished earning capacity, and future lost wages, attorney fees, the costs of this action and for such other legal and equitable relief to which they may be entitled.

Count 8: Injunctive Relief to Prevent Lee Livengood from Interaction with M.C.

81. On January 11, 2019 a meeting was held consisting of representatives from the Harrison County Board of Education and representative for the minor child M.C.

82. At the conclusion of the meeting Superintendent Mark Manchin, after considering the concerns of the J.C., C.C. and M.C., the ACLU-WV, and Fairness West Virginia agreed to the following:

- a. Authorize and implement a gay-Straight Alliance club immediately at Liberty High School;
- b. Authorize and implement policies requiring all employees in the Harrison County School District to, upon notice by a student, teacher, or administrator, refer to students by the name and pronouns that correspond with their gender identity;
- c. Authorize and implement policies requiring administrators to, upon a request by a student or student's guardians, update student education records (such as attendance reports, school IDs, transcripts, electronic records) with the student's chosen name and the appropriate gender markers;
- d. Authorize, implement, and maintain comprehensive ongoing training for staff, teachers, and administrators in Harrison County Schools;
- e. Work with Fairness West Virginia on the substance and execution of the training referenced in paragraph 4;
- f. Require Assistant Principal Livengood to:
 - i. Write a letter of apology to M.C. with regards to the November 27, 2018 incident; and
 - ii. Attend a training with regards to best practices for working with LGBTQ+ students prior to his reinstatement;
- g. Ensure an environment exists where Assistant Principal Livengood have little to no interaction with M.C.

83. Despite this agreement Mr. Livengood continues to violate paragraph g. of the agreement mentioned above.

84. Mr. Livengood did provide M.C. with a woefully inadequate written apology in which he apologized only for "raising his voice."

85. The Defendant Harrison County Board of Education has been made aware of every time that Mr. Livengood has appeared in M.C.'s lunch period despite the fact that there are other school staff that are already present at these lunches.

86. Mr. Livengood has demonstrated that he does not take the terms of the agreement seriously as he continues to try and manipulate his work duties to interact with M.C..

87. Pursuant to Rule 65 of the West Virginia Rules of Civil Procedure, the Plaintiff is seeking an injunction forcing the Defendant to require that Mr. Livengood have no further contact and/or interaction with J.C., C.C., or M.C.

WHEREFORE, Plaintiff requests an injunction requiring the Defendant Harrison County Board of Education preventing Lee Livengood from interacting, or having contact with J.C., C.C., or M.C.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Plaintiff C.C., J.C., and M.C.



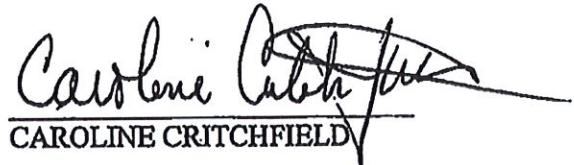
Teresa C. Toriseva, Esq.
WV Bar ID No. 6957
Toriseva Law
1446 National Road
Wheeling, WV 26003
304-238-0066
justice@torisevalaw.com



Loree Stark, Esq.
WV Bar ID No. 12936
ACLU Foundation of West Virginia
PO Box 3952
Charleston, WV 25339-3952
304-345-9246
lstark@acluwv.org

VERIFICATION

I, Caroline Critchfield, do hereby certify and swear under penalty of perjury that the factual information set forth in the foregoing Complaint, is true and correct, to the best of her knowledge and belief, the undersigned certifies and verifies as aforesaid that she verily believes the same to be true.


CAROLINE CRITCHFIELD

STATE OF West Virginia

COUNTY OF Monongalia, to-wit:

I, Brittany Everett, a Notary Public in and for the State and County aforesaid do hereby certify that Caroline Critchfield, whose name is signed in the foregoing Verification bearing the date of the 27th day of August, 2019, has this day acknowledged the same before me in my said county.

Given under my hand this 27th day of August, 2019.

My commission expires January 8, 2020.



Brittany Everett
Notary Public