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

KIRA NAGLE, et al.,	:	
Plaintiffs,	:	
	:	Civil Action No.: 3:24-cv-1808
v.	:	
THE POTTSVILLE AREA SCHOOL DISTRICT, et al.,	:	
Defendants.	:	

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT

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Plaintiffs Kira Nagle, et al. (collectively, "Plaintiffs")[1], by and through their undersigned counsel, hereby submit this Brief in Opposition to the Motion to Dismiss Plaintiffs' Complaint and Brief in Support thereof submitted by Defendants Pottsville Area School District ("PASD"), Sarah Yoder, Kayla Peters, and Cynthia Stasulli (collectively, the "PASD Defendants"). (ECF No. 10-11).

I. INTRODUCTION:

In a distorted effort to dismiss Plaintiffs' Complaint, the PASD Defendants rely primarily on three fundamentally flawed theories.

First, throughout the PASD Defendants' Motion to Dismiss, the PASD Defendants erroneously conflate Plaintiffs' claims as allegedly being brought by Gillingham Charter School ("Gillingham"). To be clear, this action has been brought by the attendee students/teachers of

[1] Plaintiffs in this action are Kira Nagle, Sean Moore, Logan Sabol, Lydia Ulrich, Athena Gerlek, Elijah Fry, C.H., a Minor, by Jeffrey Hill, Guardian, B.B., a Minor, by Heather Beam and Eric Beam, K.B., a Minor, by Michelle Santonastaso, Guardian, E.B., a Minor, by Eric Brown, Guardian, M.B., a Minor, by Monica Stocker, Guardian, B,C., a Minor, by Timothy Carden and Virginia Carden, Guardians, S.C., a Minor, by Michael Corcoran, Guardian, C.C., a Minor, by Lindsay Cohan, Guardian, H.H., a Minor, by Michelle Ennis, Guardian, S.K., a Minor, by Alicea Purcell-Anthony, Guardian, J.K., a Minor, by Brenda Krasinsky, Guardian, W.R., a Minor, by George Rondeau and Tracey Rondeau, Guardians, K.R., a Minor, by John Ruchinski and Cindy Ruchinski, Guardians, L.S., a Minor, by Shirley Shaffer, Guardian, (together, "Student Plaintiffs"), Deidra Herbert, and Leonard Martin

Gillingham—not Gillingham as an entity—as a result of the PASD Defendants' unconstitutional actions and unlawful conduct at the Schuylkill County Regional College Fair (the "College Fair"). Indeed, public school *students* who simply wanted to attend the College Fair were impermissibly harmed and damaged here, not some emotionless or dispassionate public entity. Any effort by the PASD Defendants to try to mislead this Court with mischaracterized facts and misconstrued claims outside of Plaintiffs' Complaint must be rejected.

Second, the PASD Defendants rely on a fictional, after-the-fact classification of the College Fair invitees as being limited to students from "school district members of the Intermediate 29" to justify their arbitrary and discriminatory treatment of Plaintiffs. Plaintiffs, however, sufficiently allege that students from schools *other* than "school district members of the Intermediate 29" were, in fact, not only invited but attended the College Fair. Thus, this Court should not humor the PASD Defendants' tenuous and irrational justification for admittedly discriminating against Plaintiffs based solely on their status as perceived *charter* school students/teachers, despite being *public* school students/teachers just like the students/teachers at PASD.

Finally, contrary to the PASD Defendants' meritless reliance on the argument that Martz Hall is a "nonpublic forum," Martz Hall has historically been open to the public for a variety of events, including notable concerts and iconic sporting events. Indeed, Martz Hall has been the public venue for legendary sporting events, such as basketball performances by Kobe Bryant and boxing matches with the pro boxing champion, Muhammad Ali. With this historical backdrop in mind, the PASD Defendants cannot now arbitrarily—and conveniently—claim that the College Fair was a nonpublic forum; at the very least, the College Fair was a limited public forum.

The PASD Defendants' arguments have no basis in law or fact. Accordingly, and for the reasons set forth fully below, the PASD Defendants' Motion must be denied.

II. COUNTER-STATEMENT OF FACTS:

Plaintiffs are public charter school students, teachers, and administrators who were denied the opportunity to attend the College Fair—an opportunity afforded to *all* other public high school students in Schuylkill County, including PASD students. These Plaintiffs are no different than any other public high school students in Schuylkill

County; yet, according to the PASD Defendants, Plaintiffs can be (and admittedly have been) excluded from opportunities available to their traditional public "school district" peers in Schuylkill County merely because they opted to attend a public *charter* school, namely Gillingham.

As invitees to the College Fair, an annual event hosted by PASD inside the public gymnasium at Martz Hall (which is owned and operated by PASD), Plaintiffs, along with students from Nativity BVM, Marian Catholic, and the Schuylkill Technology Center ("STC"), received two separate invitations to attend. (ECF No. 1 at ¶ 82, Exhibit C). After completing and submitting the required Registration Form, which notified the PASD Defendants of Plaintiffs' intention of attending the College Fair, Plaintiffs were subsequently informed—one week before the College Fair—that they were unceremoniously disinvited. (ECF No. 1 at ¶¶ 80-82). According to the PASD Defendants, *only* students from public "school districts" *affiliated* with the Schuylkill Intermediate Unit 29 (the "IU 29") were invited to the College Fair, despite the inclusion of students from other private Catholic schools and

the STC in the invitations (and notwithstanding the fact that Gillingham *is* affiliated with the IU 29). (ECF No. 1 at ¶¶ 74, 82).

As public high school students/teachers from Schuylkill County, Plaintiffs proceeded to attend the College Fair on October 3, 2024, where they were met with an overwhelmingly hostile welcome by the PASD Defendants. (ECF No. 1 at ¶¶ 87-91). While Plaintiff Deidra Herbert peacefully read a statement informing the PASD Defendants of Plaintiffs' right to attend the College Fair (as public high school students/teachers residing in Schuylkill County), Defendant Yoder physically corralled and removed Plaintiff Martin from Martz Hall and physically corralled other Plaintiffs to contain them to the registration desk area. (ECF No. 1 at ¶¶ 92-93). Afterwards, Defendant Yoder engaged in repeated forceful conduct to physically restrain and intimidate Plaintiffs from recording the encounter with their phones and to prevent Plaintiffs from walking towards the College Fair booths/tables to learn more about the colleges/universities in attendance and to speak with college/university representatives who attended. (ECF No. 1 at ¶¶ 94-102).

In one instance, having noticed Plaintiff C.H., a Gillingham student, filming the encounter, Defendant Yoder stormed towards Plaintiff C.H., physically grabbed his arm, forced his arm down, and attempted to seize his phone from his hand. (ECF No. 1 at ¶ 94). Similarly, Defendant Yoder placed her hands on the shoulders of Plaintiff K.B., moved Plaintiff K.B. aside, and then walked forward bumping Plaintiff K.B.'s shoulder. (ECF No. 1 at ¶ 99).

Those Plaintiffs who were not physically restrained by Defendant Yoder were detained near the registration desk area by Defendants Peters and Stasulli to prevent them from proceeding into the College Fair area. (ECF No. 1 at ¶ 100). While some Plaintiffs were able to proceed towards the College Fair booths/tables, Defendant Yoder attempted to impede and block those students from speaking with or interacting with the college/university representatives in attendance at the College Fair. (ECF No. 1 at ¶ 102).

Upon seeing some Plaintiffs moving toward the College Fair booths/tables, Defendant Peters—using a microphone plugged into the PASD intercom system—instructed the college/university representatives and other public "school district" student attendees to

immediately leave the Martz Hall gymnasium floor and to proceed to the upper-lobby bleachers that overlooked the gymnasium floor. (ECF No. 1 at ¶ 103). The college/university representatives who remained at their respective booths/tables were personally directed by Defendant Yoder to cease speaking with Plaintiffs and immediately leave the Martz Hall gymnasium floor and join the other attendees in the upper-lobby bleachers. (ECF No. 1 at ¶ 104, 106). Plaintiffs were then left walking around the empty College Fair booths/tables while their peers and representatives from their prospective future colleges/universities sat, stared, and gawked at Plaintiffs. (ECF No. 1 at ¶ 105, 107).

After officers from the Pottsville Area Police Department arrived—in response to the PASD Defendants' wholly unnecessary 911 call—Defendant Yoder and Plaintiff Herbert reached a compromise to allow Plaintiffs to remain at the College Fair with attended booths/tables for no more than thirty (30) minutes, only if Plaintiffs agreed to turn over their phones to the PASD Defendants and to not record the situation any further. (ECF No. 1 at ¶ 109). Plaintiffs refused to turn over their phones, but kept their phones in their pockets, only being permitted to use their phones to take pictures of

college/university brochures and related materials. (ECF No. 1 at ¶ 110). These conditions (e.g., time limit, cell phone restrictions, and isolation from their peers) were *not* imposed on any other public high school student attendees at the College Fair. (ECF No. 1 at ¶¶ 109-110).

III. COUNTER-STATEMENT OF QUESTIONS INVOLVED:

1. Whether the Court should deny the PASD Defendants' Motion where Plaintiffs have sufficiently pleaded a claim under 42 U.S.C. § 1983 based upon the PASD Defendants' clear and unequivocal violation of Plaintiffs' First Amendment rights to access, assembly, and free speech.

   Suggested Answer: Yes.

2. Whether the Court should deny the PASD Defendants' Motion where Plaintiffs have sufficiently pleaded a claim under 42 U.S.C. § 1983 based upon the PASD Defendants' violation of Plaintiffs' Fourth Amendment rights wherein video evidence conclusively establishes that the PASD Defendants placed their hands on Plaintiffs and restricted their movement.

   Suggested Answer: Yes.

3. Whether the Court should deny the PASD Defendants' Motion where Plaintiffs have sufficiently pleaded a claim under 42 U.S.C. § 1983 based upon the PASD Defendants' violation of Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment under a "class of one" theory.

   Suggested Answer: Yes.

4. Whether the Court should deny the PASD Defendants' Motion where Plaintiffs have sufficiently pleaded a claim under 42 U.S.C. § 1983 based upon the PASD Defendants'

utilization of excessive force against minor student Plaintiffs.

Suggested Answer: Yes.

5. Whether the Court should deny the PASD Defendants' Motion where Plaintiffs have sufficiently pleaded a claim under the Eighth Amendment based upon the PASD Defendants' creation of a cruel and unusual "fishbowl" environment at the College Fair.

Suggested Answer: Yes.

6. Whether the Court should deny the PASD Defendants' Motion where Plaintiffs have sufficiently pleaded a claim under 42 U.S.C. § 1985.

Suggested Answer: Yes.

7. Whether the Court should exercise supplemental jurisdiction over Plaintiffs' state law Equal Protection claim under the Pennsylvania Constitution.

Suggested Answer: Yes.

8. Whether the Court should deny the PASD Defendants' Motion where Plaintiffs undoubtedly have standing to bring this action.

Suggested Answer: Yes.

IV. ARGUMENT:

A. Plaintiffs have sufficiently pleaded a claim under 42 U.S.C. § 1983 based upon the PASD Defendants' clear and unequivocal violation of Plaintiffs' First Amendment rights to access, assembly, and free speech.

By organizing, hosting, and opening up the College Fair to *all* high school students of Schuylkill County, the PASD Defendants created a limited public forum in the College Fair. (ECF No. 1, Exhibit C) Plaintiffs, therefore, had a First Amendment right of access, assembly, and free speech to attend and partake in the College Fair. The PASD Defendants violated Plaintiffs' First Amendment rights because the restrictions the PASD Defendants imposed upon Plaintiffs were neither viewpoint neutral nor reasonable. In turn, the PASD Defendants' humiliating and unlawful mistreatment of Plaintiffs at the College Fair amounted to unconstitutional retaliation. Accordingly, Plaintiffs have sufficiently alleged a claim under 42 U.S.C. § 1983 for First Amendment violations.

i. The College Fair was a limited public forum, not a nonpublic forum as alleged by the PASD Defendants.

As the United States Supreme Court has explained, "[t]he existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue." *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 44 (1983). Schools

typically are considered non-public fora. *Nurre v. Whitehead*, 580 F.3d 1087, 1093 (9th Cir. 2009). "[S]chool facilities may be deemed to be public forum[]," however, "if school authorities have by policy or by practice opened those facilities [to] indiscriminate use by the general public, or by some segment of the public, such as student organizations." *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 267 (1988) (quotations omitted). A limited public forum refers to "a type of nonpublic forum that the government intentionally has opened to certain groups or to certain topics." *DiLoreta v. Downy Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958, 965 (9th Cir. 1999).

In light of the foregoing, it is indisputable that the College Fair was a limited public forum, and *not* a nonpublic forum as alleged by the PASD Defendants.[2] As explained previously, the PASD Defendants organized, hosted, and expressly opened their doors to *all* students from the public "school districts" in Schuylkill County and affiliates of the IU 29, as well as two private Catholic schools in Schuylkill County, for

[2] Again, as stated previously, the PASD Defendants have historically opened Martz Hall to the public for a variety of events, including iconic sporting events, concerts, and political rallies. With this historical backdrop in mind, the PASD Defendants cannot now arbitrarily—and conveniently—claim that the College Fair was a nonpublic forum; at the very least, the College Fair was a limited public forum.

the purpose of conducting the College Fair. As such, the PASD Defendants established, at the very least, a limited public forum, and they were required to adhere to the boundaries of access that they set.

ii. Plaintiffs had a First Amendment right of access, assembly, and free speech to attend and partake in the College Fair and the PASD Defendants violated those rights.

It is further necessary to examine the no less than three First Amendment rights at issue here.

First, in *Perry*, *supra*, the United States Supreme Court held that First Amendment right to free speech is "implicated by denying [teachers'] use of the interschool mail system." *Id*. Specifically, the Court noted that neither "students [n]or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id*. Rather, the Court held that "[t]he First Amendment's guarantee of free speech applies to teacher's mailboxes as surely as it does elsewhere within the school." *Id*. In other words, the Court reasoned that students' and teachers' communications at forums such as public schools are entitled to First Amendment protection.

Similar to *Perry*, Plaintiffs' free speech interests here were implicated (and subsequently violated) when the PASD Defendants

denied Plaintiffs, who, again, are public high school students residing in Schuylkill County, from *communicating* with university representatives, teachers, and counselors at the College Fair concerning their thoughts and ideas for their educational futures at a Schuylkill County-wide, public high school student event intended for that purpose.

Second, Plaintiffs' access and assembly rights were implicated (and subsequently violated) when the PASD Defendants denied Plaintiffs admittance to, and full participation in, the College Fair, which, again, was open to *all* Schuylkill County public high school students. Indeed, the initial right of access to the College Fair was firmly established by Plaintiffs' right of assembly under the First Amendment, which enshrines the right to organize, participate, and express views relative to a common purpose. *See De Jonge v. State of Oregon*, 299 U.S. 353, 364 (1937) ("The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental.").

Third, once Plaintiffs arrived at the College Fair, they had a protected First Amendment right to record the events that ensued. *See*

Animal Def. Legal Fund v. Wasden, 878 F.3d 1184, 1203 (9th Cir. 2018) ("Audiovisual recordings are protected by the First Amendment as recognized organs of public opinion and as a significant medium for the communication of ideas." (quotations and alterations omitted)). But the PASD Defendants proactively denied and immediately stifled Plaintiffs from exercising this right upon their arrival at the College Fair because their attendance and viewpoints expressed as public charter school students/teachers were controversial, which constitutes impermissible viewpoint discrimination. *See Satanic Temple, Inc. v. Saucon Valley School District*, 671 F.Supp.3d 555, 568 (E.D. Pa. 2023).

By restricting the speech, access, and assembly rights of *only* Plaintiffs as students and teachers of Gillingham, a public *charter* school, the PASD Defendants engaged in unconstitutional viewpoint discrimination. *See Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (holding that the government may not restrict access to a limited public forum where its distinction is not "reasonable in light of the purpose served by the forum," "nor may it discriminate against speech on the basis of its viewpoint."). Indeed, public school students from other high schools in Schuylkill County were not

subjected to the same constitutional restrictions, and Plaintiffs posit that such discrimination was strictly on the basis of their status as public *charter* school students/teachers.

Further, none of the foregoing restrictions imposed by the PASD Defendants were reasonable, also as required under the First Amendment. *Id.* Rather, the College Fair is, and always has been, intended for *all* public high school students in Schuylkill County (regardless of whether they attend a charter school or traditional "school district"), and Plaintiffs are such students. Thus, to discriminate against Plaintiffs as students of Gillingham, a public charter school, is an unreasonable distinction without a difference. It is further telling that, in response to Plaintiffs' Complaint, the PASD Defendants have provided no justification, let alone a *rational* justification, for restricting Plaintiffs' rights to attend and partake in the College Fair.[3]

[3] Plaintiffs also deny that there was any *actual* requirement that attendees of the College Fair must be members of a "school district" and further posit that, to the extent there is any factual dispute in this regard, it requires resolution through discovery and *not* the dismissal of Plaintiffs' Complaint at this juncture. *See Ashcroft v. Iqbal* 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.").

Accordingly, Plaintiffs' well-established First Amendment rights of access, assembly, and free speech were all implicated and subsequently violated in this matter.

iii. The PASD Defendants retaliated against Plaintiffs for exercising their constitutional rights.

"An 'adverse action' is retaliatory conduct 'that would deter a similarly situated individual of ordinary firmness from exercising' constitutional rights." *See Barrington v. New York*, 806 F.Supp.2d 730, 746 (S.D. N.Y. 2011) (quoting *Davis v. Goord*, 320 F.3d 346, 353 (2d Cir. 2003)).

As noted previously, for simply attending the College Fair, the PASD Defendants directed the college/university representatives in attendance to immediately leave the Martz Hall gymnasium floor and join the other attendees in the upper-lobby bleachers. Plaintiffs were then left walking around the empty College Fair booths/tables while their peers and representatives from their prospective future colleges/universities sat, stared, and gawked at Plaintiffs. Given Plaintiffs' "fishbowl" experience at the College Fair, it is unimaginable that any other public high school student who does not happen to

attend a traditional "school district" of the IU 29 would attempt to attend the College Fair in the future and face such unnecessary and unwarranted humiliation, embarrassment, and retaliation by the PASD Defendants. The PASD Defendants further retaliated against Plaintiffs by placing unlawful restrictions on Plaintiffs' cell phone use, which is protected First Amendment speech. (ECF No. 1 at ¶ 136). Thus, the PASD Defendants' punitive and detestable actions meet the retaliatory standard and, therefore, constitute "adverse action" for purposes of a First Amendment retaliation claim.

With this final understanding, and in light of all the foregoing analysis, this Court must deny the PASD Defendants' request that this court dismiss Counts I, II, and III of Plaintiffs' Complaint. Rather, for the reasons stated, Plaintiffs have sufficiently alleged that the PASD Defendants—acting under color of state law—violated their First Amendment rights to access, assembly, and free speech, thereby sufficiently stating a claim under 42 U.S.C. § 1983.

B. The PASD Defendants violated Plaintiffs Fourth Amendment rights by placing their hands on Plaintiffs and restricting their movement.

As explained above, Plaintiffs had a constitutional right to attend and partake in the College Fair. Plaintiffs' right to attend the College Fair was also established by invitation of the PASD Defendants, despite the fact that it was wrongfully and maliciously revoked.

Upon arriving at the College Fair, and as documented by indisputable video evidence, the PASD Defendants seized Plaintiffs by placing their hands upon them and restricting their movements. The PASD Defendants' egregious actions violated Plaintiffs' right to personal autonomy under the Fourth Amendment. *See Graham v. Connor*, 490 U.S. 386, 395 n.10 (3d. Cir. 1989) ("A 'seizure' triggering the Fourth Amendment's protections occurs only when government actors have, 'by means of physical force or show of authority, . . . in some way restrained the liberty of a citizen." (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968))).

The PASD Defendants' seizure of Plaintiffs was both humiliating and violative of their constitutional rights to be free from unreasonable

government restriction. As such, Plaintiffs have sufficiently stated a claim under 42 U.S.C. § 1983 relative to the Fourth Amendment.

C. Plaintiffs have sufficiently pleaded a claim under 42 U.S.C. § 1983 based upon the PASD Defendants' violation of Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment under a "class of one" theory.

Under the United Stated Constitution, the Equal Protection Clause prohibits a state from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV § 1. Where a plaintiff seeks to challenge a government action as violative of the Equal Protection Clause under a "class of one" theory, plaintiff must allege that: "(1) the defendant treated him differently from others similarly situated, (2) the defendant did so intentionally, and (3) there was no rational basis for the difference in treatment." *Hill v. Borough of Kutztown*, 455 F.3d 225, 239 (3d Cir. 2006) (citing *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) (*per curiam*)).

Here, Plaintiffs have alleged that: (1) Plaintiffs are similarly situated to the public "school district" students/teachers in attendance at the College Fair; (2) the PASD Defendants intentionally discriminated against Plaintiffs based on their status as public *charter*

school students/teachers; and (3) the PASD Defendants have not—and cannot—provide support for a rational basis for the disparate treatment. *See Hill*, 455 F.3d at 239. Accordingly, Plaintiffs have sufficiently pleaded an equal protection claim against the PASD Defendants. Moreover, because the PASD Defendants were acting under color of the law, Plaintiffs have thus stated a sufficient claim under 42 U.S.C. § 1983.

i. Plaintiffs are similarly situated to the public "school district" students/teachers in attendance at the College Fair.

When applying the Equal Protection Clause under a "class of one" theory, analyzing whether a plaintiff is "similarly situated" to others is a "case-by-case fact-intensive inquiry." *Chan v. Cnty. of Lancaster*, No. 10-3424, 2011 WL 4478283, at *15 (E.D. Pa. Sept. 26, 2011) (citing *Monaco v. Am. Gen. Assurance Co.*, 359 F.3d 296, 305 (3d Cir. 2004)).

At the outset, the PASD Defendants mischaracterize Plaintiffs' Equal Protection claim as one being brought by the school entity, Gillingham. (ECF No. 11 at 17). Instead, this matter—and the Equal Protection claims within—has been brought by the students, teachers, and administrators who were similarly situated to each and every other

public "school district" student, teacher, and administrator in attendance at the College Fair. (ECF No. 1 at ¶¶146, 148).

Accordingly, the proper analysis here is not whether the schools—Gillingham and the public "school districts" in attendance at the College Fair—were similarly situated, but instead whether the Gillingham public charter students, teachers, and administrators are similarly situated to their public "school district" counterparts in attendance at the College Fair, which they are. *See Pocono Mountain Charter School v. Pocono Mountain School District*, 908 F.Supp.2d 597, 618 (Pa. M.D. 2012) (holding that charter school students are similarly situated to school district students); *see also Montanye v. Wissahickon School Dist.*, 327 F.Supp.2d 510, 519 (E.D. Pa. 2004) (A plaintiff need not allege that they were treated differently than others "*identically* situated" but rather that they were treated differently from others "*similarly* situated.") (emphasis in original) (citation omitted)). (ECF No. 1 at ¶ 75).

In *Pocono Mountain Charter School*, plaintiffs (a charter school, its students, and their parents) brought a state Equal Protection claim against public "school district" defendants. *Pocono Mountain Charter*

School, 908 F.Supp.2d at 617. After categorizing the plaintiffs' claims as those being made under the Fourteenth Amendment and accordingly applying the federal Equal Protection analysis, this Court held that the charter school plaintiffs sufficiently stated an Equal Protection claim by alleging that the public "school district" defendants "treated them differently from situated students[.]" *Id.* Just as in *Pocono Mountain Charter School*, Plaintiffs here (public charter school students) are similarly situated in comparison to their public "school district" counterparts at the College Fair.

As a basic matter, Plaintiffs here are public high school students who attend a charter school, and that charter school receives public funds just like the schools that are traditional public "school districts." Indeed, the PASD Defendants concede that "charter schools are public schools." (ECF No. 11 at 17). Thus, notwithstanding their attendance or employment at Gillingham—a charter school—Plaintiffs are public high school students/teachers, just like those at PASD and other traditional "school districts".

Even outside the context of public "school district" attendees, STC students—similarly situated to Plaintiffs as non-"school district"

students—were invited to attend the College Fair. (ECF No. 1, Exhibit C). STC, like Gillingham, is not a public "school district" as defined by the Pennsylvania School Code; yet its students/teachers were not only permitted, but invited by the PASD Defendants to attend the College Fair. *Id.*

To the extent the PASD Defendants argue that Plaintiffs' claims fail because Gillingham is not a "member" of the IU 29, this argument has no merit in the context of the appropriate "class of one" theory. First, Gillingham is, in fact, an affiliate of the IU 29, which means it is afforded the services offered by the IU 29. (ECF No. 1 at ¶ 74). Second, even if Gillingham is not a "member" of the IU 29, Plaintiffs receive services from the IU 29, just the same as their public "school district" counterparts. (ECF No. 1 at ¶ 74). *See also* 24 P.S. § 17-1725-A(4).

Together, this sufficiently establishes that Plaintiffs are similarly situated to those in attendance at the College Fair.

ii. The PASD Defendants intentionally discriminated against Plaintiffs because of their status as public charter school students.

Plaintiffs have sufficiently pleaded the intentionally discriminatory motive for the PASD Defendants' decision to exclude

Plaintiffs from the same opportunities afforded to those similarly situated in attendance at the College Fair. Specifically, Plaintiffs allege that the PASD Defendants' decision was driven by Plaintiffs' status as "charter school students/teachers instead of being traditional school district students/teachers like PASD." (ECF No. 1 at ¶¶ 12-18, 146).

iii. There was no rational basis for the PASD Defendants to exclude Plaintiffs from the College Fair.

As held by the United States Supreme Court, a "class of one" theory can support an Equal Protection claim if the disparate treatment is "irrational and wholly arbitrary." *Village of Willowbrook*, 528 U.S. at 564. This analysis hinges on whether "there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Giuliani v. Springfield Twp.*, 238 F. Supp.3d 670, 705 (E.D. Pa. 2017), aff'd, No. 17-1675, 2018 WL 1167524 (3d Cir. Mar. 6, 2018) (citations omitted).

Here, the PASD Defendants have not—and cannot—support any rational basis for their arbitrary exclusion/limitation of Plaintiffs from the College Fair. (ECF No. 11 at 14-17). Without a rational explanation by the PASD Defendants of their legitimate government interest, the

legitimacy of their decision to exclude/limit Plaintiffs from attending and partaking in the College Fair "cannot be resolved at this stage." *See Miller v. Goggin*, 672 F.Supp.3d 14, 52 (E.D. Pa. 2023).

In their Brief, the PASD Defendants repeatedly assert the conclusory justification that only "public school districts affiliated with the IU 29" were permitted to attend the College Fair, without any rationalization for such a limitation. (ECF No. 1 at ¶ 82, ECF No. 11 at 16). However, the College Fair was advertised as a Schuylkill County regional fair for *all* public high school students—not an event that was limited to "public school districts affiliated with the IU 29." (ECF No. 1 at ¶¶ 68-71, Exhibit E). This reality is further supported by Defendant Stasulli's directive to send the College Fair invitation "to All H[igh] S[chool] Counselors" in Schuylkill County. (ECF No. 1, Exhibit C). Tellingly, the PASD Defendants did not distinguish, at any time, between IU 29 member and non-member "school districts" when sending their invitations. *Id.*

Further, it is clear that the PASD Defendants were not even consistent in enforcing the IU 29-affiliate policy that they claim to be the reason for their discrimination against Plaintiffs at the College

Fair. Indeed, multiple private schools, such as Marian Catholic and Nativity BVM, were also invited to attend the College Fair.[4] (ECF No. 1 at ¶¶ 74-75, Exhibit C). Additionally, STC—which, like Gillingham, is a public school but not a traditional public "school district" under the Pennsylvania School Code—was invited and attended the College Fair. (ECF. No. 1, Exhibit C). Unlike their private school counterparts and the STC, however, Plaintiffs were arbitrarily uninvited from the College Fair. (ECF No. 1 at ¶81, Exhibit C).

This arbitrary and irrational classification of Plaintiffs by the PASD Defendants is nothing but a haphazard, after-the-fact explanation made in an attempt to justify their exclusion of Plaintiffs with no rational basis. Even if this Court were to assume, *arguendo*, that the PASD Defendants successfully permitted only those "school districts" affiliated with the IU 29 to attend the College Fair—which it

[4] The PASD Defendants' Brief in Support of their Motion to Dismiss alleges facts outside of Plaintiffs' Complaint. Specifically, the PASD Defendants allege that students from Marian Catholic and Nativity BVM "did not attend the College Fair." (ECF No. 11 at 17). These allegations should not be considered at this juncture. *See Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993). However, to the extent the Court chooses to consider the PASD Defendants' unverified allegations, such consideration supports denying the PASD Defendants' Motion to Dismiss because it demonstrates that material facts are in dispute warranting discovery.

did not—such a decision would still fail the rational basis test. Indeed, the distinction between the classifications of "school districts affiliated with the IU 29" and public schools that are not traditional "school districts" are not rationally related to the legitimate governmental purpose of affording *all* public high school students in Schuylkill County the opportunity to pursue and achieve higher education. *See Stradford v. Secretary Pennsylvania Department of Correction*, 53 F.4th 67, 73 (3d Cir. 2022).

The PASD Defendants' exclusion of Plaintiffs was irrational, arbitrary, and based solely on the PASD Defendants' personal animosity and bias against Plaintiffs' status as public charter school students/teachers. (ECF No. 1 at ¶¶ 12-18, 146). Accordingly, Plaintiffs have sufficiently pleaded that the PASD Defendants violated their rights under the Equal Protection Clause.

iv. Plaintiffs sufficiently pleaded a claim under 42 U.S.C. § 1983 because they sufficiently alleged that the PASD Defendants violated their rights under the Equal Protection Clause.

In asserting a Section 1983 claim against the PASD Defendants, Plaintiffs seek to vindicate their rights protected under the Equal Protection Clause. *Gonzaga Univ. v. Doe*, 563 U.S. 273, 284-85 (2002).

As explained above, the PASD Defendants, acting under color of state law, deprived Plaintiffs of equal protection under the law by illegally treating them differently than those similarly situated public "school district" students during the College Fair. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

Thus, for the reasons previously stated, Plaintiffs have sufficiently stated a claim against the PASD Defendants under 42 U.S.C. § 1983. Accordingly, this Court should reject the PASD Defendants' attempt to dismiss Count V of Plaintiffs' Complaint.

D. Plaintiffs have sufficiently pleaded a claim under 42 U.S.C. § 1983 based upon the PASD Defendants' utilization of excessive force against minor student Plaintiffs.

As set forth more fully in Plaintiffs' Complaint, and as alluded to in subpart B of this Brief, the PASD Defendants' use of physical force against Plaintiffs was excessive and egregious. (ECF No. 1 at ¶¶ 152-156). In fact, it was entirely unreasonable and irrational for *adults* to act in that manner toward *minors* as defined by law. Thus, the PASD Defendants' impulsive, flagrant, and humiliating conduct against Plaintiffs—*high school students* of Gillingham—clearly constituted excessive force under the law. *See Metzger ex rel. Metzger v. Osbeck*, 841

F.2d 518, 520 (3d Cir. 1988) ("A decision to discipline a student . . . may constitute an invasion of the child's Fifth Amendment liberty interest in his personal security and a violation of substantive due process prohibited by the Fourteenth Amendment."). As such, Plaintiffs have sufficiently stated an excessive force claim under the Fourteenth Amendment and pursuant to 42 U.S.C. § 1983.

E. Plaintiffs have sufficiently pleaded a claim under the Eighth Amendment based upon the PASD Defendants' creation of a cruel and unusual "fishbowl" environment at the College Fair.

Plaintiffs have sufficiently stated a claim under the Eighth Amendment based upon the PASD Defendants' indiscriminate subjection of extreme humiliation on Plaintiffs at the College Fair. Indeed, unlike any other public "school district" students attending the College Fair, Plaintiffs were forced by the PASD Defendants to walk around an empty College Fair gymnasium floor, while their peers and representatives from prospective colleges/universities gawked at them from the bleachers above, as if they were in a proverbial "fishbowl." (ECF No. 1 at ¶ 163).

In support of their Motion, the PASD Defendants assert—without any supportive caselaw—that the Eighth Amendment "applies to civil

matters in a very limited context[.]" (ECF No. 11 at 19). The PASD Defendants fail, however, to explain in their Brief how the purported contextual limitations of the Eighth Amendment were intended to exclude the specific civil claims made by Plaintiffs here, and particularly under these extreme and perverse circumstances.

Accordingly, the Court should reject the PASD Defendants' attempt to dismiss Count VII of Plaintiffs' Complaint.

F. Plaintiffs have sufficiently pleaded a claim under 42 U.S.C. § 1985 for civil conspiracy.

The PASD Defendants contend that this Court should dismiss Count VIII of Plaintiffs' Complaint because Plaintiffs allegedly do not constitute those parties intended to be protected by Section 1985. (ECF No. 11 at 20-22). In support of this contention, however, the PASD Defendants fail to provide *any* reasoning as to why Plaintiffs do not fall under those persons protected by Section 1985. (ECF No. 11 at 20-22). Instead, the PASD Defendants simply parrot the language of Section 1985 to form the conclusion—on their own accord—that "Plaintiffs do not fall under the description of people protected by Section 1985[.]" (ECF No. 11 at 22). Such a conclusory statement on its own is insufficient to support dismissal of Count VIII of Plaintiffs' Complaint.

Even so, contrary to the PASD Defendants' assertion, Plaintiffs fall squarely under the description of people protected by Section 1985 under the "class of one" theory, as explained above. Thus, Plaintiffs have sufficiently stated a claim for civil conspiracy under Section 1985 by alleging in their Complaint that: (1) the PASD Defendants conspired to deprive Plaintiffs of their constitutional rights; (2) the PASD Defendants were motivated by Plaintiffs' status as public *charter* school students/teachers; (3) Defendant Yoder directed Defendant Peters and Defendant Stasulli to act in furtherance of depriving Plaintiffs of their constitutional rights; and (4) Plaintiffs were deprived of their constitutional and civil rights, including their rights under the First Amendment, Fourth Amendment, Eighth Amendment, and the Equal Protection Clause. (ECF No. 1 at ¶¶ 165-173); *see Lake v. Arnold*, 112 F.3d 682, 685 (3d Cir. 1997).

Accordingly, this Court should reject the PASD Defendants' baseless attempt to dismiss Count VIII of Plaintiffs' Complaint.

G. This Court should exercise supplemental jurisdiction over Plaintiffs' state law Equal Protection claim under the Pennsylvania Constitution.

Plaintiffs have sufficiently stated federal claims under Counts I-VIII, and this Court should exercise supplemental jurisdiction over Plaintiffs' state law Equal Protection claim accordingly. *See* 28 U.S.C. § 1367(a). Even if this Court were to dismiss Plaintiffs' federal claims—which it should not—this Court should exercise pendant jurisdiction over Plaintiffs' state law Equal Protection claim.

The PASD Defendants erroneously assert that Plaintiffs' state-law claim is "identical" to their federal Equal Protection claim. (ECF No. 11 at 23). Although wholly ignored by the PASD Defendants, Plaintiffs are afforded broader protections under the Pennsylvania Constitution than under the United States Constitution, particularly in the area of education. Indeed, "the right to public education" is enshrined in the Pennsylvania Constitution and any equal protection challenge thereto shall be examined under strict scrutiny. *See Pocono Mountain Charter School*, 908 F.Supp.2d at 618 (citing *Pa. Human Relations Comm'n v. Sch. Dist. of Phila.*, 681 A.2d 1366, 1380 (Pa. Cmwlth. 1996) ("public education is a fundamental right, defined also as a civil right[.]")); *see*

also William Penn School District v. Pennsylvania Department of Education, 294 A.3d 537, 959 (Pa. Cmwlth. 2023). Thus, for the same reasons Plaintiffs' federal Equal Protection claim succeeds, Plaintiffs have sufficiently stated an Equal Protection claim under the Pennsylvania Constitution.

Accordingly, the Court should reject the PASD Defendants' meritless attempt to dismiss Count IX of Plaintiffs' Complaint.

H. Plaintiffs undoubtedly have standing to bring this action.

Where, as here, Plaintiffs assert multiple constitutional claims, they are "alleging a constitutional harm" sufficient to establish standing. *Associated Buildings & Contractors Western Pennsylvania v. Community College of Allegheny County*, 81 F.4th 279, 288 (3d Cir. 2023) (holding that "a plaintiff has standing to bring a First Amendment claim where he suffers injury to his legally protected First Amendment interest[.]"); *see also Hassan v. City of New York*, 804 F.3d 277, 294 (3d Cir. 2015) ("Unequal treatment is a type of personal injury [that] ha[s] long [been] recognized as judicially cognizable.") (citations and internal quotations omitted)).

The PASD Defendants' analysis of Plaintiffs' standing is reductive and flawed for at least three reasons.

First, and fundamentally, Plaintiffs[5] suffered specific injury to their constitutional rights under the First Amendment, Fourth Amendment, Eighth Amendment, and Equal Protection Clause. (ECF No. 1 at ¶¶ 116-164). These direct and personal constitutional violations alone support Plaintiffs' standing.

Second, even setting Plaintiffs' constitutional injuries aside, Plaintiffs suffered concrete and particular harm as a result of the PASD Defendants' unlawful conduct. The PASD Defendants make much of the fact that Plaintiffs were eventually "allowed" to attend the College Fair by being permitted to walk around the College Fair for approximately thirty (30) minutes. (ECF No. 11 at 12, 24). What the PASD Defendants intentionally neglect to acknowledge, however, is that they forced all university representatives to vacate their booths in the College Fair

[5] The PASD Defendants mistake the parents of certain minor Plaintiffs as parties seeking relief from harm inflicted by the PASD Defendants. (ECF No. 11 at 24). Under Rule 17, the minor Plaintiffs are required to be represented by their guardian parents. *See* Fed.R.Civ.P. 17(c)(1). While those parents did not attend the College Fair, they are required under the Federal Rules of Civil Procedure to be named as Plaintiffs. Any overarching argument that Plaintiffs lack standing because certain parents of minor Plaintiffs suffered no injury should be summarily rejected.

during these thirty (30) minutes and directed them to sit in the bleachers above while Plaintiffs walked around an empty gymnasium floor. (ECF No. 1 at ¶¶ 104-106).

Third, and relatedly, the PASD Defendants also make the absurd argument that Plaintiffs' injuries could have been mitigated by attending "other college fairs[.]" (ECF No. 11 at 24). The fact that Plaintiffs *could* have attended another college fair does not alleviate the harm suffered by Plaintiffs because of the PASD Defendants' unlawful behavior at the College Fair—nor is it the standard of establishing injury sufficient to support standing in this Court.

In essence, any argument that Plaintiffs did not suffer any concrete and particular injury because the PASD Defendants eventually permitted Plaintiffs to remain at the College Fair—under immense restrictions and humiliating exclusions not imposed on other, similarly-situated attendees—is baseless. Accordingly, this Court should reject the PASD Defendants' frivolous attempt to dismiss Plaintiffs' Complaint for lack of standing.

V. CONCLUSION:

For the reasons set forth herein, Plaintiffs respectfully request that this Court deny the PASD Defendants' 12(b)(6) Motion to Dismiss.

Respectfully submitted,

Dated: January 21, 2025

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CERTIFICATION PURSUANT TO LOCAL RULE 7.8(b)(2)

I certify that pursuant to Local Rule 7.8(b)(2) the body of the Brief in Opposition to Motion to Dismiss contains 6,732 words.

Dated: January 21, 2025

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

KIRA NAGLE, et al., Plaintiffs, v. THE POTTSVILLE AREA SCHOOL DISTRICT, et al., Defendants.	:	Civil Action No.: 3:24-cv-1808

ORDER

AND NOW, this _____ day of _____, 2025, upon consideration of the Motion to Dismiss Complaint filed by Defendants, and Plaintiffs' opposition thereto, it is hereby **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

_____
Hon. Karoline Mehalchick

CERTIFICATE OF SERVICE

I, Mark E. Seiberling, counsel for Plaintiffs, hereby certify that on this 21st day of January 2025, a true and correct copy of the foregoing Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss Complaint has been served on counsel for Defendants via the CM/ECF system of the U.S. District Court for the Middle District of Pennsylvania:

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