

submitted by Defendants Pottsville Area School District (“PASD”), Sarah Yoder, Kayla Peters, and Cynthia Stasulli (collectively, the “PASD Defendants”). Plaintiffs’ proposed Sur-Reply Brief, which is attached hereto as Exhibit A, will facilitate a more developed exposition of the salient issues and is necessary to address the various misstatements of law and mischaracterizations of facts (as alleged in Plaintiffs’ Complaint) set forth in Defendants’ recently-filed Reply Brief in Further Support of their Motion to Dismiss. (ECF No. 15).

WHEREFORE, Plaintiffs respectfully request that this Court grant them leave to file a Sur-Reply Brief, and deem the proposed Sur-Reply Brief attached hereto as Exhibit A as filed.

Respectfully submitted,

KLEINBARD LLC

Dated: February 7, 2025

By: /s/ Mark E. Seiberling
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CERTIFICATE OF CONCURRENCE/NON-CONCURRENCE

Pursuant to Local Rule 7.1, I, Mark Seiberling, hereby certify that on February 6, 2025, I sought the concurrence of Defendants, through their counsel, in the present motion. Counsel for Defendants do not concur.

Dated: February 7, 2025

/s/ Mark Seiberling
Mark Seiberling, Esq.

EXHIBIT A

Pottsville Area School District (“PASD”), Sarah Yoder, Kayla Peters, and Cynthia Stasulli (collectively, the “PASD Defendants”). (ECF No. 15).

First, contrary to the PASD Defendants’ repeated mischaracterizations and misrepresentations in their Reply Brief, Plaintiffs do not “admit” (nor have they ever admitted) that they were *not* invited to the Schuylkill County Regional College Fair (the “College Fair”). (ECF No. 15 at 3). Rather, as clearly pleaded and stated in Plaintiffs’ Complaint, Plaintiffs were invited not once, but ***twice*** to the College Fair, with one of those emailed invitations coming directly from Defendant Stasulli. (ECF No. 1 at ¶¶ 71-79, Exhibits C-E). In response, Plaintiffs returned a completed Registration Form on or about August 26, 2024, setting forth that 27 students (nearly all of whom are Plaintiffs in this case) would be attending and arriving at 8:45am on the day of the College Fair. (ECF No. 1, Exhibit F). Subsequently, nearly ***a month later***, and on the eve of the College Fair, Defendant Stasulli attempted to disinvite Plaintiffs without any warning or explanation, which, again, occurred *after* Plaintiffs already accepted the invitation to

attend and sent in their RSVP to attend a month prior. (ECF No. 1 at ¶¶ 80-81).

Important here, and as pleaded in Plaintiffs' Complaint, students from two private Catholic schools in Schuylkill County—Marian Catholic and Nativity BVM—also were invited to attend the College Fair, together with students from Gillingham Charter School (“Gillingham”). (ECF No. 1 at ¶¶ 74-75, Exhibit C). Additionally, students from the Schuylkill Technology Center (“STC”)—which, like Gillingham, is a public school but not a traditional public “school district” under the Pennsylvania School Code—also were invited to attend the College Fair and did, in fact, attend the College Fair. (ECF No. 1, Exhibit C). Thus, these facts demonstrate that Plaintiffs were, in fact, invited to the College Fair, along with students from at least three other schools in Schuylkill County that are *not* traditional “school districts” and are not part of the Intermediate Unit 29 (“IU 29”), as set forth below.

Second, and relatedly, the PASD Defendants continue to assert in their Reply Brief the false and misleading claim that they “only invit[ed] public school districts affiliated with the Intermediate Unit 29”

to the College Fair. (ECF No. 15 at 6). As previously stated, students from at least three other schools in Schuylkill County—two Catholic schools and a trade school—were invited by the PASD Defendants to attend the College Fair, and not one of those three schools is a traditional “school district.” Indeed, STC—which, again, is a trade school and not a traditional “school district”—was invited and its students did, in fact, attend the College Fair. (ECF. No. 1, Exhibit C). Tellingly, the PASD Defendants’ Reply Brief nowhere mentions STC and wholly ignores Plaintiffs’ allegations that students from STC were invited and, in fact, attended the College Fair. Indeed, to do so would wholly undermine and compromise the PASD Defendants’ false and misleading contention that only students from traditional “school districts” affiliated with the IU 29 were invited to and attended the College Fair.

Third, the PASD Defendants’ Reply Brief continues to make the erroneous and legally unsupportable assertion that the College Fair was somehow a nonpublic forum. Such an assertion, based on the facts as pleaded in Plaintiffs’ Complaint, is absurd, given that the College Fair is a textbook example of a limited public forum under the law. This

is evidenced by the fact that the PASD Defendants organized, hosted, and expressly opened their doors to hundreds of student invitees to attend the College Fair, including students from all of the public “school districts” in Schuylkill County, students from at least two private Catholic schools in Schuylkill County, and students from other non-traditional public schools in Schuylkill County such as Gillingham and STC. *See Satanic Temple, Inc. v. Saucon Valley School District*, 671 F.Supp.3d 555 (E.D. Pa. 2023) (where a “public school district decides to open up facilities, such as classroom or meeting space for use by the general public or community groups, it creates” a “limited public forum.”); *see also Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 267 (1988) (school facilities which have been opened to “indiscriminate use by the general public, or by some segment of the public, such as student organizations” may be deemed public forums). By opening their doors to hundreds of student invitees across all of Schuylkill County to attend the College Fair, the PASD Defendants created a classic example of a limited public forum, not a nonpublic forum, as the PASD Defendants continue to erroneously argue. (ECF No. 15 at 5).

Fourth, the PASD Defendants' Reply Brief continues to misconstrue and mischaracterize Plaintiffs' Complaint as one allegedly being brought by Gillingham Charter School as an entity. (ECF No. 15 at 9). But, contrary to the PASD Defendants' erroneous recitation of the facts, Plaintiffs' Complaint, as clearly pleaded, is *not* being brought by a charter school against PASD. (ECF No. 1 at ¶¶ 22-57). Rather, it has been brought by the students/teachers of Gillingham who attended the College Fair and who were directly subjected to the PASD Defendants' unconstitutional actions and unlawful conduct at the College Fair. *Id.* The law is clear that Plaintiffs—again, individual students and teachers of Gillingham—have the legal right to assert a Section 1983 claim against the PASD Defendants (even if Gillingham as an entity may not). *See Pocono Mountain Charter School v. Pocono Mountain School District*, 908 F.Supp.2d 597, 618 (Pa. M.D. 2012). Accordingly, any argument by the PASD Defendants that Plaintiffs' Complaint should be dismissed based on the false and incorrect assertion that Gillingham Charter School is a party to this action must be rejected.

Fifth, and finally, in an apparent new challenge to Plaintiffs' standing, the PASD Defendants make the absurd argument that

“[t]here is no allegation in the complaint supporting the invitation of individual students by Defendants.” (ECF No. 15 at 3, 9). Essentially, the PASD Defendants now argue that Plaintiffs have no standing to bring this action because they allegedly did not directly receive an invitation from the PASD Defendants. *Id.* Thus, the PASD Defendants argue, the “alleged injury is merely abstract.” *Id.* This meritless argument fails for two reasons.

First, and most basically, Plaintiffs, who are students/teachers at Gillingham, were, in fact, invited by the PASD Defendants to the College Fair. Indeed, the Registration Form included by the PASD Defendants in the invitations sent to each school expressly requested the “[a]pproximate [n]umber of **students**” that would be attending the College Fair. (ECF No. 1 at Exhibits D, E). Moreover, the accompanying invitation email from Defendant Stasulli attaching the Registration Form advised invitees that “[**s**]tudents to arrive: 8:00 AM to 10:30 AM[.]” *Id.* The invitation and Registration Form expressly contemplated **student** attendees, such as Plaintiffs. And, as a practical matter, who but the students, including Plaintiffs, would attend the College Fair. Thus, the PASD Defendants’ argument that Plaintiffs somehow lack

standing because the invitations to the College Fair were not sent directly to the student Plaintiffs' email addresses is entirely meritless.

Second, contrary to the PASD Defendants' baseless assertion, the injury suffered by Plaintiffs is not, in any way, "abstract." Indeed, Plaintiffs are the students/teachers from Gillingham who were invited and attended the College Fair, and then suffered concrete and specific injury to their constitutional rights under the First Amendment, Fourth Amendment, Eighth Amendment, and Equal Protection Clause, as well as concrete and particular harm as a result of the various unlawful restrictions placed on them by the PASD Defendants. (ECF No. 1 at ¶¶ 116-164, 104-106). For the PASD Defendants to flippantly dismiss Plaintiffs' injuries as merely "abstract," allegedly because Plaintiffs "did not have the opportunity to explore this particular College Fair in the exact way in which they preferred," misses the entire point of Plaintiffs' Complaint. (ECF No. 15 at 9). As pleaded, Plaintiffs were unjustly and unlawfully treated differently than other attendees similarly situated at the College Fair solely because of the PASD Defendants' personal animosity and bias against Plaintiffs' status as public charter school students/teachers. (ECF No. 1 at ¶¶ 1, 92). Thus, as previously stated,

the unlawful conduct by the PASD Defendants at and during the College Fair caused specific and direct injury to Plaintiffs' constitutional rights, which is more than sufficient to support Plaintiffs' standing.

Accordingly, for all the foregoing reasons and for those reasons stated in Plaintiffs' opening brief, Plaintiffs respectfully request that this Court deny PASD Defendants' 12(b)(6) Motion to Dismiss.

Respectfully submitted,

KLEINBARD LLC

Dated: February 7, 2025

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

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

CERTIFICATE OF SERVICE

The undersigned attorney for Plaintiffs hereby certifies that a true and correct copy of the foregoing document has been electronically filed and is available for viewing and downloading from the ECF system in accordance with the local Federal Rules of Civil Procedure and has been electronically served upon the following counsel of record on this day, February 7, 2025:

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Dated: February 7, 2025

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