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

McKEESPORT BLACK STUDENT UNION, an unincorporated association; GRACE FAWN WALKER, a minor, by and through her parents, VALIAN FAWN WALKER-MONTGOMERY and GEORGE CEPHUS MONTGOMERY, *et al.* Plaintiffs, v. McKEESPORT AREA SCHOOL DISTRICT; and MARK P. HOLTZMAN, JR., School District Superintendent, Defendants.	)	CASE NO.: 2019-CV-00405 JUDGE: Marilyn J. Horan

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION AND, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS MCKEESPORT AREA SCHOOL DISTRICT AND MARK P. HOLTZMAN, JR.

AND NOW, come Defendants, McKeesport Area School District ("MASD"), and Mark P. Holtzman, Jr., the School District Superintendent, in his individual and official capacities, by their undersigned counsel, Nancy R. Winschel, Esquire, and Stephen M. Houghton, Esquire, and Dickie, McCamey & Chilcote, P.C., and pursuant to Fed.R.Civ.P 12(b)(6) file Defendants' Memorandum in Support of Motion to Dismiss Plaintiffs' Complaint and Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction and, in the alternative, pursuant to Fed.R.Civ.P 56(a) Memorandum in Support of Motion for Summary Judgment.

PRELIMINARY STATEMENT

It is the policy of the MASD to provide high school students an opportunity to "meet on school premises during noninstructional time for the purpose of conducting a meeting within the limited open forum on the basis of religious, political, philosophical, or other

content of the speech at such meeting." Doc. 1-1, p. 3. The MASD encourages students to form student groups within the guidelines of the policy, a policy that embraces the purpose of the Equal Access Act ("EAA"), 20 U.S.C.S. § 4071 et seq. The MASD is proud of its rich diversity and welcomes a Black Student Union, conducted and controlled by students.

Plaintiffs' proposed McKeesport Black Student Union ("MBSU"), however, is fundamentally flawed and violates the EAA and the MASD policy. Nonstudents are forbidden to direct, conduct, control or regularly attend activities of student groups pursuant to the EAA and MASD policy. Here, Plaintiffs plead that the MBSU was created by Take Action Mon Valley ("TAMV"), a nonstudent entity under the direction and control of Valian Fawn Montgomery-Walker, a "nonstudent person." Montgomery-Walker and TAMV proposed that TAMV and Penn State Greater Allegheny, nonschool persons, direct, conduct, and control the proposed MBSU.

FACTUAL ALLEGATIONS

This matter was initiated by Complaint filed on April 10, 2019. *See*, Doc. 1. Plaintiffs are the MBSU, an unincorporated association, and ten minor high school students (by and through their parents or guardians) enrolled at MASD whom Plaintiffs allege are MBSU members. Plaintiffs assert two counts against the Defendants pursuant to 42 U.S.C. § 1983: (1) EAA and (2) First Amendment. Plaintiffs also raise a standalone EAA count. The Complaint filed by Plaintiffs seeks a declaratory judgment, injunctive relief and nominal compensatory damages. Plaintiffs allege that the MASD has a limited open forum and that Defendants have improperly denied the MBSU access to school facilities. Plaintiffs plead the MBSU's charter which reveals the controlling role of nonstudent third party groups: "MBSU was founded by community organization Take Action Mon Valley." Doc. 1 ¶40. "MBSU was

structured to have two community advisors Take Action Mon Valley and Penn State Greater Allegheny." *Id.* The advisors will serve on the MBSU's executive committee. *Id.* The executive committee "will vote on all decisions" affecting the MBSU. *Id.* Critically, "the advisors will serve as the tie breaking vote." *Id.* Non-school persons would exercise ultimate control over the activities of students by serving on the Executive Committee and casting deciding votes.

STATEMENT OF ISSUES

1. Is Plaintiffs' Complaint facially defective because the MBSU proposal does not meet requirements of the EAA and MASD policy?

   Suggested Answer: Yes.

2. Should Plaintiffs' claims against Superintendent Holtzman in his official capacity be dismissed as duplicative of the claims against the School District?

   Suggested Answer: Yes.

3. Does Plaintiffs' Complaint fail to state a claim for violation of the EAA against Superintendent Holtzman as the EAA applies only to secondary schools?

   Suggested Answer: Yes.

4. Is Superintendent Holtzman entitled to qualified immunity as to Plaintiffs' Section 1983 claims?

   Suggested Answer: Yes.

STANDARD OF REVIEW

In assessing the sufficiency of a complaint pursuant to a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the Court must accept as true all material allegations in the complaint and all reasonable factual inferences must be viewed in the light most favorable to the plaintiff. Odd v. Malone, 538 F.3d 202, 205 (3d Cir. 2008). The Court, however, need not accept bald assertions or inferences drawn by the plaintiff if they are unsupported by the facts set forth in the complaint. *See*, California Pub. Employees' Ret. Sys.

v. The Chubb Corp., 394 F.3d 126, 143 (3d Cir. 2004). Nor must the Court accept legal conclusions set forth as factual allegations. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). Rather, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id.* Indeed, the United States Supreme Court has held that a complaint is properly dismissed under Federal Rule of Civil Procedure 12(b)(6) where it does not allege "enough facts to state a claim to relief that is plausible on its face," *Id.* at 570, or where the factual content does not allow the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). *See,* Phillips v. Cty. of Allegheny, 515 F.3d 224, 231 (3d Cir. 2008).

ARGUMENT

1. Plaintiffs' Complaint is facially defective because the proposed MBSU does not meet the requirements of the EAA and MASD policy.

The MBSU violates the EAA because it is directed and controlled by nonschool persons and nonschool organizations. The EAA ensures "equal access" of noncurricular student groups to limited open forums in secondary schools. 20 U.S.C. § 4071(a). A "limited open forum" exists under the EAA whenever a "school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time." 20 U.S.C. § 4071(b).[1]

[1] Because the EAA codified the First Amendment's equal access requirements, the two are discussed together. Where a public school makes its facilities generally available for the activities of student groups, it has designated those facilities as a "limited public forum" and generally cannot discriminate among those groups because of their content or subject matter. *See*, Widmar v. Vincent, 454 U.S. 263, 267-70, 276-77, 102 S. Ct. 269 (1981) (state university may not exclude student group desiring to use university facilities for religious worship). The school may lawfully set restrictions on speaker identity and subject matter "if the distinctions drawn are reasonable in light of the purpose served by the forum," Cornelius v. NAACP Legal Defense and Education Fund, Inc., 473 U.S. 788, 806, 105 S. Ct. 3439 (1985). The EAA sets forth such lawful distinctions.

In the case of a limited forum, the EAA sets forth "fair opportunity" requirements that must be satisfied to ensure open access. A school district does not discriminate if it uniformly affords student groups a "fair opportunity" to use its facilities in accordance with the following factors:

> (1) the meeting is voluntary and student-initiated;
>
> (2) there is no sponsorship of the meeting by the school, the government, or its agents or employees;
>
> (3) employees or agents of the school or government are present at religious meetings only in a non-participatory capacity;
>
> (4) the meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and
>
> (5) **nonschool persons may not direct, conduct, control, or regularly attend activities of student groups**.

20 U.S.C. § 4071(c)(emphasis added).

Courts interpret Section 4071(c)(5)'s reference to "nonschool persons" to bar all nonstudents from active participation in student groups. Sease v. Sch. Dist. of Philadelphia, 811 F. Supp. 183, 190 (E.D. Pa. 1993)(citing Student Coalition for Peace v. Lower Merion Sch. Dist. Bd. of Sch. Directors, 776 F.2d 431 (3d. Cir. 1985)).

The Court's discussion of how the "fair opportunity" factors apply to student organizations in Sease is instructive. In Sease, the Court concluded that active nonstudent involvement violated Section 4071(c)(5) of the EAA. The Court addressed the defendant school district's decision to deny access to the Gospel choir, an extracurricular group that used school facilities. The choir was directed not by a student, but by a school employee. Further, the Court noted that former students improperly belonged to the Gospel choir and attended the group's practices at the school. The Gospel choir also employed a nonstudent

as a pianist who attended "every practice," participated in the selection of music, wrote music, and was paid by the choir for his work. Sease at 185.

In Sease, the Court concluded that the school district properly prohibited the school's Gospel choir from using the school's limited open forum. The "fair opportunity" factors were dispositive: the "express language of the Act clearly prohibits anyone other than a student from actively participating in an extracurricular" activity. *Id.*

By comparison, in this case, Plaintiffs' Complaint is facially defective as Plaintiffs' proposal runs afoul of the EAA's "fair opportunity" factors. Contrary to Section 4071(c)(5)'s prohibition on the active involvement of nonstudents, Plaintiffs admit that "MBSU was founded by community organization Take Action Mon Valley (TAMV)." Doc. 1 ¶ 40. Take Action Mon Valley will advise the MBSU along with Penn State Greater Allegheny. *Id*. Plaintiffs plead that the advisors will be on the MBSU's "executive committee." *Id.* The executive committee will "vote on all decisions effecting [sic] the MBSU." *Id.* Critically, "the advisors will serve as the tie breaking vote." *Id.* The involvement of TAMV and Penn State Greater Allegheny constitute exactly the sort of nonstudent involvement that is prohibited under the EAA and MASD policy.

2. Plaintiffs' claims against Superintendent Holtzman in his official capacity are duplicative of the claims against the School District and should be dismissed.

An official capacity claim against a government official is duplicative and properly dismissed where the official's employer is also a named defendant. Cuvo v. De Biasi, 169 F. Appx. 688, 693 (3d Cir. 2006). Courts hold that dismissal is proper because a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. *See,* e.g. Will v. Michigan Dept. of State Police, 491 U.S. 58, 109 S.

Ct. 2304 (1989). Following its decision in Monell v. Dept. of Social Services, 436 U.S. 658, 98 S. Ct. 2018 (1978), the U.S. Supreme Court explained "[t]here is no longer a need to bring official-capacity actions against local government officials … [as] local government units can be sued directly for damages and injunctive declaratory relief." Schor v. N. Braddock Borough, 801 F. Supp. 2d 369, 376 (W.D. Pa. 2011) quoting Kentucky. v. Graham, 473 U.S. 159, 167, 105 S. Ct. 3099 (1985).

Here, Plaintiffs assert identical Section 1983 claims for violation of the EAA and the First Amendment against the MASD and Superintendent Holtzman in his official capacity. The claims against Superintendent Holtzman in his official capacity are by their very nature claims against Superintendent Holtzman's office and are duplicative of the claims against MASD. Therefore, the claims against Superintendent Holtzman in his official capacity should be dismissed.

3. The EAA does not provide for claims against individuals and, therefore, Plaintiffs fail to state a claim against Superintendent Holtzman for a violation of the EAA.

Plaintiffs brings a standalone EAA claim and Section 1983 claims against Superintendent Holtzman in his individual and official capacities.

The EAA forbids "any **public secondary school** which receives federal financial assistance … to deny equal access or a fair opportunity to … any students who wish to conduct a meeting within that limited open forum." 20 U.S.C. § 4071(a)(emphasis added). The text of the EAA clearly states that it applies only to public secondary schools and not school personnel. The "plain meaning rule," requires that if the language of the statute is plain and unambiguous, it must be applied according to its terms. Milavetz, Gallop & Milavetz, P.A. v. United States, 559 U.S. 229, 252, 130 S. Ct. 1324 (2010).

As a person, Superintendent Holtzman is not a proper defendant to Plaintiffs' standalone EAA claim. Defendants therefore respectfully move this Court to dismiss Plaintiffs' standalone EAA claim against Superintendent Holtzman for failure to a state claim upon which relief can be granted.

4. Superintendent Holtzman is entitled to qualified immunity on the Section 1983 claims.

Officials sued in their individual capacity may assert a defense of qualified immunity. Qualified immunity shields a government official from suit. Because it is an immunity from suit, the defense should be resolved at the earliest state of litigation. Saucier v. Katz, 533 U.S. 194, 121 S. Ct. 2151, 2156 (2001). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briffs, 475 U.S. 335, 106 S.Ct. 1092 (1986).

To surrender the defense of qualified immunity, the facts alleged must show the defendant's conduct under the circumstances violated a clearly established constitutional right. Saucier v. Katz, 533 U.S. 194, 121 S. Ct. 2151, 2156 (2001). A right clearly exists only if there is "applicable Supreme Court precedent," Third Circuit precedent, or "possibl[y] … a robust consensus of cases of persuasive authority in the Court of Appeals." Mammaro v. N.J. of Child Protection & Permanency, 814 F.3d 164,169 (3d. Cir. 2016).

The salient question is "whether it would be clear to a reasonable [official] that his conduct was unlawful in the situation he confronted." Saucier v. Katz, 533 U.S. 194, 201-202 (2001). Here, Plaintiffs allege that at its February 27, 2019 meeting, the school board – of which Superintendent Holtzman is not a member – failed to take up or approve the MBSU's application. Doc. 1 ¶53. Further, Plaintiffs allege that on March 26, 2019, Superintendent Holtzman called members of the proposed MBSU with other students to a meeting to discuss

the creation of a student group. *Id.* ¶¶ 57-60. Plaintiffs' contend that this was an alternative to the MBSU though they concede that "Plaintiffs proposed charter for the MBSU was never discussed at this meeting." *Id.* ¶ 62.

Plaintiffs plead facts that establish that the proposed MBSU violated the EAA's "fair opportunity" factors. *See*, 20 U.S.C. § 4071(c). As discussed *supra*, Plaintiffs admit that "MBSU was founded by community organization Take Action Mon Valley (TAMV)." Doc. 1 ¶40. Take Action Mon Valley will advise the MBSU along with Penn State Greater Allegheny. *Id*. Plaintiffs plead that the advisors will be on the MBSU's "executive committee." *Id.* The executive committee will "vote on all decisions effecting [sic] the MBSU." *Id.* It will serve as the tie-breaking vote. *Id.* The involvement of Take Action Mon Valley and Penn State Greater Allegheny constitute exactly the sort of nonstudent involvement that is not permitted under the EAA.

As Plaintiffs acknowledge, Superintendent Holtzman did not deny the MBSU's application. The School Board -- of which Superintendent Holtzman is not a part -- has the sole power to permit a student group to use the MASD's limited open forum. Plaintiffs allege that the Board did not approve the MBSU at its February 27, 2019 meeting. *Id.* ¶ 53. MASD's policy on extracurricular activities expressly states:

> *"extracurricular activities shall be those programs that are sponsored or approved by the Board and are conducted wholly or partly outside the regular school day; are marked by student participation in the processes of initiation, planning, organizing, and execution; and are equally available to all students who voluntarily elect to participate."*

Doc. 1-1, at 1.

Second, even if Plaintiffs allege a violation – which Defendants expressly deny -- Superintendent Holtzman's actions were objectively reasonable at all times. The MASD has

a limited open forum and is required to comply with the EAA. Section 4071(c)(5) requires: nonschool persons may not direct, conduct, control, or regularly attend activities of student groups. 20 U.S.C. § 4071(c)(5). Compliance with the EAA means that a school properly denies access to its open limited forum to unqualified groups. Here, the MBSU has not been provided access because of the proposed role and involvement in the group by TAMV and Penn State Greater Allegheny. As set forth in the Complaint, TAMV formed the MBSU, is part of the MBSU's executive committee, will vote on all matters affecting the MBSU, and will serve as the "tie-breaker" vote on all deadlocked MBSU votes. Doc. 1 ¶ 40. Thus, reliance upon the clear language of the EAA itself confirms that the Superintendent's actions were lawful.

Further, the cases construing the EAA's "fair opportunity" factors support Superintendent Holtzman's conduct in this case. In Sease v. Sch. Dist. of Philadelphia, 811 F. Supp. 183 (E.D. Pa. 1993) a public school with a limited open forum properly barred an extracurricular group's access to its limited open forum because the group violated Section 4071(c)(5) of the EAA. In granting the school district's motion for summary judgment, the Court found no violation of the EAA on the basis of significant improper nonstudent involvement.

In Sease, the court concluded that nonstudents for purposes of 4071(c)(5) included a school employee, an outside pianist, and even former students who were members of the choir and attended its practices. Here, the participation of TAMV and Penn State Greater Allegheny is similarly prohibited. Plaintiffs' gloss over the "fair opportunity" factors, if not ignored their application to the proposed group.

The decision of the U.S. District Court for the Northern District of Texas, in Caudillo v. Lubbock Indep. Sch. Dist., 2003 U.S. Dist. LEXIS 20388 (N.D. Tx. 2003), is instructive. Caudillo addressed a superintendent's right to qualified immunity based on the lack of clearly established law addressing the exceptions to the EAA. In Caudillo, a gay and straight student association sued the school and its superintendent on First Amendment and EAA grounds after it was denied access to the school's limited open forum. Plaintiff filed a Section 1983 claim against the defendant superintendent in his individual capacity.

The superintendent relied on Section 4071(f), which preserves "the authority of the school … to maintain order and discipline on school property." 20 U.S.C. § 4071. In Caudillo, the superintendent engaged in improper viewpoint discrimination as he denied the group access to the limited open forum because the group intended to: (1) discuss subject matter relating to sexual activity and birth control (2) post flyers with the group's website which included links to "explicit sexual material." *Id*. *18.

Notwithstanding, the Court determined that the superintendent was entitled to qualified immunity. The Court relied on the fact that there was no clearly established law to provide "fair warning" to the defendant that his conduct was unlawful. *Id.* *20. The Court explained: "because the cases dealing with the issue of … alliances at public secondary schools were outside of this district, this state, and this circuit, it cannot be said that the law was clearly established." *Id.* At 24. It further concluded that his determination of the exception's application was not objectively unreasonable under the circumstances.

Caudillo supports Superintendent Holtzman's entitlement to qualified immunity in this case. By comparison, as the Court found in Caudillo, there is no clearly established law relating to the denial of access to student groups that violate the EAA's prohibition on

nonstudent involvement. As such, Superintendent Holtzman is entitled to qualified immunity.

CONCLUSION

For the foregoing reasons, Defendants respectfully request dismissal of the Complaint.

In the Alternative, Defendants Request Summary Judgment in Their Favor Because Plaintiffs' Proposed Student Group is Directed, Organized, and Controlled by Nonschool Persons and, Accordingly, is not Subject to the Requirements of the EAA and MASD Policy.

The Court may grant summary judgment against a party who cannot establish an element essential to that party's case and on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). A material fact is one that can affect the outcome of the suit under the governing substance of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The substantive law determines which facts are material. *Id.*; Boyle v. County of Allegheny PA, 139 F.3d 386, 393 (3d Cir. 1998).

The EAA provides, in part,

> *"Schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that . . . (5) Nonschool persons may not direct, conduct, control or regularly attend activities of student groups."*

20 U.S.C. § 4071(c)(5).

The MASD provides a forum for several extracurricular groups. There are no nonschool persons who are members of the extracurricular activities. There are no nonschool persons who serve on executive committees for the extracurricular activities. There are no nonschool persons who have a vote regarding any matter related to the students' extracurricular activities and, accordingly, there are no nonschool persons who

have control by membership and/or voting or otherwise regarding any matter related to students' extracurricular activities.

(*See*, Declaration of Mark P. Holtzman, D.Ed., App. Exh. P).

In this case, the evidence conclusively shows and there is no dispute that control of the proposed MBSU resides in nonschool persons. Plaintiffs have unequivocally stated that they insist on the proposed "charter" of the MSBU as set forth in the Complaint, ¶ 40 (Doc. 1). Plaintiffs' counsel stated, "*If the District has not approved THIS BSU* (the proposed MBSU in paragraph 40 of the Complaint)*, . . . we will file suit in federal court* . . .. (*See*, CSMF 29; App. Exh. O).

Beginning August 16, 2018 to present, Valian Fawn Walker-Montgomery, on behalf of TAMV, a group of her creation, has repeatedly stated that TAMV and Penn State Greater Allegheny will serve as advisors of the proposed MBSU.

Plaintiff Grace Walker, daughter of Vivian Fawn Walker-Montgomery, discussed the proposed MBSU with Nicole Mallory, M.Ed., School Counselor, McKeesport Area High School. Grace Walker stated that Walker-Montgomery would serve as the advisor and would attend the group's meetings at the school. Grace Walker further stated that Walker-Montgomery was working on a list of activities with dates and times for the proposed MBSU. (*See*, Declaration of Nicole Mallory, M.Ed.; CSMF 12-13). The Plaintiff admits that Walker-Montgomery is the driving force behind the creation and operation of the MBSU and that Walker-Montgomery is the controlling party of the proposed group.

The Complaint and the drafts of the proposed charter of the MBSU uniformly provide that:

> *"The MBSU will be structured to have two community advisors Take Action Mon Valley and Penn State Greater Allegheny . . . The BSU will have 2 grade level captains in junior and senior high school. The captains and*

> *advisors will make up the executive committee (EC). The EC will vote on all decisions effecting the MSBU. If needed the advisors will serve as the tie breaking vote."*

Doc. 1; App. Exh. O; CSMF 30, 14.

No document suggests that control of the proposed MBSU resides with students. Nonschool persons are in complete control of the proposed group and direct and plan the activities. In fact, the nonschool persons would serve on the executive committee of the proposed group and cast the deciding votes on any subject. From Walker-Montgomery's initiation of the proposed MBSU to present, she has clearly stated that her organization, TAMV, will organize, promote, staff, and serve as an advisor for the MBSU. (*See*, Declaration of Tia Wanzo, D.Ed.; CSMF 4-9).

Plaintiffs' claims that Defendants have violated the EAA and MASD policy and Plaintiffs' First Amendment Rights are groundless. Plaintiffs ask this Court to ignore the clear mandate of the EAA and MASD policy which provide that non-students may not conduct, control and participate in school extracurricular activities. For the Court to recognize Plaintiffs' claims, would not only undermine the EAA and MASD policy, but would condone the takeover of extracurricular activities by non-students at MASD and secondary schools throughout the Western District of Pennsylvania.

Summary judgment is appropriate where, as here, there is no dispute that Plaintiffs' requested relief is contrary to law. Amendment of the Complaint is not viable because there is no evidence that Defendants infringed on the rights of the Defendants when Defendants did not recognize, endorse, and condone the establishment of a proposed group, the charter of which group runs afoul of the EAA and MASD policy. Court intervention is warranted if and only if school districts infringe on the rights of students who propose the creation of

extracurricular activities pursuant to the requirements of the EAA and the MASD policies. There is no such evidence in this case, and, accordingly, summary judgment should be granted in favor of the Defendants and against the Plaintiffs.

Respectfully submitted,

DICKIE, MCCAMEY & CHILCOTE, P.C.

By: */s/ Nancy R. Winschel*

Nancy R. Winschel, Esquire
PA I.D. # 34617
nwinschel@dmclaw.com

Stephen M. Houghton, Esquire
PA I.D. # 31622
shoughton@dmclaw.com

Two PPG Place
Pittsburgh, PA 15222-5402
(412) 281-7272

Attorneys for McKeesport Area School District and Mark P. Holtzman, Jr., School District Superintendent

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2019, I electronically filed the foregoing MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION AND, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS MCKEESPORT AREA SCHOOL DISTRICT AND MARK P. HOLTZMAN, JR. and a copy was served upon all parties via the Court's electronic filing system and via U.S. Mail. Parties unable to access the Court's electronic filing system have been served by regular U.S. Mail.

By: */s/ Nancy R. Winschel*
Nancy R. Winschel, Esquire
Stephen M. Houghton, Esquire

Attorneys for McKeesport Area School District and Mark P. Holtzman, Jr., School District Superintendent

8587327.1