

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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Michelle Capellupo,  
Natural Parent, & Legal Guardian  
on Behalf of S.C., An Infant  
Under the Age of Eighteen (18),

Plaintiff(s),

-v-

WEBSTER CENTRAL SCHOOL DISTRICT; and  
DAVID EVANS, Individually,

Defendant(s).

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**COMPLAINT**

Civ. No.:

**JURY TRIAL DEMAND**

**INTRODUCTION**

1. This is an action brought by Michelle Cappellupo, Legal Guardian on Behalf of S.C., an Infant Under the Age of Eighteen (18), ("Plaintiff"), pursuant to 42 U.S.C. §1983, for the denial of equal protection as and against the Defendants WEBSTER CENTRAL SCHOOL DISTRICT, and DAVID EVANS, Individually,

**JURISDICTION AND VENUE**

2. Jurisdiction of this Court is invoked pursuant to 42 U.S.C. § 1983.
3. Venue is proper pursuant to 28 U.S.C. §1391.

**PARTIES**

4. Plaintiff is a resident of the Town of Webster, State of New York.
5. Defendant WEBSTER CENTRAL SCHOOL DISTRICT ("the District") is a municipal corporation organized under the laws of the State of New York.
6. Defendant DAVID EVANS ("Evans") is an individual residing in Monroe County in the State of New York, and a former Varsity Hockey Coach and Physical Education teacher at the District's Webster Thomas High School.

**FACTS**

7. As of November 2008, Claimant S. C. ("S.C.") was a freshman at Webster Thomas High School in Webster, New York.
8. S.C. began playing ice hockey at the age of 6, and played on a AAA travel hockey team throughout his teen years.
9. AAA hockey is a very competitive and elite travel league, known for its high level of play.

10. The league is traditionally very selective, picking only elite players to be part of the league.
11. S.C. tried out for the Webster Thomas Varsity Hockey team in November of 2008, which was coached by David Evans, who, at that time, had been the Varsity Hockey Coach and a Physical Education teacher at Webster Thomas for the preceding six years.
12. S.C. was selected for the Varsity team as a freshman.
13. For a brief time early in the season, S.C. struggled with his grades.
14. Coach Evans approached S.C. and his parents and told S.C. that he would be "allowed to return to the varsity team" when his grades improved.
15. S.C. worked hard to raise his grades, and eventually was named to Webster Thomas's "High Honor Roll."
16. S.C. regained his eligibility that same season, and Evans told S.C.'s parents that he thought Plaintiff needed some more practice, but that he would likely be on Varsity the following season.

17. Evans even told S.C.'s parents to go ahead and buy Varsity Hockey jackets and other Varsity hockey apparel, further leading S.C. to believe he would be selected for the Varsity team the following year.
18. S.C. would remain on the Junior Varsity Team for the remainder of his freshman season, but practiced and traveled with the Varsity team as well, causing him to attend practice both before and after school, under the belief that he would eventually earn a spot on the Varsity Hockey team.
19. The following season, in S.C.'s sophomore year at Webster Thomas, S.C. continued to attend off season events for the Varsity Hockey team, including weight lifting and summer camps, as well as playing AAA hockey in preparation for tryouts.
20. During tryouts, S.C. injured his foot in the locker room when a teammate inadvertently stepped on his foot while wearing skates, causing a laceration.
21. Upon his recovery, S.C. was again assigned to the Junior Varsity team.

22. Concerned about the reason S.C. had been demoted to the Junior Varsity team, S.C.'s parents asked if they could have a meeting with Evans, a notoriously vindictive and unapproachable coach.
23. S.C. again tried out for the Varsity hockey team and was selected for JV by Evans, to the shock of his peers and even some assistant Varsity coaches.
24. As he had done the previous season, Evans lead S.C. to believe that he would be moved up to Varsity in short order.
25. S.C. began attending both JV and Varsity hockey practices and dominated at the JV level, leading his team in several statistical categories including goals scored.
26. In spite of S.C.'s hard work and sacrifice in attending two practices per day in addition to a full class schedule, S.C. was never allowed to play in, or even dress for, a Varsity Hockey game in his sophomore year.

27. S.C. again attended off-season training and played AAA hockey in preparation for junior year tryouts.
28. After practicing with Varsity since freshman year, S.C. believed he would finally be chosen for Varsity his junior year because no player that he knew of had ever made varsity hockey team freshman year and not been chosen the following year.
29. S.C. was again *cut* from the Varsity Team and assigned to the Junior Varsity team.
30. Astonished, S.C.'s parents again inquired as to the reason for S.C.'s failure to make Varsity with Athletic Director Morrison.
31. S.C.'s parents wanted a reason from Director Morrison for why S.C. was selected for Varsity as a freshman, and had been **cut** from Varsity in both his sophomore and junior years, a rare occurrence in High School Athletics.
32. Morrison refused to give a reason for S.C.'s exclusion from Varsity Hockey.

33. S.C. then called Carmen Gumina, the Assistant Superintendent for Webster Schools at that time, and set up a meeting with his parents.
34. Gumina told S.C.'s parents he would investigate the matter, and that Plaintiff's parents should have "blind faith" in him.
35. In April of 2011, S.C. received a call from Superintendent Adele Bovard saying that she would like to meet with S.C.'s parents about S.C.'s exclusion from Varsity hockey.
36. S.C.'s parents were hesitant to accept the meeting given the lack of success they had in previous meetings over the issue, but Superintendent Bovard insisted on having the meeting.
37. Superintendent Bovard promised to "sit down" with Evans and review Plaintiff's concerns over Evans' handling of the team, and S.C.'s exclusion from Varsity hockey, in spite of his advanced skills.

38. Gumina and Bovard both agreed that Evans would not retaliate against S.C. for his grievances, and Gumina went as far as to "promise" that no retaliation would occur.
39. In his senior year, 2012, S.C. attended off-season activities again and was lead to believe that he would be selected for the Varsity Hockey Team.
40. S.C. was again, inexplicably, cut by Evans from the team.
41. When S.C. asked for a reason Coach Evans said "we see you from the outside in," implying S.C. was an outsider to the program in spite of practicing with the Varsity team for the majority of his Webster hockey career, sometimes attending both JV and Varsity practices in the same day.
42. Upon information and belief, no other Webster student has been chosen for the Varsity Hockey Team as a Freshman and cut the following three years.



43. S.C. was cut from the Varsity team by Evans in retaliation for his good faith complaints to the Superintendent, Athletic Director, and even to Evans himself, regarding the concerns about the manner in which their son was being treated.
44. Evans failure to select Plaintiff for the Varsity team was an abuse of Evan's power that had a deleterious effect on S.C.'s future as a hockey player.

**FIRST CAUSE OF ACTION**

**42 U.S.C. §1983**

**Denial of Equal Protection**

45. Plaintiff repeats and re-alleges by reference each and every allegations contained in the above stated paragraphs and incorporates the same as though fully set forth herein.
46. S.C. was not selected for the Varsity hockey team by Evans as a result of his good faith complaints regarding Evans to school officials, each of whom promised to S.C. that he would be treated fairly and not subject to retaliation of any form by Evans.

47. After S.C.'s parents made their last complaint to Superintendent Bovard, he was again not selected for the Varsity hockey team.
48. No other similarly situated Webster public school student has been chosen for the Varsity Hockey Team as a Freshman, and cut the following three years as Plaintiff was.
49. The Defendants and each of them have no rational, important or compelling state interest for such disparate treatment of S.C., other than the fact that he was targeted for disparate treatment because he voiced his concerns and complaints about Evans to school management and Evans abused his power as a Coach to the detriment of S.C.
50. The actions of the Defendants violated Plaintiff's right to equal protected of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

51. Such deprivations were in violation of the rights secured to Plaintiff by the First, Fourth and Fourteenth Amendments to the United States Constitution and by Title 42 U.S.C. § 1983, in particular the Equal Protection Clause.
52. As a result of the defendant's deprivations of Plaintiff's civil rights, Plaintiff has been damaged in an amount to be determined by a jury at the time of trial.
53. That Plaintiff demands costs and attorney fees pursuant to 42 U.S.C. §1988.

**WHEREFORE**, Plaintiff prays as follows:

- A. That the Court award damages to him and against the defendants, jointly and severally, in an amount to be determined at trial;
- B. That the Court award punitive damages to him, and against all individual defendants, in an amount to be determined at trial, and that will deter such conduct by the defendants in the future;
- C. For prejudgment interest and recovery of her costs, including reasonable attorneys' fees as stated above;
- D. For any and all other relief to which Plaintiff may be entitled as a matter of law and equity.

Dated: September 6, 2013  
Rochester, New York

By: *CHRISTINA A. AGOLA, PLLC*  
  
/s/ Christina A. Agola, Esq.  

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