IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ANNA G.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
VANDALIA BOARD OF EDUCATION; and CAROLINE SCHUMAN, in her capacity as Principal of Compton Junior High School,	)	**No. 102276**
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

September 1, 2003

GORDON, District Judge:

The Plaintiff, Anna G., a minor student, by and through her parents, seeks a declaratory judgment that certain disciplinary actions taken by the Defendant school authorities against the Plaintiff are null and void because they violated the Plaintiff's rights under the First Amendment. The Plaintiff also seeks a permanent injunction ordering the Defendants to remove all references to the said disciplinary actions from the Plaintiff's school record. Because the Defendants were acting in all relevant respects in their official capacities as part of a state operated public school system, the Plaintiff's cause of action arises under 42 U.S.C. § 1983. This Court has jurisdiction over the Plaintiff's cause of action pursuant to 28 U.S.C. § 1331 because the Plaintiff raises federal questions under the United States Constitution. The central issue to be resolved by this Court is whether the Defendants' disciplinary actions violated the Plaintiff's First Amendment

right of free speech. This Court finds as a matter of law that the Defendants' actions did not violate the First Amendment.

I. Factual Background

The facts of this case have been stipulated and are not in dispute. At all times pertinent to this action, the Plaintiff Anna G. ("Anna") was thirteen years of age. Anna was an eighth grade student at Compton Junior High School ("Compton") in Vandalia, Illinois. Compton is a public school under the ultimate authority of the Defendant Vandalia Board of Education ("Board"). The parties agree that Anna possesses artistic talent and that her teachers at Compton encouraged Anna to further develop her abilities. Anna has taken elective courses offered by the school's art department, including Drawing, Comic Book Art, and Watercolor, and has participated in the Compton Junior High School Summer Arts Program for two years.

In April of 2003, Anna and her parents watched a televised special feature covering the anniversaries of recent violent episodes in American life: the April 19, 1993 conflict between Branch Davidians and ATF agents in Waco, Texas; the April 19, 1995 federal building bombing in Oklahoma City, Oklahoma; and the April 20, 1999 Columbine school shootings in Littleton, Colorado. Anna was intensely affected by the interviews with Columbine survivors and others concerning the effect of violence on America's youth. That same evening at home Anna created a series of three art panels in comic book style which she entitled *Justice*. Each of the three panels measured eight-and-one-half inches by eleven inches. The main character in *Justice* is a teenage girl apparently modeled after Anna herself. In the first panel, the central figure is taunted by a group of other teenage girls. The main character wears glasses and carries schoolbooks, while one of the other girls wears a cheerleader uniform and the rest are dressed in noticeably tight blouses and short skirts. In the second panel, the main character appears in a

school hallway near her open locker while a mature male figure, apparently a teacher or similar school authority figure, berates her and threatens her with detention for her tardiness. The third panel portrays the main character alone in her bedroom, accompanied by a large cartoon-style "bubble" above her head suggesting that she is imagining the scene portrayed in the bubble. That scene depicts a school building, resembling Compton, seriously damaged by an apparent explosion. Flames and smoke pour from the ruins. The front lawn and street are littered with body parts, blood, and badly injured survivors running from the destruction.

On Monday, April 21, 2003, Anna carried her *Justice* sketch panels to school with her in her backpack. During the lunch period in the school cafeteria, she took the *Justice* panels out of her backpack and showed them to two of her friends who were fellow art students. The three students discussed both the panels and the underlying subject matter of teenage resentment and violence in schools. Another student, Jill S., overheard the conversation that ensued and caught a glimpse of Anna's drawings. Jill S. immediately approached Miguel Ramirez ("Ramirez"), the teacher on duty in the cafeteria that day. In a state of visible agitation, Jill S. told Ramirez what she had seen and heard. She stated that she believed that the cheerleader in the cartoon represented her and that she feared for her own personal safety if the school authorities did not take action. Ramirez then seized the drawing from Anna and escorted her to the school principal's office. Ramirez informed the principal, Defendant Caroline Schuman ("Schuman"), that he had removed Anna and her drawing from the cafeteria after Jill S. had expressed concern.

Schuman then questioned Anna closely about the drawings and her purpose both in creating the panels and in bringing the drawings to school with her. Schuman testified at trial that Anna admitted during this interview that her home room teacher, Patrick Lee, had issued Anna two separate citations for tardiness within the past month, and that another teacher,

Suzanne Holland, had recently reprimanded her in front of the class for talking to another student while Mrs. Holland was lecturing to the class. Anna also admitted during this interview that she felt that she was the subject of whispers and ridicule whenever she was near a particular group of girls at Compton, whom Anna perceived to be more attractive and popular. Schuman testified that at the time of her interview with Anna, Schuman knew that Jill S., the girl who had reported Anna to Ramirez in the cafeteria, was a cheerleader and was widely viewed as one of the most visible members of a clique of girls by whom Anna felt ridiculed. Schuman testified at trial that she concluded from the *Justice* panels and from her interview with Anna that a strong response from the school was necessary to clearly communicate to Anna and the entire student body that threats against other students or against the peace and tranquility of the school community would not be tolerated. Schuman also testified that she was especially concerned about Anna's drawings because, in her experience as an educator, it was extremely rare for female teenagers to harbor such violent thoughts.

At the conclusion of her interview with Anna, Schuman imposed a ten-day suspension from school on Anna effective immediately. Schuman promptly recorded that action in Anna's student file. When introduced at trial, Anna's student file showed that prior to the incident in question, Anna had been verbally reprimanded by Schuman for an incident in the school hallway in which Anna had engaged in an angry shouting and shoving match with another female student during which the other student's books and papers were knocked to the ground and scattered. The record also showed the two recently recorded citations for tardy arrival at home room.

Upon learning of Anna's suspension by a phone call from Schuman shortly after she imposed the suspension, Anna's parents filed an appeal with the Defendant Board according to procedures published by the Board for such appeals. Under the Board's procedural rules, the

filing of the appeal immediately suspended Schuman's action until the Board resolved the appeal. After what all parties agree was a full and fair hearing before the Board, the Board by divided vote upheld Schuman's actions. At that point, Anna served her ten-day suspension at home and then returned to Compton without further incident. The evidence at trial showed that upon her return to school Anna was received with sympathy by some students and was conspicuously avoided by other students. Shortly after the Board announced its decision upholding Schuman's disciplinary action, Anna's parents filed this cause of action on her behalf against the Defendants Caroline Schuman and the Vandalia Board of Education.

II. Discussion

This suit seeks a declaratory judgment that the disciplinary action taken against Anna is void as a violation of her First Amendment rights and seeks an injunction ordering the expungement from her student file of any reference to the incident. In response to Anna's suit, the Defendants contend that their official actions were entirely consistent with the applicable case law defining the scope of Anna's First Amendment rights under the circumstances.

The Supreme Court of the United States has long recognized that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). However, the rights of school children within the school environment are necessarily "not automatically co-extensive with the rights of adults in other settings." *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986). Schools need not tolerate student speech that is "inconsistent with the school's basic educational mission," that is vulgar and offensive to the "fundamental values" of education, or that will "materially and substantially interfere with…the work of the school or impinge upon the rights of other students." *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988); *Fraser*, 478

U.S. at 685-86; *Tinker*, 393 U.S. at 509. Any expression by a student in the context of a public school must be analyzed with special regard for these circumstances.

In addition to these fundamental principles of school speech jurisprudence, the Supreme Court has made clear in cases such as *Watts v. United States*, 394 U.S. 705 (1969), and *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), that speech in the form of threats is not within the body of expression protected by the Free Speech Clause. Within the school context, involving children whose sense of security can be easily destroyed, we are required to take even more seriously the Court's determination that threats to the peace and security of others will not be afforded constitutional protection. In *Watts*, the Supreme Court announced a multi-factor test to determine whether speech constituted a true threat. These factors included the extent to which the speech was mere political hyperbole, the conditional nature of the "threat", the overall context and background circumstances, and the reaction of the listeners. *Watts*, 394 U.S. at 708. The Court emphasized that the actual intent of the speaker was not to be considered determinative. In applying the *Watts* standards, the Seventh Circuit in *United States v. Saunders* made clear that a true threat may exist where the context would indicate to a reasonable person in the speaker's position that the "statement would be interpreted" by the listeners as "a serious expression of an intention to inflict bodily harm upon or to take the life of another." 166 F.3d 907, 912 (7th Cir. 1999).

In the instant case, this established true threat doctrine requires this Court to consider: 1) whether Anna's drawing was mere political hyperbole, necessary to convey her message; 2) whether a reasonable observer would have perceived the drawing as a threat; 3) whether Anna could reasonably have expected an observer to perceive the drawing as a threat; 4) whether the threat was conditional in nature; and 5) whether the circumstances or context in which the

expression was conveyed indicate a serious threat. *Watts*, 394 U.S. at 708; *Saunders*, 166 F.3d at 912. Based on the evidence and testimony presented, this Court holds that Anna's drawing did constitute a true threat, particularly in the emotionally fragile environment of a junior high school.

The violence and threatening nature of the drawing were not warranted by political hyperbole. Anna's stated purpose of addressing the connection between teenage alienation and school violence could have been accomplished, even in an artistic manner, by expression that did not include graphic violence or implied threats. An actual observer in this case did in fact perceive the drawing as a threat to her personally and to the school community as a whole. There is no evidence or testimony to suggest to this Court that the concern expressed by Jill S., and acted upon by both Ramirez and Schuman, was unreasonable under the circumstances. A reasonable "speaker" in Anna's position could have expected that an observer of the drawings—with knowledge of Anna's prior encounters with both Jill S. and Anna's home room teacher, Mr. Lee—could perceive the drawings as a threat. Additionally, Anna's exposure of the drawings in the school cafeteria during the lunch period allowed the drawings to be seen by any number of individuals who might well feel threatened.

Because of the context of the school environment, the nature of the drawing, and the balancing of the reasonableness factors of the *Watts* and *Saunders* cases, this Court holds that Anna's drawing constituted a true threat. As such, the expression was not entitled to First Amendment protection, and this Court holds that the Defendants' actions—imposing a ten-day suspension on Anna in response to her expression—did not violate Anna's First Amendment right to free speech.

Counsel for Anna contends, however, that the drawings in question do not pose such a clear or specific threat as to fall beyond the protection of the First Amendment. While that argument might well be persuasive under other circumstances, and while doubts generally should be resolved in favor of protection for the expression at issue in order to avoid a chilling effect on free speech, *see, e.g., State v. Douglas D.*, 626 N.W.2d 725, 746-47 (Wis. 2001) (Abrahamson, C.J., concurring), this Court believes that precisely the opposite presumption should control in this case. The decision to impose discipline in this case was made in the first instance by an experienced professional educator and was confirmed by the Board, representing the broader community. Both were charged with the responsibility for preserving and enhancing the learning environment at Compton. Dealing with children in their early teens is notoriously difficult and requires flexible responses to a myriad of situations. This Court should not substitute its judgment for that of a skilled and knowledgeable educator under these circumstances unless the educator's decision is plainly unconstitutional. In addition, the ten-day suspension imposed on Anna by Defendant Schuman and affirmed by the Defendant Board is not a sufficient injury to warrant the intervention of this Court into the affairs of the public schools of Illinois.

Judgment is entered for the Defendants.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ANNA G.,	)	
	)	
Plaintiff-Appellant,	)	
	)	
vs.	)	
	)	
VANDALIA BOARD OF EDUCATION; and	)	**No. 04-2852**
CAROLINE SCHUMAN, in her capacity as	)	
Principal of Compton Junior High School,	)	
	)	
Defendants-Appellees.	)	

MEMORANDUM OPINION AND ORDER

June 2, 2004

BEFORE Wiltshire, Moore,
Short, Circuit Judges

MOORE, J., with whom WILTSHIRE, C.J., joins:

This case comes to us from the District Court for the Southern District of Illinois. That court held that the actions of the Vandalia Board of Education ("Board") and Compton Junior High School Principal Caroline Schuman ("Schuman") in imposing a ten-day suspension on Anna G. ("Anna") did not violate Anna's First Amendment right to freedom of speech because the expression at issue fell within the Supreme Court's established exclusion for true threats and thus, was not subject to First Amendment protection. Anna, the Plaintiff below, filed a timely appeal. For the reasons set forth below, the decision of the District Court is reversed.

The uncontested facts of this case as summarized by the District Court are adopted herein by reference. After bringing an original drawing to school, Anna was detained by Schuman and

another teacher, and subsequently issued a ten-day suspension when school authorities determined the drawing to be threatening and to be an interference with the goals of the school. This case raises an important constitutional issue, and we review the legal conclusions of the District Court de novo. *Bose Corp. v. Consumers Union*, 466 U.S. 485, 499 (1984); *Sequoia Books, Inc. v. Ingemunson*, 901 F.2d 630, 633 (7th Cir. 1990). We hold that the District Court erred in finding that Anna's artwork constituted a true threat. We also find that Anna's artwork did not present the sort of disruption in the school context required by the Supreme Court decision in *Tinker v. Des Moines Indep. Cmty. Sch. Dist*., 393 U.S. 503 (1969). Thus, the artwork in question was protected by the First Amendment. We therefore reverse the decision of the District Court and hold that the actions of the Defendant school authorities violated Anna's First Amendment right to free speech.

The District Court found that the artwork constituted a true threat and as such, was not subject to First Amendment protection. As the District Court noted, our analysis of a true threat is governed by Seventh Circuit precedent such as *United States v. Saunders*, 166 F.3d 907, 913 (7th Cir. 1999), and *United States v. Pacione*, 950 F.2d 1348, 1355 (7th Cir. 1991). The *Saunders* test requires the court to focus on "whether a reasonable speaker would foresee that the recipient of his words would take the statement seriously." 166 F.3d at 913. However, this Court will also consider relevant evidence as to the objective response of a reasonable listener. *Id*. We disagree with the District Court in its understanding of these factors and its application of this test given the facts of this case. First, the District Court considered whether the specific method of expression selected by Anna was "necessary to convey her message." While it is not the role of the judiciary to second-guess the experience and expertise of school authorities, it is equally beyond the scope of our powers, generally, to determine the intrinsic value of artistic

expression. Second, the District Court considered both the objective tests of a reasonable speaker and a reasonable listener. We believe these factors are not as clear-cut as the District Court thought, particularly in light of Anna's complete lack of intent to display the drawing to a wide audience in the school cafeteria. Finally, the District Court considered the nature of the threat and the surrounding circumstances. While we are not insensitive to the increased risk inherent in the school setting, we believe the District Court failed to give proper weight to the conditional nature of the alleged threat involved. In this case, the evidence does not support a finding that the artwork was a true threat.

Even if Anna's expression did not constitute a true threat, the Defendants' actions may still be supportable if the expression may be regulated under the guidelines imposed in *Tinker*. 393 U.S. 503. In that case, the Supreme Court held unconstitutional a school prohibition against students wearing black armbands to protest the war in Vietnam. According to the Supreme Court, "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression," even in a public school context. *Id*. at 508. Although many lower court opinions in recent years seem to have eroded the test in *Tinker*, giving more deference to the decisions of school authorities, *see, e.g., LaVine v. Blaine Sch. Dist.*, 257 F.3d 981 (9th Cir. 2001); *Porter v. Ascension Parish Sch. Bd*., 301 F. Supp. 2d 576 (M.D. La. 2004), *Tinker* remains intact to protect the First Amendment rights of students. For a school to justify actions suppressing student speech, it must demonstrate:

> that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,' the prohibition cannot be sustained.

> *Tinker*, 393 U.S. at 509 (*citing Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966)).

While school authorities are not required to wait until conduct or speech reaches the point of interfering with the work of the school or the rights of other students, *Chandler v. McMinnville Sch. Dist.*, 978 F.2d 524, 529 (9th Cir. 1992), they also may not suppress student speech where there is no reasonable expectation that a material interference will result. *Lavine*, 257 F.3d at 989. The facts of this case do not suggest that Anna's art panels should have created any such expectation, or that the artwork interfered with the rights of any other students.

For the foregoing reasons, the decision of the District Court is reversed and remanded with instructions to enter a judgment consistent with this opinion.

SHORT, J., concurring in part and dissenting in the judgment:

Although I agree with the majority that Anna's drawing does not constitute a true threat, I respectfully dissent from the holding today that the drawing is protected under *Tinker v. Des Moines Indep. Cmty. Sch. Dist*., 393 U.S. 503 (1969). In addition, both the majority here and the District Court below fail to address a key threshold matter: whether Anna's drawing is entitled to any First Amendment protection at all. First, these panels are the doodling of a thirteen year old girl; we have never recognized that minor children enjoy the same sort of protection that the First Amendment affords to adults. Second, I am not convinced that the panels were created for a purpose that mandates First Amendment protection. Whether the cartoon was created as an emotional release for Anna herself, or as mere art, Anna apparently did not intend to persuade any external audience of any particular position or opinion. Indeed, Anna seems to have shown the panels only to the two close friends at lunch who presumably shared her views. The First Amendment was intended to protect political advocacy. In a case involving such political speech, the protection of the First Amendment is "at its zenith." *Meyer v. Grant*, 486 U.S. 414, 425 (1988). The child's artwork that is involved in this case seems far removed from the expression that the First Amendment was designed to protect.

Nevertheless, the decision in this case need not rest on such abstract and debatable theoretical grounds. We can assume, *arguendo*, that the panels are a form of expression that may be entitled to some First Amendment protection as a general proposition. We must then determine the scope of that protection, given the nature of the expression and the surrounding circumstances. In this case, because the speech at issue occurred in the school context, our analysis is governed by the Supreme Court's ruling in *Tinker*. 393 U.S. 503.

As the majority noted, *Tinker* requires a showing that the expression substantially interfered with the work of the school or the rights of other students. 393 U.S. at 509. The recent interpretation of *Tinker* by the Ninth Circuit is persuasive. In *Lavine v. Blaine Sch. Dist.*, the Ninth Circuit determined that *Tinker* required an analysis of the totality of the circumstances, particularly those that may cause school authorities to reasonably believe that the conduct will cause a disturbance. 257 F.3d 981, 989 (9th Cir. 2002). Given the recent increase in school violence, and the school's duty to protect students under its supervision, it was not an unreasonable determination that Anna's drawing constituted a potential disturbance to the operation of the school. Since *Tinker* was decided thirty-five years ago, the situation facing our Nation's public schools has changed dramatically. Numerous district and circuit court opinions handed down since *Tinker* have taken into account these changing circumstances in our schools. *See, e.g.*, *Lavine*, 257 F.3d 981; *J.S. v. Bethlehem Area Sch. Dist.*, 807 A.2d 847 (Pa. 2002). In a world where school violence, indeed a full range of immoral and harmful activity, has become a widespread epidemic, our judicial system cannot turn a blind eye to the increasing problems confronting public school authorities. Where school authorities have carefully balanced the school's interest in maintaining order and safety against the extent of interference with a student's right to free speech, as Schuman and the Board have in this case, it is not the province of the judiciary to interfere with that reasonable determination.

I agree with the majority of this Court in their determination that the District Court erred in concluding that the expression at issue in this case constituted a true threat undeserving of First Amendment protection. I disagree, however, with my colleagues' determination that the expression was protected in a school context under the authority of *Tinker*. Because I believe that the expression in this case involved precisely the sort of disruption of the school's

educational environment that was absent in *Tinker*, I have concluded that this expression in this school context was not protected by the First Amendment under the authority of *Tinker*. Therefore, I reach the same conclusion as the District Court, although on different grounds.

For the foregoing reasons, I would affirm the holding of the District Court that the conduct in question is not protected by the First Amendment. I respectfully dissent.

IN THE
SUPREME COURT OF THE UNITED STATES

No. VU-SUP 2004

Vandalia Board of Education and Caroline Schuman, Petitioners

v.

Anna G., Respondent

October 1, 2004

Case Below

_____ F. Supp. 3d _____ (S.D. Ill. 2003)
_____ F. 3d _____ (7th Cir. 2004)

Petition for writ of certiorari to the Seventh Circuit Court of Appeals is **GRANTED**.

The issues before the Court are:

(1) Whether the imposition of a school suspension on Anna G. was justified because the expression at issue was a true threat and thus was not protected by the First Amendment; and

(2) Whether the imposition of a school suspension on Anna G. was justified because the expression at issue presented a significant risk of material disruption of the educational environment and thus was not protected by the First Amendment?

Arguments will be heard on an expedited basis. The Petitioners Vandalia Board of Education and Caroline Schuman shall present argument first.