

★ OCT 28 2010 ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

LONG ISLAND OFFICE

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NINA OTTAVIANO, an infant, by her father and natural  
guardian, JOHN OTTAVIANO,COMPLAINT

Plaintiff,

Jury Trial Demanded

-against-

CV-10 4962

KINGS PARK CENTRAL SCHOOL DISTRICT, KINGS  
PARK CENTRAL SCHOOL DISTRICT BOARD OF  
EDUCATION, SUSAN AGRUSO, LINO BRACCO,  
WILLIAM MOTHERWAY, MARIE GOLDSTEIN, STEVE  
WEBER, TOM LOCASCIO, and LIZ BARRETT  
(individually and in their official capacities),

SPATT, J.

TOMLINSON, M

Defendants.

X

Plaintiff, NINA OTTAVIANO, an infant, by her father and natural guardian, JOHN OTTAVIANO, and through her attorneys, Leeds Morelli & Brown, P.C., as and for her complaint against the Defendants herein, allege, upon personal knowledge and upon information and belief as to all other matters:

PRELIMINARY STATEMENT

This is an action brought on behalf of infant, and Kings Park High School student, Nina Ottaviano ("Nina"), by her parent, John Ottaviano, to address the discriminatory, malicious, irrational, and bad faith efforts of the Defendants to harm Nina, and irreparably damage her future. Defendants have, without the due process of a hearing, suspended Nina from all extra-curricular activities for the entirety of her senior year (2010/2011 school year) as a result of an incident where another student was found to have alcohol in her possession during a school

sponsored event. As a result of this event, Nina has been suspended from participating in varsity basketball and varsity soccer for the entirety of her senior year, which, in turn, has destroyed her prospects at being accepted to colleges on an athletic scholarship or recruited by various top colleges to play said sports in college. Furthermore, Nina's excessive punishment, and the consequences it has on her future career, is far more severe than those punishments issued by the District for similar and/or more severe infractions. In fact, various students have been found to be consuming alcohol on school premises, including, but not limited to, male football players, and have merely been suspended for a short period of time, but then allowed to resume their athletic and extra-curricular activities. In fact, no student has ever been subjected to this type of discipline, despite the fact that many other students, including various male student athletes and children of members of the Board of Education, have engaged in similar conduct.

While the consumption by and distribution of alcohol to minors is a serious issue, there exists no rational basis by which Nina should be singled out and branded with a scarlet letter. Such an extreme punishment, based on one alleged incident of a lack of judgment, will irreparably damage Nina's future. Meanwhile, other students, including other male athletes, are allowed to continue their high school careers, including participation in sports, after being subjected to brief discipline, if any. Such disparate treatment of Nina, is irrational, in bad faith, and has the effect of singling out one child, with no prior history of disciplinary issues, in a sea of transgressors. This type of conduct should not be permitted to continue.

### JURISDICTION AND VENUE

1. This is a civil action brought pursuant to 42 U.S.C. § 1983 to redress Defendants' violations of the Fourteenth Amendment to the Constitution of the United States and all the laws and statutes thereunder, as well as any other common law or statutory cause of action which can be inferred from the facts set forth herein.
2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331.
3. Venue is proper pursuant to 28 U.S.C. § 1331.

### PARTIES

4. Plaintiff, Nina Ottaviano ("Nina"), was and still is a resident of the County of Suffolk, State of New York. John Ottaviano ("Ottaviano") is the father and natural guardian of the Infant Plaintiff, Nina Ottaviano.
5. Defendant, Kings Park Central School District ("School District"), is a public school district organized under the laws of the State of New York with its principal place of business in the County of Suffolk, State of New York.
6. Defendant Kings Park Central School District Board of Education ("BOE"), is the governing body of the School District, with its principal place of business in Suffolk County, State of New York.
7. Defendant Susan Agruso ("Agruso") was, at all relevant times, the Superintendent of Schools for the School District. At all relevant times alleged, defendant, Agruso was an

agent, servant, or employee of the defendant School District and was engaged in the course of her duties, responsibilities, and employment in the County of Suffolk, State of New York. In her capacity as Superintendent of Schools, Agruso has the authority to levy discipline against students attending classes within the school district.

8. Defendant, Lino Bracco (“Bracco”) was, at all relevant times, the Principal of Kings Park High School, which is a high school within the School District. At all relevant times alleged, defendant Bracco was an agent, servant or employee of the defendant School District and was engaged in the course of his duties, responsibilities, and employment in the County of Suffolk, State of New York. In his capacity as Principal of Kings Park High School, Bracco has the authority to levy discipline against students attending classes within the school.
9. Defendant, William Motherway (“Motherway”) was, at all relevant times, the President of the District BOE. At all relevant times alleged, defendant Motherway was an agent, servant or employee of the defendant School District and was engaged in the course of his duties, responsibilities, and employment in the County of Suffolk, State of New York. In his capacity as BOE President, Motherway has the authority to levy discipline against students attending classes within the school district.
10. Defendant, Marie Goldstein (“Goldstein”) was, at all relevant times, the Vice President of the District BOE. At all relevant times alleged, defendant Goldstein was an agent, servant or employee of the defendant School District and was engaged in the course of her duties, responsibilities, and employment in the County of Suffolk, State of New York.

In her capacity as BOE Vice President, Goldstein has the authority to levy discipline against students attending classes within the school district.

11. Defendant, Steve Weber (“Weber”) was, at all relevant times, a member of the District BOE. At all relevant times alleged, defendant Weber was an agent, servant or employee of the defendant School District and was engaged in the course of his duties, responsibilities, and employment in the County of Suffolk, State of New York. In his capacity as a member of the BOE, Weber has the authority to levy discipline against students attending classes within the school district.
12. Defendant, Tom Locascio (“Locascio”) was, at all relevant times, a member of the District BOE. At all relevant times alleged, defendant Locascio was an agent, servant or employee of the defendant School District and was engaged in the course of his duties, responsibilities, and employment in the County of Suffolk, State of New York. In his capacity as a member of the BOE, Locascio has the authority to levy discipline against students attending classes within the school district.
13. Defendant, Liz Barrett (“Barrett”) was, at all relevant times, a member of the District BOE. At all relevant times alleged, defendant Barrett was an agent, servant or employee of the defendant School District and was engaged in the course of her duties, responsibilities, and employment in the County of Suffolk, State of New York. In her capacity as a member of the BOE, Barrett has the authority to levy discipline against students attending classes within the school district.

### BACKGROUND FACTS

14. Nina is and has always been a dedicated, accomplished, and hard working student, who has been a role model for her peers.
15. This fact is evidenced by her disciplinary record, which prior to her senior year, was non-existent, as well as her prior scholastic achievements, including being honored by the School District's Board on April 6, 2010 for her achievement as a Dowling College Long Island Youth Summit Project Winner.
16. Nina is also a two sport athlete who is being recruited by various colleges in these sports (soccer and basketball), is the editor of the school's newspaper, and is an honor's level student.
17. Despite this exemplary record, Nina has been the subject of discriminatory conduct at the hands of the Defendants and/or a malicious and bad faith attempt to injure her and in the process irreparably damage her future scholastic goals, dreams, and objectives.
18. On September 16, 2010, the School District's senior class, of which Nina is a member, was to attend a Senior Banquet at Brentwood Country Club after normal school hours.
19. That day, another student provided Nina with alcohol. Nina did not consume this alcohol, but gave it to a classmate, M.S., who then carried it onto a school bus which was transporting students to the event.

20. M.S. was caught by school officials bringing the alcohol onto the school bus and was removed from the school bus.
21. At the end of that night, Nina advised Defendant Bracco, despite having no obligation to do so, that she had provided M.S. with the alcohol that she possessed.
22. On September 17, 2010, as a result of this admission, Nina was suspended from school for two days: September 17, 2010 and September 20, 2010.
23. Additionally, that same day, Ottaviano was advised by Defendant Bracco, via phone, that Nina would be deemed ineligible to participate in soccer.
24. On September 21, 2010, Ottaviano met with Defendant Bracco, and advised Bracco of the negative impact that such a severe punishment would have on Nina's future collegiate prospects.
25. Despite this fact, and the fact that no other student has ever been subjected to such a severe punishment, despite engaging in similar and/or more severe conduct, Defendants Bracco and Agruso maintained their malicious position that Nina would not be entitled to play any sports for the entirety of her senior year (the 2010/2011 school year).
26. Plaintiff, through Ottaviano, appealed this decision to the BOE, and provided various references in support of the character of Nina.

27. Despite this fact, the BOE voted, with a malicious and bad faith intent to injure Nina, to uphold the severe punishment of Nina. Such a punishment is extreme, malicious and discriminatory on the basis of Nina's gender, in light of the fact that other similarly situated male students have been found guilty of similar or worse infractions and have not similarly been disciplined. For example:

- a. In Fall 2007, P.D. is an athlete who was found with a water bottle full of vodka in her locker. P.D. received a three day suspension and was not otherwise suspended from participation in sports for a year;
- b. In June 2007, J.C. was determined, via breathalyser, to be drunk while attending the Senior Prom. J.C. suffered no repercussions;
- c. In September 2010, W.H., a male football player, was found to be intoxicated during school hours, and, upon information and belief, had been consuming alcohol during school hours in the driveway of the home of Defendant Motherway. W.H. remains on the football team and has not been suspended for the year;
- d. On or about September 20, 2010, a male football player attended school drunk. This student was not kicked off of the men's football team for the entirety of the season; and,
- e. In early September 2010, a male football player, N.B., hosted a keg party for the football team at his home, while his parents were present, where numerous students consumed alcohol. N.B. was

not suspended from school, and was suspended for only one football game.

28. On October 6, 2010, Defendants formally memorialized this decision by way of a letter sent to Ottaviano.

29. The above examples evidence the discriminatory animus of Defendants. While two male athletes have been found since the start of the 2010/11 school year to have violated school policies with respect to alcohol, they have been permitted to continue to participate in extra curricular activities. Meanwhile, Nina and M.S. have been suspended from such activities for the entire year. Upon information and belief, this is due to the fact that Nina is a female student.

30. Furthermore, the District's rules with respect to student consumption of alcohol is not equally enforced, and has been enforced against Plaintiff in a disparate manner to similarly situated students, including similarly situated male students who participate in male sports. Such conduct is without rational basis and is designed to maliciously and irreparably damage her future.

31. For example, many other students openly display the fact that they engage in underage drinking, which is illegally sponsored by some of these student's parents. Included in this group are the children of members of the BOE, and children who consumed alcohol on school grounds and/or attended school while intoxicated. Yet, similarly severe discipline is not levied against these students.

32. As a direct and proximate result of the aforementioned conduct, Nina has suffered and will continue to suffer great pain, humiliation, as well as physical and emotional damages. Furthermore, should Defendants' discriminatory and/or malicious conduct be allowed to continue, Nina will be irreparably harmed in terms of her future aspirations.

#### **CAUSES OF ACTION AGAINST SCHOOL DISTRICT AND BOE**

33. Defendants School District and BOE, while acting under color of state law, deprived Nina of her constitutional rights, as secured by the Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. 1983, by way of their intentional discrimination of Nina on the basis of her gender, and their malicious and bad faith attempts to injure Nina.

34. Municipal officials intentionally committed, condoned or were deliberately indifferent to the aforementioned violations of Plaintiff's constitutional rights. Such deliberate indifference may be inferred in the following ways:

- a. Defendants had a custom or practice of discriminating against the Infant Plaintiff based on her gender and/or due to a malicious and bad faith intent to injure Infant Plaintiff. The discriminatory practices were so persistent and widespread that they constitute the constructive acquiescence of policymakers.
- b. Supervisors failed to properly investigate and address allegations of discrimination.
- c. Inadequate training/supervision was so likely to result in the unlawful and Discriminatory conduct that policymakers can reasonably be said to have been deliberately indifferent to the need to provide better training and supervision.
- d. Policymakers engaged in and/or tacitly condoned the discrimination.

## **CAUSES OF ACTION AGAINST THE INDIVIDUAL DEFENDANTS**

35. The individual defendants unlawfully participated in and/or permitted the aforementioned discrimination to perpetuate, without abatement, in violation of Plaintiff's constitutional and statutory rights pursuant to 42 U.S.C. § 1983, incorporated through the Fourteenth Amendment.

WHEREFORE, Plaintiff demands judgment against defendant for all compensatory, emotional, physical, and punitive damages (where applicable), injunctive relief, reinstatement to extra-curricular activities, and any other damages permitted by law. It is further requested that this Court grant reasonable attorneys' fees and the costs and disbursements of this action and any other relief to which plaintiff is entitled.

Plaintiff demands a trial by jury.

Dated: Carle Place, New York  
October 27, 2010

Respectfully submitted,

LEEDS MORELLI & BROWN, P.C.  
*Attorneys for Plaintiffs*  
One Old Country Road, Suite 347  
Carle Place, New York 11514  
(516) 873-9550

By:   
JEFFREY K. BROWN (JB-5177)