

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

FILED

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

WILLIAM NEVINS

Plaintiff,

vs.

RIO RANCHO PUBLIC SCHOOLS,  
PRINCIPAL GARY TRIPP, and  
SUPERINTENDENT SUE CLEVELAND,  
in their official and individual capacities,

Defendants.

CIV 03-1165 BB/ACT

Robert M. March  
CLERK-ALBUQUERQUE

04 APR -6 PH 4: 12

**AMENDED COMPLAINT FOR DAMAGES**

COMES NOW Plaintiff William Nevins, by and through his attorney of record, Eric Sirotkin, and hereby states the following as his cause of action for injunctive relief and damages. Plaintiff has been retaliated against by Defendant as hereinafter more specifically outlined.

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff is a citizen of the United States and the State of New Mexico, and resides in the City of Albuquerque, within Bernalillo County.
2. Defendant Rio Rancho Public Schools is a municipality within the State of New Mexico and located in Sandoval County. The Rio Rancho Public Schools was at all material times the employer of the Plaintiff.
3. Defendant Gary Tripp, is a citizen of the United States and, upon information and belief, resides in the City of Rio Rancho, Sandoval County, New Mexico.
4. Defendant Sue Cleveland, is a citizen of the United States and, upon information and belief, resides in the City of Rio Rancho, Sandoval County, New Mexico.
5. Defendant Sue Passell, is a citizen of the United States and, upon information and

belief, resides in the City of Rio Rancho, Sandoval County, New Mexico.

6. This court has jurisdiction pursuant to the residence of Plaintiff, the Constitution of the United States and New Mexico , 42 U.S.C. §§ 1983 and that the acts took place in the State of New Mexico. Venue in this court is appropriate.
7. All conditions precedent to jurisdiction have been satisfied.

#### **ALLEGATIONS COMMON TO ALL COUNTS**

8. Plaintiff was a teacher at Rio Rancho High School from September 2001 to May 2003.
9. Defendant Gary Tripp was the Principal of Rio Rancho High School during Plaintiff's employment with Rio Rancho High School.
10. Plaintiff taught Humanities, as well as becoming the coach of High School Slam Poetry Team and Write Club in September 2002.
11. Plaintiff's performance appraisal in his first year of teaching was positive. He was rehired for a second year.
12. Plaintiff brought in creative artists from the community to work with his students.
13. The School Slam Poetry Team and Write Club became very popular and active in writing poetry and in bringing its poetry out into the community at large.
14. Members of the poetry team were encouraged by Plaintiff to go out to public events and share their poetry.
15. Beginning in November 2002 some members of the team would attend a public Poetry Slam at the Barnes and Noble Bookstore to read their poems. Plaintiff would also go these events.

16. Plaintiff gave full notice to the Defendants that students were going to be at this event and invited the entire staff on numerous occasions to attend.
17. At that event students would read controversial poems on matters of public concern.
18. These events were organized by the community and were not put on by the school.
19. Despite knowing about these events, no one characterized them as field trips nor asked Plaintiff to provide any documentation for the trips.
20. Poetry Students and their families came to the events if they wanted to practice their poetry or speak their mind publicly. Plaintiff did not arrange for them to attend, nor supervise these evening public gatherings.
21. In December of 2002, Plaintiff arranged a poetry reading in the performing arts center was well received, but one teacher questioned that the students seemed interested in revolution. At said poetry reading students covered several controversial topics and Plaintiff read an original poem of his that discussed the assassination of John Kennedy and related it to the world around us.
22. After the event Plaintiff was quoted in the local newspaper about his efforts to get students to foster interest in the world around them and the article told the community to "get used to this freethinking."
23. On December 16, 2002, shortly after the event, Defendant Passell attended two of bothered that some people liked the Performing Arts Center poetry reading.
24. After the event Plaintiff suggested that she might want to attend on a different day, as the unique slam format of the event isn't really going to demonstrate all aspects of his teaching style and performance. However, Defendant Passell chose to stay

and use this as the only observation of his teaching for the year. No written feedback was completed or given to Nevins until two months later.

25. In January of 2003, Defendant Tripp directed Plaintiff to take a course at the university so that he could become dually certified in Language Arts and Social Sciences to meet the requirements of being a Humanities teacher for the following year. This was paid for by the District.
26. During these months some students from the School Slam Poetry Team and Write Club continued to go to the local Barnes and Noble bookstore and publicly read their poetry. This was at the invitation of the Barnes and Noble Manager and included an open mike with members of the general public. Many of the poems were challenging the status quo, our education system and the military-industrial complex. Plaintiff encouraged the students to read their poems publicly whenever possible, as he felt it was a very positive experience for them and encouraged the staff and defendants to attend.
27. Plaintiff would bring in speakers that held and expressed critical viewpoints on various issues affecting our society.
28. On February 19, 2003, Plaintiff, instead of being revisited, was given feedback from Assistant Principal Passel about the December slam poetry class visit that indicated that Plaintiff's activities were not meeting instructional goals and that his students were showing a lack of respect. Passell told Plaintiff about her experiences with working with a church choir and how the students behaved there.
29. Plaintiff again urged her to visit his class again during a non-slam event, but no other visits or observations were performed.

30. On February 20, 2003, one of Plaintiff's School Slam Poetry Team and Write Club students read one of her poems, Revolution X, over the closed circuit TV PA system. The System had been used as a traditional free speech forum in the past for students to share their writings, ideas and announcements about school activities.
31. The poem questioned the United States' government, the military, the failure of education policy and numerous other critiques of our justice and religious system. It was performed live and videotaped.
32. Plaintiff had allowed Courtney to read this poem at the December Performing arts Center event and had heard her read it publicly at Barnes and Noble.
33. In the past students had been allowed to share poems and stories and other matters over these regular announcement periods on the TV.
34. That same day, the military liaison of the school, Dr. Larry Morrell, reacted with anger to the poem calling it a "lack of patriotism" and he sought the identity of who had "authorized" the poem. Dr. Morrell said he was fighting mad and that "whoever approved this should be horsewhipped." He condemned the schools "bleeding heart liberals," and demanded that something be done before parents started showing up at the school to complain.
35. Plaintiff was not present on the day the poem was read nor was he the formal teacher of the student. Yet on February 21, 2003 Defendant Passell interrupted Plaintiff's class seeking a copy of the poem in response to the military liaison's complaint and demanded vehemently that something be done in response to the reading. She appeared upset.

36. On or about February 21, 2003 an investigation of the poem was conducted under the guise that contained obscenities and inferences of inciting violence, although the poem contained neither. The student involved was told that the complaint was that it was an "anti-war speech."
37. On or about February 21, 2003 Defendant Passell suggested that the student's father, also a teacher at the Defendant school, go home and search for a copy of the poem.
38. The Defendants then made a decision to ban any commentary over the TV system at the high school.
39. On or about February 21, 2003 Plaintiff offered comments on the negative evaluation given by Defendant Passell, pointing out the fact that the evaluation didn't recognize the nature or context of the class exercises she saw on that day. Plaintiff also extended an invitation to attend another class in a different block so that Defendant would have something more to work with for a more realistic and comprehensive evaluation. No other visits to his classroom were ever made.
40. In February, 2003, Plaintiff was approached by the Principal of Rio Rancho's Independence High School to start a poetry club at the school for the 2003-2004 school year and to teach at his school that Fall.
41. Plaintiff gave Defendant Tripp a transfer form to move to Independence High School.
42. Defendant Tripp never sent the form to the District Office for processing, despite Plaintiff's repeated inquiries and requests.

43. On March 4, 2003, Plaintiff took approved administrative leave for a day to attend the Independent High School assemblies and four members of the Slam Poetry Team visited Independence High School to share their poems and experiences.
44. On said day Plaintiff went out to a restaurant and put of his own pocket for lunch for the students. The students were directed to a building to wait until the next performance and the Principal, Buck Glenn agreed to supervise the students while Nevins went to get them food.
45. Prior to the students going on the trip, Plaintiff submitted field trip forms to the office for the Defendant Tripp's signature and had parental permission for them to go to Independence High.
46. After the event at Independence High the principal wrote to Plaintiff thanking him and the students for the inspirational gifts of creativity and purpose and telling them "to change the world." The principal told Plaintiff that "thank you just doesn't seem to say enough."
47. Plaintiff began organizing a multi-cultural celebration at the school for April and solicited people to come and use the spoken word related to Hispanic and Native Cultures.
48. Plaintiff invited several professional poets to the event.
49. On March 7, 2003, upon receipt of the information on the event Defendant Passell wrote to Plaintiff that because of the problems with the student poem that she was requesting that all copies of the text of all matters to be read would be submitted two weeks before the vent and that Plaintiff was to highlight anything "objectionable or controversial."

50. This practice was part of a new censorship policy adopted by the administration and Defendants.
51. Defendant Passell was feeling the need to submit the matter to legal counsel and the superintendent for review, in part, so as not to upset conservative Board Members in the District.
52. Plaintiff questioned the proposed principal's policy of pre-screening and censoring of text of the professional artists from the community as being wrong and improper. He contacted the union and the Principal, Defendant Tripp, and also voiced his concerns to them. Tripp responded that they wanted to utilize the privilege of censorship.
53. Defendant Passell later described this response of Plaintiff as "anti-establishment."
54. On the evening of March 12, 2003, students from the poetry team again attended the "Westside Slam," a poetry reading at Barnes & Noble Bookstore, again reading poems that were controversial on matters of public concern.
55. On March 17, 2003, the same day that U.S. gave notice of its intention to bomb Iraq, Plaintiff was notified by Defendant Tripp that he was being placed in paid administrative leave, but could not let Plaintiff know why, other than the fact that it had to do with the poetry club.
56. On March 18, 2003, Plaintiff was notified that a meeting was being held the following day to address the administration's concerns.
57. On March 18, 2003, the Principal Glenn of Independent High School expressed to Plaintiff that he was interested in an immediate transfer, that he wanted Plaintiff at

his school immediately, and indicated that he would attend the meeting with Plaintiff the following day.

58. On March 19, 2003, Principal Glenn was advised by the Defendant Tripp not to attend the meeting, and to “keep his nose out of it.”
59. During the March 19<sup>th</sup> meeting, Plaintiff was notified that the administration was investigating field trip matters and the student public readings at Barnes & Noble.
60. Plaintiff was asked about his intentions for future poetry gatherings. Defendant Passell said that students had decided to quit the team after she spoke with them and questioned them about their poetry.
61. On March 20, 2003, a poem written by Plaintiff was published in a local Poetry newsletter special edition publication, which questioned the march to war.
62. On March 21, 2003, the Rio Rancho Public School Human Rights Director advised the Rio Rancho High School administration that they needed to further their investigation of the Plaintiff, and advised them to extend his leave status.
63. Plaintiff was also suspended as the Poetry Club sponsor, relieved of his responsibilities for the group, was directed not to conduct any further activities on behalf of the club or its members, was instructed to return all keys and school materials, and that he was never allowed to return to campus.
64. On March 24, 2003, Channel 7 news ran a story about the Plaintiff, interviewing students from the Poetry Club who expressed their upset about Plaintiff’s suspension.
65. There were several subsequent articles published in various newspapers and other publications. On March 25<sup>th</sup> Plaintiff told the News media in an article published in the community that he supports all troops, but not the war in Iraq, and that he is a

visible teacher who encourages students to speak out, but covers all sides of an issue. He also said that "freedom and justice is being menaced" here at home. He spoke out about the concern that the actions of the administration would discourage students from speaking out and chill speech at the District. In another article it indicated that he had witnessed police misconduct wherein police officers were laughing that they were going to gas the crowd at a peace rally.

66. While Plaintiff was on suspension, Defendant Tripp again asked Plaintiff to forward the contents of all poetry that would be read at an upcoming school/community poetry event, as well as the names of participating students. This included poems by professional poets in the community.
67. On April 4, 2003, Plaintiff questioned Defendant Tripp about his reasons for pre-screening the content of the poems.
68. The press release for the April 22<sup>nd</sup> Cultural event indicated that "artists and poets will share their personal vision of peace, friendship and love."
69. Plaintiff's suspension was in part due to an effort to interfere.
70. In April 2003 the administration passed a rule banning poems from being read over the school intercom.
71. On April 7, 2003, Plaintiff forwarded copies of the field trip forms that were allegedly never approved, or that in some way Plaintiff neglected to get the appropriate approval.
72. In fact, the forms reflected Defendant Tripp's signature of approval.
73. Plaintiff indicated to Defendant Tripp that if he is back he would get back involved in organizing the April 22<sup>nd</sup> event.

74. On April 8, 2003, the poetry club disbanded and Defendant Tripp canceled the April 22nd event.
75. On April 12, 2003 Plaintiff indicated in a published letter to the editor that he agreed with the article written the week before by a columnist that said "free speech and free conscience was held in low regard by the school officials" and that it smelled of Joe McCarthy."
76. Defendants were upset about the comments Plaintiff was making to the media.
77. Plaintiff associated with the ACLU, a local civil rights organization, to secure representation in regard to the above actions. The attorney contacted the District on behalf of Plaintiff.
78. On April 18, 2003, the District advised Plaintiff, through the ACLU, that they were conducting an investigation due to the manner in which Plaintiff carried out his responsibilities as an employee and sponsor of the Poetry Team, referencing inadequate supervision, appropriate transportation and whether or not Plaintiff followed the proper procedures in the handbook for arranging and documenting trips.
79. The District also indicated that despite what was in the paper, Plaintiff's speech had nothing to do with his suspension.
80. On April 25, 2003, Defendant Passell performed another teacher evaluation of Plaintiff recommending that he not be rehired. The School stated that his performance had not improved since the December visit to the Slam poetry event classroom, but no one had ever observed his classroom again after the original visit, and Plaintiff had been off on suspension for the past five weeks.

81. Defendants Passell and Tripp recommended to the Superintendent that Plaintiff not be re-employed.
82. On May 1, 2003, Plaintiff received a Notice of Non-Renewal indicating that his employment would not be continued in the next year from Defendant Superintendent Cleveland.
83. Plaintiff was never brought back from the suspension with pay, terminated, disciplined nor allowed to return for the remainder of the year, but was paid to sit at home. During this time the war in Iraq was continuing.
84. On May 3, 2003; Plaintiff contacted the Principal of Independent High School about employment, but the principal had been advised not to hire him.
85. On May 5, 2003, his union representative advised Plaintiff that they could not negotiate on his behalf because he had made public statements.
86. On May 13, 2003, the military liaison of Rio Rancho High School publicly read a poem written by a soldier instructing those expressing a desire for peace to "shut their faces."
87. At the event, after the flag raising and poem reading, Defendant Tripp hoisted a battleship flag from Afghanistan and stated that "this event marked a new high as the principal of Rio Rancho High School."
88. Defendant Tripp, despite claiming to screen all activities, did not screen what was going to be read at that event.
89. No action was taken against the military liason for his threatening email about horsewhipping the person who authorized the poems nor for his reading and passing out this controversial poem critical of those who speak up.

90. As a result of the above conduct Plaintiff suffered embarrassment, public humiliation and stress.
91. On June 27, 2003, Plaintiff was offered a job with an Albuquerque Charter school.
92. On May 15, 2003 the Rio Rancho School District promised Plaintiff to not disclose the reasons for Plaintiff's non-renewal in a letter sent from the Superintendent to plaintiff, which is reflects their obligations under state law.
93. Plaintiff's new employer and Principal and of this new charter school, Nuevos Valores, was contacted by a member of the administration, after Plaintiff was hired, to offer negative slanderous comments about the Plaintiff, including reasons for his not renewal.
94. Said contact was in retaliation for his First Amendment activity.
95. The District continually commented on the reasons for discharge by informing the news media that the reasons for the non-renewal were not related to freedom of speech.

## **COUNT I**

### **42 U.S.C. § 1983- FIRST AMENDMENT**

96. Plaintiff incorporates the preceding paragraph as if the same were contained herein.
97. The actions described above were substantially motivated because of the activities described above and the following:
  - a. Plaintiff's support for and association with students who spoke out on matters of public concern and for cultural ends both at school and at public events not sponsored by the school district;

- b. Plaintiff's refusal to restrict protected free speech of others, including students and members of the community, and his questioning the principals policy of censorship;
  - c. Plaintiff's own poetry and writings that questioned matters of public concern;
  - d. Plaintiff's comments to the media during a time of great national debate that the actions of the school district toward the Poetry Write Club, students and himself, were chilling the free speech rights of himself and others, a break of trust with the students, and violative of the law. Also due to his comments publicly that he opposed the war in Iraq and that "freedom and justice was being menaced here at home."
  - e. Plaintiff's private off the job political activities;
  - f. Plaintiff's bringing speakers with anti-war views to discuss matters with his classes and/or the Poetry Team.
  - g. Plaintiff's association with the ACLU and an attorney to raise questions about his termination violating free speech.
98. The retaliation against Plaintiff was intentional, and in reckless disregard of his rights, and were aimed at depriving Plaintiff the right to free speech and association under the laws of the United States and the United States Constitution.
99. Said conduct violated 42 U.S.C. § 1983 proximately causing him damages.

#### **PRAYER FOR RELIEF**

As a result of the illegal acts by Defendants, Plaintiff William Nevins' constitutional and statutory rights have been violated. As a result of such violations, Plaintiff has suffered damages and injuries including, but not limited to, lost opportunities for future employment and

promotion within the Rio Rancho School District, mental and emotional distress, humiliation, damages to reputation and career, and other actual and consequential damages.

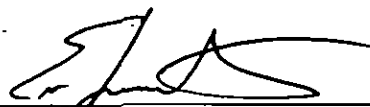
WHEREFORE, Plaintiff requests that this Court grant the following relief against the School District and the individuals Defendants:

1. Compensatory damages sufficient to compensate Plaintiff for such matters including, but not limited to, his humiliation, suffering and other injuries the actions of Defendants have caused;
2. Injunctive relief to include, but be limited to:
  - a. Reinstatement Plaintiff to the promised teaching position at Independence High School and accrual of years of service;
  - b. Reinstatement the School Slam Poetry Team and Write Club;
  - c. Reinstatement Plaintiff as the Coach of said team;
  - d. Adopt a policy to protect student and teacher First Amendment activity;
  - e. Removal of the suspension and non-renewal from Plaintiff's records;
  - and
  - f. Enjoin District from discussing his removal and its reasons publicly.
3. Punitive damages sufficient to punish Defendants and to deter Defendants and others from such malicious, willful and reckless conduct.
4. Attorney fees and costs.
5. Such other relief as this Court deems just and proper.

### **JURY DEMAND**

Pursuant to the New Mexico Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of six persons.

Respectfully submitted,



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