

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**R.H., by and through his parent and  
next friend, CHANTELL HOSIER,  
Plaintiff,**

**Case No. 1:10-CV-640 (LEK/DRH)**

**DEMAND FOR JURY TRIAL**

**v.**

**SCHENECTADY CITY SCHOOL  
DISTRICT; ERIC ELY, Superintendent;  
WILLIAM ROBERTS, Assistant Superintendent;  
MARK BROOKS, Dean of Oneida Middle School;  
KARMEN MCEVOY, Principal of Oneida Middle  
School; and LEE SATTERLEE, Assistant Principal  
of Oneida Middle School,  
Defendants.**

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**FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

Plaintiff R.H., by and through his undersigned counsel, brings this first amended complaint, as a matter of course pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), against the above-named defendants, their employees, agents, servants, officers, and successors in office and all those persons in active concert or participation with them, and in support thereof alleges the following on information and belief:<sup>1/</sup>

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<sup>1/</sup> Defendants served their answer to the original complaint on June 22, 2010. (Doc. 18.) Pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), plaintiff may amend his complaint as a matter of course within twenty-one days of the service of defendants' answer, or by July 13, 2010.

### **INTRODUCTION**

1. This is a civil rights action to redress the deprivation by defendants of rights secured to R.H. by the First and Fourteenth Amendments to the United States Constitution and to address a matter of public concern.

2. R.H., a thirteen year old student at Oneida Middle School in the Schenectady City School District, was suspended by defendants for wearing a rosary to school.

3. Defendants' actions against R.H. violate the First and Fourteenth Amendments to the United States Constitution, specifically the free speech, free exercise, and due process clauses. Defendants have also retaliated against R.H. for exercising his constitutional rights and for filing a lawsuit to redress the deprivation of his constitutional rights and to address a matter of public concern.

4. Defendants' student dress code policy, which provides that "A student's dress, grooming and appearance, including hair, jewelry, make-up and nails, shall . . . [n]ot denote, represent or be deemed to be gang related, included but not limited to bandanas, colors, flags or beads," is impermissibly vague and unconstitutional on its face and as applied to R.H. by defendants.

### **JURISDICTION AND VENUE**

5. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as it arises under the Constitution and laws of the United States and presents a federal question, and pursuant to 28 U.S.C. § 1343(a)(4), in that it seeks to secure equitable, monetary, and other relief under an Act of Congress, specifically 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights.

6. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201-2202, by Federal Rules of Civil Procedure 57 and 65, and by the general legal and equitable powers of this court, which empower this court to grant the requested relief.

7. This court has the authority to award plaintiff's attorneys' fees and costs associated with this action pursuant to 42 U.S.C. § 1988 and other applicable laws.

8. Venue is proper within this judicial district and division, pursuant to 28 U.S.C. § 1391(b)-(c), because the events giving rise to plaintiff's claims occurred in this judicial district and division.

### **PARTIES**

9. Plaintiff R.H., a minor, is a citizen of the United States and currently resides in the City of Schenectady, Schenectady County, New York. Chantell Hosier is a citizen of the United States and currently resides in the City of Schenectady, Schenectady County, New York. Chantell Hosier is the mother and legal guardian of R.H.

10. Defendant Schenectady City School District (the "School District") is a duly incorporated School District in the State of New York, with its principal place of business being 108 Education Drive, Schenectady, New York 12303. Oneida Middle School is part of the Schenectady City School District.

11. Defendant Eric Ely is and was at times relevant to this complaint the Superintendent of the Schenectady City School District, with his principal place of business being 108 Education Drive, Schenectady, New York 12303. Ely is sued in his individual and official capacities.

12. Defendant William Roberts is and was at times relevant to this complaint the Assistant Superintendent of the Schenectady City School District, with his principal place of

business being 108 Education Drive, Schenectady, New York 12303. Roberts is sued in his individual and official capacities.

13. Defendant Mark Brooks is and was at times relevant to this complaint Dean of Oneida Middle School, with his principal place of business being 1629 Oneida Street, Schenectady, New York 12308. Brooks is sued in his individual and official capacities.

14. Defendant Karmen McEvoy is and was at times relevant to this complaint the Principal of Oneida Middle School, with her principal place of business being 1629 Oneida Street, Schenectady, New York 12308. McEvoy is sued in her individual and official capacities.

15. Defendant Lee Satterlee is and was at times relevant to this complaint the Assistant Principal of Oneida Middle School, with his principal place of business being 1629 Oneida Street, Schenectady, New York 12308. Satterlee is sued in his individual and official capacities.

### **ALLEGATIONS OF FACT**

16. R.H. recently completed the seventh grade at Oneida Middle School and plans to attend eighth grade in the Schenectady City School District this Fall.

17. R.H. and his family are Christian.

18. Since September 2009, R.H. has generally worn each day to the Oneida Middle School a plastic rosary made of light-colored purple beads and a white crucifix. A rosary is a commonly understood religious symbol.

19. R.H. wears the rosary outside his shirt for religious reasons and in memory of his deceased brother and deceased uncle. The same rosary hung around his brother's hand as he lay dying in the intensive care unit in 2005. His uncle died within the past couple of

months from brain cancer. His uncle prayed the rosary during his life and taught R.H. about the rosary.

20. In addition, R.H. wears the rosary as a public expression of his Christian beliefs.

21. Defendant's student dress code policy provides, in pertinent part: "A student's dress, grooming and appearance, including hair, jewelry, make-up and nails, shall . . . [n]ot denote, represent or be deemed to be gang related, included but not limited to bandanas, colors, flags or beads."

22. R.H. is not a member of any criminal gang. R.H. does not wear his rosary to advocate or promote gang membership or violence. R.H. is not aware of any gang whose members wear a plastic rosary made of light-colored purple beads and a white crucifix as a gang symbol. During this past school year, R.H. has not caused any disruption to the Oneida Middle School environment while he has passively worn his rosary on the outside of his shirt.

23. On or about Monday, May 17, 2010, R.H. was told by Assistant Principal Lee Satterlee and School Dean Mark Brooks that it was against the student dress code policy for R.H. to wear the rosary on the outside of his shirt because the rosary is made of beads and is gang related. Principal McEvoy explained to Chantell Hosier that R.H. was violating the student school dress code policy by wearing his rosary because it is made of beads and therefore is a gang related item. Principal McEvoy sent R.H. home from school with his mother.

24. On or about Tuesday, May 18, 2010, R.H. returned to school and wore his rosary on the outside of his shirt. No school official prevented him from wearing his rosary that day.

25. On or about Wednesday, May 19, 2010, R.H. went to school and again wore his rosary on the outside of his shirt. He was suspended by Principal Karmen McEvoy from that Wednesday through Friday, May 21, 2010, for violating the school's dress code policy by wearing his rosary. Principal McEvoy explained to Chantell Hosier that the rosary is considered a gang related symbol and R.H. is not allowed to wear his rosary outside his shirt to school. Principal McEvoy warned Chantell Hosier and R.H. that he would receive further punishment if he wore his rosary to school on Monday, May 24, 2010, or thereafter.

26. On or about Thursday, May 20, 2010, Chantell Hosier and R.H. met with Assistant Superintendent William Roberts. Assistant Superintendent Roberts gave Chantell Hosier a copy of the school's dress code policy and said that R.H. cannot wear the rosary to school because it is made of beads. Assistant Superintendent Roberts informed Chantell Hosier that the Superintendent's office was not going to interfere with the decision of Principal McEvoy and was leaving the matter in the hands of Principal Karmen McEvoy whether to discipline R.H. further.

27. On the morning of Monday, May 24, 2010, R.H. arrived at school wearing his rosary and was suspended by Defendant McEvoy. R.H. did not return to Oneida Middle School to attend classes until on or about Wednesday, June 2, 2010.

28. Superintendent Eric Ely supports the application of the student dress code to R.H. Even though R.H. wears a rosary for religious reasons, defendant Ely has stated publicly that "beads are beads" and cannot be displayed in school.

29. R.H. wants to attend public school in the Schenectady City School District while wearing his rosary on the outside of his clothing without further interference from school officials and without further violation of his constitutional rights.

30. On or about Tuesday, June 1, 2010, R.H. filed with this court his original complaint against defendants to redress the deprivation of his constitutional rights and to address a matter of public concern.

31. On or about Tuesday, June 1, 2010, R.H. also filed with this court an application for a temporary restraining order/preliminary injunction to permit him to wear his rosary on the outside of his clothing to school for the remainder of the school year.

32. On or about Tuesday, June 1, 2010, this court issued its show cause order/temporary restraining order, later extended, allowing R.H. to go back to school while wearing his rosary outside his clothing.

33. Despite the court's show cause order/temporary restraining order, school officials immediately began to retaliate against R.H. by "writing him up," and punishing him, with trumped up school infractions once he returned to school on or about Wednesday, June 2, 2010.

34. For example, on or about Wednesday, June 2, 2010, R.H.'s first day back to school after filing his lawsuit and receiving the court order to permit him to wear his rosary on the outside of his shirt, School Dean Brooks approached R.H. during lunch while R.H. was seated with his friends. School Dean Brooks informed R.H. that he needed to do a lunch detention by sitting at a table in the middle of the lunch room with other kids on the "I-list." R.H. asked School Dean Brooks why he needed to do a lunch detention, and Brooks handed him a slip of paper which had written on it something about R.H. running in a hallway once. Brooks told R.H., "If you want to play the insubordinate game, we can play too." R.H. then sat at the "I-list" table in the middle of the lunch room and sat there for lunch.

35. Chantell Hosier later had a speaker phone conference with Principal McEvoy, who said she had School Dean Brooks present with her. Regarding the reason why R.H. had to serve the lunchtime detention, Principal McEvoy stated that the detention was apparently for a May 12, 2010, incident that was not officially written up as an infraction or “referral” so she did not know the specifics of the incident. Chantell Hosier asked about Brooks’s comment to R.H. that “If you want to play the insubordinate game, we can play too.” Neither Principal McEvoy nor Brooks denied that Brooks had said that to R.H.

36. On or about Friday, June 4, 2010, and Thursday, June 10, 2010, R.H.’s counsel sent letters to defendants’ counsel to have defendants cease and desist the continuing retaliation against R.H.

37. From the start of the school year in September 2009, to on or about May 17, 2010, the date on which school officials began to tell R.H. to stop wearing his rosary to school, R.H. had been “written up” for school infractions a handful of times.

38. In contrast, between on or about May 17, 2010, and on or about June 10, 2010, school officials “wrote up” R.H. for more infractions than he had received during the previous eight months, and the number of infractions increased after the court on June 1, 2010, permitted R.H. to return to school while wearing his rosary.

39. Defendants’ retaliation against R.H. is an effort to paint falsely R.H. as a troublemaker and to punish him for, and to deter him from, exercising his right to wear his rosary to school and to file a lawsuit to redress the deprivation of his constitutional rights and to address a matter of public concern.



### **ALLEGATIONS OF LAW**

40. Defendants are “persons” for purposes of the claims set forth in this complaint, as that term is used in 42 U.S.C. § 1983.

41. All of the conduct of defendants as set forth in this complaint constitutes conduct “under color of state law” as that phrase is used in 42 U.S.C. § 1983.

42. All of the actions of defendants as set forth in this complaint were done pursuant to a policy, practice, and/or custom, which was a moving force behind the violation of R.H.’s clearly established constitutional rights.

43. Defendants’ conduct was done with malice and with reckless indifference to the federally protected rights of plaintiff.

### **CAUSES OF ACTION**

#### **COUNT ONE**

#### **(Violation of the Federal Rights of Speech and Expression)**

44. Plaintiff repeats and realleges the allegations in paragraphs 1 through 43 above and incorporates those allegations herein by reference.

45. Defendants’ actions in suspending R.H. for wearing, and/or preventing him from wearing, his rosary on the outside of his clothing to Oneida Middle School was a violation of the freedoms of speech and expression guaranteed by the First Amendment to the United States Constitution, as applied to the States and their political subdivisions through the Fourteenth Amendment to the United States Constitution, as protected by 42 U.S.C. § 1983.

46. On its face and as applied by defendants, defendants’ student dress code policy violates the freedoms of speech and expression guaranteed by the First Amendment to the

United States Constitution, as applied to the States and their political subdivisions through the Fourteenth Amendment to the United States Constitution, as protected by 42 U.S.C. § 1983.

47. Wherefore, plaintiff requests the relief set forth below in the prayer for relief.

**COUNT TWO**  
**(Violation of the Federal Right to Due Process)**

48. Plaintiff repeats and realleges the allegations in paragraphs 1 through 43 above and incorporates those allegations herein by reference.

49. Defendants' student dress code policy is impermissibly vague and violates the right to due process that is guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

50. Wherefore, plaintiff requests the relief set forth below in the prayer for relief.

**COUNT THREE**  
**(Violation of the Federal Right to Free Exercise of Religion)**

51. Plaintiff repeats and realleges the allegations in paragraphs 1 through 43 above and incorporates those allegations herein by reference.

52. In not permitting R.H. to wear his rosary to school, defendants have burdened the religious exercise of R.H. without a compelling reason and have thus violated his right to the free exercise of religion, in violation of the First Amendment to the United States Constitution, as applied to the States and their political subdivisions through the Fourteenth Amendment to the United States Constitution, as protected by 42 U.S.C. § 1983.

53. Wherefore, plaintiff requests the relief set forth below in the prayer for relief.

**COUNT FOUR**  
**(Retaliation in Violation of the First Amendment)**

54. Plaintiff repeats and realleges the allegations in paragraphs 1 through 43 above and incorporates those allegations herein by reference.

55. The actions defendants took against R.H. as set forth above after he returned to school on or about June 2, 2010, were done to retaliate against R.H. for, and to deter him from, exercising his First Amendment right to wear a rosary on the outside of his clothing and his right to file a lawsuit to seek the redress of the deprivation of his constitutional rights and to address a matter of public concern, in violation of the First Amendment to the United States Constitution, as applied to the States and their political subdivisions through the Fourteenth Amendment to the United States Constitution, as protected by 42 U.S.C. § 1983.

56. Wherefore, plaintiff requests the relief set forth below in the prayer for relief.

**PRAYER FOR RELIEF**

57. Plaintiff R.H. repeats and realleges all allegations made above and incorporates those allegations herein by reference, and plaintiff respectfully asks that this court grant him the following relief, as set forth in this complaint, and enter final judgment against defendants:

A. Declare that defendants' actions in suspending R.H. for wearing, and/or preventing him from wearing, a rosary on the outside of his clothing to public school in the Schenectady City School District was a violation of the First and Fourteenth Amendments to the United States Constitution;

B. Declare that defendants' student dress code policy is overbroad on its face and violates the freedoms of speech and expression that are protected by the First Amendment to the United States Constitution;

C. Declare that defendants' student dress code policy is vague on its face and violates the right to due process that is guaranteed by the Fourteenth Amendment to the United States Constitution;

D. Declare that defendants wrongly retaliated against plaintiff for exercising his First Amendment rights and for filing a lawsuit to redress the deprivation of his constitutional rights and to address a matter of public concern;

E. Permanently enjoin defendants and their agents, servants, employees, attorneys, officers, and successors in office, and all those persons in active concert or participation with them, from enforcing the student dress code policy against R.H., and others not before this court, and preventing R.H. from wearing a rosary outside his clothing to public school in the Schenectady City School District;

F. Permanently enjoin defendants and their agents, servants, employees, attorneys, officers, and successors in office, and all those persons in active concert or participation with them, from further violation of the constitutional rights of R.H. for wearing a rosary outside his clothing to public school in the Schenectady City School District;

G. Permanently enjoin defendants and their agents, servants, employees, attorneys, officers, and successors in office, and all those persons in active concert or participation with them, from retaliating against R.H. for wearing a rosary outside his clothing to public school in the Schenectady City School District and for filing this lawsuit;

H. Award nominal, compensatory, and punitive damages against the appropriate defendants;

I. Grant reasonable attorneys' fees and costs associated with this action;

J. Retain jurisdiction over this action for the enforcement of its orders and final judgment; and

K. Grant any other and further relief as this court deems equitable and just.

Respectfully submitted,

/s/ Raymond J. Dague  
Raymond J. Dague

[REDACTED]

/s/ Edward L. White III  
Edward L. White III (adm. phv)

[REDACTED]

/s/ Geoffrey R. Surtees  
Geoffrey R. Surtees (adm. phv)

[REDACTED]

Dated: July 13, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on July 13, 2010, I electronically filed the foregoing first amended complaint with the Clerk of Court using the CM/ECF filing system, which will send notification of such filing to the following:

Patrick J. Fitzgerald  
Attorney for Defendants

[REDACTED]  
[REDACTED]  
[REDACTED]

/s/ Edward L. White III

Edward L. White III (adm. phv)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]