

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LUIS SOUSA,)	
<i>Plaintiff,</i>)	
)	
vs.)	C.A. NO. 1:22-cv-40120-IT
)	
SEEKONK SCHOOL COMMITTEE, RICH DROLET,)	
in his personal and official capacities, and KIMBERLY)	
SLUTER, in her personal and official capacities,)	
<i>Defendants.</i>)	

ANSWER OF DEFENDANTS, SEEKONK SCHOOL COMMITTEE & RICH DROLET, TO FIRST AMENDED COMPLAINT AND JURY DEMAND

FIRST DEFENSE

Plaintiff's First Amended Complaint fails to state a claim against defendants, the Seekonk School Committee and Superintendent Dr. Rich Drolet, upon which relief can be granted and, therefore, must be dismissed.

SECOND DEFENSE

Defendants, the Seekonk School Committee and Superintendent Dr. Rich Drolet [hereinafter "defendants,"] respond to plaintiff's First Amended Complaint, paragraph by paragraph, as follows:

The Parties

1. – 4. Defendants admit the allegations contained in Paragraphs 1 – 4.

Jurisdiction and Venue

5. – 7. Defendants do not dispute jurisdiction and venue.

Factual Background

8. Defendants deny the allegations contained in the first sentence of Paragraph 8. Defendants neither admit nor deny the allegations contained in the second sentence of Paragraph 8, because

they have no actual knowledge of same and, therefore, call upon plaintiff to prove same. In further responding, defendants state that the public comment period known as “Public Speak” was not on the duly-posted January 5, 2022 School Committee Agenda.

9. Defendants neither admit nor deny the allegations contained in the first sentence of Paragraph 9, because they have no actual knowledge of what plaintiff allegedly “anticipated” and, therefore, call upon plaintiff to prove same. Defendants admit the door was locked as the School Committee was meeting in executive session pursuant to the provisions of M.G.L. c. 30A, § 21.

10. Defendants admit plaintiff approached the room in which the School Committee was meeting from outside the building. Defendants admit plaintiff recorded a portion of the meeting. Defendants deny the remainder of the allegations contained in Paragraph 10.

11. Defendants admit the School Committee Chair Kimberly Sluter called the Seekonk Police Department. Defendants deny the remainder of the allegations contained in Paragraph 11.

12. Defendants neither admit nor deny the allegations contained in Paragraph 12 as the police report is a written document that speaks for itself.

13. Defendants admit the Seekonk Police Department acted quickly and professionally. Defendants neither admit nor deny the remainder of the allegations contained in Paragraph 13 as the police report is a written document that speaks for itself. In further responding, defendants state the subject of the mask mandate was not on the duly-posted January 5, 2022 School Committee Agenda.

14. Defendants neither admit nor deny the allegations contained in Paragraph 14, because they have no actual knowledge of same and, therefore, call upon plaintiff to prove same.

15. Defendants neither admit nor deny the allegations contained in Paragraph 15 as the video is an electronic document that speaks for itself.

16. Defendants deny the allegations contained in the first sentence of Paragraph 16. Defendants neither admit nor deny the remainder of the allegations contained in Paragraph 16, because they have no actual knowledge of same and, therefore, call upon plaintiff to prove same.

17. Defendants admit Superintendent Drolet sent a letter to plaintiff dated January 10, 2022. Defendants neither admit nor deny the contents of said letter as it is a written document that speaks for itself.

18. Defendants deny the allegations contained in Paragraph 18.

19. Defendants neither admit nor deny the allegations contained in Paragraph 19 as the letter is a written document that speaks for itself.

20. Defendants deny the allegations contained in Paragraph 20.

21. Defendants deny the allegations contained in Paragraph 21.

22. Defendants admit plaintiff met with Superintendent Drolet on January 18, 2022. Defendants deny plaintiff's disruption of the January 5, 2022 School Committee meeting was a "protest."

23. Defendants admit that, during the January 18, 2022 meeting, Superintendent Drolet stated: "One thing I wanted to clarify, I made sure in the letter that it didn't say you were banging or screaming." Defendants deny the remainder of the allegations contained in Paragraph 23.

24. Defendants admit that, during the January 18, 2022 meeting, Superintendent Drolet stated: "One thing I wanted to clarify, I made sure in the letter that it didn't say you were banging or screaming."

25. Defendants admit that, during the January 18, 2022 meeting, plaintiff stated: "Kim also lied and said she was scared because I was banging and screaming." In further responding, defendants state that plaintiff denied he did anything wrong: "I did absolutely nothing wrong."

26. Defendants admit that, during the January 18, 2022 meeting, plaintiff informed Superintendent Drolet that if he issued the No Trespass Order, plaintiff could not pick up his son at school.

27. Defendants admit that, during the January 18, 2022 meeting, plaintiff stated: “If you’re saying I didn’t bang on the window, what is the point of this?”

28. Defendants admit that, during the January 18, 2022 meeting, Superintendent Drolet stated: “I could go over the difference between regular session and executive session. So, when you came by that night it was at that time in executive session.”

29. Defendants deny the allegations contained in Paragraph 29.

30. Defendants neither admit nor deny the allegation contained in Paragraph 30 that, on September 26, 2022, plaintiff “was waiting patiently in line to address the Committee,” because they have no actual knowledge of same and, therefore, call upon plaintiff to prove same.

31. Defendants admit plaintiff’s wife, Kanessa Lynn, addressed the School Committee during the second “Public Speak” session on September 26, 2022.

32. Defendants admit that, after the expiration of Ms. Lynn’s three minutes, the School Committee Chair stated: “That’s time Ms. Lynn.” In further responding, defendants state that Ms. Lynn did not stop speaking or surrender the podium when told her time had elapsed, but instead continued talking for more than 30 seconds over the Chair’s requests that she stop.

33. Defendants admit that, while Ms. Lynn continued speaking beyond her allotted time and refused to yield the podium, the Chair asked: “Is there an additional public comment this evening?”

34. Defendants admit the allegations contained in Paragraph 34.

35. Defendants admit that, while Ms. Lynn continued speaking beyond her allotted time and refused to yield the podium, the Chair stated: “Ms. Lynn, you need to sit down please.”

36. Defendants admit that plaintiff yelled: “So you should have had the meeting about two weeks ago” among other things.

37. Defendants admit Ms. Lynn would not stop talking or sit down, despite the Chair’s requests. Defendants admit the School Committee went into recess after its meeting was disrupted.

38. Defendants admit the allegations contained in Paragraph 38.

39. Defendants admit plaintiff stated “No” after the School Committee voted to go into recess.

40. Defendants admitted plaintiff shouted the statements alleged in Paragraph 40.

41. Defendants deny the allegations contained in Paragraph 41. In further responding, defendants state that Superintendent Drolet asked plaintiff to leave the meeting because of his outbursts.

42. Defendants admit a School Resource Officer entered the meeting room and escorted plaintiff out. Defendants deny the remainder of the allegations contained in Paragraph 42.

43. Defendants did not violate the Open Meeting Law and, therefore, deny the allegations contained in Paragraph 43.

44. Defendants admit Superintendent Drolet sent a letter to plaintiff dated September 27, 2022. Defendants neither admit nor deny the contents of the letter as it is a written document that speaks for itself.

45. Defendants neither admit nor deny the allegations contained in the first two sentences of Paragraph 45 as the September 27, 2022 letter is a written document that speaks for itself. Defendants deny the remainder of the allegations contained in Paragraph 45.

46. Defendants admit plaintiff met with Superintendent Drolet on October 3, 2022. Defendants admit the purpose of the meeting was to afford plaintiff an opportunity to provide the Superintendent with any information plaintiff deemed relevant to the Superintendent’s decision

and plaintiff's status. Defendants admit plaintiff recorded the meeting. Defendants admit plaintiff had Superintendent Drolet's permission to make an audio recording of the meeting.

47. Defendants deny the allegations contained in the first sentence of Paragraph 47. Defendants admit that, during the October 3, 2022 meeting, Superintendent Drolet referred to "an outburst [on January 5, 2022] outside the windows here when you [plaintiff] were screaming and videorecording through the window." Defendants admit Superintendent Drolet stated: "I was here and I saw you and there was screaming." Defendants deny the remainder of the allegations contained in Paragraph 47.

48. Defendants admit that, during the October 3, 2022 meeting, plaintiff stated:

There was no screaming. There was just talking. I'm Portuguese. Portuguese people are loud. We use our hands just like Italians. They are loud. We speak loud. I'm also bipolar. I'm not screaming. I'm not yelling. I'm diagnosed bipolar.

Defendants deny the remainder of the allegations contained in Paragraph 48. Defendants neither admit nor deny the statement contained in Footnote 2 to Paragraph 48, because they have no actual knowledge of same and, therefore, call upon plaintiff to prove same.

49. Defendants deny the allegations contained in Paragraph 49.

50. Defendants deny the allegations contained in Paragraph 50.

51. Defendants deny the allegations contained in the first sentence of Paragraph 51. Defendants neither admit nor deny the contents of the Public Participation Policy as it is a written document that speaks for itself.

52. Defendants admit that, during the October 3, 2022 meeting, Superintendent Drolet discussed with plaintiff the ways in which he (plaintiff) violated the Public Participation Policy. Defendants further admit that a copy of plaintiff's recording of the October 3, 2022 meeting is attached as Exhibit 11 to the First Amended Complaint and that plaintiff was not recognized as a

“speaker” by the Chair at the September 26, 2022 meeting. Defendants deny that plaintiff by his nature is loud, deny that Rule 2 is unconstitutionally vague, deny that the three-minute rule is arbitrary, deny that the School Committee “regularly allows speakers to speak longer than three minutes when they are providing comments of which the Committee approves ...,” deny that the Committee holds speakers to a strict time limit “when there are viewpoint differences ...,” deny that plaintiff did not violate the Public Participation Policy, deny that the Committee does not adhere to its own rules, and deny that Rule 9 “is an unconstitutional content-based restriction on speech and petition which lacks sufficient precision to be valid.” Defendants further deny any statements alleged in Paragraph 52 to the extent they are inconsistent with the recording of the October 3, 2022 meeting. Defendants neither admit nor deny the contents of the Public Participation Policy as it is a written document that speaks for itself. Defendants object to Paragraph 52 on the grounds it does not contain a “short and plain statement of the claim” within the meaning of Fed. R. Civ. P. 8(a)(2).

53. Defendants admit that, during the October 3, 2022 meeting, plaintiff stated: “A sex offender, a registered sex offender, can go pick up their kid.” Defendants neither admit nor deny the terms of the Permanent No Trespass Order as it is a written document that speaks for itself.

54. Defendants admit that, during the October 3, 2022 meeting, plaintiff stated:

My lawyers will be involved with this. If we’re going to go forward, if you’re trying to ban me, I will get my lawyers involved. You’re trying to ban me for being ... for my opinion, my freedom of speech. You’re trying to ban me for that. So, if we have to get my lawyers involved, then I’ll get my lawyers involved Drolet, because this is getting ridiculous. You’re trying to take all my rights with my kids at this school away because I tried to say something.

Defendants further admit that plaintiff stated: “My lawyers will be in contact with you ...” and “You’ll hear from my lawyers ...,” among other things.

55. Defendants admit that, during the October 3, 2022 meeting, plaintiff stated: “I never put my hands on anybody. I never threatened anybody.” Defendants deny the remainder of the allegations contained in Paragraph 55.

56. Defendants admit Superintendent Drolet sent a letter to plaintiff dated October 4, 2022. Defendants neither admit nor deny the contents of said letter as it is a written document that speaks for itself.

57. Defendants neither admit nor deny the allegations contained in Paragraph 57 as the October 4, 2022 letter is a written document that speaks for itself.

58. Defendants deny plaintiff’s caption. Defendants admit plaintiff attended the School Committee meeting held on January 24, 2022, a which time he played his recording of a portion of the incident on January 5, 2022. Defendants neither admit nor deny plaintiff’s reason(s) for playing the recording, because they have no actual knowledge of same and, therefore, call upon plaintiff to prove same. Defendants admit that, after playing the recording, plaintiff addressed the School Committee Chair:

So Kim, where’s there banging? Where is there screaming? That you were so fearful for your safety that you called the police on me and tried to get a temporary no trespass warrant put on me?

59. Defendants admit Superintendent Drolet stated: “Based on your behavior that day we had the discussion, there were people scared.”

60. Defendants deny anyone was “scared” merely for having their “views challenged” and, therefore, deny the self-serving statement contained in Paragraph 60.

61. Defendants admit School Committee Chair Kimberly Sluter interrupted an exchange between Superintendent Drolet and plaintiff, used the gavel and stated: “That’s enough. The

comments need to come through the Chair and you have twenty seconds left.” Defendants deny the remainder of the allegations contained in Paragraph 61.

62. Defendants admit plaintiff addressed his points and questions to “Kim.” The Chair declined to respond, nor was she under any duty or obligation to do so. In further responding, defendants state that plaintiff did not stop speaking or surrender the podium once his time had elapsed. Further, according to the Public Participation Policy, “Public Speak is not a time for debate or response to comments by the School Committee.”

63. Defendants admit the allegations contained in Paragraph 63.

64. Defendants admit the allegations contained in Paragraph 64.

65. Defendants deny the School Committee Chair retaliated against plaintiff and, therefore, deny the allegations contained in Paragraph 65.

66. Defendants neither admit nor deny the allegations contained in Paragraph 66, because they have no actual knowledge of plaintiff’s awareness and, therefore, call upon plaintiff to prove same.

67. Defendants admit the allegations contained in Paragraph 67.

68. Defendants admit the allegations contained in Paragraph 68.

69. Defendants admit the allegations contained in Paragraph 69. In further responding, defendants refer plaintiff to the time limitations set forth in Paragraph 5 of the Public Participation Policy attached as Exhibit 12 to his First Amended Complaint.

70. Defendants admit no one cut the speaker off after three minutes. Defendants neither admit nor deny the remainder of the allegations contained in Paragraph 70, because they have no actual knowledge of same and, therefore, call upon plaintiff to prove same.

71. Defendants admit the allegations contained in Paragraph 71.

72. Defendants admit the allegations contained in Paragraph 72. In further responding, defendants refer plaintiff to the time limitations set forth in Paragraph 5 of the Public Participation Policy attached as Exhibit 12 to his First Amended Complaint.

73. Defendants admit the allegations contained in Paragraph 73. In further responding, defendants refer plaintiff to the time limitations set forth in Paragraph 5 of the Public Participation Policy attached as Exhibit 12 to his First Amended Complaint.

74. Defendants admit no one cut the speaker off after three minutes. Defendants neither admit nor deny the remainder of the allegations contained in Paragraph 74, because they have no actual knowledge of same and, therefore, call upon plaintiff to prove same.

75. Defendants admit plaintiff attended the School Committee meeting held on August 22, 2022, at which time he attempted to donate a book “Johnny the Walrus” by Matt Walsh, to two Seekonk Elementary Schools. Defendants admit plaintiff addressed the School Committee twice.

76. Defendants admit plaintiff and Superintendent Drolet engaged in discussion both times plaintiff addressed the School Committee. Defendants admit plaintiff was not asked to leave the August 22, 2022 School Committee meeting. Defendants deny the remainder of the allegations contained in Paragraph 76.

77. Defendants deny the allegations contained in Paragraph 77.

78. Defendants admit the ages of plaintiff’s children. Defendants neither admit nor deny the content of the Modified No Trespass Order issued on November 23, 2022 as it is a written document that speaks for itself.

79. – 83. Defendants neither admit nor deny the allegations contained in Paragraphs 79 – 83 as the emails and responses are electronic documents that speak for themselves.

84. Defendants deny the allegations contained in Paragraph 84.

85. Defendants deny the allegations contained in Paragraph 85.

86. Defendants admit the Seekonk Police Department acted reasonably. Defendants object to plaintiff's self-serving social commentary and need not respond to same. To the extent a response is required, defendants deny the remainder of the allegations contained in Paragraph 86.

87. – 95. Defendants deny the allegations contained in Paragraphs 87 - 95.

Count I
(First Amendment Retaliation – 42 U.S.C. § 1983)

96. Defendants repeat and incorporate by reference their responses to Paragraphs 1 – 95 above.

97. – 99. Defendants deny the allegations contained in Paragraphs 97 - 99.

100. Defendants neither admit nor deny the statement contained in Paragraph 100 as it is a mere conclusion of law to which no response is required. To the extent a response is required, defendants deny that any right to disregard rules of civility, order and decorum and to disrupt a meeting of a governmental body engaged in performing government business in a limited public forum is clearly established under the First Amendment.

101. Defendants deny the allegations contained in Paragraph 101.

102. Defendants neither admit nor deny the statement contained in Paragraph 102 as it is a mere conclusion of law to which no response is required. To the extent a response is required, defendants deny the First Amendment protects the right to disregard rules of civility, order and decorum and to disrupt a meeting of a governmental body engaged in performing government business in a limited public forum and, therefore, defendants deny the remainder of the allegations contained in Paragraph 102.

103. Defendants deny the allegations contained in Paragraph 103.

104. Defendants deny the allegations contained in Paragraph 104.

Count II

(Violation of First Amendment – Declaratory & Injunctive Relief)
(42 U.S.C. § 1983)

105. Defendants repeat and incorporate by reference their responses to Paragraphs 1 – 105 above.

106. Defendants neither admit nor deny the allegations contained in Paragraph 106 as the Public Participation Policy is a written document that speaks for itself.

107. Defendants deny the allegations contained in Paragraph 107.

108. Defendants deny the allegations contained in Paragraph 108.

109. Defendants neither admit nor deny the allegations contained in Paragraph 109 as the Public Participation Policy is a written document that speaks for itself.

110. Defendants deny the allegations contained in Paragraph 110.

111. Defendants deny the allegations contained in Paragraph 111.

112. Defendants deny the allegations contained in Paragraph 112.

Count III
(Violation of ADA – 42 U.S.C. § 12132)

113. Defendants repeat and incorporate by reference their responses to Paragraphs 1 – 112 above.

114. Defendants deny the allegations contained in Paragraph 114.

115. Defendants admit plaintiff advised Superintendent Drolet only on October 3, 2022 “I’m diagnosed bipolar,” but deny the remainder of the allegations contained in Paragraph 115.

116. Defendants admit the School Committee is a public body with the authority to operate SPS under state law. Defendants neither admit nor deny the remainder of the allegations contained in Paragraph 116 because such allegations are vague and ambiguous and, therefore, call upon plaintiff to prove same.

117. – 121. Defendants deny the allegations contained in Paragraphs 117 - 121.

Count IV
(Violation of Equal Protection Clause – 42 U.S.C. § 1983)

122. Defendants repeat and incorporate by reference their responses to Paragraphs 1 – 121 above.

123. Defendants object to plaintiff’s self-serving social commentary and need not respond to same. To the extent a response is required, defendants suggest that a prudent person would know that one who violates rules of civility, order and decorum and disrupts meetings of a governmental body engaged in performing government business in a limited public forum is not participating in activity protected under the First Amendment.

124. Defendants deny the allegations contained in Paragraph 124.

125. Defendants deny the allegations contained in Paragraph 125.

126. Defendants neither admit nor deny the allegations contained in Paragraph 126, because they have no actual knowledge of same and, therefore, call upon plaintiff to prove same.

127. Defendants object to plaintiff’s self-serving and inaccurate statement and need not respond to same.

128. The Permanent No Trespass Order was issued based on plaintiff’s behavior, not his alleged speech or status as a “speaker” and, therefore, defendants deny the allegations contained in Paragraph 128.

129. Defendants deny the allegations contained in Paragraph 129.

This Court should deny all relief requested in plaintiff’s “Prayer for Relief.”

THIRD DEFENSE

Plaintiff’s injuries and damages were caused by someone for whose conduct, acts and omissions defendants cannot be held responsible.

FOURTH DEFENSE

Defendants' actions and conduct were protected by law and/or legal process and, therefore, plaintiff cannot recover.

FIFTH DEFENSE

Defendant, Superintendent Dr. Rich Drolet, is protected from suit and liability under the doctrine of qualified immunity.

SIXTH DEFENSE

Defendants did not deprive plaintiff of any rights secured by the Constitution or by the laws of the United States. Therefore, plaintiff cannot recover. In the alternative, if defendants deprived plaintiff of any constitutional or statutory rights, such rights were not clearly-established at the time of the alleged deprivation.

SEVENTH DEFENSE

Plaintiff's' First Amended Complaint fails to allege any unconstitutional policy, practice or custom. Further, no unconstitutional policy, practice or custom was either adopted, followed or adhered to by defendants. Therefore, Counts I & IV must be dismissed as against defendant, Seekonk School Committee.

EIGHTH DEFENSE

The remedy in Title II of the ADA is available only as against "public entities." 42 U.S.C. § 12132. Therefore, Count III must be dismissed as against defendant, Superintendent Dr. Rich Drolet.

NINTH DEFENSE

Even if plaintiff's alleged speech is protected under the First Amendment (which defendants deny), defendants had adequate justification for restricting plaintiff's speech and, therefore, plaintiff cannot recover.

JURY DEMAND

Defendants demand a trial by jury on all issues so triable.

The Defendants,
SEEKONK SCHOOL COMMITTEE &
RICH DROLET, in his personal and official capacities,
By their Attorneys,

PIERCE DAVIS & PERRITANO LLP

/s/ John J. Davis

John J. Davis, BBO #115890
10 Post Office Square, Suite 1100N
Boston, MA 02109
(617) 350-0950
jdavis@piercedavis.com

Dated: November 30, 2022

CERTIFICATE OF SERVICE

I hereby certify that the foregoing, filed through the Electronic Case Filing System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants on November 30, 2022.

/s/ John J. Davis

John J. Davis, Esq.