

Eastern District of Kentucky  
**FILED**

**JUN 13 2006**

AT COVINGTON  
LESLIE G WHITMER  
CLERK U S DISTRICT COURT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND DIVISION  
CIVIL ACTION NO. 03-CI-17- (DLB)

BOYD COUNTY HIGH SCHOOL GAY STRAIGHT ALLIANCE, et al., PLAINTIFFS

VS.

BOARD OF EDUCATION OF BOYD COUNTY, KENTUCKY, et al., DEFENDANTS

**AMENDMENT TO CONSENT DECREE AND ORDER**

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The parties to the Consent Decree and Order (“Consent Decree”) in the above-captioned case have agreed that the Consent Decree shall be amended as outlined below:

**II. Mandatory Staff Training Program**

Section II (A)(1) of the consent Decree is hereby amended to read as follows:

Defendants shall conduct one full-day training session for all classified, certified, and district staff in the Boyd County Middle School and High School in the fall semester in each of three successive years (the “First Staff Training,” “Second Staff Training,” and “Third Staff Training”), commencing with the fall semester of 2005.

Section II (A)(2) of the Consent Decree is hereby amended and shall read as follows:

Commencing with the fall of 2006, Defendants shall provide Plaintiffs, by e-mail and facsimile to Plaintiffs’ counsel, with a detailed agenda for the mandatory staff training at least three weeks in advance thereof. If Plaintiffs believe that the proposed agenda indicates that the mandatory staff training will not satisfy the content requirements outlined in the Consent Decree, Plaintiffs shall notify Defendants, by e-mail and facsimile to Defendants’ counsel, within seven business days. Defendants shall engage in timely and good-faith negotiations with Plaintiffs

about their concerns, in a effort to avoid having to bring further disputes about the content of the training to the Court. Nothing herein shall be construed to otherwise alter or amend Plaintiffs' rights to seek enforcement of the mandatory staff training requirement pursuant to Section VII of the Consent Decree.

**III. Mandatory Student Training Program**

A. Scope of the Mandatory Student Trainings, is hereby amended as follows:

Beginning in the spring of 2006 semester, and repeating in the fall of 2006 and fall of 2007 semesters, the Defendants shall provide a one-hour age-appropriate training session for all students in Boyd County Middle and High Schools on the subject of preventing harassment and discrimination on the basis of actual or perceived sexual orientation or gender identity (hereinafter referred to as the "Mandatory Student Trainings"). Plaintiffs have reviewed and accepted the contents of a training video as consistent with the requirements of the original Consent Decree and as amended herein. Defendants may use that video to conduct the training for each of the three years. Should Defendants seek to revise the training video at any time, Defendants shall provide Plaintiffs, by e-mail and overnight mail to Plaintiffs' counsel, with both a transcript and videotape showing the revisions, at least three weeks in advance of any training in which Defendants propose to use the revised training video. If Plaintiffs object to the revisions and/or believe that the revisions bring the video out of compliance with the content requirements outlined in the Consent Decree, Plaintiffs shall notify Defendants within seven business days, by e-mail and facsimile. Defendants shall engage in timely and good-faith negotiations with Plaintiffs about their concerns in an effort to avoid bringing further disputes about the content of the training to the Court.

C. Content of the Mandatory Student Trainings, is hereby amended to read as follows:

1. Prior to the student training video being shown to students in school, the Boyd County Board of Education shall make the video available for viewing on at least one evening, and on at least one Saturday, which viewings shall be accessible to parents and legal guardians of students at the Boyd County Middle School and the Boyd County High School. This viewing will be for informational purposes only, and students will not be given credit for watching the video at this time, although they may accompany their parents/legal guardians.

Thereafter, the student training video will be shown at both the Middle School and High School on two separate dates during a school day. The video will also be shown on at least one evening, and at least one Saturday, which will be made available to all Middle School and High School students who have not otherwise seen the trainings during either of the school dates. A student may be accompanied by up to two parents or legal guardians to watch the video on any such evening or Saturday showing.

2. Any student thereafter who has still not seen the video after the two in-school showings and the evening/Saturday showing will be required to do a written alternative to avoid the consequences for nonperformance as set forth infra. The written alternative will be a substantive exercise, and will be deemed satisfactory/unsatisfactory based upon whether the student exhibits good faith effort. The exercise must be completed and turned in within two weeks of the assignment or by the end of the grading period for the semester, whichever first occurs.

The assignment shall be a research project, requiring students to research the effect of bullying, harassment, and discrimination based on actual or perceived sexual orientation and

gender identity, and the effect thereof on student's educational and extracurricular accomplishments. The research project shall include current statistics on incidents of such bullying, harassment, and discrimination; the number of students who state they have dropped out of school because of such bullying, a description of the nature of such bullying, and a description of how the students who are subjected to these incidents are affected. The research paper shall include footnotes or endnotes documenting the sources of information. The paper shall be a minimum of 500 words, and must be wholly handwritten, legibly, by student.

3. Compliance Coordinators will review the research papers, and only those papers which the Compliance Coordinators reasonably believe reflect a good faith effort by the student shall satisfy this requirement.

The Compliance Coordinators shall certify, by Affidavit, the number of students who participated in the videotaped training sessions, the number of students who turned in the alternative written assignment, and, of those students who turned in the written assignments, the number of those assignments which were deemed satisfactory, and the number of those assignments which were deemed unsatisfactory, and the number of students who neither participated in the videotaped training sessions nor turned in the written alternative assignment. This certification shall be part of the report required under Section VIII.

If more than ten students prepare the alternative written assignment, then all written assignments shall be retained for sixty days after the submission of the report referenced in Section VIII including the certification by the Compliance Coordinators, and made available for inspection solely by the Court at Plaintiffs' request, provided that the students' papers shall not be further published or disseminated, and that confidentiality/student privacy shall be

maintained. After completing its review, the Court shall inform Plaintiffs of the number of alternative written assignments deemed satisfactory by the Compliance Coordinators that did not, in the Court's view, satisfy the criteria described above in Section III.C.2. All papers shall be returned to the Boyd County Board of Education following completion of the Court's inspection.

A new section III, Mandatory Student Training, Subsection D, Consequences for Nonperformance, is hereby added:

Students who neither watch the video nor satisfy the alternative writing requirement will be required to review the applicable Code of Conduct provisions on harassment and discrimination with the Compliance Coordinators, and reminded of the applicability of those Code of Conduct provisions for all students. Defendants shall determine, in their sole discretion, what further consequences are appropriate for students who refuse to watch the video or complete the alternative writing assignment, but, at a minimum, students shall be assessed one unexcused absence for one class period. Nothing herein shall be construed to otherwise alter or amend any other grounds for assessment of absences; school district policies and procedures concerning tardies and absences shall otherwise be in full force and effect.

A new provision, Section III, Subsection E, is further added: Good Faith Implementation  
Defendants shall not facilitate nor condone avoidance of the student trainings and/or alternative writing assignments.

Section VII, Subsection A, concerning Duration of Consent Order is hereby amended to read as follows:

A. This Consent Order is effective immediately upon its entry by the Court and shall remain in effect until December 31, 2007 or sixty (60) calendar days after the last report under

Section VIII is received, whichever date is later, subject to modification by the Court upon motion, notice, and hearing. The Consent Order may be extended for an additional period of time by order of this Court Plaintiffs' motion, if at any time from entry of the Consent Order through December 31, 2007 or sixty (60) calendar days after the last report under Section VIII is received, whichever date is later, the Defendants, or any of them, are found to be in contempt of Court or in substantial non-compliance with the terms of the Consent Order.

Section VIII, Annual Reporting to Plaintiffs, Subsection A is hereby amended as follows:

Annually, on or before September 30, 2006, and September 30, 2007, Defendants shall deliver to counsel for the Plaintiffs . . .

Section VIII, Annual Reporting to Plaintiffs, Subsection A is further amended to require the following additional item: (9) The Compliance Coordinators shall make the certification by Affidavit, referred to in Section III, Subsection C of this Consent Decree and Order, which certification by Affidavit shall be included with the reports referenced herein.

HAVE SEEN AND AGREED PRIOR TO ENTRY:

  
\_\_\_\_\_  
JAMES D. ESSEKS  
COUNSEL FOR THE PLAINTIFFS

\_\_\_\_\_  
SARAH ALCORN

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WILLIAM CARTER

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DAVID FANNIN

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LIBBY FUGETT

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SYDNEY DUARTE

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TYLER McCLELLAND

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LENA REESE

\_\_\_\_\_  
KAYE KING

SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
HON. DAVID L. BUNNING, Judge

HAVE SEEN AND AGREED PRIOR TO ENTRY:

\_\_\_\_\_  
COUNSEL FOR THE PLAINTIFFS

*Sarah Alcorn*  
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SARAH ALCORN

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WILLIAM CARTER

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LIBBY FUGETT

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SYDNEY DUARTE

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TYLER McCLELLAND

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LENA REESE

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KAYE KING

SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
HON. DAVID L. BUNNING, Judge

HAVE SEEN AND AGREED PRIOR TO ENTRY:

\_\_\_\_\_  
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*David Fannin*  
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SYDNEY DUARTE

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WILLIAM CARTER

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KAYE KING

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\_\_\_\_\_  
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LIBBY FUGETT

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SYDNEY DUARTE

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TYLER McCLELLAND

*Lena B. Reese*  
\_\_\_\_\_  
LENA REESE

\_\_\_\_\_  
KAYE KING

SO ORDERED, this \_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
HON. DAVID L. BUNNING, Judge

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*Elizabeth B. Fugett*  
\_\_\_\_\_  
LIBBY FUGETT

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TYLER McCLELLAND

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KAYE KING

SO ORDERED, this \_\_\_ day of \_\_\_\_\_, 2006.

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HON. DAVID L. BUNNING, Judge

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TYLER McCLELLAND

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LENA REESE

  
\_\_\_\_\_  
KAYE KING

*Wendell R Huff* *W. Mitchell Huff*  
*by per authorization*  
COUNSEL FOR THE DEFENDANTS

BOARD OF EDUCATION OF BOYD CO., KY

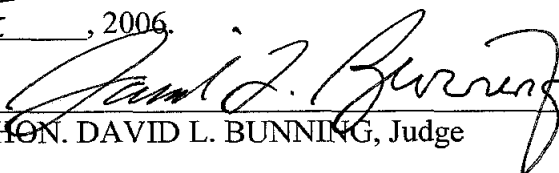
By: *Sheryl Bryan*  
CHAIR OF THE BOARD

ATTEST:

*Edward W. Osborn*  
SECRETARY OF THE BOARD

Any of the original Plaintiffs in this action that have not signed this Amendment are not parties to the Amended Consent Decree but remain parties to the original Consent Decree to the extent that the original Consent Decree has not been superseded by this Amendment.

SO ORDERED, this 13<sup>th</sup> day of JUNE, 2006.

  
HON. DAVID L. BUNNING, Judge