

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
ASHLAND DIVISION

TIMOTHY ALLEN MORRISON, II, by )  
and through his next friends, TIMOTHY )  
MORRISON and MARY MORRISON; )  
TIMOTHY and MARY MORRISON; )  
BRIAN NOLEN; and DEBORA JONES )

Plaintiffs, )

vs. )

BOARD OF EDUCATION OF BOYD )  
COUNTY, KENTUCKY )

Defendant. )

CASE NO. *05-38-HRW*

**Jury Demanded**

Eastern District of Kentucky  
**FILED**

**FEB 15 2005**

AT LEXINGTON  
LESLIE G WHITMER  
CLERK U S DISTRICT COURT

**COMPLAINT**

Come now the Plaintiffs, by counsel and pursuant to the Federal Rules of Civil Procedure, and for their causes of action against Defendant aver the following:

**I.**

**INTRODUCTION**

1. This is a civil rights action under 42 U.S.C. § 1983 to protect the constitutional rights of students in schools controlled by the Board of Education of Boyd County, Kentucky ("School District") and their parents. By policy and practice the School District unlawfully restricts these rights, as its policies are facially vague and overbroad, and unconstitutionally restrict student speech and beliefs, and parental rights. These constitutional defects give rise to both facial and as-applied constitutional challenges to the discriminatory policies.
2. School District policies and practice prohibit students from speaking in a manner that has the effect of insulting or stigmatizing another.

3. School District policies and practice prohibit students from telling someone who is a homosexual that they believe homosexuality is wrong.
4. School District policies and practice require all students in middle school and high school to undergo mandatory training wherein they are taught that homosexuality is a condition that is immutable.
5. School District policies and practice do not permit parents to opt their students out of this training, even if it violates their personal ideology, beliefs, and morality.
6. To redress the irreparable harm that Plaintiffs are suffering, and have suffered, under the School District's policies and practices, Plaintiffs seek a declaratory judgment that the Defendant's policies and practices violate First and Fourteenth Amendment rights facially and as applied and threatened to be applied to the Plaintiffs and others.
7. Plaintiffs also seek preliminary and permanent injunctive relief to prevent Defendant from further enforcing the challenged policies and practices in a manner inconsistent with their constitutional rights, and damages.

## II.

### JURISDICTION AND VENUE

8. Jurisdiction for this case is based on 28 U.S.C. §§ 1331, 1343, 1367, 2201, 2002, and 42 U.S.C. §§ 1983 and 1988.
9. Venue is proper under 28 U.S.C. § 1391 in the Eastern District of Kentucky because this claim arose there.

III.

**IDENTIFICATION OF PLAINTIFFS**

10. Timothy Allen Morrison, II is a minor who is suing by and through his parents, Timothy and Mary Morrison, who are acting as his next friends. Timothy Allen Morrison, II is a resident of Boyd County, Kentucky and a student at Boyd County High School.
11. Timothy Morrison and Mary Morrison are residents of Boyd County, Kentucky. They have a child who attends Boyd County High School.
12. Brian Nolen is a resident of Boyd County, Kentucky. He has a child that attends Boyd County Middle School.
13. Debora Jones is a resident of Boyd County, Kentucky. She has a child that will attend Boyd County Middle School beginning in the Fall of 2005.

IV.

**IDENTIFICATION OF DEFENDANT**

14. Defendant Board of Education of Boyd County, Kentucky is a local political subdivision and is a "person" capable of being sued under 42 U.S.C. § 1983.

V.

**STATEMENT OF FACTS**

***The Policies Restricting Student Speech***

15. The School District has a policy prohibiting students from using "language conduct or symbols in such a manner as ...to have the effect of insulting or stigmatizing an individual."

16. Violation of this speech restriction may result in one to five days suspension, referral to a court, and notification of a local law enforcement agency.
17. The School District requires all middle school and high school students to participate in an hour long mandatory diversity training session in which the full hour is devoted to addressing harassment and discrimination on the basis of actual or perceived sexual orientation or gender identity.
18. The School District requires all middle school and high school students to participate in mandatory training on issues related to sexual orientation and gender identity or be subject to the provisions of the School District's disciplinary procedures.
19. This training states that School District policy prohibits any student from telling another student that they believe homosexuality is "wrong" or contrary to their values or beliefs.
20. Students are required to undergo this training without expressing any disagreement. This effectively forces the students to speak in agreement with the School District's view that homosexuality is a safe and healthy lifestyle that cannot be changed.

***Mandatory Diversity Training***

21. In the Fall of 2004, the School District began requiring all high school and middle school students to undergo mandatory diversity training.
22. This training is meant to satisfy the School District's obligations it voluntarily assumed pursuant to a settlement agreement it entered into in the case of *Boyd*

*County High School Gay Straight Alliance v. Boyd County Board of Education,*  
Case No. 03-CI-17-DLB.

23. Parents are not permitted to opt their students out of the training.
24. The training consists of a one hour video.
25. School District employees and other individuals in the video state that homosexuality is a characteristic that cannot be changed.
26. School District employees and other individuals in the video state that it is wrong to communicate one's objection to the homosexual lifestyle to someone who is homosexual.
27. School District employees and other individuals in the video state that School District policy prohibits students from communicating to a homosexual the belief that the homosexual lifestyle is wrong.
28. School District employees and other individuals in the video attempt to change the belief systems of those students who believe homosexuality is morally wrong, is a changeable behavior, and is harmful to those who practice it and society as a whole.
29. Students are not permitted to vocalize any opposition to the beliefs espoused by the training video.

***Student Rights***

30. The named student plaintiff in this case has an ideological and sincerely held religious belief that homosexuality is harmful to those who practice it, and to society as a whole.

31. The named student plaintiff in this case has an ideological and sincerely held religious belief that he must love and care for others, including his fellow students.
32. The named student plaintiff in this case has an ideological and sincerely held religious belief that homosexuality is a behavior that can be changed.
33. The named student plaintiff in this case has an ideological and sincerely held religious belief that he must inform those who are engaged in destructive lifestyles like homosexuality that they are wrong, and they are engaging in behavior that is harmful to themselves and to society as a whole.
34. The named student plaintiff has refrained from conveying his views on homosexuality to his classmates because the School District policies restricting speech prohibit him from doing so.
35. Being subjected to the School District's training about homosexuality without the opportunity to express his disagreement would violate the named student plaintiff's ideological and sincerely held religious beliefs.

***Parental Rights***

36. The parent plaintiffs have an ideological and sincerely held and religious belief that they must direct the moral training of their students.
37. The parent plaintiffs have an ideological and sincerely held religious belief that homosexuality is harmful to those who practice it, and to society as a whole.
38. The parent plaintiffs have an ideological and sincerely held religious belief that homosexuality is a behavior that can be changed.

39. The parent plaintiffs have an ideological and sincerely held religious belief that they must teach their children that homosexuality is harmful to those who practice it, and society as a whole.
40. The parent plaintiffs have an ideological and sincerely held religious belief that they must teach their children that they have an obligation to those who practice homosexuality to inform them that it is harmful to them and to society as a whole.
41. The parent plaintiffs have an ideological and sincerely held religious belief that they must not allow their children to undergo training that teaches them that homosexuality is not wrong.
42. Unless and until the policies and practices of Defendants are enjoined, Plaintiffs will continue to suffer irreparable harm.

***Plaintiffs' Attempts to Resolve this Case***

43. On or about November 16, 2004, counsel for Plaintiffs appeared at a regularly scheduled meeting of Defendant and informed its members that its policies regarding mandatory diversity training are unconstitutional and failure to bring them into compliance with the law may result in a lawsuit being filed against the Defendant.
44. On or about November 24, 2004, counsel for Plaintiffs sent a follow-up letter to counsel for the Defendant informing her that the School District's policies regarding mandatory diversity training are unconstitutional and must be changed.
45. Defendant has failed to bring its policies regarding mandatory training into compliance with the law.

## VI.

### STATEMENT OF LAW

46. At all times relevant to this Complaint, each and all of the acts alleged herein were attributed to the Defendant, acting under the color, authority and pretense of state law, statutes, ordinances, regulations, customs, usages, and policies of the School District.
47. Religious and ideological speech is entitled to comprehensive protection under the First Amendment.
48. First Amendment rights of speech, association, and religious freedom extend to campuses of public schools.
49. Defendant's policies and practice of limiting speech are prior restraints, and grant School District officials unfettered discretion in the restriction of expression.
50. Defendant's policies are unconstitutional on their face and as applied because they are overbroad, and impermissibly restrict student expression.
51. Defendant's policies limiting speech are unconstitutional on their face and as applied because they are vague and overbroad, impermissibly restrict student expression and association, violate freedom of the press, are a prior restraint, violate freedom of religion, and grant School District officials unfettered discretion in the restriction of expression.
52. Defendant's policies and practice of requiring all middle school and high school students to undergo mandatory training that attempts to change their ideological, moral and religious beliefs, even if it conflicts with the ideological, moral and

religious beliefs of the students and their parents, violate parental rights as protected by the Fourteenth Amendment to the United States Constitution.

53. Plaintiffs are suffering irreparable injury from the challenged policies and practice of Defendant, which cannot be fully compensated by an award of money damages.
54. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to appropriate relief invalidating the unconstitutional School District policies and practice.

## VII.

### FIRST CAUSE OF ACTION

#### VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH UNDER THE UNITED STATES CONSTITUTION

55. Plaintiffs reallege all matters set forth in the preceding paragraphs and incorporate them herein.
56. The policies and practice of the Defendant constitute a violation of the First and Fourteenth Amendments of the United States Constitution by, among other things, prohibiting students from expressing their view that homosexuality is wrong, or that may be perceived as insulting or stigmatizing.
57. Defendant's policies and practice constitute impermissible viewpoint-based and content-based restrictions of constitutionally protected expression.
58. The policies and practice vest unfettered discretion in the Defendant to restrict constitutionally protected expression.
59. The policies and practice of the Defendant are prior restraints and restrictions on student speech.

60. The policies and practice are not content-neutral time, place, and manner restrictions on expression. Further, they are not narrowly tailored, do not serve significant government interests, and do not leave open ample alternative channels of communication, as the Constitution requires.
61. Students are required to undergo training on controversial issues without expressing any disagreement. This effectively forces the students to speak in agreement with the School District's view that homosexuality is a safe and healthy lifestyle that cannot be changed.
62. Defendant's policies are vague and overbroad.
63. The policies and practice restrict students' freedom of association and are not supported by a narrowly tailored compelling state interest.

WHEREFORE Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

## VIII.

### SECOND CAUSE OF ACTION

#### VIOLATION OF THE RIGHT TO DUE PROCESS UNDER THE UNITED STATES CONSTITUTION

64. Plaintiffs reallege all matters set forth in the preceding paragraphs and incorporate them herein.
65. The policies and practice of the Defendant constitute a violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.
66. Defendant's policies are vague.
67. Defendant's policies and practice fail to adequately advise, notify, or inform students of what is prohibited.

68. Defendant's policies and practice do not allow parents to opt their children out of diversity training, even if it violates their ideological, moral and sincerely held religious beliefs.
69. Defendant's policies and practice infringe upon rights of parents to direct the education and upbringing of their children.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

## IX.

### THIRD CAUSE OF ACTION

#### VIOLATION OF THE EQUAL PROTECTION CLAUSE UNDER THE UNITED STATES CONSTITUTION

70. Plaintiffs reallege all matters set forth in the preceding paragraphs and incorporate them herein.
71. Defendant's policies and practice, on their face and as applied, treat Plaintiffs and other students and parents differently from other similarly situated individuals and groups on the basis of the content of their speech and viewpoint, as well as their ideological, moral and religious beliefs.
72. Defendant does not have a compelling state interest for such disparate treatment.
73. Therefore, said conduct of Defendant comprises an unconstitutional and continuing interference and infringement upon the rights of Plaintiffs and other students and parents to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

X.

**FOURTH CAUSE OF ACTION**

**FREE EXERCISE OF RELIGION**  
**UNDER THE UNITED STATES CONSTITUTION**

74. Plaintiffs reallege all matters set forth in the preceding paragraphs and incorporate them herein.
75. Defendant's policies and practice burden the free exercise of religion guaranteed by the First and Fourteenth Amendments to the United States Constitution.
76. The policies, as interpreted and enforced by the Defendants, burden the Plaintiffs' right to speak about their personal religious beliefs.
77. Defendant discriminates against religious persons because they condition access to an important government benefit upon students self-censoring any speech that may be considered insulting or stigmatizing, or that states homosexuality is wrong.
78. Defendant discriminates against religious persons by requiring students to undergo mandatory diversity training that attempts to change their ideological, moral, and religious beliefs. Attendance is required even if that training violates the ideological, moral, and religious beliefs of the students and their parents.
79. Defendant discriminates against religious persons because they condition access to an important government benefit upon parents forcing their children to undergo mandatory diversity training even if it conflicts with the ideological, moral, and sincerely held religious beliefs of the parents and their children.

80. Defendant's policies, facially and as applied, thus constitute a violation of Plaintiffs' freedom to believe under the Free Exercise Clause of the First Amendment to the United States Constitution because they attempt to change the beliefs of students and condition a government benefit on the forfeiture of a fundamental individual right.

81. Defendant has no compelling reason that would justify its discrimination against Plaintiffs and others who want to express their ideological, moral, or religious view that homosexuality is harmful, and opt their children out of diversity training that conflicts with their moral, ideological, and sincerely held religious beliefs.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the relief set forth hereinafter in the prayer for relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that the Court:

a. Declare that the School District policies and practices described in this Complaint are unconstitutional on their face because they violate the rights to freedom of speech, due process, parental rights, equal protection, and freedom to believe, all guaranteed to the Plaintiffs and others under the Constitution of the United States and by operation of federal law;

b. Declare that the School District policies and practices, described in this Complaint are unconstitutional as applied or threatened to be applied to the Plaintiffs, described in this Complaint, because they violate the Plaintiffs' rights to freedom of speech, due process, parental rights, equal protection, and freedom to believe, all guaranteed to the

Plaintiffs and others under the Constitution of the United States and by operation of federal law;

c. Issue a preliminary and permanent injunction against the Defendant, its agents, officials, servants, employees, and any other persons acting in its behalf, from enforcing said Policies and practice against the Plaintiffs and;

d. Grant to Plaintiffs an award of actual and nominal damages in an amount deemed appropriate by this Court;

e. Grant to Plaintiffs an award of their costs of litigation, including reasonable attorneys' fees and expenses; and,

f. Grant such other and further relief as this Court deems just and proper.

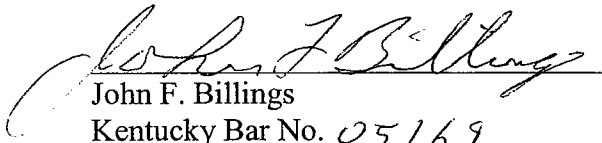
Respectfully submitted this 14<sup>th</sup> day of February, 2005.

Attorneys for Plaintiffs,

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+ Of Counsel, not admitted in this Court