

**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

v.

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

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**CONSENT DECREE AND ORDER**

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On January 22, 2003, Plaintiffs Boyd County High School Gay Straight Alliance (“GSA”), Sarah Alcorn, William Carter, David Fannin, Libby Fugett, Sydney Duarte, Tyler McClelland, Lena Reese and Kaye King filed a Complaint asserting claims under the Equal Access Act, the First Amendment, the Equal Protection Clause and the Kentucky Education Reform Act. Defendants Board of Education of Boyd County, Kentucky (the “Board”), Chester Tackett, Theresa Jackson, Randall Stapleton, Sheri Bryan and Teresa Cornette in their official capacities as members of the Board, Dr. William Capehart in his official capacity as Superintendent of Boyd County Public Schools, and Jerry Johnson in his official capacity as Principal of Boyd County High School (“BCHS”) denied the violations alleged in the Complaint.

The parties wish to avoid further costly and protracted litigation and have agreed voluntarily, as indicated by the signatures below, to resolve Plaintiffs’ claims against Defendants without the necessity of a trial by entering into this Consent Order. After reviewing the terms of this Consent Order, the Court concludes that the entry of this Consent Order comports with federal law and is appropriate under all the circumstances.

Therefore, it is ORDERED, ADJUDGED and DECREED as follows:

## **I. BCHS Gay Straight Alliance and Student Activities Policies**

Defendants and their agents, employees, successors, and persons acting in concert with them shall:

A. Permit student activity meetings on BCHS premises (including East Campus) immediately after classes end for the day, provide the GSA with equal access and opportunity to meet at that time and refrain from discriminating against the GSA, except that nothing herein shall require defendants to provide the GSA or its sponsor with financial support.

B. Permit school-authorized volunteers in accordance with applicable law and regulation to regularly attend student activities, including GSA meetings and field trips.

C. Refrain from charging BCHS student groups fees for use of school property or for supervision of meetings and activities on school premises, with the exception of fees for custodial services for non-routine meetings if the event or activity necessitates custodial services and such fees would be imposed on any student group engaging in that event or activity.

D. Refrain from requiring parental permission or notification to participate in student meetings on school premises, with the exception of permission to participate in activities that present a risk of physical injury. The student handbook shall however list all student activities in alphabetical order and state “for more information on any student activity please call the Principal or Assistant Principal.” If a parent objects to a student’s participation in a particular student activity, any disagreement between the parent and the student shall be resolved by the parent and the student without the involvement of the school district or its employees. The school district shall neither encourage nor discourage a student from participating in the GSA based on parental opposition.

E. Establish and apply uniform standards for obtaining parental permission for students to attend off-campus conferences, competitions, conventions or other activities.

F. Establish and apply uniform standards for obtaining authorization for a student activity group to participate in off-campus conferences, competitions, conventions or other activities, including authorization to use school resources, including school buses, for such off-campus activities.

G. Provide a uniform method for student groups to announce their meetings and activities.

H. Permit the GSA to identify itself as the Boyd County High School Gay Straight Alliance, provided its members are current BCHS students.

I. Refrain from retaliating against or taking any action that adversely affects any student or employee based on his or her association with GSA members, participation in the GSA or involvement in this litigation.

J. Refrain from discriminating among BCHS student groups in the provision of insurance coverage for faculty, staff, students or authorized volunteers who participate in approved student activities. This provision shall not require Defendants to obtain any new insurance coverage or to maintain coverage, nor shall it prevent Defendants from maintaining separate insurance coverage for student activities that involve a risk of physical injury.

## **II. Mandatory Staff Training Program**

### **A. *Mandatory Staff Training Program***

1. 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 fall semester 2004.

2. The training session conducted by Defendants in November 2003 may qualify as the First Staff Training if the parties so agree after Plaintiffs have an opportunity to review the

syllabus and course materials and to discuss the November 2003 training with the trainer. If so, then all further references herein shall be adjusted accordingly and the fall semester, 2004 training shall be considered the Second Staff Training.

3. The Mandatory Staff Trainings will be conducted in groups of not more than 80 people, or in smaller groups if recommended by the trainer.

4. Each Staff Training shall consist of a full day of training on diversity, discrimination and harassment and shall include a significant focus on issues pertaining to sexual orientation and gender identity diversity, harassment and discrimination. The parties anticipate that a significant focus on those issues will require at least three hours exclusively addressing those issues but agree that the trainer shall determine how to structure the training to include a significant focus on such issues. Defendants shall conduct such preparatory activities in advance of each Staff Training as are recommended by the trainer.

B. *Identity of Trainers*

Within thirty (30) calendar days from the date of entry of this Consent Order, Defendants shall retain the Anti-Defamation League (the "ADL") to prepare and to implement all aspects of the First and Second Staff Trainings. Defendants shall have the option of using the ADL to conduct the Third Staff Training or of using District staff to conduct the Third Staff Training in order to build the District's capacity to offer similar trainings in the future.

C. *Content of the Mandatory Staff Training Program*

The goals of the Mandatory Staff Trainings are to increase safety, to promote a safe learning environment, and to prevent harassment and discrimination on the basis of actual or perceived sexual orientation or gender identity. Defendants will cooperate with the ADL in designing and implementing the Mandatory Staff Training Program and will defer to the ADL's

expertise if there are disagreements about how to conduct the Mandatory Staff Training Program.

### **III. Mandatory Student Training Program**

#### *A. Scope of the Mandatory Student Trainings*

Beginning in the Fall 2004 semester and repeating in the Fall 2005 and Fall 2006 semesters, 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”). Mandatory Student Trainings shall be conducted in existing classes of approximately 30 students when the teacher is present in order to ensure that students pay attention and that the size of the student group is manageable. In schools where team or pod teaching is typical, Mandatory Student Trainings may be conducted with approximately 60 students in each training so long as they are conducted in classes that are normally combined.

#### *B. Identity of Trainers*

Within 30 days of entry of this Consent Order, Defendants shall retain the ADL to design the Mandatory Student Training program in cooperation with Defendants. Defendants may use Compliance Coordinators to teach the Mandatory Student Training sessions provided those Compliance Coordinators have been trained in advance by the ADL. The first few Mandatory Student Training sessions conducted at the beginning of the Fall 2004 semester shall be conducted by both Compliance Coordinators and instructors from the ADL as part of the final training for the Compliance Coordinators.

C. *Content of the Mandatory Student Trainings*

The Mandatory Student Trainings will address topics related to harassment, discrimination, and school safety, specifically focused on preventing harassment and discrimination on the basis of actual or perceived sexual orientation or gender identity. Defendants are free to address topics relating to general diversity or other kinds of discrimination or harassment in these trainings so long as a full hour is devoted to addressing harassment and discrimination on the basis of actual or perceived sexual orientation or gender identity.

**IV. Policies and Handbooks**

A. *Anti-Discrimination Provisions*

No later than the first day of the Fall 2004 semester, Defendants shall ensure that the Boyd County High School and Middle School student code of conduct, Boyd County High School and Middle School student handbooks, Boyd County School District Faculty Handbooks, and Boyd County Board of Education Policies prohibit harassment and discrimination based on actual or perceived sexual orientation or gender identity.

B. *Description of Complaint Resolution Procedures*

No later than the first day of the Fall 2004 semester, Defendants' policies, codes of conduct, and student and faculty handbooks shall be revised if necessary to explain clearly the complaint procedures for reporting harassment and discrimination based on sexual orientation and gender identity; how investigations involving allegations of harassment and discrimination are conducted; what resources are available for victims of harassment and discrimination, including the existence of and the role of Compliance Coordinators; and what remedies or

responses Defendants make available for victims of harassment and discrimination.

## **V. Compliance Coordinators**

### *A. Selection and Training of Compliance Coordinators*

1. Within thirty (30) calendar days from the date of entry of this Consent Order, Defendants shall create and post the positions; the Site Based Decision Making Councils shall promptly thereafter fill the position for two individuals from administrators, faculty, or staff (one male and one female) to serve as “Compliance Coordinators” for the Boyd County Middle School and BCHS. Compliance Coordinators will be individuals who are identified as resources for students who feel that they may have suffered harassment or discrimination based on sexual orientation or gender identity, and who are responsible for oversight of recording, reporting, investigating and remedying all forms of harassment or discrimination, including harassment or discrimination based on actual or perceived sexual orientation or gender identity. The Board of Education shall designate the criteria for the position, and the Site Based Councils shall select appropriate Compliance Coordinators whom they reasonably believe will be perceived as impartial by students and will have sensitivity to the needs of all students, including students who are or are perceived to be lesbian, gay, bisexual or transgender. Nothing herein shall be construed to diminish or abdicate in any way the normal authority of other school officials in these matters. The Compliance Coordinators shall ensure prompt and proper reporting, recording, investigating and remedying of harassment and discrimination by both direct means and by oversight to ensure follow up by others.

2. Compliance Coordinators will receive additional training to prepare them for their duties, which will include conducting Mandatory Student Trainings. Defendants shall ensure

that Compliance Coordinators are familiar with (i) how to report, investigate and remedy allegations of harassment or discrimination, (ii) how to track, record, and report such incidents or complaints, and (iii) how to advise and work with other staff concerning incidents of harassment or discrimination.

3. In the event of the resignation or termination of a Compliance Coordinator, the Site Based Decision Making Council shall fill the position as soon as possible with a new Compliance Coordinator reasonably believed to be perceived as impartial by students and who will have sensitivity to the needs of all students, including students who are or are perceived to be lesbian, gay, bisexual or transgender. Defendants shall have the option of providing new Compliance Coordinators with supplemental training provided by other Compliance Coordinators in the Boyd County School District or by experts outside the District. Defendants must ensure that new Compliance Coordinators are familiar with (i) how to report, investigate and remedy allegations of harassment or discrimination, including harassment or discrimination based on actual or perceived sexual orientation or gender identity, (ii) how to track, record, and report such incidents or complaints, and (iii) how to advise or work with other staff concerning such incidents or complaints. In the event of a vacancy of the Compliance Coordinator position, the principal or his/her designee shall serve until the vacancy is filled by the Council.

*B. Publicly Identifying Compliance Coordinators*

1. Within 10 calendar days of their selection, the existence, role, and identity of the two Compliance Coordinators shall be posted in at least one prominent and accessible location in the Boyd County Middle School and at BCHS, along with instructions to consult the Principal to find out who is serving in the interim if one of the Compliance Coordinator positions becomes



vacant. In addition, the Boyd County School District website and any websites for individual Boyd County schools shall, at a minimum, describe the existence and role of the Compliance Coordinators and shall instruct students and parents that they should check with the principal or other administrators at their school for the identity of site-specific Compliance Coordinators.

2. By the beginning of the Fall 2004 semester, all parents, students, and employees shall be reasonably notified of the existence, role, and identity of Compliance Coordinators through student and faculty handbooks and other guides.

## **VI. Systems for Reporting Incidents of Harassment and Discrimination**

### *A. Incident Reports*

For the duration of Defendants' reporting obligations under this Consent Order, Defendants shall maintain a written record (hereinafter referred to as an "Incident Report") of the following written complaints made to Defendants or their agents and employees: all complaints of physical or verbal harassment of students, faculty, or staff based on race, sex, national origin, religion, disability, sexual orientation, or gender identity and shall instruct all employees to encourage students who verbally complain of harassment or discrimination to submit their complaints in writing.

### *B. Content of Incident Reports*

Each Incident Report shall, at a minimum, include (1) the name of the person making the allegation, and, if different, the name of the alleged victim; (2) the nature of the allegation and the date of alleged incident; (3) the names of all persons alleged to have committed the violations reported therein; (4) the names of all persons who may have relevant information about the incident; (5) any written statements of the complainant, the victim (if different from the complainant), the alleged perpetrator, and any witnesses; (6) the outcome of the District's

investigation; (7) any action taken by the District; and (8) attached copies of any documents supplied to the District or created during the investigation or complaint process. Defendants may comply with this obligation by using existing forms provided they cover the required information.

## **VII. Duration of Consent Order**

A. This Consent Order is effective immediately upon its entry by the Court and shall remain in effect until June 30, 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 upon Plaintiffs' motion, if at any time from entry of the Consent Order through June 30, 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.

B. With the entry of this Consent Order, Plaintiffs and Defendants consent to and this Court hereby orders that all issues in this litigation are resolved, provided however, that the Court shall retain jurisdiction over this action for the period specified in Paragraph VII.A to ensure compliance with all provisions of this Consent Order.

C. The parties agree that the time limits set forth throughout this Consent Order may be expanded upon mutual consent of the parties.

## **VIII. Annual Reporting to Plaintiffs**

A. Annually, on or before September 30, 2004, September 30, 2005, September 30, 2006, and September 30, 2007, Defendants shall deliver to counsel for Plaintiffs, at the address set forth below, a detailed report covering the preceding reporting period containing information about Defendants' compliance efforts with this Consent Order, including but not limited to:

1. Copies of the District's policies and procedures for preventing, identifying, reporting and responding to harassment and discrimination on the basis of actual or perceived sexual orientation, including any revisions since the previous report (if the policies are unchanged from a previous year, the District can so certify in lieu of providing copies of the policies);

2. Copies of the specific language contained in student handbooks or any other notices or materials sent to students, parents, or employees providing information about the District's policies and procedure for preventing, identifying, reporting and responding to harassment and discrimination on the basis of actual or perceived sexual orientation, and a narrative description of which documents contained these notices and when these notices and materials were distributed;

3. A certification that the Mandatory Staff Training Program required during the preceding year was held, along with a statement of the number of District staff members who attended the training.

4. A certification that the Mandatory Student Training Program required during the preceding year was held, along with a statement of the number of students who attended the training.

5. Copies of the training materials used in the Mandatory Staff Training and Mandatory Student Training programs from the preceding year.

6. Identification of the Compliance Coordinators by name, sex, job title, and school for each school during the preceding year, along with copies of the training materials for the initial training for Compliance Coordinators in the report after the first year.

7. Statistical information showing the number of Incident Reports, as described in Section VI above, and a summary of the District's investigation and resolution of these

incidents. After providing this statistical information the District shall provide complete copies of the actual Incident Reports, redacted to remove any identifying information about students, upon request from Plaintiffs' counsel.

8. Items 3, 4 and 5, above, will not be applicable to the September 2004 report.

B. Within sixty (60) calendar days of receipt of any of the above reports, Plaintiffs may request, in writing, clarifications of, or supplementation to, the report. In that event, the District shall provide such clarifications and/or permit the inspection and copying of supplemental materials as the Plaintiffs may reasonably request.

### **IX. Extension of Time**

The District shall notify Plaintiffs by facsimile at least seven (7) days in advance if it reasonably calculates that it will not be able to comply with submission of a report or implementation of any portion of this Consent Order, specifying the reasons for anticipated non-compliance and the date by which it reasonably calculates compliance will be achieved. Plaintiffs may respond to the District within five (5) calendar days if they believe that the District's proposed timetable is unreasonable and suggest an alternative date. The District shall take steps to avoid non-compliance; repeated non-compliance will be grounds for Plaintiffs or Plaintiffs' attorneys to move the Court to extend the duration of the Consent Order for substantial noncompliance.

### **X. Costs and Attorneys' Fees**

A. Defendants shall have until the end of February 2004 to secure approval from their insurer to provide prompt payment of the amount set forth in the confirming letter of Winter Huff to James D. Esseks dated January 29, 2004 to be applied towards Plaintiffs' counsel's fees and costs, which payment would constitute full satisfaction of Defendants' obligation under this Section X. If Defendants secure such approval, the parties shall enter into a separate agreement

regarding the distribution of this amount among Plaintiffs' counsel, and Defendants shall issue IRS Forms 1099 (if required by law) for these amounts only to Plaintiffs' counsel.

B. If Defendants fail to secure approval under paragraph X.A prior to the end of February 2004, Plaintiffs shall not be limited by the amount set forth in paragraph X.A, but shall be considered "prevailing parties" on at least one claim for purposes of applying for attorneys' fees and costs under 42 U.S.C. § 1988, and the amount of the award of fees and costs shall be determined by this Court. Plaintiffs shall file such an application for attorneys' fees and costs no later than April 30, 2004.

### **XI. Miscellaneous**

A. This Consent Order does not constitute, nor shall it be construed as, an admission of any liability or wrongdoing by any party.

B. The provisions of this Consent Order will be governed by the laws of the Commonwealth of Kentucky.

C. Nothing in this Consent Order will be construed to limit any party's right to enforce this Consent Order (or any other documentation delivered pursuant to or in connection with it) according to its terms. If any court of competent jurisdiction determines that any provision contained in this Consent Order, or any part thereof, cannot be enforced, the parties agree that such determination shall not affect or invalidate the remainder of the Consent Order.

D. This Consent Order shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

E. The parties to this Consent Order shall endeavor in good faith to resolve informally any differences regarding interpretation of, and compliance with, this Order before bringing such matters to the Court for resolution. However, in the event that Defendants either fail to perform in a timely manner any act required by this Order or act in violation of any provision of this

Order, Plaintiffs or Plaintiffs' attorneys may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance or non-performance of certain acts.

F. All documents or reports required to be submitted to Plaintiffs pursuant to this Consent Order shall be addressed to: James D. Esseks, ACLU Foundation, 125 Broad St., 18<sup>th</sup> Floor, New York, NY 10004, facsimile number 212-549-2650.

G. Nothing herein shall be construed to waive or limit any rights of the Defendants under applicable state or federal law.

H. This Consent Decree may be executed in multiple counterparts, all of which together shall constitute one original document.

SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2004.

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HON. DAVID L. BUNNING, Judge

By their signatures on this and the following pages, the undersigned parties agree to, and request the entry of, this Consent Order:

PLAINTIFF BOYD COUNTY HIGH SCHOOL GAY STRAIGHT ALLIANCE:

\_\_\_\_\_  
by Sarah Alcorn, Senior Member

PLAINTIFF SARAH ALCORN:

\_\_\_\_\_  
Sarah Alcorn

PLAINTIFF WILLIAM CARTER:

\_\_\_\_\_  
William Carter

PLAINTIFF DAVID FANNIN:

\_\_\_\_\_  
David Fannin

PLAINTIFF LIBBY FUGETT:

\_\_\_\_\_  
Libby Fugett

\_\_\_\_\_  
next friend Gary Fugett

\_\_\_\_\_  
next friend Tammy Fugett

PLAINTIFF SYDNEY DUARTE:

\_\_\_\_\_  
Sydney Duarte

\_\_\_\_\_  
next friend Erick Duarte

PLAINTIFF TYLER MCCLELLAND:

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Tyler McClelland

PLAINTIFF LENA REESE:

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Lena Reese

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next friend Jenny Reese

PLAINTIFF KAYE KING:

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Kaye King

DEFENDANT BOYD COUNTY BOARD OF EDUCATION, KENTUCKY

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by Sheryl Bryan, Chair

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by Dr. William Capehart, Secretary

DEFENDANT DR. WILLIAM CAPEHART:

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Dr. William Capehart, Superintendent of Boyd County Public Schools

DEFENDANT RHONDA SALISBURY:

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Rhonda Salisbury, Principal of Boyd County High School



APPROVED AS TO FORM:

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