

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDWARD W. REYNOLDS and ERIN L. REYNOLDS, individually and on behalf of their minor children, A.R. and E.R.; A.B., a minor child by and through Next Friend, EDWARD W. REYNOLDS; MONICA C. SCHAFFER; and CHRISTOPHER D. JOHNECHECK,

COMPLAINT

FILE NO: _____

Plaintiffs,

-vs-

GREG TALBERG, individually and in his official capacity as member of the Williamston Community School District Board; CHRISTOPHER LEWIS, individually and in his official capacity as a member of the Williamston Community School District Board; NANCY DEAL, individually and in her official capacity as a member of the Williamston Community School District Board; SARAH BELANGER, individually and in her official capacity as a member of the Williamston Community School District Board; KATHY HAYES, individually and in her official capacity as a member of the Williamston Community School District Board; JOEL GERRING, individually and in his official capacity as a member of the Williamston Community School District Board; and the WILLIAMSTON COMMUNITY SCHOOL DISTRICT,

Defendants.

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NOW COME the above-named Plaintiffs, by and through their undersigned counsel, and together bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

INTRODUCTION

1. This case seeks to protect and vindicate statutory and fundamental constitutional rights. Plaintiffs bring a civil rights action under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, and for other statutory and constitutional violations, challenging Defendants’ acts, policies, practices, customs, and procedures, which deprived Plaintiffs and their children of their right to privacy, self-autonomy and personal identity, and freedom of speech. Defendants unjustly discriminate against Plaintiffs because of their sincerely held religious beliefs and their viewpoints by adding specially protected categories of “sexual orientation,” “gender expression,” and “gender identity” to Defendants’ non-discrimination and gender/transgender policies and practices. Specifically, Defendants’ non-discrimination and gender/transgender policies and practices seek to silence and punish Plaintiffs’ sincerely held religious beliefs and viewpoint.

2. As set forth in this Complaint, the policies, practices, customs, and procedures of Defendants (hereinafter collectively referred to as “School District”) were the cause of, and the moving force behind, the statutory and constitutional violations in this case.

3. Plaintiffs seek injunctive relief enjoining the unconstitutional application of the School District’s policies, practices, customs and procedures as set forth in this Complaint; a declaration that Defendants violated Plaintiffs’ clearly established statutory and constitutional rights; a declaration that the training, supervision, policies, practices, customs, and procedures of the School District as set forth in this Complaint violate the United States Constitution and the

Michigan Constitution; and a judgment awarding nominal damages and compensatory damages for the loss of Plaintiffs' constitutional rights. Plaintiffs also seek an award of their reasonable costs of litigation, including attorneys' fees and costs, pursuant to 42 U.S.C. §1988 and other applicable law.

JURISDICTION AND VENUE

4. This action arises under the Constitution and laws of the United States and of the State of Michigan. Jurisdiction is conferred on this court pursuant to 28 U.S.C. § 1331 and 1343, as well as under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*, and 42 U.S.C. § 1983, and other Federal and State laws and regulations, to redress violations of federal statutes and state law.

5. This Court has jurisdiction pursuant to Article III of the United States Constitution, 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(1), (2), (3), and (4). Declaratory relief is authorized pursuant to 28 U.S.C. § 2201 and 2202.

6. This Court has supplemental jurisdiction regarding the remaining state claims pursuant to 28 U.S.C. § 1367.

7. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. § 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this court. Plaintiffs' claims for damages are authorized under 42 U.S.C. § 1983, 42 U.S.C. § 2000d-7, and by the general legal and equitable powers of this court.

8. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

PLAINTIFFS

9. Plaintiffs Edward W. Reynolds and Erin L. Reynolds are married and residents in the Williamston public school district in the State of Michigan. They are the parents of two children who were enrolled in the School District. Plaintiffs, as part of their personal identity and autonomy, raise their children in their religious faith and have been forced as a matter of conscience to remove their children from the School District as a direct result of the Defendants' actions, policies, practices, customs, and procedures that give rise to this case. Plaintiffs bring this action on behalf of their children, A.R. and E.R., as their next of kin. Named Plaintiffs A.R. and E.R. appear through their next friend, Edward W. Reynolds, who is sufficiently familiar with the facts of each child's situation to fairly and adequately represent each child's interests in this litigation, and Edward W. Reynolds requests that this Honorable Court recognize and appoint him as the next friend for A.R. and E.R.

10. Plaintiff A.B. is a minor student at the School District and a resident of the Williamston public school district in the State of Michigan whose constitutional and statutory rights are being infringed upon as a direct result of Defendants' policies and actions. Edward W. Reynolds requests that this Honorable Court recognize and appoint him as the next friend for A.B., who also respectfully requests that A.B.'s identity remain undisclosed because of the sensitive nature of the government action in this case, to protect his privacy, and to avoid retaliation or harassment.

11. Plaintiff Monica C. Schafer is a resident of the Williamston public school district in the State of Michigan. She is the mother of children currently enrolled in the School District. Plaintiff Schafer, as part of her personal identity and autonomy, raises her children in her religious faith which is being infringed upon as a direct result of Defendants' actions.

12. Plaintiff Christopher D. Johnecheck is a resident of the Williamston public school district in the State of Michigan. He is the father of children currently enrolled in Defendants' school district. Plaintiff Johnecheck, as part of his personal identity and autonomy, raises his children in his religious faith which is being infringed upon as a direct result of Defendants' actions.

13. Plaintiffs are Christians who adhere to the teachings of the Bible and are morally bound to follow the universal, consistent moral teaching of the Christian faith. All Plaintiffs find their dignity, personal identity, and autonomy in the exercise of their sincerely held Christian religious beliefs.

14. Plaintiffs do not oppose or demean any person for who they truly are as a person. Plaintiffs oppose the conduct choices now being promoted by the School District, and the resulting violation of Plaintiffs' statutory and constitutional rights.

15. Plaintiffs sincerely believe the Bible's teaching on sexual orientation and gender reiterates a truth that is evident to right reason and recognized as such by all the major cultures of the world.

16. Plaintiffs sincerely believe the Bible teaches that human beings were created male and female and that gender is neither fluid nor a social construct.

17. Plaintiffs sincerely believe that a person's sex is established by the Creator with its own nature, essential properties, and purpose.

18. As part of their personal identity and autonomy, Plaintiffs sincerely believe that they have a duty and obligation to live out their faith in all areas of life, including defending their faith in public. The School District's policies punish them and their children for exercising their constitutionally and statutorily protected rights.

DEFENDANTS

19. The Williamston Community School District is a public state entity established and organized under, and pursuant to, the laws of the State of Michigan with the authority to sue and be sued in its own name. Defendant operates numerous schools located within the School District. At all times relevant, the School District and School Board have acted and continue to act under color of state law.

20. The School District and its officials are responsible for creating, adopting, approving, ratifying, and enforcing the policies, practices, customs and procedures of the district, including the challenged policies, practices, customs, and procedures set forth in this Complaint.

21. Greg Talberg is an individual and School District school board member and board President who voted in favor of the policies at issue in this case. As a school board member, he requires the students and parents of the School District to comply with the contested policies set forth in this Complaint. Defendant Talberg violated Plaintiffs' clearly established constitutional and statutory rights and acted outside the scope of his authority in approving these policies.

22. Christopher Lewis is an individual and School District school board member who voted in favor of the policies at issue in this case. As a school board member he requires the students and parents of the School District to comply with the contested policies set forth in this Complaint. Defendant Lewis violated Plaintiffs' clearly established constitutional and statutory rights and acted outside the scope of his authority in approving these policies.

23. Nancy Deal is an individual and School District school board member and board Secretary who voted in favor of the Policies at issue in this case. As a school board member she requires the students and parents of the School District to comply with the contested policies set forth in this Complaint. Defendant Deal violated Plaintiffs' clearly established constitutional and

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statutory rights and acted outside the scope of her authority in approving these policies.

24. Sarah Belanger is an individual and School District school board member and board Treasurer who voted in favor of the Policies at issue in this case. As a school board member she requires the students and parents of the School District to comply with the contested policies set forth in this Complaint. Defendant Belanger violated Plaintiffs' clearly established constitutional and statutory rights and acted outside the scope of her authority in approving these policies.

25. Kathy Hayes is an individual and School District school board member who voted in favor of the Policies at issue in this case. As a school board member she requires the students and parents of the School District to comply with the contested policies set forth in this Complaint. Defendant Hayes violated Plaintiffs' clearly established constitutional and statutory rights and acted outside the scope of her authority in approving these policies.

26. Joel Gerring is an individual and was a School District school board member who voted in favor of the Policies at issue in this case. As a school board member he required the students and parents of the School District to comply with the contested policies set forth in this Complaint. Defendant Gerring violated Plaintiffs' clearly established constitutional and statutory rights and acted outside the scope of his authority in approving these policies.

STATEMENT OF FACTS

27. The School District adopted the following policies, practices, customs, and procedures promoting and forcing the approval of only one viewpoint on the issues of sexual orientation, gender identity, and gender expression:

A. **Policy 4900 – Fair Employment Clause** (adopted November 6, 2017). The policy added a new privileged category of “sexual orientation.” This policy mandates non-

discrimination on the new category for the awarding of any “contracts in excess of \$15,000.00” (see Exhibit A).

B. **Policy 7500 – Guidance Program** (adopted November 6, 2017). The policy added new privileged categories of “sexual orientation, gender identity, gender expression” despite language stating that the policy already applied to “all individual students” (see Exhibit B).

C. **Policy 8010 – Equal Educational Opportunity** (adopted November 6, 2017). The policy added new privileged categories of “sexual orientation, gender identity, gender expression.” This policy mandates “non-discrimination” for “any educational program or activity conducted by the district” including participation in “athletics” and “extracurricular activities.” The policy permits any individual to use the same showers, locker rooms, restrooms, and other facilities and programs designated for the opposite biological sex (see Exhibit C).

D. **Policy 8011 – Gender Identity** (adopted November 6, 2017). The policy added new privileged categories of “sexual orientation, gender identity, or gender expression.” Defendants have required the acceptance of any sexual orientation or gender identity asserted by a student without question; the policy does not require the parents to be notified of any such assertion or choice by their child. Parents are further required to comply with this policy regardless of their sincerely held religious or other beliefs. The policy permits any individual to use the same showers, locker rooms, restrooms, and other facilities and programs designated for the opposite biological sex (see Exhibit D).

E. **Policy 8040 – School Admissions** (adopted October 2, 2017). The policy added new privileged categories of “sexual orientation, gender identity, gender expression” for

the admission of Non-Resident Students. The policy permits any individual to use the same showers, locker rooms, restrooms, and other facilities and programs designated for the opposite biological sex (see Exhibit E).

F. **Policy 8260-R – Bullying** (adopted October 2, 2017). The policy defines “harassment” to include new privileged categories of “sexual orientation, gender identity, gender expression.” The policy prohibits “aggressive behavior” against other students and can lead to the expulsion of a student and exclusion of a parent from school property. Defendants’ policy defines “aggressive behavior” to include speech and unintentional “emotional” harm (see Exhibit F).

G. **Policy 8720 – Student Organizations** (adopted October 2, 2017). The policy added new privileged categories of “sexual orientation, gender identity, gender expression,” despite language already requiring membership to be “open to all interested and eligible students” (see Exhibit G).

28. The School District adopted, authorized, and approved these policies, which promote and force the approval of alternate sexual lifestyles and behavior in direct opposition to, and with the disapproval of, Plaintiffs’ personal identity, autonomy, and their sincerely held religious beliefs and convictions and in violation of federal and state statutes and constitutional provisions.

29. The School District adopted, authorized, and approved these policies, which promote and force the approval of alternate sexual lifestyles and behavior in a manner that infringes upon Plaintiffs’ personal identity, autonomy, and their sincerely held religious beliefs and convictions and constitutional right to oppose such policies and freely speak out on such issues in accordance with their sincerely held religious beliefs.

30. The School District adopted a policy position that discriminates against Plaintiffs' personal identity, autonomy, and their sincerely held religious beliefs and silences and punishes any opposition to the policies. The School District treats such opposition as bullying and hate speech. The School District, through its policies, practices, customs, and procedures, accepts, promotes, and endorses its policy position in its public schools that forces Plaintiffs' to violate their sincerely held religious beliefs.

31. The School District adopted, authorized, and approved policies, practices, customs, and procedures that portray alternate sexual lifestyles solely in a positive light and prohibit any contrary viewpoint, such as Plaintiffs' sincerely held religious viewpoint. Religious viewpoints, such as those held by Plaintiffs, that do not affirm and promote alternate sexual lifestyles are treated as harassment, bullying, hate speech, and homophobic.

32. The School District through its training, supervision, policies, practices, customs, and procedures indoctrinate students to believe that religious opposition to such alternate sexual lifestyles is harassment, bullying, hate speech, and homophobic. This indoctrination creates a hostile school environment that favors the stated alternate sexual lifestyles and disfavors and is hostile toward sincerely held religious beliefs opposing such actions and to those holding more traditional views.

33. Pursuant to Policy 7175-R (see Exhibit H), the School District requires all parents to comply with the Student Handbook. Parents must also mandate that their child comply with all school rules and regulations, including those policies at issue herein.

34. Policy 8190 (Behavior Code – see Exhibit I) references the expectations for student and parent behavior and consequences for violation of the behavioral expectations in the School District's "Code of Conduct" handbook.

35. The School District Student Handbook incorporates the Code of Conduct and makes it clear that all students and parents are expected to obey all Board Policies and the rules contained in the Code of Conduct.

36. If a student violates any Board Policy, Code of Conduct or Student Handbook requirement, the student is subject to discipline ranging from a warning to suspension to expulsion (Policy 8350, Policy 8350-R, Code of Conduct, Student Handbook).

37. The School District through its training, supervision, policies, practices, customs, and procedures is violating Policy 7800 (Exhibit J) that requires students in the School District to be tolerant of religious points of view, not to disparage religious beliefs, and to foster understanding of religious points of view. Mandating affirmation of alternative sexual lifestyles under threat of discipline or negative consequences for failing to comply with the above policies violates policy 7800.

38. The School District through its training, supervision, policies, practices, customs, and procedures mandating affirmation and approval of alternative sexual lifestyles contrary to Plaintiffs' religious beliefs constitutes harassment and bullying aimed at all parents and students who disagree with the School District. These policies are the moving force behind the constitutional and statutory violations set forth in this Complaint.

39. The School District through its training, supervision, policies, practices, customs, and procedures directs and trains teachers and all school employees to enforce its policies and viewpoint, and to stop speech or action that it improperly labels as bullying, hate speech, homophobic, or otherwise not approving of alternative sexual lifestyles. Merely expressing disagreement with the policies or alternative sexual lifestyles is treated as bullying or harassment by the School District.

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40. The purpose of the School District's training, supervision, policies, practices, customs, and procedures is to indoctrinate students into believing that alternative sexual lifestyles are approved by all and to shame and blame those who believe it is wrong and immoral. In particular the purpose is to make those who oppose alternative sexual lifestyles on moral and religious grounds to feel guilty for holding those beliefs and to portray those beliefs as intolerant, harmful, hateful, and destructive. In sum, the purpose of the School District's policy changes is to place blame, guilt, and shame onto those who oppose these alternative sexual lifestyle categories on moral and religious grounds, and to violate, stifle, and chill the constitutional rights of parents and students.

41. The School District has created a school environment that favorably promotes the agenda of alternative sexual lifestyle activists while creating an environment that is hostile toward and disfavors students and families that oppose these policies based upon their sincerely held moral and religious beliefs, and who object to the close interaction of males and females together in intimate settings such as showers, locker rooms and bathrooms.

42. The School District's policies, practices, customs, and procedures encourage school officials, and others, to silence and disparage opinions, ideas, and viewpoints that disfavor alternative sexual lifestyles.

43. The School District's training, supervision, policies, practices, customs, and procedures chill speech and the expression of religious viewpoints, such as those held by Plaintiffs.

44. The School District's training, supervision, policies, practices, customs, and procedures allow biologically intact males to enter and use the locker rooms, showers, bathrooms and other facilities used exclusively by biological females.

45. The School District's training, supervision, policies, practices, customs, and

procedures allow biologically intact females to enter and use the locker rooms, showers, bathrooms and other facilities used exclusively by biological males.

46. The School District's training, supervision, policies, practices, customs, and procedures demean and diminish the personal autonomy and dignity of Plaintiffs and all students who have a differing viewpoint and disagree with the School District's policies and actions.

COUNT I – DEFENDANTS ACTED WITHOUT LEGAL AUTHORITY

47. Plaintiffs hereby incorporate and repeat herein paragraphs 1 through 46 above as if fully restated herein.

48. The School District and its Board are responsible for creating, adopting, approving, ratifying, and enforcing the policies, practices, customs and procedures of the School District as set forth in this Complaint.

49. The School District Board acts as a “legislative body in formulating and adopting policy” (see Exhibit K – Board Policy/By-Laws 1000) and shall make reasonable policies necessary to carry on the functions of a public school (see Exhibit L – Policy 1032 Powers and Duties).

50. The School District Board's authority derives from the Michigan Constitution and state law, and the Board operates as a “general powers school district” (see Exhibit M – Policy 1010 District Legal Status; MCL 380.11a).

51. Defendants operate under the auspices of, and under the authority granted by, the state legislature and are a state body bound by, and subordinate to, the state legislature.

52. Despite Plaintiffs' objections to Defendant School District's policies (4900, 7500, 8010, 8011, 8040, 8260-R, and 8720), Defendant passed said policies and now enforces and demands that all parents and students obey and submit to said policies.

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53. The School District acted outside the scope of its authority in adding the new “non-discrimination” categories of “sexual orientation, gender identity, or gender expression.”

54. The School District is not granted authority to act as the state legislature by extending protection to categories not enumerated in Michigan’s civil rights laws because the Michigan Legislature occupies the field in this area.

55. The Michigan Legislature enacted the Elliott-Larsen Civil Rights Act (ELCRA) (MCL 37.2101 et. seq.), a pervasive regulatory scheme that regulates and controls discrimination issues in Michigan.

56. The Michigan Legislature’s purpose in enacting ELCRA was to prevent discrimination and provide uniformity across the State of Michigan.

57. The School District only has the general powers delegated to it by the State Legislature (MCL 380.11a). The School District is not granted authority to add additional categories not enumerated in ELCRA.

58. Article IV, §1 of the Michigan Constitution provides that “[t]he legislative power of the State of Michigan is vested in a senate and a house of representatives.” The Legislature has explicitly refused to add sexual orientation, gender expression, or gender identity categories at least eleven times over the past thirty years. The School District cannot supplant or preempt the Michigan Legislature’s authority in this field.

59. The School District has the constitutional duty to apply and enforce state law as written and enacted by the Michigan Legislature.

60. Because the School District’s amended policies are not expressly or impliedly mandated or authorized by state law, its actions are an *ultra vires* activity for which the School District is liable.