

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

FILED
JUN 17 2003
U.S. DISTRICT COURT
WESTERN DIVISION

WESTFIELD HIGH SCHOOL L.I.F.E.
CLUB, STEPHEN GRABOWSKI, by and
through his parents, Edmund and Mary Etta
Grabowski, TIMOTHY SOUZA and
DANIEL SOUZA by and through their
parents, Ralph and Diane Souza, SHARON
SITLER and PAUL SITLER, by and
through their parents, William and Denise
Sitler, and, DUSTIN COOPER, by and
through his parents, Brian and Amy
Turner-Cooper,
Plaintiffs

CASE No. 03-30008 FHF

v.

CITY OF WESTFIELD,
Defendant

CONSENT DECREE

WHEREAS, this case involved claims by Plaintiffs Westfield High School L.I.F.E. Club, Stephen Grabowski, Timothy Souza, Daniel Souza, Sharon Sitler, Paul Sitler and Dustin Cooper under 42 U.S.C. §1983 concerning the Plaintiffs' right to freedom of speech and equal protection and asserting claims under the Establishment Clause of the First Amendment to the United States Constitution, the Equal Access Act and Massachusetts Student Freedom of Expression Law, seeking permanent injunctive relief as well as a declaratory judgment and damages;

WHEREAS, Plaintiffs and Defendants (collectively, the "Parties") agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter is intended to avoid expensive

and protracted litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

THEREFORE, with the consent of the Parties, it is ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION

For purposes of entry and enforcement of this Consent Decree only, the Parties agree that the Court specifically retains jurisdiction over this action and may issue such further orders or directions as may be necessary or appropriate to enter, construe, implement, modify, or enforce the terms of this Consent Decree, including resolving any disputes arising under this Consent Decree, and for granting any further relief as the interests of justice may require. The Parties agree to provide written notice to all counsel of record of their intent to seek judicial relief regarding any dispute arising from this Consent Decree, no less than five (5) days prior to filing for relief with the Court.

II. COVENANTS BY DEFENDANTS

1. Defendants covenant that they have repealed the Policies entitled “Freedom of Speech, Assembly or Congregation,” and “Posting of Information and Distribution of Materials” that were the subject of the above-captioned lawsuit. The Policies were repealed by the Westfield School Committee at its regular meeting on May 5, 2003.

2. Defendants covenant that they have adopted two new Policies entitled “Free Speech Policy and “Posting of Information”. The new Policies were adopted by the Westfield School Committee at its regular meeting on May 5, 2003, and are attached hereto as Exhibit “A” and incorporated herein as if fully set forth.

3. Defendants covenant that they will not enforce any punishment upon any of the named student Plaintiffs for their actions in distributing the candy canes with religious messages in December 2002 and will expunge from the records of the named student Plaintiffs any and all reference to disciplinary charges arising out of the distribution of the candy canes with religious messages in December 2002.

4. Defendants covenant that they will not impose any prior restraints upon the rights of the named student Plaintiffs and the L.I.F.E. Club to distribute literature to fellow students during non-instructional time without first complying with the substantive and procedural safeguards outlined in the Defendants' attached Policies unless the distribution fails to comply with the terms of the attached Policies.

5. Defendants covenant that they will not prohibit the named student Plaintiffs and the L.I.F.E. Club from distributing literature to fellow students during non-instructional time based upon the content of the literature, unless the school reasonably forecasts that the disruption would substantially and materially disrupt or materially interfere with the operation of the school or the distribution fails to comply with the terms of the Defendants' attached Policies.

6. Defendants covenant that they will not punish the named student Plaintiffs in any way for distributing literature to fellow students during non-instructional time, where such distribution does not substantially and materially disrupt or materially interfere with the operation of the school unless the distribution fails to comply with the terms of the Defendants' attached Policies.

III. COVENANTS BY PLAINTIFFS

In consideration of the covenants by the Defendants, Plaintiffs hereby covenant to dismiss with prejudice any and all claims, including but not limited to the claims asserted in the Complaint, against the above-named Defendants in the action captioned *Westfield High School L.I.F.E. Club, et al. V. City of Westfield, et al.*, case no. 03-30008, in the United States District Court for the District of Massachusetts.

IV. ATTORNEYS FEES AND COSTS

Defendants covenant to pay to Plaintiffs' attorney, Liberty Counsel, the amount of \$28,500.00 in attorney's fees and costs.

V. EFFECT OF SETTLEMENT

Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of the Parties expressly reserves any and all rights, defenses, claims, demands and causes of action which each party may have with respect to any matter, transaction or occurrence relating to any person not a party hereto.

VI. ENTIRE AGREEMENT

This Consent Decree is the entire agreement between Plaintiffs and Defendants. All prior conversations, meetings, discussions drafts and writings of any kind are specifically superseded by this Consent Decree.

VII. EFFECTIVE DATE

The effective date of this Consent Decree shall be the date upon which it is entered by the Court. If for any reason the District Court does not enter this Consent Decree, the Consent Decree shall not become effective.

VIII. MODIFICATIONS

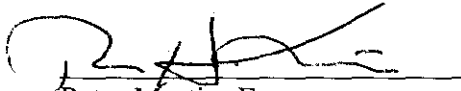
This Consent Decree shall not be modified or amended except by mutual written consent of all Parties, with approval of the Court.

IX. REPRESENTATIVE AUTHORITY

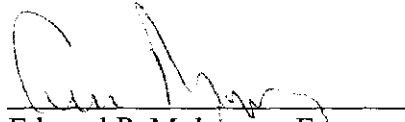
Each undersigned representative of the Parties to this Consent Decree certifies that he or she is fully authorized by the party to enter into and execute the terms and conditions of this Consent Decree, and to legally bind such party to this Consent Decree. By their representative's signature below, the Parties consent to entry of this Consent Decree.



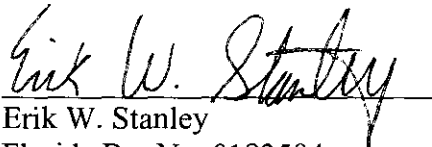
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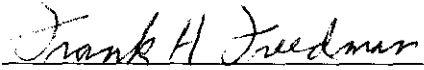
Erik W. Stanley
Florida Bar No. 0183504
LIBERTY COUNSEL
210 East Palmetto Avenue
Longwood, FL 32750
Attorney for Plaintiffs

ORDER

UPON CONSIDERATION OF THE FOREGOING, the Court thereby finds that this Consent Decree is fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest. THE FOREGOING Consent Decree is hereby APPROVED.

There being no just reason for delay, the Court expressly directs, pursuant to Rule 54(b), Fed.R.Civ.P., ENTRY OF FINAL JUDGMENT in accordance with the terms of this Consent Decree.

DONE and ORDERED this 16th day of June, 2003.


FRANK H. FREEDMAN
U.S. DISTRICT JUDGE

File: 1
1st reading: 4/15/2003
2nd reading: 5/5/2003
Passed: 5/5/2003

EXHIBIT

tabbles

A

POSTING OF INFORMATION AT WESTFIELD HIGH SCHOOL

The daily bulletin is prepared by the principal's office each school day. School sponsored organizations and student initiated voluntary associations of students that utilize school facilities may place notice of their future meetings or events in the daily bulletin. The daily bulletin is posted each day on the bulletin board outside the main office and in each classroom. The Guidance Office has bulletin boards that post official information as well.

School-sponsored clubs and organizations may display posters provided space is available and provided further that the posting is approved in advance by the principal or the principal's designee. Clubs and organizations that are student initiated voluntary associations (not school sponsored) may display posters on the bulletin board located in the school office. All postings are subject to the high school free speech policy. Posters hung other than in authorized locations will be removed.

The Westfield High School does not endorse the private views espoused by students and/or student organizations merely by allowing them to post information and/or conduct activities on school premises.

File: C.A.
1st reading: 4/15/2003
2nd reading: 5/5/2003
Amendments offered: 5/5/2003
Passed as amended: 5/3/2003

FREE SPEECH POLICY

The Westfield Public Schools recognize the free speech rights of high school students in the public schools. In order to protect the valid exercise of those rights as well as the maintenance of a sound educational process and a constructive school environment in which to conduct the goals of teaching and learning, this policy provides guidelines for oral and written speech offered within the confines of the high school campus or its off campus sponsored events and activities. This policy recognizes a distinction between school-sponsored speech, such as posters advertising the election of students to the school sponsored Student Council, which is subject to reasonable control as hereinafter defined, and school tolerated speech which is the private speech of individual students or of voluntary associations of students, which is allowed provided that it conforms to the terms of this policy. This policy does not apply to the speech of, or to speech produced by, individuals or organizations who are neither students nor employees of the Westfield Public Schools. The duties and privileges of such unaffiliated individuals, including commercial enterprises, are the subject of a separate policy.

Students are free to engage in private speech at the high school during non-instructional time so long as their speech:

- (a) is not disruptive to the normal operation of the school; or
- (b) does not infringe on the rights of other students, including the rights to be free of sexual harassment and to be free of bullying in the school, or
- (c) does not constitute an assembly.

For purposes of this policy, the following terms have the following meanings:

Speech. The term speech means “pure speech” that is, the act of communicating by unamplified voice. It also includes forms of communication used by the speech or hearing impaired in lieu of communication by voice and communication through written materials such as handbills and posters.

Non-instructional time. Before or after class hours, between classes and during lunch. Homeroom and study halls are considered “classes.”

Class hours. The hours of the day when students are scheduled to be in class at the high school.

Reasonable control. In the context of school sponsored speech, reasonable control means restrictions on speech that are rationally related to the goal of teaching students. The goal of teaching students is not limited only to academic subjects but includes the promotion of conduct consistent with the shared values of a civilized social order such as civility, appreciation for different cultures, leadership skills, and the avoidance of such self destructive behaviors as the use of illegal drugs. The exercise of editorial control by the faculty advisor over articles concerning abortion rights submitted by students for publication in the high school newspaper is an example of reasonable control.

Assembly. The term “assembly” means a pre-planned gathering of six or more students for the purpose of influencing the behavior, conduct or beliefs of others.

School hours. Those hours in which the high school is open for use by high school students.

Infringes on the rights of other students. This term includes conduct which is proscribed by the criminal laws and such conduct as could subject the actor or school district to civil liability.

Disruptive to the normal operation of the school. This term includes violence but also includes any speech or associated conduct that is designed to or does unreasonably interfere with the primary goal of the school system which is to provide a positive atmosphere to foster the optimal learning of the students.

Examples of speech or associated conduct that would be disruptive to the normal operation of the school are set forth, below. Students may not:

- a.) interfere with, impede or cause blockage of the flow of traffic or of passage;
- b.) commit any act likely to create an imminent health or safety hazard;
- c.) commit any act that is likely to induce immediate breach of the peace;
- d.) use sticks or other hard objects to hold up signs inside the school building;
- e.) interfere with an event by blocking audience view or orally interrupting a speaker or performance;
- f.) use voice amplification systems that interfere with school activities, or make loud or raucous sounds which disturb others due to the decibel level of the sound;
- g.) willfully or recklessly engage in destruction of property;
- h.) attempt by force to impair classes, events or normal business operations;
- i.) use language commonly understood by a reasonable person to be vulgar or lewd;
- j.) use language that includes "fighting words", which are those words, including racial or ethnic slurs, that by their very utterance inflict injury or tend to incite an immediate breach of the peace.

When engaged in written speech, students and voluntary associations of students who choose to publish, post or otherwise distribute speech shall by name identify on the writing the principal sponsor of the speech, be it an individual student name or the name of the sponsoring

student organization or group. Students and voluntary associations of students engaged in private speech ("school tolerated speech" as opposed to "school sponsored speech") are not authorized to use the words "Westfield High School" in their written materials nor may they use any similar words that could mislead other high school students into reasonably concluding that the speech was school sponsored.

In the event that students wish to engage in an assembly during school hours, they shall make written request to the principal or his designee specifying the date, time, place and purpose of the assembly. On or before the end of the next school day following receipt of the request, the principal or his designee shall determine whether the assembly would be disruptive to the ordinary operation of the school or would infringe on the rights of other students. In the event that he so found, he must so notify the sponsors forthwith specifying his reasons in writing. If modifying the time, place or manner of the proposed assembly would eliminate the potential for disruption, the principal or his designee must offer in the written response a reasonable alternative so as to allow the assembly to take place. If the principal or his designee does not act upon the request by the end of the next school day following receipt of the request, the request is deemed approved.

Any student aggrieved by the action of a teacher, the principal or the principal's designee may obtain review by access to the procedures set forth in this handbook under the heading "Complaints, Grievances & Appeals Procedures".