

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

JEREMY LOVINS,

Plaintiff,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor

v.

PLEASANT HILL PUBLIC SCHOOL DISTRICT, R-III,

Defendant.

Case No. 99-0550-CV-W-2

CONSENT ORDER

On June 4, 1999, Plaintiff Jeremy Lovins ("plaintiff," "Jeremy," or "Mr. Lovins") filed this action, alleging that, for four years, Defendant Pleasant Hill Public School District, R-III ("defendant" or "the District"), and Hugh Graham,⁽¹⁾ caused him to be harassed on the basis of sex and sexual orientation. In his Complaint, Mr. Lovins alleged, *inter alia*, violations of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.* In its Answer, the defendant expressly denied the plaintiff's claims. The United States, after conducting a preliminary evaluation of the plaintiff's allegations and the defendant's responses, informed the parties on May 19, 2000, that the Attorney General had certified this case as one of general public importance for purposes of seeking intervention under Title IX of the Civil Rights Act of 1964, 42 U.S.C. 2000h-2. Contemporaneously with the filing of this Consent Order, the United States is filing its Complaint-in-Intervention and accompanying Certificate of the Attorney General. The defendant does not contest this Court's jurisdiction over, or the United States' right to intervene in, this case.

The parties desire to avoid costly and protracted litigation and have voluntarily agreed, as indicated by the signatures below, to resolve the plaintiff's and United States' claims against the defendant without the necessity of an evidentiary hearing. 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. Factual Background

A. Defendant Pleasant Hill Public School District, R-III is organized under, and exists pursuant to, the laws of the State of Missouri, and is a recipient of Federal financial assistance. During the 1994-95 school year, Plaintiff Jeremy Lovins attended the eighth grade at Pleasant Hill Middle School, which is operated by the defendant; during the 1995-96, 1996-97, and the first semester of the 1997-98 school years, the plaintiff attended the ninth, tenth and eleventh grades, respectively, at Pleasant Hill High School, which is also operated by the defendant.

B. During the period from 1995 through 1998, the plaintiff was subjected to harassment on the basis of sex and perceived sexual orientation by his classmates. The United States and the plaintiff contend that, as a result of this harassment, the plaintiff completed the eleventh and twelfth grades on a homebound program provided by the District. The plaintiffs and the United States contend that the harassment on the basis of sex

and perceived sexual orientation was severe, pervasive and objectively offensive; that District officials with authority to rectify the situation were given notice of the harassment but failed to take immediate and appropriate corrective actions; that these District officials were deliberately indifferent to this harassment; and that this deliberate indifference prevented Jeremy Lovins from enjoying educational benefits and opportunities. The plaintiff and the United States further contend that the District's response to Jeremy Lovins's complaints of harassment constitutes a violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and Title IX of the Education Amendments of 1972. The defendant denies these allegations. Neither the defendant's agreement to the terms of this Consent Order nor any other action taken by the defendant in connection with this settlement constitutes an admission of wrongdoing or a violation of any state or federal law by the defendant.

II. Scope and Duration of Consent Order

- A. This Consent Order is effective immediately upon its entry by the Court and shall remain in effect for two (2) years from the date of entry or ninety (90) calendar days after the last report under Section VII is received, whichever date is later, absent an extension as set forth in Section II.C.
- B. The Court shall retain jurisdiction over this action during the two-year period specified above, absent an extension as set forth in Section II.C, to insure compliance with all provisions of this Consent Order.
- C. The United States may move the Court to extend the period in which this Consent Order is in effect if it determines that the defendant likely has violated one or more terms of the Order, or if the interests of justice otherwise require an extension of the terms of the Order.
- D. The parties to this Consent Order shall endeavor in good faith to resolve informally any differences regarding interpretation of, and compliance with, this Order prior to bringing such matters to the Court for resolution. However, in the event that the defendant either fails to perform in a timely manner any act required by this Order or acts in violation of any provision of this Order, the United States 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 and an award of any damages, costs, and attorneys' fees that may have been occasioned by the defendant's actions or non-actions.
- E. The parties agree that the time limits set forth throughout this Consent Order may be expanded upon mutual consent of the parties.

III. Injunctive Relief

The defendant, its agents, employees, successors, and all persons in active concert or participation with it, are enjoined from:

- A. Engaging in any act or practice that has the purpose or effect of discriminating against any student on the basis of that student's sex or sexual orientation in the administration or provision of educational services, programs, opportunities or benefits;
- B. Failing to respond promptly and appropriately to allegations of harassment or discrimination on the basis of sex or sexual orientation;
- C. Retaliating against, or taking any actions that may have the purpose or impact of adversely affecting, any student or employee because that student or employee has alleged, opposed, or filed or participated in a complaint with the District or any federal, state, local or non-governmental entity concerning, harassment or discrimination on the basis of sex or sexual orientation.

IV. Retention of Expert/Development of Comprehensive Plan and Training Program

A. Within thirty (30) calendar days from the date of entry of this Consent Order, the District shall retain, and submit to the United States⁽²⁾ the name(s) and resumes of, individual(s) and/or organization(s) with appropriate expertise in the area of sexual harassment prevention and training in the context of elementary/secondary education, to:

1. Evaluate the District's policies, practices and procedures for preventing, identifying and remediating harassment and discrimination on the basis of sex or sexual orientation;
2. Conduct a school climate assessment, in consultation with and with the approval of the superintendent, and prepare a written analysis of each school in the District regarding student to student and teacher to student interactions, to determine whether circumstances warrant school-specific actions;
3. Develop a comprehensive plan to prevent, identify and remediate harassment and discrimination on the basis of sex or sexual orientation ("the Comprehensive Plan"), as described in Section V, below;⁽³⁾ and
4. Develop a mandatory education and training program ("the Training Program"), as described in Section VI, below, for all District school board members and employees.⁽⁴⁾

B. Within ninety (90) calendar days from the date of entry of this Consent Order, the defendant shall deliver to counsel for the United States, at the address set forth previously, copies of the written school climate assessments and analyses, the proposed Comprehensive Plan, the proposed Training Program, and all supporting materials.

C. Within one hundred twenty (120) calendar days from the date of entry of this Consent Order, the United States shall provide written comments or objections, if any, to the defendant that pertain to the items set forth in Section IV.B, above. The defendant shall make a good faith effort to address any concerns of the United States, and, where appropriate, incorporate any suggestions or modifications proposed by the United States.

V. Comprehensive Plan for Preventing, Identifying and Remediating Harassment and Discrimination on the Basis of Sex or Sexual Orientation

The Comprehensive Plan shall be implemented by the District within one hundred eighty (180) calendar days from the date of entry of this Consent Order, and shall, at a minimum, include the following provisions:

A. *The District's general statement of policy.* The District shall revise its written policy prohibiting harassment and discrimination on the basis of sex or sexual orientation, to insure that the written policy (1) sets forth the District's commitment to protect students from harassment and discrimination and to maintain a nondiscriminatory environment; (2) states that all students, regardless of sex or sexual orientation, are entitled to an educational environment free from harassment and discrimination; (3) reaffirms that the District shall respond to male and female students' complaints of harassment promptly, appropriately and with the same degree of seriousness; (4) requires all District employees to promptly report, to the principal or a compliance coordinator (as described in Section V.J, below), harassment that they observe, are informed of, or reasonably suspect; and (5) prohibits retaliation against students or District employees who report allegations of harassment or discrimination, or who participate in the reporting or investigation of such allegations.

B. *Definitions and examples of prohibited conduct.* The District shall define harassment and discrimination on the basis of sex or sexual orientation, and provide concrete examples of each.

C. *Policies and procedures for reporting prohibited conduct.* The District shall explain how to report allegations of harassment and discrimination, and, with annual revisions (as appropriate), identify to whom at each school in the District and at the District's central office such allegations should be reported. The District shall set forth formal complaint procedures within the District and shall also inform students and their parents of their rights to file complaints with the U.S. Department of Education, the U.S. Department of Justice, and other state or local entities, including the right to bring an action in state or federal court.

D. *Policies and procedures for investigating complaints.* The District shall describe the steps it will take to respond to reported incidents of harassment or discrimination, including but not limited to taking disciplinary measures against those found to have engaged in such acts, and, where appropriate, reporting violent or criminal conduct to law enforcement authorities.

E. *Policies and procedures for remediating violations.* The District shall explain the disciplinary measures available against persons who are found to have engaged in harassment or discrimination on the basis of sex or sexual orientation. Corrective action shall be, among other things, appropriate to the severity of the harassment; calculated to end the harassment and prevent retaliation; and designed to insure that the offending conduct does not limit and/or interrupt the ability of the complainant (and the victim, if different) to participate in, or benefit from, the educational services, programs and/or opportunities provided by the District.

F. *Policies regarding confidentiality.* The District shall explain what efforts it will make, consistent with its legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations, to respect the privacy of the complainant, the victim, individuals against whom a complaint is filed, and witnesses.

G. *Dissemination of policies and procedures, and training of personnel.* The District shall inform all employees of the requirements of this Consent Order and shall post, in prominent places throughout each school and District administrative building, its revised policies concerning harassment and discrimination on the basis of sex or sexual orientation.

H. *Dissemination of policies and procedures to students and parents.* The District shall inform students and their parents, through, at a minimum, annual meetings with all students, an annual distribution of notices to students and mailings to parents or guardians, and inclusion in student and parent handbooks, of the District's policies prohibiting harassment and discrimination on the basis of sex or sexual orientation, including how and to whom to report harassment or discrimination, how to file a formal complaint, and what steps the District will take to investigate complaints and punish those found to have engaged in prohibited conduct.

I. *Student curriculum.* As part of each school's regular curriculum, at least annually the District shall train students (using age-appropriate training materials) about preventing, identifying and responding to harassment and discrimination on the basis of sex or sexual orientation;

J. *Designation of compliance coordinators (one male and one female teacher or administrator) at each school in the District.* The compliance coordinators shall be appointed by the District Superintendent and shall be empowered to receive and investigate complaints of harassment or discrimination, and to take such other actions as may be delineated. The District shall insure that appropriate time is afforded the compliance coordinators to fulfill their duties as described herein. The District shall inform its employees, students and parents or guardians of the identities and roles of the compliance coordinators. The District shall, on at least an annual basis, provide the compliance coordinators with appropriate training. Such training shall, at a minimum, include (1) how to investigate allegations of harassment or discrimination on the basis of sex or sexual orientation; (2) how to document and maintain records of such investigations; (3) how to balance the complainant's privacy and confidentiality concerns with the notification of complainant's teachers to prevent additional incidents of harassment or discrimination; and (4) how to remediate such harassment or discrimination. Any new compliance coordinators who may be designated in the future shall receive appropriate training within thirty (30) calendar days.

K. *Record-keeping.* The District shall maintain a written record ("Incident Report") of each and every allegation, whether verbal or in writing, of harassment or discrimination on the basis of sex or sexual orientation. The 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 violations; (4) the names of all persons who may have relevant

information about the incident; (5) the written statements of the complainant, the victim (if different from the complainant), the alleged perpetrator, and any witnesses; (6) the outcome of the 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. The Incident Report shall be completed no later than fifteen (15) calendar days after the date upon which the complaint is first made. The compliance coordinators, the school building principal, and the Superintendent shall be supplied with a copy of each such Incident Report, and, in a space specifically designated, each shall initial the Incident Report to indicate that s/he has reviewed the Report and approves of the actions taken by the investigating official.

VI. Mandatory Education and Training Program

A. The District shall begin implementation of the Training Program within one hundred eighty (180) calendar days from the date of entry of this Consent Order. Within two hundred ten (210) calendar days from the date of entry of this Consent Order, the District shall insure that all District school board members and employees have participated in the Training Program.

B. The Training Program shall, at a minimum, include the following:

1. Informing each individual of the District's policies prohibiting any act or practice that has the purpose or effect of discriminating against any student on the basis of that student's sex or sexual orientation in the administration or provision of educational services, programs, opportunities or benefits;
2. Informing each individual of her or his duties and responsibilities under the District's Comprehensive Plan for preventing, identifying and remediating harassment and discrimination on the basis of sex or sexual orientation, and of the consequences to each individual for failure to comply with these duties and responsibilities;
3. Informing each individual of the District's procedures for the prompt reporting of incidents of harassment or discrimination;
4. Discussing how to structure a classroom and school environment in which harassment and discrimination are not tolerated;
5. Holding a question and answer session to review each of the foregoing areas; and
6. Certification of attendance by the person conducting the Training Program for each person attending the program.

C. The District shall conduct a comparable Training Program within thirty (30) calendar days of the start of each school year.

D. New District school board members and employees shall participate in a comparable Training Program within thirty (30) calendar days from the start of their affiliation with, or employment in, the District.

VII. Reports to the United States

A. On or before January 31, 2001, June 30, 2001, and June 30, 2002, the defendant shall deliver to counsel for the United States, at the address set forth previously, a detailed report covering the preceding reporting period containing information about the defendant's 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 sex or sexual orientation, including any revisions since the previous report;

2. Copies of notices and other materials provided to employees, students and parents of the District's policies and procedures for preventing, identifying, reporting and responding to harassment and discrimination on the basis of sex or sexual orientation, and a description of how and when these notices and materials were distributed;
 3. Copies of the agenda (including date of training) and all materials used in the Training Program for District school board members and employees;
 4. Copies of all certifications of attendance of District school board members and employees in the Training Program;
 5. A list of compliance coordinators, by sex, job title and school;
 6. Copies of the agenda (including date of training) and all materials used in the training of compliance coordinators;
 7. The names of all trainers and copies of their resumes, vitae and/or brochures;
 8. Copies of all posters or notices regarding harassment and discrimination on the basis of sex or sexual orientation, and a description of when they were posted and where;
 9. Copies of all Incident Reports, as described in Section V.K, above. (The District may redact the names of minor students or request that the United States maintain the confidentiality of these records to the extent permitted by law.); and
 10. Narrative descriptions of upcoming training and other activities related to the prevention of harassment and discrimination.
- B. Within sixty (60) calendar days of receipt of any of the above reports, the United States 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 United States may reasonably request.

VIII. Compensation of Plaintiff and Release of Claims

In consideration of the mutual covenants, promises and consideration contained herein, the parties agree as follows:

- A. This Consent Order (including this release) does not constitute, nor shall it be construed as, an admission of any liability or wrongdoing by any party.
- B. The District shall pay to Jeremy Lovins within ten (10) business days from date of entry of this Consent Order, the total sum of seventy-two thousand five hundred and 00/100 U.S. dollars (\$72,500.00), by check made payable to Mr. Jeremy Lovins and Mr. Douglas Patterson, his attorney, for settlement of any and all claims that Mr. Lovins may have against the District, and its affiliates and subsidiaries, together with their respective members, directors, officers, agents, and employees, including but not limited to, claims for compensatory damages, personal injury, emotional distress, loss of reputation, humiliation, embarrassment, costs, expenses and attorneys' fees.
- C. Jeremy Lovins hereby releases, remises, and forever discharges the District, and its affiliates and subsidiaries, together with their respective members, directors, officers, agents, and employees, including their attorneys, from any and all claims or other causes of action he may have against them, including but not limited to -- any alleged rights or claims arising under Title IX of the Education Amendments of 1972; 20 U.S.C. 1681, et seq.; 42 U.S.C. 1983; 42 U.S.C. 1985; the Americans With Disabilities Act, 42 U.S.C. 12101,

et seq.; 42 U.S.C. 1981; the Rehabilitation Act of 1973, 29 U.S.C. 791, et seq.; the Missouri Human Rights Act, Mo. Rev. Stat. ch. 213; and any other alleged discrimination; personal injury; wrongful act; or any other violation of federal, state, or local statutory or common law -- relating to or arising out of Mr. Lovins's enrollment in, attendance at, and status as a student of the District, including but not limited to claims for the physical and emotional injuries, up to and including the date on which this release becomes effective.

D. Mr. Lovins agrees that simultaneously with the submission of this Consent Order to the Court, his attorney, Mr. Douglas Patterson, shall also file in the United States District Court for the Western District of Missouri, Western Division, the Motion to Dismiss attached hereto as Exhibit A, which Motion requests that, contingent on the Court's signing and entering this Consent Order, all claims asserted in Case No. 99-0550-CV-W-2 be dismissed with prejudice, each party to bear its own costs.

E. Mr. Lovins agrees not to enter into any suit, action, or other proceeding at law or in equity, or to prosecute further any suit or action that might presently exist, or to make any claim or demand of any kind against the District or any of its affiliates and subsidiaries, together with their respective members, directors, officers, agents, and employees, asserting any claim released by Mr. Lovins in Section VIII.C, above, other than an action to enforce his rights herein. If Mr. Lovins enters into any action in violation of this Section, Mr. Lovins shall forfeit all sums paid pursuant to Section VIII.A, above, and shall pay all legal costs, including attorneys' fees, incurred by the District, its affiliates and subsidiaries, and their respective officers, directors, agents, and employees in defending against such action.

F. Mr. Lovins acknowledges that this Consent Order (including his release of all claims) has been reviewed in detail with him and that its language and intended effect have been explained, and that he has had the opportunity to review the Consent Order (including his release of all claims) with an attorney of his choice. Mr. Lovins also acknowledges that he has voluntarily entered into this Consent Order (including the release of all claims) of his own free will based only upon the terms and conditions included in the Consent Order and release.

G. The provisions of this release will be governed by the laws of the State of Missouri.

H. If a court of competent jurisdiction determines that any provision contained in this release, or any part thereof, cannot be enforced, the parties agree that such determination shall not affect or invalidate the remainder of the release.

I. This Consent Order (including the release of all claims) constitutes the entire agreement between Mr. Lovins and the District, and supercedes all prior understandings, whether oral or written, between the parties. Any amendments or modifications to this Consent Order (including the release of all claims) must be in writing and signed by the parties.

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

ORDERED, this _____ day of _____, 2000.

 FERNANDO J. GAITAN, JR.
 United States District Judge

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

Plaintiff Jeremy Lovins:

 JEREMY LOVINS

Counsel for Plaintiff Jeremy Lovins

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Civil Rights Division
Educational Opportunities Section
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Counsel for, and Representatives of, Defendant Pleasant Hill Public School District, R-III

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ORETTA SMITH, President

Pleasant Hill Board of Education

LIL BOUCHARD, Secretary

Pleasant Hill Board of Education

1. On February 11, 2000, the Court ordered Defendant Hugh Graham dismissed with prejudice from this action.
2. All documents or reports required to be submitted to the United States pursuant to this Consent Order shall be addressed to: Chief, Educational Opportunities Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 65958, Washington, DC 20035-5958.
3. Although this Consent Order obligates the District to develop and implement a comprehensive plan to prevent, identify and remediate harassment and discrimination on the basis of sex or sexual orientation, the District is encouraged to develop and implement similar plans to prevent, identify and remediate harassment and discrimination on the basis of race, ethnicity, national origin and disability. See, e.g., Office for Civil Rights, U.S. Department of Education, and National Association of Attorneys General, Protecting Students from Harassment and Hate Crime: A Guide for Schools at ii (1999).
4. For purposes of this Consent Order, "employees" shall be defined to include all central office and school administrators, counselors, teachers, teacher aides, coaches, secretaries, playground supervisors, bus drivers, cafeteria workers, custodians, and all other staff members who have contact with students.

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
MISSOURI, WESTERN DIVISION**

JEREMY LOVINS,
Plaintiff

vs.

PLEASANT HILL PUBLIC SCHOOL DISTRICT, R-III,
Defendants.
Case No. 99-0550-CV-W-2

MOTION TO DISMISS

COMES NOW Plaintiff, by and through counsel, and moves this Court to dismiss the above-captioned case with prejudice upon the entry of the Consent Order to which this motion is attached. In support of his motion, Plaintiff states as follows:

1. Plaintiff requests that all claims in this case be dismissed with prejudice against Defendant Pleasant Hill R-III School District upon the entry of the Consent Order to which this motion is attached.
2. Defendant does not object to said request.
3. Each party shall bear their own costs and fees incurred herein.

WHEREFORE, Plaintiff respectfully requests that the Court enter its order dismissing all claims against defendant herein with prejudice with each party to bear their own fees and costs incurred herein; and for such other and further relief as the Court deems just and proper.

Respectfully Submitted,

ARGENT, MARSHALL & PATTERSON
1125 Grand - Suite 1801
Kansas City, MO 64106
PHONE: (816) 472-5297
FAX: (816) 471-5277

By: Douglas A. Patterson, 50670

Attorney for Plaintiff

Certificate of Service

The undersigned hereby certifies that true and accurate copy of the foregoing was sent via U.S. Mail, postage prepaid and properly addressed, this 20th day of July, 2000 to :

Thomas Mickes
Beverly Propst
Celynda Brasher
720 Olive Street, Suite 5000
St. Louis, MO 63101

Douglas A. Patterson >

Updated August 6, 2015