

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
ASHLAND DIVISION

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

Plaintiffs)

v.)

Civil Action No. 05-38-DLB

BOARD OF EDUCATION OF BOYD)
COUNTY, KENTUCKY)

Defendants)

ELECTRONICALLY FILED

SARAH ALCORN, WILLIAM CARTER,)
DAVID FANNIN, LIBBY FUGETT,)
TYLER McCLELLAND, and JANE DOE)

Proposed Intervenor-Defendants)

ANSWER IN INTERVENTION

Intervenor-Defendants Sarah Alcorn, William Carter, David Fanin, Libby Fugett, Tyler McClelland, and Jane Doe (collectively “Intervenor-Defendants”), by counsel, and for their Answer in Intervention to the Complaint filed herein, state as follows:

FIRST DEFENSE

Without waiving any of the affirmative defenses set forth below, Intervenor-Defendants answer the specific allegations of the Complaint herein as follows:

1. Intervenor-Defendants admit that Plaintiffs have brought a civil rights action pursuant to 42 U.S.C. § 1983. Intervenor-Defendants are without sufficient

information either to admit or deny all other allegations set forth in paragraph 1 of Plaintiffs' Complaint, and therefore deny the same.

2. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 2 of Plaintiffs' Complaint, and therefore deny the same.

3. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 3 of Plaintiffs' Complaint, and therefore deny the same.

4. Intervenor-Defendants admit that, pursuant to the Consent Decree in *Boyd County High School Gay Straight Alliance v. Board of Education of Boyd County*, Civ. Action No. 03-17-DLB (E.D. Ky.) (hereinafter "Boyd County Gay Straight Alliance litigation"), Defendant Boyd County has an obligation to conduct anti-harassment training that is mandatory for all students. Intervenor-Defendants are without sufficient information either to admit or deny all other allegations set forth in paragraph 4 of Plaintiffs' Complaint, and therefore deny the same.

5. Intervenor-Defendants admit that, pursuant to the Consent Decree in the Boyd County Gay Straight Alliance litigation, Defendant Boyd County has an obligation to conduct anti-harassment training that is mandatory for all students. Intervenor-Defendants are without sufficient information either to admit or deny all other allegations set forth in paragraph 5 of Plaintiffs' Complaint, and therefore deny the same.

6. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 6 of Plaintiffs' Complaint, and therefore deny the same.

7. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 7 of Plaintiffs' Complaint, and therefore deny the same.

8. Intervenor-Defendants admit the allegation in paragraph 8 of Plaintiffs' Complaint to the extent that jurisdiction would be proper in this Court if any claims had been stated, but Intervenor-Defendants deny that any justiciable claims have been stated.

9. Intervenor-Defendants admit the allegation in paragraph 9 of Plaintiffs' Complaint to the extent that venue would be proper in this Court if any claims had been stated, but Intervenor-Defendants deny that any justiciable claims have been stated.

10. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 10 of Plaintiffs' Complaint, and therefore deny the same.

11. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 11 of Plaintiffs' Complaint, and therefore deny the same.

12. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 12 of Plaintiffs' Complaint, and therefore deny the same.

13. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 13 of Plaintiffs' Complaint, and therefore deny the same.

14. Intervenor-Defendant admits the allegations set forth in paragraph 14 of Plaintiffs' Complaint to the extent consistent with applicable state and federal law.

15. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 15 of Plaintiffs' Complaint, and deny this allegation to the extent that they are inconsistent with the actual policies, procedures and training materials and content in effect and in fact implemented by Defendant Boyd County.

16. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 16 of Plaintiffs' Complaint, and deny the allegations to the extent that they are inconsistent with the actual policies, procedures and training materials and content in effect and in fact implemented by Defendant Boyd County.

17. Intervenor-Defendants admit that, pursuant to the Consent Decree in the Boyd County Gay Straight Alliance litigation, Defendant Boyd County has an obligation to conduct a mandatory diversity training for all middle school and high school students sessions during which one hour must be devoted to addressing harassment and discrimination on the basis of actual or perceived sexual orientation or gender identity. Intervenor-Defendants are without sufficient information either to admit or deny any other allegations set forth in paragraph 17 of Plaintiffs' Complaint, and deny the allegations to the extent that they are inconsistent with the actual policies, procedures and training materials and content in effect and in fact implemented by Defendant Boyd County.

18. Intervenor-Defendants admit that, pursuant to the Consent Decree in the Boyd County Gay Straight Alliance litigation, Defendant Boyd County has an obligation to conduct a mandatory diversity training for all middle school and high school students

sessions during which one hour must be devoted to addressing harassment and discrimination on the basis of actual or perceived sexual orientation or gender identity. Intervenor-Defendants are without sufficient information either to admit or deny any other allegations set forth in paragraph 18 of Plaintiffs' Complaint, and deny the allegations to the extent that they are inconsistent with the actual policies, procedures and training materials and content in effect and in fact implemented by Defendant Boyd County.

19. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 19 of Plaintiffs' Complaint, and deny the allegations to the extent that they are inconsistent with the actual policies, procedures and training materials and content in effect and in fact implemented by Defendant Boyd County.

20. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 20 of Plaintiffs' Complaint, and deny the allegations to the extent that they are inconsistent with the actual policies, procedures and training materials and content in effect and in fact implemented by Defendant Boyd County.

21. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 21 of Plaintiffs' Complaint, and deny the allegations to the extent that they are inconsistent with the actual policies, procedures and training materials and content in effect and in fact implemented by Defendant Boyd County.

22. Intervenor-Defendants admit that Defendant Boyd County is required to conduct anti-harassment training that specifically addresses harassment of those who are lesbian, gay, bisexual or transgender, or are perceived to be so. Intervenor-Defendants are without sufficient information to either admit or deny all other allegations set forth in paragraph 22 of Plaintiffs' Complaint, and therefore deny the same.

23. Intervenor-Defendants admit that Defendant Boyd County is required by the Consent Decree in the Boyd County Gay Straight Alliance litigation to conduct training that is mandatory for all students at Boyd County Middle School and High School. Intervenor-Defendants are without sufficient information either to admit or deny all other allegations set forth in paragraph 23 of Plaintiffs' Complaint, and deny the allegations to the extent that they are inconsistent with the actual policies, procedures and training materials and content in effect and in fact implemented by Defendant Boyd County.

24. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 24 of Plaintiffs' Complaint, and deny the allegations to the extent that they are inconsistent with the actual policies, procedures and training materials and content in effect and in fact implemented by Defendant Boyd County.

25. Intervenor-Defendants deny the allegations set forth in paragraph 25 of Plaintiffs' Complaint to the extent that they are inconsistent with the actual substantive content of the training video.

26. Intervenor-Defendants deny the allegations set forth in paragraph 26 of Plaintiffs' Complaint to the extent that they are inconsistent with the actual substantive content of the training video.

27. Intervenor-Defendants deny the allegations set forth in paragraph 27 of Plaintiffs' Complaint to the extent that they are inconsistent with the actual substantive content of the training video.

28. Intervenor-Defendants deny the allegations set forth in paragraph 28 of Plaintiffs' Complaint to the extent that they are inconsistent with the actual substantive content of the training video.

29. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 29 of Plaintiffs' Complaint, and deny the allegations to the extent that they are inconsistent with the actual policies, procedures and training materials and content in effect and in fact implemented by Defendant Boyd County.

30. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 30 of Plaintiffs' Complaint, and therefore deny the same.

31. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 31 of Plaintiffs' Complaint, and therefore deny the same.

32. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 32 of Plaintiffs' Complaint, and therefore deny the same.

33. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 33 of Plaintiffs' Complaint, and therefore deny the same.

34. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 34 of Plaintiffs' Complaint, and therefore deny the same.

35. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 35 of Plaintiffs' Complaint, and therefore deny the same.

36. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 36 of Plaintiffs' Complaint, and therefore deny the same.

37. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 37 of Plaintiffs' Complaint, and therefore deny the same.

38. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 38 of Plaintiffs' Complaint, and therefore deny the same.

39. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 39 of Plaintiffs' Complaint, and therefore deny the same.

40. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 40 of Plaintiffs' Complaint, and therefore deny the same.

41. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 41 of Plaintiffs' Complaint, and therefore deny the same.

42. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 42 of Plaintiffs' Complaint, and therefore deny the same.

43. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 43 of Plaintiffs' Complaint, and therefore deny the same.

44. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 44 of Plaintiffs' Complaint, and therefore deny the same.

45. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 45 of Plaintiffs' Complaint, and therefore deny the same.

46. Intervenor-Defendants admit the allegation set forth in paragraph 46 of Plaintiffs' Complaint only to the extent that the acts alleged in the Complaint have otherwise been admitted by Defendant Boyd County, and deny all allegations inconsistent therewith.

47. Intervenor-Defendants state that paragraph 47 of Plaintiffs' Complaint states a legal assertion that need neither be admitted nor denied.

48. Intervenor-Defendants state that paragraph 48 of Plaintiffs' Complaint states a legal assertion that need neither be admitted nor denied.

49. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 49 of Plaintiffs' Complaint, and therefore deny the same.

50. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 50 of Plaintiffs' Complaint, and therefore deny the same.

51. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 51 of Plaintiffs' Complaint, and therefore deny the same.

52. Intervenor-Defendants deny the allegations set forth in paragraph 52 of Plaintiffs' Complaint.

53. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 53 of Plaintiffs' Complaint, and therefore deny the same.

54. Intervenor-Defendants state that paragraph 54 of Plaintiffs' Complaint states a legal assertion that need neither be admitted nor denied.

55. Intervenor-Defendants answer the allegations set forth in paragraph 55 of Plaintiffs' Complaint in the same manner as set forth above.

56. Intervenor-Defendants deny the allegations set forth in paragraph 56 of Plaintiffs' Complaint.

57. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 57 of Plaintiffs' Complaint, and therefore deny the same.

58. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 58 of Plaintiffs' Complaint, and therefore deny the same.

59. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 59 of Plaintiffs' Complaint, and therefore deny the same.

60. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 60 of Plaintiffs' Complaint, and therefore deny the same.

61. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 61 of Plaintiffs' Complaint, and deny the allegations to the extent that they are inconsistent with the actual policies, procedures and training materials and content in effect and in fact implemented by Defendant Boyd County, and deny all other allegations set forth in paragraph 61.

62. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 62 of Plaintiffs' Complaint, and therefore deny the same.

63. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 63 of Plaintiffs' Complaint, and therefore deny the same.

64. Intervenor-Defendants answer the allegations set forth in paragraph 64 of Plaintiffs' Complaint in the same manner as set forth above.

65. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 65 of Plaintiffs' Complaint, and therefore deny the same.

66. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 66 of Plaintiffs' Complaint, and therefore deny the same.

67. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 67 of Plaintiffs' Complaint, and deny the allegations to the extent that they are inconsistent with the actual policies and practices in effect and in fact implemented by Defendant Boyd County, and deny all other allegations set forth in paragraph 67.

68. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 68 of Plaintiffs' Complaint, and deny the allegations to the extent that they are inconsistent with the actual policies and practices implemented by Defendant Boyd County.

69. Intervenor-Defendants deny the allegations set forth in paragraph 69 of Plaintiffs' Complaint.

70. Intervenor-Defendants answer the allegations set forth in paragraph 70 of Plaintiffs' Complaint in the same manner as set forth above.

71. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 71 of Plaintiffs' Complaint, and therefore deny the same.

72. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 72 of Plaintiffs' Complaint, and therefore deny the same.

73. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 73 of Plaintiffs' Complaint, and therefore deny the same.

74. Intervenor-Defendants answers the allegations set forth in paragraph 74 of Plaintiffs' Complaint in the same manner as set forth above.

75. Intervenor-Defendants deny the allegations set forth in paragraph 75 of Plaintiffs' Complaint.

76. Intervenor-Defendants are without sufficient information either to admit or deny the allegations set forth in paragraph 76 of Plaintiffs' Complaint, and therefore deny the allegations to the extent that they are inconsistent with the actual policies and practices implemented by Defendant Boyd County, and deny all other allegations contained in paragraph 76.

77. Intervenor-Defendants deny the allegations set forth in paragraph 77 of Plaintiffs' Complaint.

78. Intervenor-Defendants admit that attendance at the trainings is required by the Consent Decree in the Boyd County Gay Straight Alliance litigation, but deny all other allegations set forth in paragraph 78 of Plaintiffs' Complaint.

79. Intervenor-Defendants deny the allegations set forth in paragraph 79 of Plaintiffs' Complaint.

80. Intervenor-Defendants deny the allegations set forth in paragraph 80 of Plaintiffs' Complaint.

81. Intervenor-Defendants deny the allegations set forth in paragraph 81 of Plaintiffs' Complaint.

82. Intervenor-Defendants deny each and every allegation set for in Plaintiffs' Complaint not otherwise specifically admitted.

SECOND DEFENSE

83. Plaintiffs fail to state a claim or cause of action for which the relief sought, or any relief, may be granted.

THIRD DEFENSE

84. Defendant Board of Education of Boyd County (hereinafter "Boyd County") is permitted to develop mandatory anti-harassment programs and policies designed to ensure the welfare and safety of students who are, or are perceived to be, lesbian, gay, bisexual or transgender. Implementing such programs and policies does not interfere with Plaintiffs' constitutional rights or, if it does, it is constitutionally justified.

FOURTH DEFENSE

85. Plaintiffs lack standing to pursue claims alleged in their Complaint.

FIFTH DEFENSE

86. Plaintiffs reserve the right to assert any other affirmative defense the factual basis for which is revealed during the course of litigation.

WHEREFORE, Intervenor-Defendants respectfully demand that:

1. Plaintiffs' Complaint be dismissed with prejudice in its entirety;
2. Intervenor-Defendants be awarded any and all other relief to which they reasonably appear to be entitled.

Respectfully submitted,

s/ David A. Friedman
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Attorneys for Proposed Intervenor-Defendants

* Motion for Admission *Pro Hac Vice* pending.