

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

CHRIS LOWRY, by, through, and with
his Mother WENDY CROW;
COLTON DOUGAN, by, through, and with
his Father FRANK DOUGAN
and Mother LEIGH DOUGAN; and
MICHEAL JOSEPH, by, through, and with
his Mother HEIDI JOSEPH

PLAINTIFFS

VS. CIV. NO. 5:06CV00262HLJ

WATSON CHAPEL SCHOOL DISTRICT;
CHARLES DANIEL KNIGHT, WATSON CHAPEL
SCHOOL DISTRICT SUPERINTENDENT,
in his Individual and Official Capacities;
HENRY WEBB, in his Individual and Official
Capacities as Principal of Watson Chapel Junior High;
and WATSON CHAPEL SCHOOL BOARD
PRESIDENT CHARLES DANIEL;
VICE PRESIDENT SANDRA C. BOONE;
SECRETARY DONNIE HARTSFIELD; and
MEMBERS DANNY HOLCOMB; JIM JOHNSON;
MAXINE NELSON; and JOHN TREGLOWN,
In their Individual Capacities

DEFENDANTS

AMENDED COMPLAINT

INTRODUCTION

Plaintiffs Chris Lowry, Wendy Crow, Colton Dougan, Frank Dougan, Leigh Dougan, Micheal Joseph, and Heidi Joseph bring this action against the Defendants for declaratory relief, preliminary and permanent injunctive relief, damages, and attorneys' fees and costs, pursuant to 28 U.S.C. §§ 2201 and 2202, Rule 65 of the Federal Rules of Civil Procedure, and 42 U.S.C. §§ 1983 and 1988 for the unconstitutional infringement of their rights to free speech as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

JURISDICTION AND VENUE

1. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) in that this is an action arising under the First and Fourteenth Amendments to the Constitution of the United States and is one brought to redress deprivation of federal constitutional rights by Defendants under color of law, in contravention of the protections of 42 U.S.C. § 1983.

2. This Court has authority to enter a declaratory judgment pursuant to 28 U.S.C. § 2201-2202, and the requested injunctive relief under Rule 65 of the Federal Rules of Civil Procedure. The Court has authority to award attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

3. Venue is proper in this district and division of the Court under 28 U.S.C. § 1391(b)(2), as a substantial part of the events giving rise to this Complaint occurred in the Eastern District of Arkansas, Pine Bluff Division.

PARTIES

Plaintiffs

4. Plaintiff Chris Lowry, ("Lowry") a minor, brings this suit through his mother, Wendy Crow.

5. Lowry is 15 years old and was an eighth grade student at Watson Chapel Junior High School, which is owned, operated and controlled by Defendant Watson Chapel School District ("WCSD"), and thus Lowry has been subject to the challenged policies, practices, and actions of WCSD. Upon reenrollment in the WCSD, Lowry would again be subject to WCSD's policies, practices, and actions subject to challenge in this suit.

6. Plaintiff Colton Dougan, (“Dougan”) a minor, brings this suit through his parents, Frank and Leigh Dougan.

7. Dougan is 14 years old and a ninth grade student at Watson Chapel Junior High School, which is owned, operated and controlled by Defendant WCSD, and thus Dougan is subject to the challenged policies, practices, and actions of WCSD.

8. Plaintiff Micheal Joseph, (“Joseph”) a minor, brings this suit through his mother, Heidi Joseph.

9. Joseph is 16 years old and a tenth grade student at Watson Chapel High School, which is owned, operated and controlled by Defendant WCSD, and thus Joseph is subject to the challenged policies, practices, and actions of WCSD.

Defendants

10. Defendant WCSD is an Arkansas public school district organized under Arkansas state law, and is a regulatory and administrative body responsible for all schools and school employees in the WCSD.

11. Defendant WCSD is responsible for the policies, practices, and actions complained of by Plaintiffs.

12. Defendant Charles D. Knight “Knight” is Superintendent of WCSD, and as such, is directly responsible for implementing the policies, practices, and actions complained of by Plaintiffs.

13. Defendant Henry Webb is a Principal in WCSD’s Junior High School, and as such, is directly responsible for implementing the policies, practices, and actions complained of by Plaintiffs Lowry and Dougan.

14. Defendants Charles Daniel, Sandra C. Boone, Donnie Hartsfield, Danny Holcomb, Jim Johnson, Maxine Nelson, John Treglown, (collectively referred to as “Board”) are members of the WCSD’s Board of Directors, and are responsible for the policies, practices, and actions complained of by plaintiffs.

15. During all times mentioned in this Complaint, each of the Defendants was acting under color of local and state law.

16. Defendants WCSD, Knight, and the Board have the responsibility for directing the actions of School District employees, including principals and assistant principals, administrative assistants, counselors, teachers, and other school personnel.

17. Defendants WCSD, Knight, and the Board have constitutional and statutory responsibility for the policies, practices, and procedures of the WCSD, and are responsible for maintaining the WCSD in conformity with law.

STATEMENT OF MATERIAL FACTS

18. WCSD has a Student Apparel Policy, attached hereto as Exhibit 1.

19. The Student Apparel Policy specifies the styles of shirts and pants that students may wear and the permissible colors of clothing.

20. WCSD’s Student Apparel Policy prohibits the wearing of any “towel, scarf, bandana, do-rag, shirt, string, chain, jewelry, special button, insignia, label, marking, different-colored stitching, fringe, brad, stud, picture, logo, ribbon, embroidery, initials, monogram, special buckle, or other form of adornment” from being worn “on or over any part of the uniform, except the school name, school logo, or school insignia.” Ex. 1, ¶ 14.

21. The Student Apparel Policy, as written and as applied, prohibits all messages on clothing, except those of the school name, logo, or mascot.

22. Changes in the interpretation of the Student Apparel Policy by school administration, including Defendants, have occurred throughout this school year.

23. At the discretion of Defendant Knight, the Student Apparel Policy may not apply for particular days or student groups.

24. There are no written guidelines concerning the lifting of the Student Apparel Policy for particular days or student groups.

25. WCSD students are subject to progressive discipline, up to and including expulsion from school for violating the Student Apparel Policy.

26. WCSD students have been disciplined under the Student Apparel Policy for such infractions as:

- a. Wearing a black or brown belt that is the wrong color or shade of black or brown;
- b. Wearing a black or brown belt that is too wide or not wide enough;
- c. Wearing a black or brown belt that has too many holes, a stud or studs, or is a braided belt;
- d. Wearing a black or brown belt with stitching of a different color than the belt;
- e. Wearing a black or brown belt that has the student's name on the belt;
- f. Wearing pants that have an extra pocket;
- g. Wearing pants that have flaps on top of the back pants pockets;

- h. Wearing pants that do not have enough belt loops;
- i. Wearing pants that have an extra brad;
- j. Wearing pants that have a manufacturer's tag;
- k. Wearing khaki pants that are too light-colored khaki;
- l. Wearing pants with seam stitching of a different color than the pants;
- m. Wearing polo-style shirts with sleeves "too short;"
- n. Wearing a polo-style shirt that doesn't have a ribbed collar;
- o. Wearing shirts with the wrong number of buttons;
- p. Having a corner of a shirt-tail untucked;
- q. Wearing coats or jackets that "make a fashion statement;"
- r. Wearing a coat or jacket that does not zip all the way up; and
- s. Wearing a garment with writing on the garment's buttons.

27. Clothing that has been fine under the Student Apparel Policy one day later has been cited as a violation by Defendants.

28. Plaintiffs Dougan and Joseph are students in the WCSD.

29. Lowry was a student in the WCSD eligible to re-enroll in WCSD in the future.

30. Lowry is currently being home-school due to the policies, practices, and actions of the Defendants challenged herein.

31. Lowry, Dougan, and Joseph were students at WCSD on October 6, 2006, and each wore small, black armbands to protest the district's Student Apparel Policy and the District's enforcement of that policy.

32. Many other students at WCSD wore the black armbands to protest the student apparel policy.

33. Lowry, Dougan, and Joseph wore the armbands only on their arms, and not over any part of their school uniform.

34. The wearing of the armbands did not violate WCSD's Student Apparel Policy.

35. Lowry, Dougan, and Joseph were subjected to discipline for wearing the armbands to protest the school district's Student Apparel Policy and its enforcement practices.

36. Lowry, Dougan, and Joseph wanted to wear their armbands to protest this policy and not face discipline for it.

37. Lowry received a disciplinary slip this school year imposing a one day-suspension for a violation of the Student Apparel Policy for wearing a black lanyard with his school identification card instead of the school-issued yellow lanyard, which says "Watson Chapel Wildcats" all over it.

38. The Student Apparel Policy does not state that the lanyard is required to be the school-issued yellow lanyard.

39. During the week prior to October 6, 2006, Lowery talked to his mother, Plaintiff Wendy Crow ("Crow") and his friends about wearing armbands to protest the Defendants' policies and actions in enforcing the policy.

40. Crow had contact with many students and parents of students in the Watson Chapel School District who also disagree with the Defendants' Student Apparel Policy and Defendants' enforcement of that policy.

41. Crow made black armbands for the students to wear. The armbands are a quarter-inch wide, and solid black with no writing. Crow and other parents passed out over 206 black armbands for the students to wear.

42. It was planned and publicized in the *Pine Bluff Commercial* newspaper and on several TV news programs that the WCSD students would wear the armbands on Friday, October 6, 2006, to protest the Student Apparel Policy and its enforcement.

43. On Thursday, October 5, 2006, Watson Chapel High School employees announced that any student wearing a black armband to school would be suspended for three days.

44. Watson Chapel Junior High School officials announced to junior high students that anyone wearing an armband would be punished.

45. Announced punishment for wearing the armbands included taking of the students' school identification cards.

46. The identification cards are required for all students attending classes at WCSD.

47. Many parents did not let their children wear the armbands because of the schools' threats of suspension and the consequences that suspension would have for their children.

48. All officers of any WCSD organization must maintain a good disciplinary record. These school organizations include: Student Council, Beta Club, cheerleading squad, Stepperettes, Future Business Leaders of America, Family Career Community Leaders of America, Future Teachers' Organization, Drama Club, French Club, Spanish Club, Key Club, WET Club, Chess Club, First

Priority/Prayer Group, Art Club, Fellowship of Christian Athletes, VICA, Quiz Bowl, Engineering Team, CAP Team, Band, Choir, and ICT.

49. Friday, October 6, 2006, Lowry wore to one of the black armbands to school.

50. As soon as Lowry stepped foot on the school's front driveway, a teacher told him that he was in trouble for wearing an armband. The Assistant Principal, Dr. Johnson, told him to go to the library. On his way to the library, Principal Webb took him to his office, where he waited until Assistant Principal Glover told him to go to the library, and accompanied Lowry there.

51. In the library, there were two Pine Bluff police officers and a Jefferson County Sheriff's Deputy, in uniform and armed, who appeared to be in charge of the students.

52. About 24 students were in the library waiting to be called in for armband-related violations.

53. Students were called out of the library one by one. Lowry was the last called, after three class periods, and he was sent to Principal Webb's office.

54. Principal Webb confiscated Lowry's armband.

55. Principal Webb called Lowry's mother, Crow, and told her to come pick Lowry up for a second uniform violation. Principal Webb gave Lowry a disciplinary slip for a one-day suspension.

56. Principal Webb then sent Lowry to in-school suspension in the "box," which is a dim room connected to the gym, and Lowry waited there for 15 minutes until his mother arrived.

57. Lowry wore two necklaces to school every day; both fit snugly around his neck. He was not disciplined for any uniform violations due to his wearing of these necklaces.

58. One of Lowry's necklaces has seashells on it with a small skull in the middle. The other is a hemp-like rope necklace with a small glass pendant in the middle. Once this year, the school secretary wanted Lowry to take off the necklace with the small skull because she said it looked satanic, but she dropped the matter when Lowry protested.

59. Plaintiff Colton Dougan has had no Student Apparel Policy violations or school disciplines of any kind from WCSD.

60. Dougan disagrees with the Defendants' Student Apparel Policy and its enforcement.

61. On October 6, 2006, Dougan wore his black armband to school and to all of his classes until the end of third period, which is just before lunch.

62. Dougan saw no disruption of the school or any classes on account of the armbands.

63. At the end of third period, a teacher saw Dougan's armband and sent him to the principal's office.

64. Principal Webb called Dougan in, and asked him if anyone had called his parents. Dougan said no, and Principal Webb asked Dougan where he had gotten his armband. Dougan told him that he had gotten it from his parents.

65. Principal Webb asked Dougan for his armband, and Dougan gave it to him.

66. Principal Webb called one of Dougan's parents, and said that Dougan would not be suspended because it was the first time he had violated the uniform policy.

67. Principal Webb told Dougan that he could go back to class, but that he would have a disciplinary slip in his folder.

68. Principal Webb did not give Dougan a copy of the disciplinary slip.

69. Dougan is a member of Beta Club, and under Beta Club rules, he would no longer have been eligible to be a member of Beta Club because of this disciplinary action.

70. Every day, Dougan wears a white, stretchy rubber bracelet that is about a half-inch wide to school. The bracelet says "Live Pure: 1 Timothy 4:12." He has not been disciplined for wearing this bracelet.

71. Plaintiff Micheal Joseph likewise had no Student Apparel Policy violations until he wore his black armband to school October 6, 2006.

72. Joseph walked to school the morning of Friday, October 6, 2006, wearing his black armband on his wrist.

73. Joseph was standing in the parking lot before school when Assistant Principal Hayden told Joseph to go to the auditorium and wait until someone came to send him home.

74. Joseph went to the auditorium, and waited for two class periods with other students.

75. Another Assistant Principal came to the auditorium and took Joseph outside to talk to her. She gave him a sheet of paper titled "Uniform Violation

Report” and told him he was being suspended for one day for wearing a black armband.

76. School policy says that students receive a written warning for the first violation of the Student Apparel Policy, but Joseph was suspended for his first “violation” on October 6, 2006.

77. A large part of the student body was planning to wear the armbands, but because they heard the school was suspending students, many of the students took their armbands off before school and hid them.

78. School officials gave some students, but not all students, an opportunity to remove their armbands and not face disciplinary action.

79. WCS D Students were worried that they would not be able to take nine weeks tests, which were moved to this week.

80. By the end of the school day on October 6, 2006, at least six WCS D high school students were disciplined for wearing the armband, and four of those students received a suspension. At least twenty-five WCS D junior high school students were disciplined for wearing the armband, and sixteen of those students received a suspension. At least two WCS D elementary students were required to remove their armbands.

CLAIMS FOR RELIEF

COUNT ONE: DICIPLINE OF STUDENTS FOR WEARING OF ARMBANDS VIOLATED THE FIRST AMENDMENT

81. The students’ rights to freedom of expression, guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, were

violated by Defendants when Plaintiffs were subjected to discipline for wearing black armbands as a symbol of protest.

82. Defendants acted under color of law when they implemented and enforced the policies and practices that abridged the students' right to freedom of expression, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, in violation of the protections of 42 U.S.C. § 1983.

83. If allowed to stand, the Plaintiff students' suspension or any other disciplinary action against them for wearing the black armbands would have constituted a permanent part of their scholastic records and would have been used as a basis for other disciplinary actions, if any, taken by Defendants against the students.

84. If allowed to stand, the Plaintiffs' suspensions for wearing armbands would have caused the Plaintiffs to miss educational opportunities including credits for any homework, quizzes, or tests that they missed on account of the discipline imposed by Defendants.

85. Such disciplinary action would serve as a basis to exclude the students from extra-curricular activities they now participate in, or wish to participate in.

86. Such disciplinary action and its consequences would also serve to affect the students in their applications for college education and employment.

**COUNT TWO: THE STUDENT APPAREL POLICY
VIOLATES THE FIRST AMENDMENT**

87. The Plaintiffs' rights to freedom of expression, guaranteed by the First and Fourteenth Amendments to the Constitution of the United States have been violated by the Defendants' Student Apparel Policy and Defendants' enforcement of that policy.

88. The Student Apparel Policy violates the First Amendment as it is written and as it is applied to WCSD students, including Plaintiffs.

89. Defendants acted under color of law when they implemented and enforced the policies and practices that bridged the students' right to freedom of expression, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, in violation of the protections of 42 U.S.C. § 1983.

90. The Student Apparel Policy violates the First Amendment in that: it is a prior restraint and ban on pure student speech, is a content-based restriction on speech, and coerces speech.

91. The Student Apparel Policy prohibits all pure student speech such as political buttons, ribbons, stickers, and clothing or adornments except those of the school name, school logo, or school insignia. Exhibit 1, ¶ 14.

92. Public school students have the right under the First Amendment to express themselves by wearing adornments or clothing that expresses a message.

93. A strict prohibition of all expressive accessories is a prior restraint on speech that is presumed unconstitutional.

94. There has been no threat of material and substantial disruption to the WCSD to support a blanket ban on all student speech.

95. The Student Apparel Policy's prohibition of legitimate forms of student expression violates the First Amendment rights of the Plaintiffs.

96. The Student Apparel Policy, paragraphs 9G and 14, provides that the only adornments which are allowed are those of the school name, school logo, or school insignia.

97. The only hooded sweatshirts which are allowed for students must have the school name, logo, or insignia.

98. The Student Apparel Policy allows school supportive, school sponsored speech, but does not allow for messages other than school support.

99. WCSD's allowing only school supportive messages and no other messages is a content-based restriction on speech that violates the First Amendment rights of the student Plaintiffs.

100. The Student Apparel Policy requires the student Plaintiffs to wear only uniform clothing intended to identify them as members of the student body at WCSD.

101. The Student Apparel Policy, as applied, allows students to wear any color hooded sweatshirts to school only if they have the WCSD logo on the front.

102. The Student Apparel Policy, as applied, requires students to wear WCSD lanyards, and no other type of lanyard.

103. The Student Apparel Policy provides no opt-outs or exceptions.

104. Coercing students to wear only clothing or accessories that identify them with the school is a violation of the student plaintiffs' First Amendment rights.

COUNT THREE: DEFENDANTS' ENFORCEMENT OF THE STUDENT APPAREL POLICY VIOLATES THE PLAINTIFFS' RIGHT TO DUE PROCESS

105. Defendants' enforcement of the Student Apparel Policy violated the Plaintiff students' rights to due process, guaranteed by the Fourteenth Amendment to the Constitution of the United States.

106. Defendants acted under color of law when they implemented and enforced the policies and practices that bridged the students' right to due process, as guaranteed by the Fourteenth Amendments to the Constitution of the United States, in violation of the protections of 42 U.S.C. § 1983.

107. Due process requires that dress code provisions provide adequate notice and procedural safeguards before discipline may be imposed.

108. The Student Apparel Policy did not give adequate notice to Plaintiffs of the types of dress that were actually prohibited by Defendants.

109. The Student Apparel Policy has been arbitrarily and inconsistently enforced.

110. Arbitrary enforcement of the policy violates the right to due process.

111. WCSD personnel have disagreed about the meaning or application of the Student Apparel Policy.

112. The Student Apparel Policy is unconstitutionally vague.

**COUNT FOUR: THE STUDENT LITERATURE POLICY
VIOLATES THE FIRST AMENDMENT**

113. The students' rights to freedom of expression, guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, are and have been violated by Defendants' student literature policy and its enforcement.

114. Defendants acted under color of law when they implemented and enforced the policies and practices that bridged the students' right to freedom of expression, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, in violation of the protections of 42 U.S.C. § 1983.

115. WCSD's policies and practices with respect to written student speech violate the First Amendment because they are an unconstitutional prior restraint on student speech, lack guidance to school administrator decision makers, and are enforced based on the content of the literature.

116. WCSD's student handbook prohibits students from distributing any petitions or other printed matter not approved in advance by the principal. Exhibit 2, ¶ 15.

117. This policy is a prior restraint on speech that violates the student Plaintiffs' First Amendment rights.

118. WCSD has no written policies to advise the principal in making the decision whether to approve or disapprove written materials.

119. The lack of written policies or procedures to guide the principal or other administrators violates the student Plaintiffs' First Amendment rights for school sponsored speech.

120. Plaintiff Lowry was suspended for two days by Defendant Webb for distributing a flyer which opposed the Student Apparel Policy.

121. The flyer had not been submitted for pre-approval by Defendant Webb prior to its distribution.

122. Plaintiff Lowry distributed the flyer one morning before school, outside the school building.

123. Plaintiff Lowry did not distribute the flyer during instructional time or interfere with the operations of the school.

124. Plaintiff Lowry's suspension was in violation of his First Amendment rights.

125. After Plaintiff Lowry's suspension for distributing the flyer, the flyer was submitted to Defendant Webb for approval.

126. Defendant Webb did not approve the flyer for distribution.

127. Other flyers and written materials, including those with religious messages, have been distributed at school.

128. Other students have not been subject to discipline for disseminating written materials.

129. Plaintiff Lowry was disciplined by Defendant Webb because of the content of Lowry's message, in violation of his rights under the First Amendment.

RELIEF REQUESTED

130. Plaintiffs request that this Court issue a preliminary and permanent injunction enjoining each and all of the Defendants from disciplining the student Plaintiffs in any way for violations of the Student Apparel Policy and literature review policy.

131. Plaintiffs request that this Court find, declare, and determine that the policies, practices, and actions complained of herein are unconstitutional, and a deprivation of rights guaranteed to Plaintiffs under the First and Fourteenth Amendments to the United States Constitution.

132. Plaintiffs request that this Court declare and determine the following policies, practices, procedures, and actions are unconstitutional and a deprivation of Plaintiffs rights, in that:

a. Discipline of students for wearing black armbands as a symbol of protest violates the First Amendment;

b. The Student Apparel Policy is a prior restraint on pure student speech, bans all pure student speech, is a content-based restriction on speech, and coerces speech;

c. The Student Apparel Policy lacks adequate notice to Plaintiffs of the types of dress actually prohibited, is unconstitutionally vague, and has been arbitrarily and inconsistently enforced.

d. The Defendants' student literature review policy is an unconstitutional prior restraint on speech, lacks written, objective guidelines for approval of other speech, and is enforced in a content-based manner.

133. Plaintiffs request that this Court enjoin enforcement of the policies, practices, procedures, and actions set forth in the preceding paragraph.

134. Defendants should be ordered to abate and expunge the unlawful discipline of the students. Plaintiffs request that this Court grant a preliminary injunction enjoining Defendants from taking or enforcing the remainder of any disciplinary action against Plaintiffs on account of their armband protest, the Student Apparel Policy, or literature review policy.

135. Defendants should be prevented from using the unlawful discipline to exclude the students from participation in school, including school clubs, activities, and other events, curricular or extra-curricular.

136. Plaintiffs retain their right to add Plaintiffs and claims to ensure that all claims, rights, and persons are fully and adequately represented in this action.

137. Each student Plaintiff has suffered pain, humiliation, embarrassment, and emotional distress due to the actions of the Defendants in violating Plaintiffs' rights under the First and Fourteenth Amendments.

138. Plaintiffs request that nominal and compensatory damages for the acts complained of herein be awarded to each of them and against each of the Defendants.

139. Plaintiffs request that this Court award Plaintiffs their costs, including reasonable attorneys' fees, as authorized by 42 U.S.C. §§ 1983 and 1988.

140. Plaintiffs demand their right to a trial by jury.

141. Plaintiffs request that this Court award all other relief to which Plaintiffs are entitled.

WHEREFORE, Plaintiffs pray for the foregoing, and for such other relief as the Court deems equitable and just.

Respectfully submitted,

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