

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

BRAD EDWARD MATHEWSON, by and through
his natural mother and next friend,
MARION LYNN MATHEWSON

Plaintiff,

CASE NO. _____

v.

WEBB CITY R-VII SCHOOL
DISTRICT; and STEPHEN P.
GOLLHOFER, in his capacity as Principal of
Webb City High School,

Defendants.

COMPLAINT

COMES NOW Plaintiff Brad Edward Mathewson, by and through his natural mother and next friend Marion Lynn Mathewson, and, for his Complaint against the Webb City R-VII School District and Stephen P. Gollhofer, in his capacity as Principal of Webb City High School, herein alleges and states as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201, arising out of the violation of rights guaranteed to Plaintiff by the First and Fourteenth Amendments to the Constitution of the United States of America.

JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331, 1343, and 2201.

3. Venue in the United States District Court for the Western District of Missouri is proper pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff Brad Edward Mathewson, at all times relevant hereto, is a sixteen-year-old junior enrolled at Webb City High School in Webb City, Missouri and a resident of Oronogo, Missouri.

5. Plaintiff is gay.

6. Defendant Webb City R-VII School District is a duly organized school district of the State of Missouri and commonly known as the Webb City School District.

7. The Webb City School District is responsible for the operation of, *inter alia*, Webb City High School.

8. The Webb City School District is a proper party to this action. *See School Dist. of Kansas City, Mo. v. State of Mo.*, 460 F. Supp. 421 (D.C. Mo. 1978); *State, to Use of Consol. School Dist. No. 42 of Scott County v. Powell*, 221 S.W.2d 508 (Mo. 1949).

9. Defendant Stephen P. Gollhofer, at all times relevant hereto, was the principal of Webb City High School and a resident of the State of Missouri.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

10. The Webb City High School Statement of Philosophy states that “[w]e realize the uniqueness of the individual . . . [i]t is important that the student be recognized for his or her own value as a human being.”

11. The Webb City High School dress code states that “[d]ress and appearance must not present health or safety hazards, be indecent, disruptive, distracting, or inappropriate for the classroom.”

12. On or about October 20, 2004, Plaintiff attended Webb City High School wearing a T-shirt with the words “Gay-Straight Alliance” on the front. On the back were the words “Make a Difference,” three pairs of symbols (two male symbols (♂♂), two female symbols (♀♀), and a male and female (♂♀) symbol), and a pink triangle, a well-known symbol of the gay rights movement.

13. On that morning, Plaintiff’s homeroom teacher, Ms. Gray, questioned whether Plaintiff’s T-shirt was appropriate and sent Plaintiff to the office to discuss the T-shirt with Assistant Principal Jeff Thornsberry.

14. Plaintiff went to the office and met with Thornsberry, who told Plaintiff the shirt was inappropriate, distracting, and offensive to other students.

15. When Plaintiff questioned Thornsberry about why the T-shirt was considered inappropriate, distracting, and offensive to others, Thornsberry refused to explain his statements.

16. When Plaintiff pointed out that other students’ notebooks and backpacks bear stickers, signs, markers, or decals expressing their personal views that gay marriage is wrong, Thornsberry refused to reconsider and claimed that was a different situation.

17. Thornsberry gave Plaintiff the option of changing his shirt or turning it inside out. Plaintiff chose the latter option.

18. On the way to the bathroom to turn his shirt inside out, Plaintiff met a friend in the hallway. Plaintiff’s friend is heterosexual.

19. Plaintiff and his friend decided to switch shirts. Plaintiff’s friend wore the shirt for the rest of the day without incident, even though Plaintiff had been ordered to remove it.

No teacher and no one in the administration approached Plaintiff's friend about removing the shirt.

20. On or about October 27, 2004, Plaintiff wore a T-shirt with a rainbow, a star, and with the words, "I'm gay and I'm proud," on the front. One of Plaintiff's friends wore a T-shirt with the words, "I love lesbians," on the front.

21. Thornsberry approached Plaintiff and demanded that he change shirts or turn the shirt inside-out. Thornsberry approached Plaintiff's friend and demanded that he change shirts entirely.

22. Plaintiff refused to change his shirt or hide its message, and he left school to go home and call his mother.

23. On or about October 28, 2004, Plaintiff and his mother met with Principal Stephen P. Gollhofer, Thornsberry, and Assistant Principal Randy Richardson to discuss their refusal to let Plaintiff wear his T-shirts.

24. At that meeting, Plaintiff and his mother were told that the primary reason for not allowing Brad to wear clothing expressing political support for his sexual orientation was because it was distracting. When Plaintiff and his mother pressed for more information, Defendant Gollhofer said the school was trying to protect Plaintiff from other students who might act out against Plaintiff for being gay or his political positions related to his sexual orientation.

25. Defendant Gollhofer specifically characterized Webb City High School as being in the middle of the "Bible Belt."

26. Defendant Gollhofer further stated that by Plaintiff wearing the aforementioned T-shirts, he was "flaunting" being gay, which could lead to problems for him.

27. Defendant Gollhofer told Plaintiff that if he was allowed to wear a gay-themed shirt, school officials would have to allow other students to express anti-gay messages, ignoring the fact that several students had anti-gay marriage stickers on their notebooks who were never told to remove them.

28. Plaintiff asked if an African-American student would be allowed to wear a T-shirt with the words, "I'm black and I'm proud," on it. The school officials present at the meeting told him such a shirt would not be allowed.

29. The meeting of October 28, 2004 ended with no resolution.

30. On or about October 29, 2004, Plaintiff went back to school. During the homeroom period, he and his friend were discussing the two incidents related to his T-shirts. Ms. Gray, the homeroom teacher, told Plaintiff and his friend in a raised tone of voice not to discuss the issue of Plaintiff's T-shirts. Plaintiff and his friend complied with Ms. Gray's orders. Although other students were talking to each other, none were asked to be silent other than Plaintiff and his friend.

31. After the homeroom period, when all other students had left, Plaintiff asked Ms. Gray why he was singled out to stop discussing the two T-shirt incidents. Ms. Gray refused to answer his question. When Plaintiff asked her again to explain why he was singled out, she asked Plaintiff if her answering the question was worth a discipline referral. She then walked Plaintiff down to the Defendant Gollhofer's office.

32. Defendant Gollhofer first privately consulted with Ms. Gray about what happened.

33. Defendant Gollhofer then asked Plaintiff what had happened. After hearing Plaintiff's side of the story, Defendant Gollhofer told Plaintiff that he needed to respect a teacher's orders in class.

34. Plaintiff pointed out to Defendant Gollhofer that he had respected Ms. Gray's orders that he and his friend stop discussing the incidents surrounding Plaintiff's T-shirts. Defendant Gollhofer told Plaintiff that he needed to respect his teacher's demands to stop discussing such issues.

35. The topic of Plaintiff's and Defendant Gollhofer's discussion then turned to the T-shirts. The discussion became somewhat heated and Plaintiff told Defendant Gollhofer that the administration was narrow-minded and said, "You people suck." Defendant Gollhofer said the word "suck" was considered a curse word and Brad would be disciplined for uttering it.

36. Defendant Gollhofer called Plaintiff's mother, Marion Mathewson, and asked that she come to the school to discuss the situation. When Marion told Defendant Gollhofer that she and Brad were represented by counsel and that the school officials should communicate with her lawyers, Principal Gollhofer refused to communicate with Plaintiff's counsel and told Marion that Plaintiff would not be allowed back in school until she came to the school to discuss the situation.

37. Marion Mathewson chose to pick Plaintiff up at the school and take him home for the day. Plaintiff was suspended for the rest of that day, but the suspension notice did not specify any offense and merely stated that Plaintiff was allowed back to school after a parent-teacher conference.

38. On November 2, 2004, Plaintiff, Mrs. Mathewson, and local counsel, William Fleischaker, met with Superintendent Ron Lankford and Defendant Gollhofer. The

school officials would not allow Plaintiff back to class unless he refrained from wearing attire that expressed his political support for gay rights. Superintendent Lankford and Defendant Gollhofer informed Plaintiff that violating this demand would result in further disciplinary action against him. Plaintiff agreed and returned to class after the meeting.

39. Toward the end of the school day, Plaintiff saw a student wearing a shirt with an anti-gay message.

COUNT I

40. Paragraphs 1-39 are incorporated by reference as if fully set forth herein.

41. The actions of Defendants, as described herein, have denied and infringed upon the right to freedom of speech guaranteed to Plaintiff by the First and Fourteenth Amendments of the United States Constitution.

42. The actions of Defendants, as described herein, were taken under color of state law in direct violation of Plaintiff's constitutional rights, and are therefore actionable under 42 U.S.C. § 1983.

43. As a direct result of Defendants' actions, Plaintiff has suffered direct and immediate violation of his fundamental rights guaranteed by the United States Constitution and is therefore entitled to injunctive and declaratory relief, and attorney fees, pursuant to Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. § 2201, to redress, remedy, and prevent irreparable harm and future violations of his rights and the rights of others.

CLAIM FOR RELIEF

WHEREFORE, Plaintiff asks for judgment in his favor, including temporary and permanent injunctive relief and a declaration that the actions of Defendants as described herein were and are unconstitutional, illegal, void, and that the same were in contravention of Plaintiff's

constitutional rights. Plaintiff further asks for judgment that Defendants reimburse Plaintiff for his reasonable attorneys' fees, expenses, and costs associated with the maintenance of this action, pursuant to 42 U.S.C. § 1988, and all such further relief as the Court may deem just and proper.

Respectfully submitted,

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