

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT
CUMBERLAND COUNTY, PENNSYLVANIA

BRANDI BRANDL, OLIVER BRANDL, : No.
III, KRISTIE ALWINE AND FRANK W. :
JOHNSON, SR. :

Plaintiffs :

v. :
WEST SHORE SCHOOL DISTRICT, :
TODD STOLTZ, in his official capacity, :
BRIAN K. GUISTWHITE, in his official :
capacity, CHRISTOPHER J. KAMBIC, in :
his official capacity, JUDITH A. :
CROCENZI, in her official capacity, :
FRANK J. KAMBRIC, ANTONIOS J. :
MAPRANOS, in his official capacity, :
SHERI D. MOYER, in her official capacity, :
FRANK A. STOLTENBURG, in his official :
capacity, HEIDI E. THOMAS, in her :
official capacity, and ABIGAIL A. :
TIERNEY, in her official capacity. :

Defendants :

COMPLAINT

Plaintiffs file this complaint and aver as follows.

Parties

1. Plaintiffs Brandi Brandl and Oliver Brandl, III are parents of K.B., a student in the West Shore School District, and are citizens of the Commonwealth of Pennsylvania.

2. Plaintiffs Kristie Alwine and Frank W. Johnson, Sr. are parents of H.J. and F.J., students in the West Shore School District, and are citizens of the Commonwealth of Pennsylvania.

3. Defendant West Shore School District (the “School District”) is a school district organized under Pennsylvania law.

4. Defendant, Todd Stoltz, is superintendent of the School District and is sued in his official capacity.

5. Defendant, Jamie Whye, is the assistant superintendent of the School District and is sued in her official capacity.

6. Defendant, Brian K. Guistwhite, is a member of the School District’s Board of School Directors and is sued in his official capacity.

7. Defendant, Christopher J. Kambic, is a member of the School District’s Board of School Directors and is sued in his official capacity.

8. Defendant, Judith A. Crocenzi, is a member of the School District’s Board of School Directors and is sued in her official capacity.

9. Defendant, Frank J. Kambric, is a member of the School District’s Board of School Directors and is sued in his official capacity.

10. Defendant, Antonios J. Kapranos, is a member of the School District’s Board of School Directors and is sued in his official capacity.

11. Defendant, Sheri D. Moyer, is a member of the School District’s Board of School Directors and is sued in her official capacity.

12. Defendant, Frederick A. Stoltenberg, is a member of the School District's Board of School Directors and is sued in his official capacity.

13. Defendant, Heidi E. Thomas, is a member of the School District's Board of School Directors and is sued in her official capacity.

14. Defendant, Abigail A. Tierney, is a member of the School District's Board of School Directors and is sued in her official capacity.

Facts

A. The School District's CharacterStrong & Social Emotional Learning Curriculum.

15. The School District maintains a Social Emotional Learning ("SEL") course of curriculum known as CharacterStrong (sic).

See <https://www.wssd.k12.pa.us/CharacterStrongSEL.aspx>

16. The School District uses the CharacterStrong SEL curriculum for students in kindergarten through grade 8. *Id.*

17. According to the School District, the CharacterStrong SEL curriculum "intentionally teaches character traits and goes in-depth into what these traits look like and then follows up with practical ways to improve them in their own lives and with those around them." *Id.*

18. The CharacterStrong SEL curriculum "is routine part of the student day with lessons included during morning meetings at the elementary schools." *Id.*

19. Among other things, the CharacterStrong SEL curriculum promotes "pro-social" behavior and "seeing value in all things." *Id.*

20. The CharacterStrong SEL curriculum teaches children to identify their own “values and virtues” and to reflect on those values to “help guide their decisions.”

<https://www.youtube.com/watch?v=pJI-oq47hGk&t=390s>

21. Indeed, the CharacterStrong SEL curriculum “is more than a curriculum” and it instead seeks “to enable[] students to become their best possible selves.” <https://www.characterstrong.com/family-welcome-link/>

22. The School District acknowledges that the CharacterStrong SEL curriculum is designed to supplement the personal values that parents instill in their children. *Id.*

23. Plaintiffs believe that the CharacterStrong SEL curriculum conflicts with their Christian beliefs.

B. Plaintiff Alwine’s request.

24. On August 25, 2022, under 22 Pa. Code § 4.4(b)(3), plaintiff, Kristi Alwine, provided written notice to the School District asserting her right to have her children, H.J. and F.J, excused from the CharacterStrong SEL curriculum because it conflicted with her religious beliefs. A copy of that notice is attached at Exhibit “A.”

25. It stated: “I am writing this to opt my children [identifies children and schools] out of the SEL/CASEL program Character Strong as it does not reflect our values, morals, and beliefs in our religion.” *Id.*

26. On August 26, 2022, Chris Stine, Principal of Rossmoyne Elementary School, responded to plaintiff Alwine’s request by stating: “I have received the form

and will let the teachers know that your children will not be present for these lessons.” A copy of this email is attached at Exhibit “B.”

27. But, later on August 26, 2022, the School District reversed course when defendant Whye emailed Alwine stating that the School District would not honor Alwine’s right to have her children excused from the CharacterStrong SEL curriculum.

28. Whye told Alwine that the School District would not respect Alwine’s rights because:

“[y]ou have not identified specific instruction within the curriculum, which conflicts with your religious beliefs. I have included the link to the Character Strong and Social Emotional Learning page on our website, which includes information about the curriculum (including specific lessons), as well as a link to obtain family access so you may review the curriculum in even greater detail. You might consider this review in order to better substantiate a later request for exemption. . . . The Character Strong curriculum has been approved by the Board of School Directors, and your children will participate as scheduled, unless you are able to identify specific instruction within the curriculum, which conflicts with your religious beliefs.”

A copy of this email is attached at Exhibit “C.”

29. After defendant Whye’s email on August 26, 2022, Principal Stine emailed Alwine stating: “My apologies, I misspoke in my previous response to you. I need to reference Dr. Whye’s reply to you, she has outlined those areas where we still need to receive additional information [sic] from you in order to be in compliance with our board policy. I will be happy to comply with your wishes once we receive the information needed to exempt your children.” A copy of this email is attached at Exhibit “D.”

30. On August 29, 2022, defendant Whye reiterated that Alwine’s children would not be excused from the CharacterStrong SEL curriculum explaining “[a]t this time your children are not exempt from instruction as you have not identified specific instruction that is contrary to your religious beliefs.” A copy of this email is attached as Exhibit “E.”

31. Thereafter, on September 7, 2022, Alwine again stated that she was exercising her rights under the Code stating: “Pursuant to 22 Pa. code 4.4(d)(3) and Board Policy 105.3, I am opting my children [identifies children] out of all character strong classroom lessons for the entire character strong curriculum. This opt out is because the character strong curriculum conflicts with my religious beliefs.” A copy of that email is attached at Exhibit “F.”

32. But, on September 9, 2022, the defendants denied her request.

C. Plaintiff Brandl’s requests.

33. On September 2, 2022, plaintiff Brandi Brandl provided written notice to the School District that she was exercising her rights under the Code.

34. That notice stated:

“Pursuant to 22 Pa Code § 4.4(d)(3) and board policy 105.3, I am opting [child’s name] out of all the Character Strong classroom lessons for the Character Strong curriculum. This opt out is because the Character Strong conflicts with our religious beliefs.”

A copy of this email is attached at Exhibit “G.”

35. On September 7, 2022, the School District notified Brandl that it would not honor her rights under the code and that her children would not be excused from the CharacterStrong SEL curriculum.

36. On September 8, 2022, plaintiff Brandl submitted a second notification of her rights to School District, this time on a form sent to her by the School District.

37. But on September 12, 2022, the School District again notified Brandl that it would not honor those rights.

38. Despite denying plaintiffs' their respective religious exemptions, defendants have granted the religious exemption requests of other parents in the School District.

CAUSES OF ACTION

COUNT I INJUNCTIVE RELIEF

39. Plaintiffs incorporate the previous paragraphs by reference.

40. A special and preliminary injunction is necessary to prevent defendants from continuing to violate plaintiffs' statutory and constitutional rights and from continuing to require plaintiffs' children to attend the CharacterStrong SEL classroom instruction in violation of those rights.

41. The five elements courts weigh when deciding whether to issue a preliminary injunction are (1) whether the injunction is necessary to prevent immediate and irreparable harm, which cannot be compensated by damages; (2) whether greater injury would result by refusing it than by granting it; (3) whether an injunction will restore the parties to the status quo as it existed immediately before the alleged wrongful conduct; (4) whether the alleged wrong is manifest, and the injunction is reasonably suited to abate it; and (5) whether the plaintiff's right to relief is clear. *Kierski v. Twp. of Robinson*, 810 A.2d 196, 198 (Pa.Cmwlth. 2002).

42. Each of these five elements exists here.

43. First, plaintiffs will suffer irreparable harm because defendants are refusing to honor the plaintiffs' rights under the Pennsylvania Code. *Shaeffer v. City of Lancaster*, 754 A.2d 719, 723 (Pa. Cmwlth. 2000) ("Statutory violations are sufficiently injurious to constitute irreparable harm.")

44. 22 Pa. Code § 4.4 states that parents have "[t]he right to have their children excused from specific instruction that conflicts with their religious beliefs, upon receipt by the school entity of a written request from the parent or guardians."

45. Defendants are flatly denying plaintiffs that right.

46. Plaintiffs submitted written requests for their children to be excused from specific instruction that conflicts with their religious beliefs.

47. Plaintiffs are also suffering irreparable harm because defendants are violating their constitutional rights. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.")

48. Second, greater injury will result if the injunction is not entered than if it is granted.

49. If the injunction is granted the Court will restore plaintiffs' rights and defendants will suffer no harm. Defendants can continue to teach the CharacterStrong SEL curriculum; just not to plaintiffs' children, because it conflicts with their religious beliefs.

50. Third, an injunction will restore plaintiffs' rights and maintain the status quo that existed before defendants subjected plaintiffs' children to the CharacterStrong SEL curriculum.

51. Fourth, the injunction is reasonable and limited to abate the harm.

52. Fifth, plaintiffs have made a prima facie case for relief.

COUNT II DECLARATORY JUDGMENT

53. Plaintiffs incorporate the previous paragraphs by reference.

54. Pennsylvania's Declaratory Judgments Act, 42 Pa.C.S. § 7531, et seq., states in relevant part "[c]ourts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree."

55. Chapter 4 of the Pennsylvania School Code authorizes parents or guardians to "have their children excused from specific instruction that conflicts with their religious beliefs, upon receipt by the school entity of a written request from the parent or guardians." 22 Pa. Code. § 4.4(b)(3).

56. Board Policy 105.3, facially and as applied, conflicts with 22 Pa.Code. § 4.4(b)(3). A copy of Board Policy 105.3 is attached at Exhibit "H."

57. Board Policy 105.3 states the School District and its employees do not have a responsibility to ensure children are actually excused from specific instruction that their parents have opted them out of.

58. Board Policy 105.3 explicitly states it is the child's responsibility to excuse themselves from specific instruction that their parents' have opted them out of receiving.

59. Board Policy 105.3 is invalid because it violates the plain language of 22 Pa. Code § 4.4.

60. Board Policy 105.3 is invalid because it violates the First and Fourteenth Amendments.

61. "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia, Pennsylvania*, 141 S.Ct. 1868, 1876 (2021).

62. Board Policy 105.3 unduly burdens plaintiffs' exercise of their First Amendment rights and defendants have no compelling justification to deny plaintiffs' religious exemption request.

63. Board Policy 105.3 is invalid because it violates plaintiffs' fundamental right to make child rearing decisions under the Fourteenth Amendment.

64. Finally, Board Policy 105.3 violates plaintiffs' Fourteenth Amendment equal protection rights because defendants have denied plaintiffs' religious exemption requests but granted other religious exemption requests.

Demand for Relief

WHEREFORE, Plaintiffs, Kristie Alwine, Frank W. Johnson, Sr., Brandi Brandl, and Oliver Brandl, III respectfully request that this Court enter judgment in their favor and against defendants and award the following relief:

1. Enjoining defendants and anyone acting through, with, or on behalf of them, from requiring plaintiffs' children to attend CharacterStrong classroom lessons or being subject to the CharacterStrong SEL curriculum;
2. Enjoining defendants and anyone acting through, with, or on behalf of them, from requiring plaintiffs' children to excuse themselves from class related to their parents' opt out of specific instruction;
3. Declaring Board Policy 105.3 void, invalid, and unconstitutional;
4. Awarding plaintiffs monetary damages and attorneys fees under 42 U.S.C. § 1983 and 42 U.S.C. § 1988; and
5. Awarding plaintiffs all appropriate and necessary relief.

Respectfully submitted,

Dated: January 25, 2023

/s/Walter S. Zimolong
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