

East High School PRISM Club v. Cynthia L. Seidel

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL
DIVISION

COMPLAINT

Case No. 2:00CV-0311K

Judge Tena Campbell

EAST HIGH SCHOOL PRISM CLUB, an unincorporated association; EAST HIGH
SCHOOL RAINBOW CLUB, an unincorporated association; JESSICA R. COHEN, a
minor, by and through mother and next friend, JUDY COHEN; and MARGARET
HINCKLEY, a minor, by and through her mother and next friend, JUDY HINCKLEY,
Plaintiffs,

vs.

CYNTHIA SEIDEL, Assistant Superintendent of Salt Lake City School District, in her
official capacity, Defendant.

(Additional counsel for Plaintiffs)

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Plaintiffs East High School PRISM Club (the "PRISM Club"); East High School Rainbow Club (the "Rainbow Club"); Jessica R. Cohen ("Cohen"), by and through her mother and next friend Judy Cohen; and Margaret Hinckley ("Hinckley"), by and through her mother and next friend Judy Hinckley, as and for their Complaint against defendant Cynthia Seidel, state and allege as follows:

PRELIMINARY STATEMENT

1. This lawsuit involves the latest in a series of efforts by lesbian and gay students and their friends to have an equal voice within the East High School community, to meet together as a student club, and to participate on equal terms in the forum for student groups at East High School. Those efforts date back to 1995, when a group of East High students first became visible, and vocal, on the status of gays and lesbians in the school community. In response to those students' request to meet on equal terms in the "limited open forum" for non-curricular student groups that then existed under the federal Equal Access Act, the Board of the Salt Lake City School District purported to close that forum. A second generation of students filed suit, and succeeded in exacting from the District an unequivocal representation to this Court that "as a matter of District policy, gay-positive viewpoints as to matters relevant to the school curriculum may be freely expressed in the existing forum [for curriculum-related student groups]." A third generation of students now seeks to give that statement meaning by challenging the District's past and continuing refusal to recognize any group for students who wish to explore together curricular subjects from a gay-positive viewpoint. Plaintiffs bring this action under the First and Fourteenth Amendments to the United States Constitution, the federal Declaratory Judgment Act (28 U.S.C. §§ 2201-02), and the federal Civil Rights Act of 1871 (42 U.S.C. §§ 1983 and 1988) to obtain declaratory, injunctive and compensatory relief. Plaintiffs seek injunctive relief prohibiting defendant from violating plaintiffs' constitutional rights and from interfering with plaintiffs' right to meet; a declaration that defendant has unconstitutionally prohibited them from meeting; nominal damages for violation of their constitutional rights; and attorneys' fees.

JURISDICTION AND VENUE

2. This action is based on, and seeks to redress deprivations under color of law of rights and privileges secured by, the First Amendment to the United States Constitution and the federal Civil Rights Act of 1871. This action thus arises under the Constitution and laws of the United States. In addition, declaratory relief is appropriate in this Court pursuant to 28 U.S.C. §§ 2201-02. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343, and 2201-02 and 42 U.S.C. § 1983.

3. All of the plaintiffs reside in Salt Lake County, State of Utah, and within the Central Division of this Judicial District. Plaintiffs are informed and believe that defendant resides in Salt Lake County, State of Utah, and within the Central Division

of this Judicial District. Further, all or substantially all of the events that give rise to the claims in this action occurred in the Central Division of this Judicial District. The venue for this action accordingly is properly in the Central Division of this Judicial District, pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff PRISM Club is an unincorporated association of students enrolled at East High School, a public secondary school located within Salt Lake City School District. The PRISM Club has standing to bring these claims pursuant to Rule 17(b) of the Federal Rules of Civil Procedure. The PRISM Club sues on its own behalf and on behalf of its members.

5. Plaintiff Rainbow Club is an unincorporated association of students enrolled at East High School. The Rainbow Club has standing to bring these claims pursuant to Rule 17(b) of the Federal Rules of Civil Procedure. The Rainbow Club sues on its own behalf and on behalf of its members.

6. Plaintiff Cohen is a minor and sues by and through her mother and next friend, Judy Cohen. Cohen is an 11th grade student at East High School and is a member of the PRISM Club and of the Rainbow Club.

7. Plaintiff Hinckley is a minor and sues by and through her mother and next friend, Judy Hinckley. Hinckley is an 11th grade student at East High School and is a member of the PRISM Club and of the Rainbow Club.

8. Defendant Cynthia Seidel ("Ms. Seidel") is Assistant Superintendent of the Salt Lake City School District. She is sued in her official capacity. Ms. Seidel was acting under color of law at all times relevant to this complaint and within the scope of her duties as the person authorized by the Salt Lake City School District (the "District") to make final decisions about which student groups are allowed to meet at public high schools in the District.

FACTUAL ALLEGATIONS

9. In February 1996, the District adopted Policy IGDA. With the adoption of this policy, the District purported to prohibit non-curricular student groups from meeting on school premises during non-instructional time, but stated that it "desires to promote and advance curriculum-related student clubs." In subsequently announcing the student groups that had been approved under the new policy, the District stated that "[s]tudents in each of the high schools will continue to be allowed to charter additional curriculum-related clubs that fall within" the policy.

10. Ms. Seidel is the person authorized by the District to determine whether curriculum-related student groups fall within the District policy and to approve or disapprove their meeting on campus. As implemented by Ms. Seidel, Policy IGDA requires that faculty advisors for student groups wishing to meet as a curriculum-related student group timely submit an application. The application must indicate whether the group claims that its subject matter is "actually taught . . . in a regular course" or is otherwise curriculum-related. Ms. Seidel also suggests that the application include a "charter or other written description of the name and of the student club," a copy of the "disclosure statement(s) for the courses that provide the curricular basis for the student club," and a "written outline of the club activities

planned. . . .”

11. According to Ms. Seidel, to determine whether the subject matter of a group is the same as the subject matter of a course, she looks “at the courses that are listed on the application,” the “course descriptions that are associated with those course titles,” and the “disclosure statements attached to the application.” Ms. Seidel will approve the club if on the face of the documentation submitted it appears that the subject matter of the group is taught in a course at the high school and if the group’s activities will provide an “extension and reinforcement, application, and practice of curricular content,” i.e., if it “takes the subject matter [taught in a class at the high school], gives the students a chance to review it, to see it in real life, to practice what they’ve learned in a hands-on type of setting, or to see it in the real world, those types of connections.”

12. Under Policy IGDA and the above criteria, Ms. Seidel has reviewed a number of applications for groups representing a variety of student interests and activities from each of the high schools in the District. Almost without exception, she has determined those groups to be curriculum-related under the applicable standards, and has allowed them to meet in one or more of the school years since adoption of the policy. Those groups include CHARABANC (the Humanities Club) and MESA at East High School, and the National Honor Society and Odyssey of the Mind at West High School. Many of the “curriculum-related” clubs Ms. Seidel has approved and allowed to meet are student-initiated and student-directed. The views expressed in those clubs are solely the views of the students.

13. Most recently, Ms. Seidel approved the application for a student group called the Polynesian Club. The Polynesian Club claimed a relationship with the Tongan Language class taught at East High School. According to its application, the purpose of the Polynesian Club is to “provide academic services, support, cultural awareness plus enriching activities thus enhancing the students’ high school experience” and to “allow the students to better understand the Polynesian community” through socials, guest speakers, a luau, demonstrations of ethnic arts and crafts, dances and other activities designed to “enrich and enhance what is taught in the class room.” East High Principal Bob Pliley endorsed the Polynesian Club application on October 1, 1999, and Ms. Seidel approved it on November 3, 1999.

14. In or about January 1999, a number of East High School students, including plaintiffs Cohen and Hinckley, decided to form the Rainbow Club. They timely submitted an application on the District-approved form to meet as a curriculum-related student group in the forum for such groups at East High School. In its application, the Rainbow Club identified two main goals: to achieve the specific course objectives of the Advanced Placement Government and Politics, Resiliency Training/Student Support and Sociology courses at East High School with an emphasis on issues affecting gays and lesbians; and to survey the entire curriculum to identify ways in which teachers might incorporate discussions about the contributions of gays and lesbians and to present the results of that survey to the school administration.

15. The subject matter, activities and objectives described in the Rainbow Club application complied with Policy IGDA and met the standards articulated and previously applied by Ms. Seidel for approval of curriculum-related student groups. Nevertheless, Ms. Seidel denied that application, saying “the subject matter of the proposed club is sexual orientation. Given the subject matter of the club, the

proposed club does not fall under any of the criteria for a curriculum-related club." Ms. Seidel also opined that "sexual orientation is not the proper organizing subject matter of a curriculum-related club."

16. In or about January 2000, a number of East High students, again including plaintiffs Cohen and Hinckley, once again sought to form a curriculum-related student group, the PRISM Club. PRISM stands for "People Respecting Important Social Movements." Centering on subjects taught in the American Government and Law, U.S. History and Sociology courses at East High School, the PRISM Club was to engage in discussions and activities that would expand and enhance students' study and understanding of those subjects by viewing them from the perspective of gay and lesbian people.

17. In their application on behalf of the PRISM Club, the students described the club's subject matter as being "about American history, government, law and sociology." The students said that they "want to talk about democracy, civil rights, equality, discrimination and diversity," and that they are not interested in "advocating homosexuality, promoting a partisan platform, or discussing sexual behavior." Instead, they want "to expand and enhance [the students'] study and understanding of American history and government, law and social institutions, which are topics covered in the U.S. History, American Government and Sociology courses currently taught here at East High School, and to gain hands-on experience in applying the concepts and skills taught in those courses." The PRISM Club planned activities aimed at extending and applying these subjects, "giving interested students an opportunity to enhance their knowledge of American history, government, law and social institutions and to gain a more concrete understanding of how they affect the real lives of gay and lesbian people."

18. The PRISM Club, like the Rainbow Club before it, is open to all students attending East High School, regardless of their race, age, religion, gender, disability or sexual orientation. The PRISM Club and the Rainbow Club have members who are heterosexual as well as members who are gay, lesbian or bisexual, in addition to members who are not certain of their sexual orientation and members who have not made their sexual orientation known to others.

19. When plaintiffs Cohen and Hinckley timely submitted their application seeking recognition of the PRISM Club as a curriculum-related student group to Principal Pliley, he declined to endorse the application. Imposing a standard not previously identified as a District or school requirement for recognition as a curriculum-related student group, and not imposed by Pliley even a few months before when he approved the application of the Polynesian Club, Pliley stated as follows:

I am uncomfortable when any group asks that a public institution endorse a limited, specialized position or format. By my lights, our responsibility is to be inclusive, not exclusive. If the application would have said, "The club will serve as a prism . . . in terms of the impact, experience and contributions of all of the non-mainstream groups as they come to terms with their place in their respective and/or collective community," I would be more inclined to affix my signature in support.

20. Although Principal Pliley refused to endorse the PRISM Club application, he did forward it to Ms. Seidel, who considered the application without requiring Principal Pliley's endorsement. Ms. Seidel nevertheless declined to approve the application of the PRISM Club as a curriculum-related student group, stating:

This letter responds to your application for The PRISM Club. According to your application, The PRISM stands for "People Recognizing Important Social Movements" and seeks a curriculum relationship with East High Schools [sic] history, government and sociology courses. However, the organizing subject matter of the club narrows to "the impact, experience, and contributions of gays and lesbians" in historical and current events, institutions and culture. This subject matter is not taught in the courses you cite. After careful review of your application, I am unable to approve this club as a curriculum-related club.

21. The subject matter, activities and objectives described in the PRISM Club application complied with Policy IGDA and met the standards articulated and previously applied by Ms. Seidel for approval of curriculum-related student groups.

22. The members of the PRISM Club, including plaintiffs Cohen and Hinckley, wish to begin immediately to express their viewpoints together on the subjects they have identified, all of which are currently taught in the curriculum at East High School, in the PRISM Club. While the District may maintain that they are free to do so in existing student groups, plaintiffs wish to do so in the specific context of the PRISM Club because (1) there currently is no student group devoted to discussion of the curricular subjects plaintiffs wish to discuss, nor one that would examine those subjects from plaintiffs' particular viewpoints; and (2) plaintiffs believe that the freedom of expressive association that generally allows groups of like-minded individuals freely to meet together subject only to reasonable, constitutional regulations applies fully in their school community and should be applied fairly and equally to them.

23. Although the District has stated unequivocally that students are allowed to express gay-positive views in the forum for curriculum-related student groups at high schools in the District, Ms. Seidel applies that policy in such a way as to prohibit plaintiffs from having a club in which students with a like viewpoint can set the agenda for their meetings, determine which activities they wish to engage in together, attract students with similar viewpoints, and jointly engage in the expression of their common viewpoints through bulletin board and other announcements, flyers and other publications, and community service activities – on the same terms as students in other curriculum-related clubs meeting in the forum are allowed to do.

24. Because Ms. Seidel has refused and continues to refuse to recognize such a club, plaintiffs cannot meet. Under East High School policy, if the PRISM Club or the Rainbow Club were to meet without approval, it would be "considered illegal and [would] be disbanded," and the students could be suspended or placed on disciplinary probation for "willful disobedience towards school staff" if the clubs were to meet without approval. Ms. Seidel thus has severely infringed and restricted plaintiffs' freedom of speech and association.

25. Plaintiffs Cohen and Hinckley and the other members of both the PRISM Club and the Rainbow Club do not wish to violate any District or school policy. They are fully aware of and are committed to fulfilling their responsibility under District Policy JF to "exercise restraint and good taste in their expression, and to refrain from use of

expression that is vulgar, profane, obscene or likely to incite violence on school property” in all meetings and activities of the PRISM Club and the Rainbow Club. They simply want to be treated equally and not discriminated against because of the viewpoints they wish to express on subjects taught in the curriculum.

CLAIM FOR RELIEF

Violation of Freedoms of Expression and Association (Under the First Amendment to the United States Constitution, the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988, and for Declaratory Relief Under 28 U.S.C. §§ 2201-02)

26. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 25 of this Complaint as if set forth fully herein.

27. Defendant is a government official and is therefore subject to the First Amendment to the United States Constitution by virtue of the Fourteenth Amendment.

28. Under the First Amendment, defendant may not abridge the freedoms of expression and association of students enrolled at public secondary schools within the District, including plaintiffs, through the inconsistent application of the standards governing the forum. To the contrary, the First Amendment requires that, once the government has opened a forum, it must apply the standards governing expression within that forum consistently.

29. Under the First Amendment, defendant may not abridge freedoms of expression and association of students enrolled at public secondary schools within the District, including plaintiffs, by discriminating against speech on subjects otherwise permissible within the forum, based solely on the viewpoints expressed by that speech. To the contrary, the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.

30. Under the First Amendment, defendant may not abridge freedom of expressive association of students enrolled at public secondary schools within the District, including plaintiffs, by interfering with students’ right to associate with other like-minded students for the purpose of discussing and communicating with one another and to others their views and ideas.

31. The Salt Lake City School District has created, and has maintained continuously from at least the 1996-97 school year to the present, a limited designated public forum, within the meaning of the case law interpreting the First Amendment to the United States Constitution, at the public secondary schools within the District, including East High School. The specific forum to which plaintiffs have sought and seek access is the forum described by both Ms. Seidel and this Court at East High School – the forum for groups initiated, organized, and run by students, the meetings and activities of which extend, reinforce, enhance or enrich the students’ study and understanding of subjects taught in the curriculum at East High Schools, and which take the subject matter taught in a class at East High School, give the students a chance to review it, to see it in real life, to practice what they have learned in a hands-on type of setting, or to see it in the real world.

32. This Court previously has held that for purposes of the First Amendment “the ‘permissible subject matter’ of the existing forum for [curriculum-related] student

groups encompasses the subject matter actually taught in courses offered at each high school and any additional matters which would be deemed 'curriculum-related' as the Mergens Court read that phrase in construing the Equal Access Act. It embraces as well the activities of bona fide 'curriculum-related' student groups approved to meet within the forum." East High Gay/Straight Alliance v. Bd. of Educ., Civ. No. 2:98-CV-193J, Memorandum Opinion and Order dated October 6, 1999.

33. The limited designated public forum for curriculum-related student groups at East High School is significantly different from the forum that the school, operating as a civic center, allows for community groups of young people or adults. In the limited designated public forum for curriculum-related student groups, students do not have to pay for meeting space or arrange for insurance coverage; students can meet at convenient times; students have access to important means of communicating with their peers regarding their meetings and club activities by, for example, being allowed to make loudspeaker and closed circuit television announcements during instructional time at school, post bulletin board announcements at school, be listed or featured in school handbooks, yearbooks, flyers, and other publications, and participate in recruitment, fundraising, and promotional activities at school, such as during Club Rush and Spring Fest; and students enjoy other benefits not available in the forum for community groups.

34. Through her conduct alleged in this Complaint, Ms. Seidel has improperly applied the standards governing the forum in deciding which student groups will be allowed to use the limited public forum the District has created and maintained for curriculum-related student groups. While Ms. Seidel has approved the applications of dozens of other groups to meet at high schools in the District, including East High School, she has denied plaintiffs' applications for the PRISM Club and the Rainbow Club, and plaintiffs have not been and are not allowed to meet together on campus as members of such clubs even though they have satisfied the standards governing the forum. Ms. Seidel's refusal to allow plaintiffs to meet is based on an inconsistent application of those standards.

35. By failing to apply the established standards to plaintiffs' applications for recognition as curriculum-related student groups in a consistent, non-arbitrary and viewpoint-neutral fashion, Ms. Seidel has interfered with, abridged and violated plaintiffs' rights to freedom of speech and freedom of association, in violation of the First Amendment to the United States Constitution and the federal Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988. That violation would exist even if the forum for curriculum-related student groups were considered a non-public forum.

36. Through her conduct alleged in this Complaint, Ms. Seidel also has discriminated against plaintiffs on the basis of their viewpoint. Among other things, Ms. Seidel has discriminated against plaintiffs by attempting to reclassify the viewpoint they seek to express in the PRISM Club and the Rainbow Club as the "organizing subject matter" of those groups and by declaring it to be beyond the scope of the forum for curriculum-related student groups. The subject matter of the PRISM Club and the Rainbow Club is plainly within the permissible subject matter of the forum. By improperly classifying plaintiffs' viewpoint as a "subject matter" and incorrectly declaring it outside the permissible subject matter of the forum, Ms. Seidel effectively forbids curriculum-related student groups whose speech she disfavors (the PRISM Club and the Rainbow Club) to meet on the same terms and conditions as student groups whose speech she prefers (such as the MESA Club, the CHARABANC Club, the Polynesian Club, the National Honor Society and the Odyssey

of the Mind Club).

37. By discriminating against plaintiffs based on their viewpoint, Ms. Seidel has interfered with, abridged and violated the rights of the PRISM Club and the Rainbow Club and their members (including plaintiffs Cohen and Hinckley) to freedom of speech, in violation of the First Amendment to the United States Constitution and the federal Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988. That violation would exist even if the forum for curriculum-related student groups were considered a non-public forum.

38. Through her conduct alleged in this Complaint, Ms. Seidel also has discriminated against plaintiffs on the basis of their viewpoint by refusing to permit groups of students to associate with other like-minded students for the purpose of providing mutual support and discussing and communicating with one another and to others their common views and ideas as to the ways in which subjects taught in the curriculum affect and are affected by gays and lesbians. Ms Seidel thus effectively prohibits formation of any gay-supportive group, including the PRISM Club and the Rainbow Club, to discuss otherwise permissible subjects from the viewpoint of gays and lesbians, even though she permits other groups of like-minded students to associate for the purpose of providing mutual support and discussing and communicating with one another and to others their common views and ideas on otherwise permissible subjects.

39. By not allowing groups of students (including plaintiffs the PRISM Club and the Rainbow Club) to associate with other like-minded students for the purpose of providing mutual support and discussing and communicating with one another and to others gay-positive views and ideas on otherwise permissible subjects, Ms. Seidel has interfered with, abridged and violated the rights of those groups and their members (including plaintiffs Cohen and Hinckley) to freedom of expressive association, in violation of the First Amendment to the United States Constitution and the federal Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988. That violation would exist even if the forum for curriculum-related student groups were considered a non-public forum.

40. As a result of defendant's violations of the First Amendment to the United States Constitution and the Civil Rights Act of 1871, plaintiffs have suffered and continue to suffer irreparable injury.

41. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to injunctive relief prohibiting defendant from restricting plaintiffs' freedom of expression other than through the consistent application of established standards in non-arbitrary, viewpoint-neutral fashion to all student groups using or seeking to use the limited designated public forum; from interfering in any way with plaintiffs' right to use the limited designated public forum on the same non-discriminatory terms as others; from discriminating against plaintiffs on the basis of the viewpoints expressed by the PRISM Club and the Rainbow Club or the members of those student groups; from interfering with plaintiffs' right of expressive association; and from interfering in any way with plaintiffs' right to use the limited designated public forum for curriculum-related student groups on the same non-discriminatory terms as others.

42. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to nominal damages against defendant for the violation of plaintiffs' rights.

43. An actual controversy has arisen and now exists between plaintiffs and defendant. Plaintiffs contend that defendant has applied inconsistently the established standards governing access to the limited designated forum for curriculum-related student groups, and otherwise has discriminated against plaintiffs in violation of the First Amendment's guarantees of freedom of expression and freedom of association. Plaintiffs are informed and believe that defendant disputes these contentions and takes the position that her practices are constitutional. Pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-02, plaintiffs are entitled to a declaration of the parties' rights and responsibilities.

44. Pursuant to 42 U.S.C. § 1988, plaintiffs are entitled to an award against defendant of plaintiffs'

reasonable attorneys' fees and costs incurred in connection with this action. PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court enter judgment in favor of plaintiffs, and, pursuant to 20 U.S.C. §§ 4071 et seq., 28 U.S.C. §§ 2201-02, and 42 U.S.C. §§ 1983 and 1988,

(1) grant plaintiffs preliminary and permanent injunctive relief enjoining defendant from continuing to prohibit the PRISM Club and the Rainbow Club from meeting at East High School on the same terms and conditions as other curriculum-related student groups meeting in the forum the District has created and maintained for such groups, and prohibiting defendant from limiting plaintiffs' right to freedom of expression other than through the application of established standards in consistent, non-arbitrary, viewpoint fashion to all student groups using or seeking to use the limited public forum or from interfering in any way with plaintiffs' right to use the forum on the same non-discriminatory terms as others; and

(2) grant plaintiffs injunctive relief prohibiting defendant from discriminating against plaintiffs on the basis of the viewpoints expressed by the PRISM Club and the Rainbow Club or the members of those student groups, and from forbidding or interfering with the formation, meetings or lawful activities of gay-supportive curriculum-related student groups; and

(3) award plaintiffs nominal damages against defendant for the violation of plaintiffs' constitutional rights and the injuries defendant has caused; and

(4) issue a declaratory judgment declaring the rights and responsibilities of the parties to this action under the First Amendment to the United States Constitution, and specifically declaring that defendant violated plaintiffs' constitutional rights by failing to approve as submitted the applications of the PRISM Club and/or the Rainbow Club and thereby prohibiting those groups from meeting; and

(5) award plaintiffs their reasonable attorneys' fees and costs; and

(6) grant such further and different relief as this Court deems just and appropriate.

DATED this 10 day of April, 2000.

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