

2007 WL 654308

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United States District Court,
E.D. Texas, Sherman Division.

Jonathan MORGAN, et al. Plaintiffs,

v.

THE PLANO INDEPENDENT SCHOOL DISTRICT, et al., Defendants.

No. 4:04CV447.

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Feb. 26, 2007.

Attorneys and Law Firms

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Opinion

MEMORANDUM ADOPTING IN PART AND MODIFYING IN PART REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

[SCHELL, J.](#)

*1 Came on for consideration the above-referenced civil action, this court having heretofore ordered this case be referred to the United States Magistrate Judge for all pretrial purposes.

The report of the United States Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of “Plaintiffs’ Motion for Partial Summary Judgment (Facial Challenge to PISD Policies)” [Doc. No. 27], “Defendant Plano Independent School District’s (“PISD”) Cross Motion for Summary Judgment” [Doc. No. 53], “Plano ISD’s Objections to Plaintiffs’ Evidence Attached to Plaintiffs’ Response to Plano ISD’s Cross Motion for Partial Summary Judgment (Facial Challenge to Plano ISD Policies)” [Doc. No. 66], “Plaintiffs’ Motion for Leave to Submit Additional Plano ISD Board Policy in Opposition to Arguments Raised in Plano ISD’s Combined 1) Sur-reply to Plaintiffs’ Reply to Plano ISD’s Response to Plaintiffs’ Motion for Partial Summary Judgment (Facial Challenge to PISD Policies) and 2) Reply to Plaintiffs’ Response to Plano ISD’s Cross Motion for Partial Summary Judgment” [Doc. No. 77], “Defendant’s Objections to the Affidavit of Doug Morgan Attached to Plaintiffs’ Sur-Reply to Plano ISD’s Reply to Plaintiffs’ Response to Plano ISD’s Cross Motion for Summary Judgment” [Doc. No. 84], “Defendants’ Motion for Leave to File Supplemental Summary Judgment Evidence” [Doc. No. 94], “Motion to Substitute Affidavit of David Morgan Attached to Document No. 78” [Doc. No. 119], and “Defendants’ Objection to the Substitute Affidavit of Doug Morgan Attached to Document Number 78” [Doc. No. 121] have been presented for consideration.

The court having made a *de novo* review of the objections raised by Plaintiffs and Defendant PISD thereto, is of the opinion that the Magistrate Judge correctly applied the four categories of school speech in the Fifth Circuit as stated in *Canady v. Bossier Parish School Board*, 240 F.3d 497, 443 (5th Cir.2001). Specifically, the Magistrate Judge correctly

found that the 2005 Policy's regulations on speech were viewpoint neutral, and therefore, correctly applied the test for time, place and manner restrictions to the 2005 Policy.

The court also finds the Magistrate Judge's findings of fact and conclusions of law were correct with respect to the 2004 Policy and with respect to the 2005 Policy as it relates to the middle school and high school students. However, the court finds that the 2005 Policy as it relates to elementary students is overbroad with respect to the following provision:

4. District elementary school cafeterias, during designated meal periods, are provided for the limited purpose of providing students meals and/or other nutrition and for delivering instruction to students with regard to nutrition, time management, manners, responsibility, and group discipline. Due to this limited purpose and the financial costs and safety/security concerns associated with litter and/or trash in the cafeteria, students may not distribute materials in elementary school cafeterias during designated meal periods.

***2** The court finds that this provision reaches more broadly than is reasonably necessary to protect PISD's legitimate interests. Accordingly, the Report and Recommendation of the United States Magistrate Judge is hereby modified to grant in part Plaintiffs' Motion for Partial Summary Judgment (Facial Challenge to PISD Policies) and to deny in part Defendant Plano Independent School District's ("PISD") Cross Motion for Summary Judgment as it pertains to this provision of the 2005 Policy.

The court finds that the remaining objections of Plaintiffs and the objections of Defendant PISD are without merit. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge, as modified herein, as the findings and conclusions of this court. It is, therefore,

ORDERED that the Magistrate Judge's Report is ADOPTED, as modified, as the opinion of the Court. It is further

ORDERED that Plaintiffs' Motion for Partial Summary Judgment (Facial Challenge to PISD Policies) is GRANTED IN PART AND DENIED IN PART, and Defendant Plano Independent School District's Cross Motion for Summary Judgment is GRANTED IN PART AND DENIED IN PART.

All Citations

Not Reported in F.Supp.2d, 2007 WL 654308