

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

WORLD CHANGERS OF FLORIDA,)
INC.,)

Plaintiff,)

vs.)

DISTRICT SCHOOL BOARD OF)
COLLIER COUNTY, FLORIDA;)
DR. DENNIS L. THOMPSON, in his)
official capacity as Superintendent,)

Defendants.)

Case No. 2:10-CV-419-FTM-36SPC
Judge: Charlene E. Honeywell

CONSENT DECREE AND ORDER

Findings of Fact

1. On July 1, 2010, Plaintiff, WORLD CHANGERS OF FLORIDA, INC. (“WCF”), filed a Complaint against Defendants, DISTRICT SCHOOL BOARD OF COLLIER COUNTY, FLORIDA and DR. DENNIS L. THOMPSON, in his official capacity as Superintendent (collectively, “Defendants”), asserting various constitutional claims pursuant to 42 U.S.C. § 1983, arising from Defendants’ denial of WCF’s requests for literature distribution to students.

2. The Parties agree, and this Court finds, that this Consent Decree has been negotiated by the Parties in good faith, and that settlement of this matter is intended to avoid expensive and protracted litigation between the Parties.

3. Defendant DISTRICT SCHOOL BOARD OF COLLIER COUNTY, FLORIDA has implemented Policy 9700 and Procedure 9700A to permit outside organizations to distribute to students information and literature through a poster/table limited public forum.

4. WCF and Defendants have consented to a decree that allows WCF the same access to its forum as all other non-profit organizations.

Conclusions of Law

5. The terms of this Consent Decree are fair, reasonable and serve the public interest through a poster/table limited public forum.

6. The terms of this Consent Decree comport with the United States Constitution, including the First Amendment. *See e.g., Meltzer v. Bd. of Pub. Instr. of Orange Cty, Fla.*, 577 F.2d 311 (5th Cir. 1977); *Peck v. Upshur Cty. Bd. of Ed.*, 155 F.3d 274 (4th Cir. 1998).

7. Without limiting the Court's determination that the terms of this Consent Decree are constitutional, the Court specifically finds that the literature distribution permitted by this Consent Decree: (a) does not bear the imprimatur, sponsorship or endorsement of government; (b) is the private speech of private non-profit organizations, occurring in a publicly-announced, neutral, limited public forum that is open on equal terms to all non-profit organizations; and (c) does not convey to a reasonable observer the message that government is endorsing a particular literature, message or creed.

8. The terms of this Consent Decree do not discriminate against any viewpoint.

Order

THEREFORE, with the consent of the Parties, it is ORDERED, ADJUDGED and DECREED as follows:

9. On or before October 23, 2010, Defendant SCHOOL BOARD OF COLLIER COUNTY shall amend its Policy 9700 and Procedure 9700A to: (a) clarify that the passive literature distribution provided for in this Consent Decree is part of Defendants' limited public

forum for on-campus distribution of literature by non-profit organizations; and (b) clarify that no decision-maker can exercise discretion to deny access to the limited public forum on basis of viewpoint.

10. Consistent with Defendants' policies and procedures for the passive distribution of literature by non-profit organizations, as amended pursuant to paragraph 9 of this Consent Decree, Defendants shall allow WCF and other non-profit organizations to passively distribute literature to students in Defendants' high schools, on one school day each school year, as follows:

a. Unless the Parties otherwise agree in writing, the distribution day shall be on January 16 each year, provided that school is in session on that day. If school is not in session on January 16, the distribution day shall be on the nearest day to January 16 when school is in session.

b. On the distribution day, Defendants shall allow representatives of WCF and other non-profit organizations who satisfy the requirements of Policy 9700 and Procedure 9700A, and who meet Defendants' generally applicable safety criteria and have completed Defendants' safety screening requirements applicable to non-students on school campuses, to be present on high school premises to: (i) set up one table provided by Defendants for each participating non-profit organization at each high school, on which literature may be made available to interested students; (ii) replenish the literature on the tables as necessary throughout the distribution day; and (iii) take down the table(s) and remove any undistributed literature at the end of the distribution day.

c. The distribution table(s) will be located outside of classrooms, in areas where the general student body passes by or congregates during non-instructional time to be determined by the Superintendent and or the principal of each school, such that the table(s) will be conveniently accessible to all students during non-instructional time.

d. The organizational representative(s) present at the high schools shall not discuss the literature being distributed with students, and shall neither encourage nor discourage students to pick up any literature. The representative(s) shall not position themselves at the distribution table(s) continuously throughout the distribution day. Instead, Defendants will provide a suitable staging area in the vicinity of the distribution table(s) for the organizational representatives, where students do not generally congregate, so that the representatives do not have to leave the school premises during the distribution day, and so that they can effectively monitor the table(s) to ensure an adequate supply of literature is available for interested students.

e. Under no circumstances shall organizational representatives enter classrooms or other places of instruction to announce to students the availability of literature, or to otherwise discuss the literature with students.

f. No employee of the Defendants, in the employee's official capacity, shall assist with or otherwise participate in the literature distribution, other than to direct the organizational representatives to the designated distribution location and staging area at each school and to ensure strict compliance with the conditions in this Consent Decree.

g. A written disclaimer shall be displayed on the distribution table(s), stating that the literature distribution is not sponsored or endorsed by the Defendant SCHOOL BOARD OF COLLIER COUNTY and identifying the name of the non-profit organization sponsoring the distribution.

h. In addition to the disclaimer, a written sign shall be displayed on the distribution table(s), informing passersby that the literature on the table is available free of charge and that they may take one copy.

i. No student shall be coerced, pressured, encouraged or discouraged to pick up any literature. The distribution shall be entirely voluntary.

j. No student shall be excused from instructional time to visit the literature distribution table(s). Students shall only be allowed to visit the distribution tables on their own, during non-instructional time, such as before school starts, after school ends, between classes or during their lunch.

k. Consistent with Defendants' Policy 9700 and 9700A, Defendants may prohibit the distribution of literature that: (i) promotes the use of alcohol, tobacco or illegal drugs; (ii) advertises products or services for sale; (iii) is not appropriate for the age and maturity of high school students; (iv) is pornographic, obscene or libelous; (v) violates intellectual property or privacy rights; (vi) advocates or is likely to incite imminent lawless action; or (vii) is likely to cause substantial disruption at the school despite the application of available discipline rules and procedures.

11. Within fourteen (14) days of the entry of this Consent Decree, Defendants shall pay WCF \$20,750.00, via bank draft or check payable to Liberty Counsel, as and for reasonable attorney's fees and costs incurred by WCF in this action.

12. This Consent Decree shall not be modified or amended except by mutual written consent of all Parties, with approval of the Court.

13. Each undersigned representative of the Parties to this Consent Decree certifies that he or she is fully authorized by the party to enter into and execute this Consent Decree, and to legally bind such party to this Consent Decree. By their representative's signature below, the Parties consent to entry of this Consent Decree.

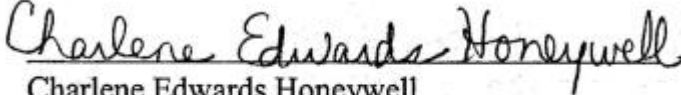
14. Nothing in this Consent Decree shall be construed to limit any Party's right to enforce this Consent Decree according to its terms. In the event that any court of competent jurisdiction determines that any provision of this Consent Decree, or any part thereof, cannot be enforced, such determination shall not affect or invalidate the remainder of this Consent Decree.

15. This Consent Decree shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, successors and assigns.

16. Pursuant to the settlement reached by the Parties, this case is dismissed. The Court retains jurisdiction of this action to enforce the terms of this Consent Decree.

17. The Clerk is directed to enter judgment accordingly.

DONE and ORDERED this 2nd day of November, 2010.


Charlene Edwards Honeywell
United States District Judge