

Court reverses anti-harassment ruling

Boyd student can seek damages

By Brett Barrouquere
Associated Press

An Eastern Kentucky school district's anti-harassment policy constituted a "chill" on a student's free-speech rights, so the student should be able to pursue nominal damages, a federal appeals court ruled yesterday.

In a 2-1 vote, the 6th U.S. Circuit Court of Appeals ruled that the Boyd County school district's policy effectively barred student Timothy Allen Morrison's ability to profess his Christian beliefs and opposition to homosexuality. The ruling sends the case back to U.S. District Judge David Bunning for a trial on damages.

Judge Karen Nelson Moore, joined by Judge John R. Adams, wrote that the allegation of a policy stifling free speech is enough to allow Morrison to seek damages. To make his case, the judges said, Morrison must show that the policy would "deter a person of ordinary firmness" from exercising free-speech rights.

Joel Oster, an attorney for the Alliance Defense Fund, a Christian law group in Scottsdale, Ariz., that represented Morrison, said the ruling has left him "ecstatic."

"It's everything we could have hoped for," Oster said. "This vindicates our client's constitutional rights."

Sharon McGowan, an attorney with the American Civil Liberties Union, who represented gay and transgender students in the case, also applauded the ruling, saying it recognizes that schools can't violate anyone's free-speech rights, but can take steps — including training — to protect gay students.

"Our students have always been about promoting dialogue," McGowan said. "They have never been looking to suppress other people's views."

A message left yesterday afternoon at the Boyd County Board of Education was not immediately returned.

Morrison, a senior at Boyd County High School, sued the school district over the anti-harassment training, claiming the policy threatened him with punishment for expressing religious beliefs in opposition to homosexuality.

Morrison was never punished under the policy, which later was changed to exempt speech that normally would be protected off campus.

Judge Deborah Cook issued a dissenting opinion, saying Morrison wasn't punished because he chose not to speak out against homosexuality and take that risk.

Cook said Morrison suf-

fered no actual harm from the policy, and holding a trial for damages to award "a single dollar" serves no purpose and "trivializes" the business of the federal courts in protecting the constitution.

"I see no evidence in the record that the school district would have punished him for protected speech in violation of its own policy," Cook wrote in a one-page opinion. "We cannot find a school district constitutionally liable for chilling student speech every time a student chooses caution over risking possible discipline."

The training sessions were part of a settlement in 2004 of a three-year dispute between the school district and a now-defunct gay-rights group that wanted recognition as an extra-curricular group.

At issue was the federal Equal Access Act, which says districts can't bar student groups from access to school facilities based on religious, political or philosophical orientation if the districts let other groups meet on campus.

Libby Fugett, a former Boyd County High School student who was a plaintiff in the suit that resulted in the settlement, also was pleased with the ruling.

"The school finally has a training and policy that respects everybody's rights, and that's how it should be," Fugett said in a statement.