

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT

CLAUDIUS BENSON, II, by his Next
Friend ALECHA BENSON,

Plaintiff,

v.

Case No.:

OLD REDFORD ACADEMY, INNOVATIVE
TEACHING SOLUTIONS and
MELVIN SMITH, in his official capacity as Chief Executive
Officer of Innovative Teaching Solutions,

Defendants.

Mark P. Fancher (P56223)
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REPLY TO OLD REDFORD'S RESPONSE TO PLAINTIFF'S MOTION

INTRODUCTION

Defendants' response is filled with distortions, half-truths and offensive red herring arguments about religious doctrine¹ that miss by a wide margin the central points of inquiry that are required for the very narrow question of whether Defendants should be enjoined from preventing 14-year-old Claudius Benson from attending a publicly-funded charter school while this litigation is pending.

This motion has nothing to do with whether Ms. Benson is a "Messianic Jew," a "Black Hebrew Israelite" or for that matter whether she has a religious label at all. It has nothing to do with whether Claudius uses an electric razor or a straight razor. It has nothing to do with the religious beliefs of family members who are not parties to this litigation or with a rabbi from Nebraska who obviously has a different interpretation of the Old Testament than Ms. Benson and Claudius.

This motion has everything to do with the following, and other closely-related narrow areas of inquiry:

1. Is Plaintiff irreparably harmed by a suspension from school that has now been in effect for more than a month? MCR 3.310.
2. Are the beliefs of Plaintiff religiously motivated and sincerely held? *McCready v Hoffius*, 458 Mich 131, 143; 586 NW2d 723 (1998); *People v DeJonge*, 442 Mich 266, 281; 501 NW2d 127 (1992).
3. Do Defendants have a compelling interest that requires that they prevent Claudius from attending school? *Id.*

¹ Defendants go so far to suggest that Ms. Benson is wrong to consider herself Jewish because her mother was not Jewish. See Defendant's response, pp. 8 and 9.

It is remarkable that Defendants' response in effect concedes one critical issue (sincerity of beliefs), and provides no credible support for their positions regarding the others.

PLAINTIFF'S BELIEFS ARE SINCERELY HELD
AND RELIGIOUSLY MOTIVATED

The letter of Nebraska Rabbi Oved Ruff [Exhibit D of Defendants' response] states: **“While I have no doubt that Ms. Benson and her family has (sic) sincere beliefs,** this belief is blatantly mistaken and corrective measures can be taken without compromising any religious commitment.”(emphasis added)

The **only** question before this honorable Court regarding religion is whether Plaintiff's beliefs are sincere and religiously motivated. *People v DeJonge*, 442 Mich 266, 281; 501 NW2d 127 (1992) *citing United States v Seeger*, 380 US 163, 185 (1965). “While a court may inquire into whether a religious belief is genuine or sincere, it should not decide the ‘truth’ or ‘reasonableness’ of the belief.” *Dep't of Social Services v Emmanuel Baptist Pre-School*, 434 Mich 380, 392; 455 NW2d 1 (1990).

[C]ourt[s] must accept a worshiper's good-faith characterization that its activity is grounded in religious belief because '[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds.

DeJonge, 442 Mich at 281.

A presumed “expert” proffered by Defendants themselves is convinced of the family's sincerity, and if there is agreement on that point alone, the parties' debate over religion for purposes of this motion ends. A bible verse may be interpreted by religious leaders and lay people of different faiths in hundreds of different ways. Indeed, the same verse is frequently interpreted in different ways by people who consider themselves to be

of the same faith – whether that faith be Christianity, Judaism or any other religious faith. Many religious people believe that their beliefs are the “correct” or “true” beliefs and that others are mistaken. However, if religious freedom means anything in this country, it means that it is not up to the government – whether it is a public school or a court – to determine which religious views are “correct.” Rather, the sole inquiry is whether the belief is sincerely held.

There are other elements of Defendants’ response which also provide evidence of Plaintiff’s sincerity. The Counter-Statement of Facts (at page 5) reports that even before his mother’s arrival at the school on September 6, Claudius had explained to school administrators that his hair had not been cut for years for religious reasons, and that his father (who does not share the religious views of Plaintiff and his mother) had cut it against his mother’s wishes. Although the facts regarding Ms. Benson’s appearance before the school’s board are sharply contested, even Defendant Smith acknowledges in paragraph 9 of his affidavit [Exhibit C of Defendants’ response] that Ms. Benson referenced religion during her presentation.

DEFENDANTS HAVE NO COMPELLING INTEREST IN
MAINTAINING PLAINTIFF’S SUSPENSION

It is astonishing that the response makes absolutely no reference to any “compelling interest” it has in maintaining Plaintiff’s suspension from school. In fact, the only rationale provided for the hair requirement is found in paragraph 4 of Defendant Smith’s affidavit. He states that the policy was adopted because of the school’s board’s conviction: “that the allowance of radically different grooming styles by the students would be harmful to the educational mission of the school, which is and always has been

to provide a learning environment that will assist children in reaching their maximum potential so that they may become productive members of a peaceful global society.”

While the school’s mission, as articulated, may reflect an administrative preference, it in no way expresses or even implies an interest that is comparable to those that courts have regarded as “compelling.” Consider that in *DeJonge*, the court stated:

"Furthermore, a compelling state interest must be truly compelling, threatening the safety or welfare of the state in a clear and present manner." 501 NW2d. at 138. In *Dep’t of Social Services v Emmanuel Baptist Pre-School*, 434 Mich 380, 392; 455 NW2d 1 (1990), the compelling state interest was preventing corporal punishment of young children. In *McCready v Hoffius*, 458 Mich 131, 143; 586 NW2d 723 (1998), the compelling state interest was the need for housing.

In the instant case, Defendants’ preoccupation with short hair in no way compares with interests that threaten the safety and welfare of the state. It is more akin to those interests that courts have held to be *not* compelling. Specifically, in *Wisconsin v Yoder*, 406 US 205 (1972), the court determined that a compulsory education law, which required all students to attend school until the age of sixteen, violated the Amish plaintiff’s religious belief that their children should not attend school past the eighth grade. The court said that there was not a compelling interest in forcing this limited group of people to attend school for two more years (until they could leave voluntarily).

In *Sherbert v Verner*, 374 US 398 (1963), the state denied unemployment benefits to a Seventh Day Adventist, who quit her job rather than work on her Sabbath. The court concluded that the denial of benefits imposed a substantial burden on religion because the

woman had to choose between an income and her faith. The court could not find a compelling interest to deny the woman's unemployment benefits in this instance.

In *Thomas v Review Board*, 450 US 707 (1981), the court held that the government could not deny unemployment benefits to a man who quit his job when he was transferred to build armaments. He quit his job for religious reasons and the court could not find a compelling interest in withholding the benefits.

Defendants make the disturbing argument that a public school -- which is bound by the Constitution and funded by taxpayer dollars -- may adopt a dress code that essentially excludes certain religious minorities from attending the school. They essentially assert that if a student's religious-based convictions prevent him from complying with the dress code, and the school forms a subjective opinion that the student's beliefs are not credible, the student should seek an education at another school. [Defendants' Response, p. 18].

In the same way that a public charter school cannot deny admission based on a student's race, it cannot deny admission based on a person's religion. It does not matter that another public school might accept the student. Public charter schools are bound by the constitution just as all other schools are bound by the constitution. If Old Redford's position was adopted by the court, schools could deny admission to Arab girls who wear hijabs simply because they have "no hat or head coverings" rules. If the military and prisons must make exceptions to general grooming and dress rules to accommodate soldiers and inmates' religion, then certainly a public school must. [See Plaintiff's Main Br., p. 6.]

Old Redford Academy does not assert a compelling state interest for denying Claudius an education. Furthermore, it cannot establish why requiring Claudius to cut his hair in violation of his religious beliefs is the least drastic means of achieving its goal of providing “a learning environment that will assist children in reaching their maximum potential so that they may become productive members of a peaceful global society.” Accordingly, Plaintiff’s likelihood of success in this case is very high and a preliminary injunction is required.

DEFENDANTS – NOT PLAINTIFF – HAVE CAUSED IRREPARABLE HARM

Finally, the response argues that the irreparable harm that Plaintiff has suffered and will continue to suffer from his absence from school is of his own making. On the one hand, the response suggests that Plaintiff was dilatory, and that he sat on his claim. “Plaintiff was suspended on September 6, 2007. The due process hearing took place on September 12, 2007. Plaintiff did not commence the instant action until October 2, 2007. The delay in moving forward with his claim certainly casts a shadow on his claim that any injury is ‘immediate’ and ‘irreparable.’” [Defendants’ response, p. 18] Defendants, in an stark contradiction, state at page 6 of their response: “Ms. Benson chose to proceed with this litigation (a) prior to final action by the Old Redford Academy Board of Directors and (b) while attempts were being made by Mr. Smith and his staff to speak with her and her son regarding their desire for an exemption from the dress code.”

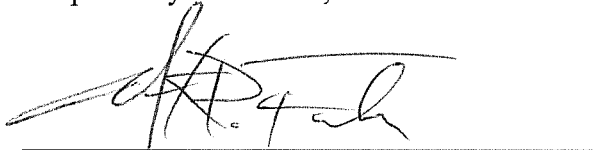
The truth is found in Ms. Benson’s appended affidavit. It demonstrates clearly that she attempted to both work with the school to resolve this matter quickly and without litigation, and to also institute this action immediately after it became apparent that the school had no continuing interest in dialogue. There can be no credible suggestion that

preventing a child's attendance at school does not cause irreparable harm. This harm is exacerbated with each passing day.

CONCLUSION

Defendants' response is in many ways patently offensive. It presumes to dictate the requirements of Plaintiff's faith. It arrogantly proffers interpretations of scriptures that are presented as indisputable and not subject to the personal reflection and convictions of individual citizens. Finally, it betrays Defendants' religious intolerance by suggesting that, notwithstanding the fact that the school is publicly funded, Plaintiff's remedy is to attend another school. In these and other ways, Defendants' approach to this matter is in direct conflict with the legal and policy concerns of a long line of cases concerning religious liberties. Plaintiff desperately requires injunctive relief in this matter, and such is respectfully requested.

Respectfully Submitted,



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DATED: October 10, 2007

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_____ /

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

AFFIDAVIT

I, Alecha Benson, being duly swon, hereby deposes and says:

1. There are numerous statements contained in Defendants' response that are distortions or half-truths, and I take this opportunity to clarify and correct.

2. My religious belief system is admittedly unique because it is entirely personal. Over the course of nearly 20 years, I have taken a spiritual journey that has led to my association with various religious groups and spiritual leaders. I have on my own studied a wide array of religious texts. All of these influences have led to my development of a religious doctrine that is grounded in the Old Testament, and represents a blend of belief systems that many people regard as “established.”
3. I understand the almost instinctive effort to place labels on religious doctrines. Defendants have done this in their response. Early in my association with my own attorneys, they too made attempts to describe my faith with references to religious affiliations I have had, but which do not accurately reflect my current belief system. There is no label that fully describes my beliefs. The best description I have been able to develop is “contemporary African American Hebrew.”
4. My religious practices include the various activities described in other papers filed in this case, and other practices. However, the only practice that is relevant to this lawsuit is my commitment to not cutting my son’s hair.
5. I enrolled Claudius in Old Redford Academy in August. I was told I must also attend one of their scheduled orientation sessions the following week. At the end of the orientation session, they ran out of student handbooks, but I was able to get the last one. I was instructed to review and sign the Code of Conduct Agreement by a specified date during the first week of school. I later signed the agreement after reading the school’s “Belief Statements” and their Equal Rights Policy. One of the Belief Statements is: “We believe we are participants in a global society and we value cultural diversity.” I was greatly comforted by this statement because it suggested to me that an exemption from the hair

length requirement on religious grounds would be freely given if my son's hair ever became an issue. I expected this to happen in much the same way that a child who suffers from a physical disability would not be required to participate in certain required physical education activities. I therefore signed the agreement with those thoughts in mind.

6. Defendants' response refers to the religious and grooming practices of members of my family other than Claudius. While I believe this is entirely irrelevant to this case, I will note for the record that the hair requirement of my doctrine applies only to males, so it does not affect me or other females in my family.
7. I am greatly disturbed by Defendants' contradictory contentions that I both moved too quickly with litigation, and that I also moved too slowly. The fact is, I went out of my way to work with the school for an extended period, but ultimately I concluded that they have no real interest in fairly considering my requests for my son's return to school, and I obtained legal assistance.
8. Within a few days after my son's suspension (September 11), I essentially had to force my way on to the Old Redford board's agenda because they were dismissing the meeting without acknowledging me or my son., and I read a hastily prepared written statement that (contrary to the assertions in Defendants' response) did make reference to Leviticus and the fact that my actions and my son's were based on religion. I had a very emotional meeting with Mr. Smith the following day, during which he appeared to demonstrate sensitivity and concern. [I note here what may be an error in paragraph 22 of the Verified Complaint. That paragraph specifies religious topics I raised with the board, but I am not certain that I mentioned the Hope of Israel. I did mention it to Mr. Smith during my private meeting with him the following day.]

9. At the conclusion of my September 12 meeting with Mr. Smith, we agreed to meet again. Over the next several days, I engaged in frustrating “phone tag” with Mr. Smith’s staff, until finally I received two voice mail messages from Monique Parker (Mr. Smith’s assistant) advising that he would be available to meet with me on September 20. In the interim, I had consulted with counsel about my concerns about Mr. Smith’s stated plan to delay any action until after the board considered the matter in October. My attorneys communicated with the school’s attorney in an effort to accelerate a decision. I left a voice mail message for Ms. Parker on September 20 indicating my availability for a September 24 meeting, I never received confirmation. On September 24, I called Ms. Parker again. She responded with great hostility, and stated that because I had “filed a lawsuit” Mr. Smith would not speak further with me. I had not filed a lawsuit, but it was apparent at that time that it was the only remaining option available to me.

I am greatly confused and frustrated by Defendants’ assertion that I have not provided “evidence” of my religious beliefs. With respect to my religious beliefs, I have not only what is in my heart but everything else I have shared about my faith. It disappoints me greatly that educators are unwilling to acknowledge and respect my beliefs.

FURTHER DEPONENT SAYETH NOT.

ALECHA BENSON

Subscribed and sworn to before
me this 10th day of October, 2007.
