

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONNA KAY BUSCH, in her individual )  
capacity and as the parent and next friend )  
of Wesley Busch, a minor, )

Plaintiff, )

v. )

MARPLE NEWTOWN SCHOOL )  
DISTRICT, MARPLE NEWTOWN )  
SCHOOL DISTRICT BOARD OF )  
DIRECTORS, ROBERT MESAROS, )  
Superintendent of the Marple Newtown )  
School District, and THOMAS COOK, )  
Principal of Culbertson Elementary )  
School, )

Defendants )

CIVIL ACTION: 05-cv- 02094

**ANSWER OF DEFENDANTS, MARPLE NEWTOWN SCHOOL DISTRICT,  
MARPLE NEWTOWN SCHOOL DISTRICT BOARD OF DIRECTORS,  
ROBERT MESAROS AND THOMAS COOK, TO PLAINTIFF’S COMPLAINT  
WITH AFFIRMATIVE DEFENSES**

AND NOW, come the Defendants, Marple Newtown School District, Marple Newtown School District Board of Directors, Robert Mesaros and Thomas Cook, hereinafter collectively referred to as the “Defendants”, by and through their attorneys, Mark A. Sereni, Esquire and Sweet, Stevens, Tucker & Katz, LLP, to present the following Answer to Plaintiff’s Complaint with Affirmative Defenses:

1.1 Admitted.

1.2 Admitted.

1.3 Admitted.

2.1 Admitted.

2.2 Admitted.

2.3 Admitted.

2.4 Admitted.

2.5 Admitted.

3.1 Paragraphs 1.1 through 2.5 are incorporated as if fully set forth herein.

3.2 Admitted in part, denied in part. It is admitted that as of October, 2004, Plaintiff's son, Wesley, was a kindergarten student at Culberston Elementary School and that his teacher was Mrs. Reilly. It is further admitted that in approximately mid-October, 2004, Plaintiff came to Mrs. Reilly's kindergarten classroom. It is denied that Plaintiff came to Mrs. Reilly's kindergarten classroom pursuant to a specific invitation. By way of further answer, at the beginning of the 2004-2005 school year, Mrs. Reilly gave to the parents of her kindergarten students who attended Back to School Night, and made available to the remaining parents, a written description of the "All About Me" week classroom exercise. This written description contained a general invitation to all parents, which read, "If any parent would like to come to school to share a talent, short game, small craft or story with us during your child's "All About Me" week please contact me 1 week in advance to schedule a day and time."

3.3 Admitted in part, denied in part. It is admitted that the Plaintiff came to Mrs. Reilly's kindergarten classroom during the week for which Wesley was the designated student in regard to the "All About Me" week classroom exercise. It is denied that Plaintiff was specifically invited to attend the "All About Me Week" classroom exercise. It is denied that Culbertson Elementary School had a policy, custom or practice known as "Me Week." To the contrary, the correct title of the classroom exercise is "All About Me" week. Further, "All About Me" week is a classroom exercise within the kindergarten classroom and not a policy, custom or

practice of Culbertson Elementary School as a whole. It is denied that “All About Me” week is a program intended to feature a particular student during the week and during which the student’s personal characteristics, preferences and personality are emphasized in classroom activities. To the contrary, at the beginning of the 2004-2005 school year, Mrs. Reilly gave to the parents of her kindergarten students who attended Back to School Night, and made available to the remaining parents, a written description of the “All About Me” week classroom exercise. This written description read, “Each child will have the opportunity to share information about themselves during their ‘All About Me’ week. To start off your child’s ‘All About Me’ week please send in a poster with pictures, drawings, or magazine cut outs of your child’s family, hobbies, or interests. Your child may bring in a special toy or stuffed animal during the week to introduce to the class. Your child may also bring in a favorite snack to share with the class during their ‘All About Me’ week.”

3.4 Denied. By way of further answer, Defendants do not know why Plaintiff was at Culbertson Elementary School that day or who chose the book from which she attempted to read aloud. Defendants further deny that one such activity of the “All About Me” week was the opportunity to have the student’s parent read aloud from the student’s favorite book. To the contrary, there was a general invitation to share, among other things, a story.

3.5 Denied. By way of further answer, Defendants do not know who chose the Bible or why the Bible was chosen. Defendants do not know whether Wesley asked the Plaintiff to read a passage from the Bible to his classmates. Defendants do not know who chose to read Psalm 118.

3.6 Admitted in part, denied in part. It is admitted that the Plaintiff asked Mrs. Reilly if it was “okay” that the Plaintiff read aloud some Psalms and that Mrs. Reilly told the Plaintiff

that Mrs. Reilly was not sure and that Mrs. Reilly would have to first check with her Principal, Thomas Cook. It is denied that Plaintiff informed Mrs. Reilly that Wesley desired that a passage be read from the Bible and that the Plaintiff intended to read Psalm 118. To the contrary, Plaintiff simply asked Mrs. Reilly if it was “okay” that the Plaintiff read aloud some Psalms to the kindergarten class and never stated to Mrs. Reilly that Wesley desired that a passage be read from the Bible. It is denied that Mrs. Reilly told the Plaintiff not to read aloud Psalm 118 to the kindergarten class. To the contrary, Mrs. Reilly told the Plaintiff that she was not sure if it was “okay” that the Plaintiff read aloud Psalms to the kindergarten class and that she would have to first check with her Principal, Thomas Cook.

3.7 Admitted in part, denied in part. It is admitted that Mrs. Reilly asked that Mr. Cook come to her classroom. It is denied that Mrs. Reilly took part in any meeting between the Plaintiff and Mr. Cook in the hallway. To the contrary, Mrs. Reilly remained in her classroom.

3.8 Admitted in part, denied in part. It is admitted that Mr. Cook requested that the Plaintiff not read aloud from the Bible to the kindergarten class because such a Bible reading would be prohibited by law. It is admitted that Mr. Cook stated to the Plaintiff that her reading aloud from the Bible to the kindergarten class would constitute proselytizing and that such conduct would thus violate the requirement of separation of church and state. It is denied that Mr. Cook in any way ordered the Plaintiff not to read aloud from the Bible to the kindergarten class. To the contrary, he requested that she not do so, and she complied with his request. It is denied that Mr. Cook spoke to the Plaintiff in a loud enough voice to be heard by any of the children in the classroom, including Wesley. To the contrary, he spoke in a normal tone of voice; no one in the classroom could hear him; and there was no one in the hallway in any position to hear him.

3.9 Admitted in part, denied in part. It is admitted that the Plaintiff questioned Mr. Cook regarding his request that she not read aloud from the Bible to the kindergarten class. It is denied that Mr. Cook stated to the Plaintiff that Rosh Hashanah is not a religious holiday. To the contrary, Mr. Cook never described Rosh Hashanah to the Plaintiff in those terms. It is denied that Mr. Cook characterized *Gershon's Monster* in the way which the Plaintiff alleges. To the contrary, Mr. Cook stated that *Gershon's Monster* is a story related to Jewish culture and the Jewish holiday of Rosh Hashanah is not a religious writing and is available in the Culberston Elementary School Library along with many books about other holidays, including Christian holidays.

3.10 Admitted in part, denied in part. It is admitted that Mr. Cook requested that the Plaintiff not read aloud from the Bible to the kindergarten class and that the Plaintiff complied with his request. It is admitted that Mrs. Reilly offered the Plaintiff the opportunity to read aloud from several children's stories within her classroom, including some about Halloween. It is admitted that the Plaintiff declined to read any children's story about Halloween for the stated reason that she does not observe Halloween; instead, the Plaintiff chose to read aloud to the kindergarten class a children's story about counting. By way of further answer, Defendants do not know who chose to read aloud from Psalm 118 to the kindergarten class. Defendants do not know why the Plaintiff declined to read aloud from any of the children's stories about Halloween. Defendants do not know why the Plaintiff chose to read aloud the children's story about counting. Therefore, each of these allegations is denied. It is further denied that Mr. Cook prevented the Plaintiff from reading aloud from the Bible to the kindergarten class. After reasonable investigation, Defendants do not have knowledge or information sufficient to form a

belief about the truthfulness of Plaintiff's allegation that a parent dressed as a witch interrupted her reading aloud the children's story about counting, and therefore deny this allegation.

3.11 Denied. By way of further answer, it is denied that Defendant ever attempted to suppress the right of Christians to freely express their religious beliefs. To the contrary, at all material times, the Defendants acted with neutrality toward all religious beliefs.

3.11(a) Denied. By way of further answer, it is denied that any student – or parent – was ever allowed to read aloud a book about Judaism to the kindergarten class as part of the “All About Me” week classroom exercise. To the contrary, no student – or parent – ever read aloud or was allowed to read aloud any book about Judaism under such circumstances.

3.11(b) Denied. By way of further answer, it is denied that any student – or parent – was ever allowed to teach the kindergarten class the dreidel game as part of the “All About Me” week classroom exercise. To the contrary, no student – or parent – ever taught or was allowed to teach the kindergarten class the dreidel game under such circumstances.

3.11(c) Denied. By way of further answer, it is denied that any student – or parent – was ever allowed to place the Star of David on the monthly calendar as part of the “All About Me” week classroom exercise. To the contrary, no student – or parent – ever placed or was allowed to place the Star of David on the monthly calendar under such circumstances.

3.11(d) Denied. By way of further answer, it is denied that any student – or parent – was ever allowed to instruct students on how to create a laminated cover for a song book, which had the Star of David and the Menorah on the cover, as part of the “All About Me” week classroom exercise. To the contrary, no student – or parent – ever instructed or was allowed to instruct students on how to create a laminated cover for a song book, which had the Star of David and the Menorah on the cover, under such circumstances.

3.11(e) Denied. By way of further answer, it is denied that any student – or parent – was ever allowed to participate in making decorations to remember the Jewish holiday of Hanukkah by creating the Star of David and Menorah decorations as part of the “All About Me” week classroom exercise. To the contrary, no student – or parent – ever participated or was allowed to participate in making decorations to remember the Jewish holiday of Hanukkah by creating the Star of David and Menorah decorations, under such circumstances. Further, it is denied that any student – or parent – ever asked permission to make, let alone was prohibited from making, Christmas decorations as part of the “All About Me” week classroom exercise. To the contrary, no student – or parent – ever asked permission to make, let along was prohibited from making, Christmas decorations under such circumstances.

3.11(f) Denied. By way of further answer, it is denied that any student – or parent – was ever allowed to insist that the kindergartners and first graders place a witch’s finger on their finger while they were reading, as part of the “All About Me” week classroom exercise. To the contrary, no student – or parent – was ever allowed to insist that the kindergartners and first graders place a witch’s finger on their finger while they were reading, under such circumstances.

3.12 Admitted in part, denied in part. It is admitted that Mrs. Reilly occasionally placed on the top of her monthly weather calendar forms and of her weekly newsletters, certain symbols of the various seasonal holidays, including Christmas, Hanukkah and Kwanzaa. To the extent that this allegation refers to paperwork or circumstances other than the above, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of this allegation, and therefore it is denied.

3.13 Admitted in part, denied in part. It is admitted that Culbertson Elementary School displayed a tree which school officials referred to as a “giving tree.” School officials referred to

this tree in this manner because they intended it to symbolize a holiday gift-giving program in which the school's students were encouraged to participate; school officials did not refer to this tree in this manner for the reason that a "Christmas Tree" has a connection to a Christian religious holiday. It is further admitted that the Defendants did not require that the Menorah be called by a different name; students and parents were free to refer to the Menorah by that name if they so chose. It is denied that the Defendant refused to allow this tree to be called a "Christmas Tree" or insisted that it be referred to as a "giving tree." To the contrary, students and parents were free to refer to the tree as a "Christmas Tree" if they so chose.

3.14 Denied. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of this allegation, and therefore it is denied.

3.14(a) Denied. By way of further answer, it is denied that Wesley showed to any school officials any alleged signs of frustration about going to school. To the contrary, Wesley did not show to any school officials any alleged signs of frustration about going to school.

3.14(b) Denied. By way of further answer, it is denied that Mrs. Reilly told Wesley that it was bad to read the Bible. To the contrary, Mrs. Reilly never told Wesley that it was bad to read the Bible.

### **FIRST CLAIM**

4.1 Paragraphs 1.1 through 3.14 are incorporated as if fully set forth herein.

4.2 Denied.

4.3 Admitted in part, denied in part. It is admitted that Plaintiff, Donna Kay Busch, was a parent of Wesley Busch, a pupil at Culbertson Elementary School. The remainder of the allegations in the paragraph are denied.

4.4 Denied.

4.5 Admitted.

4.6 Denied. By way of further answer, Defendants deny that there was a violation of the First Amendment rights of Plaintiff and Wesley Busch.

4.7 Denied.

### **SECOND CLAIM**

5.1 Paragraphs 1.1 through 4.7 are incorporated as if fully set forth herein.

5.2 Denied.

5.3 Admitted in part, denied in part. It is admitted that Plaintiff, Donna Kay Busch, was a parent of Wesley Busch, a pupil at Culbertson Elementary School. The remainder of the allegations in the paragraph are denied

5.4 Denied.

5.5 Admitted.

5.6 Denied. By way of further answer, Defendants deny that there was a violation of the First Amendment rights of Plaintiff and Wesley Busch

5.7 Denied.

### **THIRD CLAIM**

6.1 Paragraphs 1.1 through 5.7 are incorporated as if fully set forth herein.

6.2 Denied. By way of further answer, Defendants did not restrict the speech and expression of Plaintiff and Wesley Busch.

6.3 Denied.

6.4 Denied.

### **FOURTH CLAIM**

7.1 Paragraphs 1.1 through 6.4 are incorporated as if fully set forth herein.

7.2 Denied. By way of further answer, Defendants did not restrict the speech and expression of Plaintiff and Wesley Busch.

7.3 Denied.

7.4 Denied.

#### **FIFTH CLAIM**

8.1 Paragraphs 1.1 through 7.4 are incorporated as if fully set forth herein.

8.2 Denied.

8.3 Denied. By way of further answer, Defendants did not engage in disparate treatment of and discrimination against the Plaintiff and Wesley.

8.4 Denied. By way of further answer, Defendants did not engage in disparate treatment of and discrimination against the Plaintiff and Wesley.

8.5 Denied.

#### **SIXTH CLAIM**

9.1 Paragraphs 1.1 through 8.5 are incorporated as if fully set forth herein.

9.2 Denied.

9.3 Denied. By way of further answer, Defendants did not engage in disparate treatment of and discrimination against the Plaintiff and Wesley.

9.4 Denied. By way of further answer, Defendants did not engage in disparate treatment of and discrimination against the Plaintiff and Wesley.

9.5 Denied.

**DEFENDANTS, MARPLE NEWTOWN SCHOOL DISTRICT,  
MARPLE NEWTOWN SCHOOL DISTRICT BOARD OF DIRECTORS,  
ROBERT MESAROS AND THOMAS COOKS' AFFIRMATIVE DEFENSES**

AND NOW, comes the Defendants, Marple Newtown School District, Marple Newtown School District Board of Directors, Robert Mesaros and Thomas Cook, by and through their attorneys, Mark A. Sereni, Esquire and Sweet, Stevens, Tucker & Katz LLP to present the following Affirmative Defenses:

**FIRST AFFIRMATIVE DEFENSE**

The Individual Defendants are entitled to qualified immunity.

**SECOND AFFIRMATIVE DEFENSE**

There is no policy, practice, or custom sufficient to establish liability pursuant to 42 U.S.C. § 1983, and Plaintiff's Complaint should be dismissed.

**THIRD AFFIRMATIVE DEFENSE**

Defendants did not create, and did not intend to create, any public forum for First Amendment expression within the context of the "All About Me" week classroom exercise.

**FOURTH AFFIRMATIVE DEFENSE**

Defendants have the right to set reasonable restrictions as to time, place and manner.

**FIFTH AFFIRMATIVE DEFENSE**

Defendants have the right to set reasonable restrictions based upon age-appropriateness of subject matter and/or other pedagogical concerns.

**RESERVATION OF DEFENSES**

Defendants shall rely upon such further affirmative defenses which may become apparent during the course of discovery and therefore, specifically reserve the right to assert the same.

**WHEREFORE**, the Defendants, Marple Newtown School District, Marple Newtown School District Board of Directors, Robert Mesaros and Thomas Cook, respectfully request that Plaintiff's claims be denied and the Plaintiff's Complaint be dismissed and judgment be entered in favor of the Defendants. The Defendants respectfully request all additional relief, legal and/or equitable, to which it may be entitled.

Respectfully submitted,

DIORIO & SERENI, LLP

Date: June 8, 2005

By: /s/ Mark A. Sereni  
Mark A. Sereni, Esquire Atty. I.D. #50090  
Front and Plum Streets, P.O. Box 1789  
Media, PA 19063  
Attorney for Defendants,  
Marple Newtown School District, Marple Newtown  
School District Board of Directors, Robert Mesaros  
and Thomas Cook

SWEET, STEVENS, TUCKER & KATZ, LLP

Date: June 8, 2005

By: /s/ Ellis H. Katz  
Ellis H. Katz, Atty. I.D. #34835  
331 Butler Avenue, P.O. Box 5069  
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Marple Newtown School District, Marple Newtown  
School District Board of Directors, Robert Mesaros  
and Thomas Cook

IN THE UNITED STATES DISTRICT COURT  
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DONNA KAY BUSCH, in her individual )  
capacity and as the parent and next friend )  
of Wesley Busch, a minor, )

Plaintiff, )

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MARPLE NEWTOWN SCHOOL )  
DISTRICT, MARPLE NEWTOWN )  
SCHOOL DISTRICT BOARD OF )  
DIRECTORS, ROBERT MESAROS, )  
Superintendent of the Marple Newtown )  
School District, and THOMAS COOK, )  
Principal of Culbertson Elementary )  
School, )

Defendants )

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**CERTIFICATE OF SERVICE**

I, Ellis H. Katz, Esquire, counsel for the Defendants, Marple Newtown School District, Marple Newtown School District Board of Directors, Robert Mesaros and Thomas Cook , hereby certify that a true and correct copy of the foregoing Answer to Plaintiff's Complaint with Affirmative Defenses is available through the Court's ECF filing system and also mailed to the following counsel at the following address, *via* U.S. First Class Mail, on this date:

L. Theodore Hoppe, Jr., Esquire  
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DIORIO & SERENI, LLP

Date: June 8, 2005

By: /s/ Mark A. Sereni

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Marple Newtown School District, Marple Newtown  
School District Board of Directors, Robert Mesaros  
and Thomas Cook

SWEET, STEVENS, TUCKER & KATZ LLP

Date: June 8, 2005

By: /s/ Ellis H. Katz

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