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United States District Court,S.D. Indiana, Indianapolis Division.

Nancy HODGKINS and C.H., by her next friend and natural parent Nancy Hodgkins, each on their own behalf and on behalf of those similarly situated, Plaintiffs,

v.

Bart PETERSON, in his official capacity as Mayor of the City of Indianapolis, Indiana, Frank J. Anderson, in his official capacity as Marion County Sheriff, Carl Brizzi, in his official capacity as Marion County Prosecutor, Defendants,

andSTATE of Indiana, Intervenor.

No. 1:04-CV-569-JDT-TAB.

July 23, 2004.

ENTRY ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND DEFENDANTS' MOTION TO STRIKE EXPERT TESTIMONY

TINDER, J.

***1** The Plaintiffs claim that Indiana's current version of its juvenile curfew law is unconstitutional because it violates the substantive due process rights of juveniles' parents and guardians as well as the substantive due process and equal protection rights of juveniles. The court previously held that a prior version of Indiana's juvenile curfew law and an Indianapolis curfew ordinance did not violate the due process rights of parents. *Hodgkins v. Peterson,* No. IP00-1410-C-T/G, 2000 WL 33128726 (S.D.Ind. Dec. 14, 2000) (*Hodgkins II*) (Indianapolis ordinance); *Hodgkins ex rel. Hodgkins v. Peterson,* 175 F.Supp.2d 1132, 1156-57 (S.D.Ind.2001) (Indiana law), *rev'd on other grounds,* 355 F.3d 1048 (7th Cir.2004) (*Hodgkins III*). The Plaintiffs move for a preliminary injunction, seeking an order enjoining the Defendants from enforcing the curfew law. The motion has been fully briefed, and the court has heard oral argument. This entry sets forth the court's Findings of Fact and Conclusions of Law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

I. FINDINGS OF FACT [FN1]

FN1. Any finding of fact more appropriately considered a conclusion of law should be treated as such, and vice versa. The headings contained herein are not controlling.

The Plaintiffs have challenged prior versions of Indiana's curfew law and an Indianapolis curfew ordinance, with varying success. Earlier this year in *Hodgkins ex rel. Hodgkins v. Peterson,* 355 F.3d 1048 (7th Cir.2004), the Seventh Circuit reversed this court's decision and held that a prior version of Indiana's curfew law was unconstitutional in that it impermissibly infringed on minors' First Amendment rights. In response to the Seventh Circuit's decision, the Indiana legislature amended its juvenile curfew law, effective March 17, 2004. The Plaintiffs contend that the law as amended is unconstitutional because it impermissibly infringes on the rights of parents to control the upbringing of their children and on the collateral right of minors to be out in public places with parental permission.

Under Indiana's juvenile curfew law, it is a curfew violation for a child fifteen, sixteen or seventeen years of age to be in a public place: "(1) between 1 a.m. and 5 a.m. on Saturday or Sunday; (2) after 11 p.m. on Sunday, Monday, Tuesday, Wednesday, or Thursday; or (3) before 5 a.m. on Monday, Tuesday, Wednesday, Thursday, or Friday ." Ind.Code § 31-37-3-2(a). For a child under fifteen years of age, it is a curfew violation to be out in public after 11 p.m. or before 5 a.m. any day of the week. Ind.Code § 31-37-3-3. The most recent amendment to the curfew law provides:

A law enforcement officer may not detain a child or take a child into custody based on a violation of this section [the curfew law] unless the law enforcement officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that:

(1) the child has violated this section; and

(2) there is no legal defense to the violation.

Ind.Code § 31-37-3-2(b); Ind.Code § 31-37-3-3(b). A curfew violation is a delinquent act. Ind.Code § 31-37-2-5. A parent who allows his or her child to violate the curfew law is subject to criminal liability for contributing to the delinquency of a minor. *See* Ind.Code § 35-46-1-8(a).

*2 Legal defenses to a curfew violation are set forth in the statute. It is a defense that the child was emancipated at the time the child engaged in the prohibited conduct. Ind.Code § 31-37-3-3.5(a). It is also a defense that the child was:
(1) accompanied by the child's parent, guardian, or custodian;
(2) accompanied by an adult specified by the child's parent, guardian, or custodian;
(3) participating in, going to, or returning from:
(A) lawful employment;
(B) a school sanctioned activity;
(C) a religious event;
(D) an emergency involving the protection of a person or property from an imminent threat of serious bodily injury or substantial damage;
(E) an activity involving the exercise of the child's rights protected under the First Amendment to the United States Constitution or Article 1, Section 31 of the Constitution of the State of Indiana, or both, such as freedom of speech and the right of assembly; or
(F) an activity conducted by a nonprofit or governmental entity that provides recreation, education, training, or other care under the supervision of one (1) or more adults; or
(4) engaged in interstate or international travel from a location outside Indiana to another location outside Indiana.

Ind.Code § 31-37-3-3.5(b).

Plaintiff Nancy Hodgkins is the mother of one minor child, C.H., who is seventeen years of age. (Nancy Hodgkins Aff. ¶ 2.) Ms. Hodgkins states that there have been and are times when she wants her children to be able to lawfully remain out past curfew hours, with her permission and without being accompanied by parents or adults. (*Id.* ¶ 6.) She would like her daughter, for example, to be able to work on school work, run errands or socialize with friends. (*Id.*) At times, her daughter may study at a friend's home and Ms. Hodgkins would like her to be able to study past 11:00 p.m. if necessary without risking arrest when she returns home. (*Id.*) Ms. Hodgkins' husband was recently hospitalized with a serious illness and in, such a situation, she would like her daughter to be able to visit her father past 11:00 p.m. on a week day and not have to worry about being arrested on her way home. (*Id.* ¶ 8.) Ms. Hodgkins believes that a parent has the right to give her children more privileges and responsibilities as they age, if she believes the children can handle them. (*Id.* ¶ 9.) She also believes this is part of a parent's job of preparing her children for adulthood. (*Id.*) Ms. Hodgkins thus believes that a parent should have the right to decide whether her child is mature enough to accept the responsibility of being out late, possibly after curfew. (*Id.*)

In the instant case, as in the previous litigation, the Defendants claim that the curfew law serves the governmental interest in reducing juvenile crime and victimization, and assisting parents by allowing law enforcement officers to inform them about their children's nocturnal activities and assisting them in enforcing their own rules for their children. Captain David M. Allender, in charge of the juvenile branch of the Indianapolis Police Department ("IPD") and designated by Indianapolis Mayor Bart Peterson to testify at a deposition in this case pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure (Allender Dep. at 5-6), testified that the curfew allows law enforcement to "be an extra set of eyes for the parents" and let them know what their children are doing. (*Id.* at 34.) [FN2] He also indicated that the curfew gets children off the streets and into their homes where "hopefully they're not going to be victimized late at night." (Allender Dep. at 35.) [FN3]

FN2. Much the same was stated in 2000 by IPD Officer Jeffrey S. Decker and Timothy J. Motsinger of the Marion County Sheriff's Department. (Decker Aff. ¶ ¶ 26-28; Motsinger Aff. ¶ ¶ 19, 21.)

FN3. This was expressed by Officers Decker and Motsinger as well. (Decker Aff. ¶ ¶ 15-16; Motsinger Aff. ¶ 20.)

*3 The Local Defendants (Mayor Peterson, Sheriff Anderson and Prosecutor Brizzi) have presented statements of other law enforcement officers and a deputy prosecutor (the same evidence presented in *Hodgkins II*) regarding the perceived need for the curfew. Officer Jeffrey S. Decker, then Lieutenant with the IPD stated that in his experience, "IPD devotes the greatest amount of street manpower to the hours between 7 p.m. to 3:30 a.m., which coincides with the time of day when IPD receives the most calls pertaining to criminal matters or when IPD officers are investigating the greatest number of criminal offenses" (Local Defs .' Desig. Evid., Ex. C., Decker Aff. ¶ ¶ 3, 10), in his observation, "crime is generally up during the late night/early morning hours" (*id.* ¶ 12), and "the curfew hours are, in my experience, the most dangerous hours for juveniles to be out ... without adult supervision[.]" (*Id.* ¶ 14). Timothy J. Motsinger, then Deputy Chief of

Administration of the Marion County Sheriff's Department, said in 2000 that in his experience, "crime is generally heightened during the nighttime hours, particularly during the hours of 11 p.m. to 4 a.m." (Local Defs.' Desig. Evid., Ex. D, Motsinger Aff. ¶¶ 2, 17.)

Captain Allender testified that crime builds up in the late afternoon and early evening and then by 11:00 p.m. starts declining, and the number of reported crimes goes down in the late evening and early morning hours. (Allender Dep. at 32-33.) He noted that Indianapolis generally mirrors national crime statistics. (*Id.* at 34.) According to Captain Allender, although the amount of crime decreases in the evening, the number of people on the street goes down, and he "would hazard to guess that ... there's a higher percentage of those people victimized in the evening or the late morning hours than there are in the daytime." (*Id.* at 34-35.)

Moreover, statistics from IPD illustrate that crime in Indianapolis declines during curfew hours. (Local Def.'s Desig. Evid ., Ex. E at 67.) The statistics reveal that the most dangerous hours of the day as reflected by the number of crimes reported by the hour are: (1) 12:00 p.m. to 12:59 p.m. (2,220 crimes reported); (2) 10:00 p.m. to 10:59 p.m. (1,925 crimes reported); and (3) 6:00 p.m. to 6:59 p.m. (1,872 crimes reported). (*Id.*) [FN4] The most dangerous hour during which the curfew is in effect is from 11:00 p.m. to 11:59 p.m., and that hour comes in 6th in the rankings of the most dangerous hours of the day. (*Id.*) The other hours covered by the curfew rank 12th, 14th, 19th, 20th and 23rd in number of crimes reported. (*Id.*) [FN5] Thus, some of the hours for which the curfew is in effect are some of the safest hours of the day as reflected by the statistics of crimes reported. [FN6]

FN4. For 2,656 crimes the hour the crime was reported is unknown. (*Id.*) Nothing suggests that these crimes were reported during curfew hours, however.

FN5. The report notes that if an officer does not state a time in his report, the reporting center frequently uses 0000 (12:00 a.m.), so the number of crimes shown as reported between 12:00 a.m. and 12:59 a.m. may be artificially high (*id.*); thus, this time of day actually may be less dangerous than is reflected in the report.

FN6. The curfew hours, though, are some of the most dangerous for officers, based on officer assaults. (*Id.* at 69.) No attempt has been made to draw any connection between the danger to juveniles or juvenile crime and officer assaults, however.

Captain Allender agreed that most juvenile crime occurs in the hours immediately after school until the early evening. (Allender Dep. at 46.) The statistics show that based on the number of arrests, serious juvenile crime declines in Indianapolis during curfew hours. (Local Def.'s Desig. Evid., Ex. H.) [FN7] For the years 2001 through 2003, there were 4,103 juvenile arrests for UCR Part One offenses, of which 487 were during curfew hours. [FN8] Captain Allender testified that most juveniles who are going to commit a crime will do so regardless of the existence of a curfew law. (Allender Dep. at 48.)

FN7. The Plaintiffs created the chart in Exhibit H by comparing the numbers from page 70 of IPD's Uniform Crime Report ("UCR"), Exhibit E to the Local Defendants' Designation of Evidence, with the numbers from Exhibit 11 to Captain Allender's deposition. Exhibit 11 lists all juvenile arrests for UCR Part One offenses (murder, non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson) between 11:00 p.m. and 5:00 a.m. from May 2000 through December 2003. (Allender Dep. at 28-29; Local Defs.' Desig. Evid., Ex. E at 57.) Exhibit 11 does not distinguish between assaults and aggravated assaults; thus, the Plaintiffs' chart found at Exhibit H includes all assaults. The Plaintiffs represent that the chart excludes arrests of 15-17 year olds from the category of arrests during curfew hours if the arrest occurred before 1:00 a.m. during the weekends as the curfew begins at 1:00 a.m. on Saturdays and Sundays. (Pls.' Reply Mem. at 2 n. 1.) No comparison was made for non-UCR Part One juvenile offenses.

FN8. During curfew hours from 2001 through 2003, juveniles committed 4 murders, 10 forcible rapes, 22 robberies, 63 burglaries, 124 vehicle thefts, 192 assaults and 0 arsons. (Local Defs.' Desig. Evid ., Ex. H.)

***4** Captain Allender is unaware of any statistics

which show a curfew reduces juvenile crime or victimization during the times it is in effect. (*Id.* at 36.) He is unaware of any statistics regarding the rate of criminal behavior or victimization of juveniles who are out during curfew hours with parental permission, or who are out because they are traveling to or from work, school, religious or First Amendment activities, or activities conducted by a not-for-profit or governmental entity. (*Id.* at 36-37.)

It was confirmed by Captain Allender that under the current version of Indiana's curfew law, law enforcement officers have to independently verify the non-existence of the statutory defenses to a curfew violation before an arrest for a curfew violation can be made. (*Id.* at 10-11, 38-39.) The captain anticipated problems in implementing a parental permission defense to the curfew law. In particular, he perceived problems in verifying the non-existence of a parental permission defense based on difficulty in determining which parent has guardianship, difficulties presented when a child has been placed in foster care, and because of incentives that both the minors and parents may give false information about whether parental permission was granted. (*Id.* at 39-40, 51-52.) However, Captain Allender conceded that similar problems may arise in applying the defenses available under the current law such as verifying that a juvenile out during curfew hours was returning from work if the business was closed and in attempting to verify that a minor out accompanied by a person over age eighteen had parental permission to be out with the adult. (*Id.* at 39.)

II. MOTION TO STRIKE EXPERT TESTIMONY

The Plaintiffs have relied on the expert witness testimony of Michael Males, Ph.D., a sociologist, and studies to establish that juvenile curfew laws have not been shown to reduce crime, juvenile offenses or juvenile victimization. Dr. Males studied the effectiveness of nocturnal juvenile curfew laws in Vernon, Connecticut and several cities in California. (Males Aff. ¶ 4.) From these studies, he concludes that there is no statistical evidence that a nocturnal juvenile curfew leads to lower crime levels and reduction of juvenile crime or victimization in the cities studied. (*Id.* ¶ ¶ 6, 7.) He also cites other literature which conclude that there is no empirical support for the hypothesis that curfews prevent crime and victimization. (*Id.* ¶ 8.) The Local Defendants move to strike the expert witness testimony of Dr. Males on the grounds that his opinions regarding the efficacy of curfew laws in reducing juvenile crime or victimization are irrelevant and immaterial.

The Plaintiffs concede that Dr. Males' general conclusions about the efficacy of curfew laws based on experiences in other cities do not automatically apply to Indiana. *Cf. A Woman's Choice East-Side Women's Clinic v. Newman,* 305 F.3d 684, 689-92 (7th Cir.2002) (concluding that empirical studies of the effects of abortion informed-consent laws in Mississippi and Utah did not predict the effects of a like law in Indiana), *cert. denied,* 537 U.S. 1192 (2003); *Karlin v. Foust,* 188 F.3d 446, 488 (7th Cir.1999) ("not only would plaintiffs have us overlook the district court's rejection of plaintiffs' causation evidence, but they ask us to apply the Mississippi Study's suspect conclusions on the Mississippi experience to Wisconsin. We decline to do so."). Dr. Males stated that he had not reviewed any statistical evidence or other data related to Indianapolis, Indiana or Marion County regarding the effectiveness of Indiana's curfew law (Males Aff. ¶ ¶ 6-7, 9; Males Dep. at 56-57.) He testified that the conclusions from his studies could not be extrapolated to a different city without further analysis (Males Dep. at 22-23), indicating that "you can't extrapolate from ten or fifteen valid studies of curfews the effect on any one particular city." (*Id.* at 26.) Dr. Males therefore testified he had no opinion whether his studies have any predictive value for what would happen in Indiana. (*Id.* at 23-24.)

*5 The court concludes that Dr. Males' testimony fails to support a logical conclusion regarding the effect of Indiana's juvenile curfew law. *Cf. A Woman's Choice,* 305 F.3d at 699 (Coffey, J., concurring) ("It is impossible to come to a well-reasoned and logical conclusion based on the record before us whether the laws of the state of Indiana will have a similar impact as Mississippi's laws."). Therefore, Dr. Males' opinions and testimony are irrelevant and inadmissible. *See Gen. Elec. Co. v. Joiner,* 522 U .S. 136, 144-45 (1997) (expert studies based on data that was "so dissimilar to the facts presented in this litigation" were irrelevant and inadmissible); *Daubert v. Merrell Dow Pharm., Inc.,* 509 U.S. 579, 591-92 (1993) (expert studies that fail to establish "a valid scientific connection to the pertinent inquiry" are irrelevant and inadmissible).[FN9] Accordingly, the Local Defendants' Motion to Strike Expert Testimony is GRANTED.

FN9. His opinions and the studies and literature upon which he relies are of the same status as the study upon which the

Defendants rely from the U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention bulletin on juvenile curfews. (*See* Local Defs.' Desig. Evid., Ex. F.) Were the court to conduct a rational basis review, these studies might have some bearing on the issues in this case. But, as discussed below, the court must conduct a more exacting review of the curfew law. Dr. Males' opinions are not critical to the Plaintiffs' case. In fact, as discussed *infra,* the Plaintiffs can establish a likelihood of success on the merits without his opinions.

III. CONCLUSIONS OF LAW

The Plaintiffs seek to preliminarily enjoin enforcement of Indiana's juvenile curfew law. To prevail on a motion for a preliminary injunction, a party must make a preliminary showing that (1) her case has a likelihood of success on the merits; (2) she has no adequate remedy at law; and (3) she will suffer irreparable harm if the injunction is not granted. *Hodgkins ex rel. Hodgkins v. Peterson,* 355 F.3d 1048, 1055 (7th Cir.2004). If these are shown, then the court must balance the irreparable harm to the petitioner if the injunction is not issued against the irreparable harm to the respondent if the injunction is issued, and consider whether the preliminary injunction is in the public interest. *FoodComm Int'l v. Barry,* 328 F.3d 300, 303 (7th Cir.2003). Here, the Defendants contest only whether the Plaintiffs can show a likelihood of success on the merits.[FN10]

FN10. "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Campbell v. Miller,* No. 03-3018,-F.3d-, 2004 WL 1432328, at *4 (7th Cir. June 28, 2004) (Williams, J ., dissenting) (quotation and citation omitted). Proof of irreparable harm "is probably the most common method" of showing an inadequate remedy at law. *Id.* (quotation omitted). Further, defendants "cannot reasonably assert that [they are] harmed in any legally cognizable sense by being enjoined from constitutional violations." *Id.* (quotation omitted). So, if the Plaintiffs show a likelihood of success on the merits, then they also can show irreparable harm, no adequate remedy at law, and that the balance of harms and public interest favor an injunction.

The Supreme Court has recognized that the right of parents to make decisions concerning the care, custody, and control of their children is a fundamental liberty interest protected by the Due Process Clause. *Troxel v. Granville,* 530 U.S. 57, 65-66 (2000) (plurality opinion) ("it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."); *Pierce v. Society of Sisters,* 268 U.S. 510, 534-535 (1925) (holding that the liberty interest of parents and guardians includes the right "to direct the upbringing and education of children under their control"); *Meyer v. Nebraska,* 262 U.S. 390, 399, 401 (1923) (holding the Due Process Clause includes the right of parents to "establish a home and bring up children" and to "control the education of their own"); *see also Wisconsin v. Yoder,* 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."). Even *Prince v. Massachusetts,* 321 U.S. 158 (1944), which rejected a claim that the state could not prevent a child accompanied by her guardian from selling religious literature on the street, confirms the fundamental right of parents to direct their children's upbringing. *Id.* at 159-61. The Court said that "[a]cting to guard the general interest in youth's well-being, the state as *parens patriae* may restrict the parent's control.... [T]he state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare[.]" *Id.* at 166-67. The Court stated that the streets may pose dangers for children not affecting adults and emphasized the evils of child employment and the dangers of propagandizing religion on the streets. *Id.* at 168-170. Nonetheless, *Prince* recognizes "the private realm of family life which the state cannot enter." *Id.* at 166. In fact, the Court stated: "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.* Thus, under *Prince,* the State may interfere with parents' rights to control their children where the interference is justified in order to protect the children's welfare.

***6** This court held in *Hodgkins II* and *Hodgkins III* that an Indianapolis curfew ordinance and a prior

version of Indiana's curfew law did not violate the due process rights of parents. *Hodgkins v. Peterson*, No. IP00-1410-C-T/G, 2000 WL 33128726, at *10-12 (S.D.Ind. Dec. 14, 2000); *Hodgkins ex rel. Hodgkins v. Peterson*, 175 F.Supp.2d 1132, 1156-57 (S.D.Ind.2001), *rev'd on other grounds*, 355 F.3d 1048 (7th Cir.2004). However, reconsideration leads the court to a different conclusion this time: The curfew law violates the fundamental due process right of parents to make decisions about their children's upbringing without undue interference by the state.

In *Hodgkins II* and *Hodgkins III*, the court described the asserted right as "the right of parents to allow their children to be in public places without adult supervision during curfew hours," *Hodgkins II*, 2000 WL 33128726, at *7, and "the right of parents to allow their minor children to be in public with parental permission during curfew hours." *Hodgkins III*, 175 F.Supp.2d at 1156-57. Though the court attempted to carefully describe the right at stake, *see, e.g., id.* at 1155-57, it now believes that these descriptions are too specific. The court read *Washington v. Glucksberg*, 521 U.S. 702, 721-22 (1997) ("the question before us is whether the 'liberty' specially protected by the Due Process Clause includes a right to commit suicide which itself includes a right to assistance in doing so"), *Reno v. Flores*, 507 U.S. 292, 302 (1993) (describing the asserted right as "the alleged right of a child who has no available parent, close relative, or legal guardian, and for whom the government is responsible, to be placed in the custody of a willing-and-able private custodian rather than of a government-operated or government-selected child-care institution"), *Collins v. City of Harker Heights, Texas*, 503 U.S. 115, 126 (1992) (describing the claim asserted as "the governmental employer's duty to provide its employees with a safe working environment"), and *Bowers v. Hardwick*, 478 U.S. 186, 190 (1986) (identifying the issue as whether the Constitution "confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal"), as requiring a very precise description of the asserted right. In *Troxel v. Granville*, however, the Supreme Court identified the asserted right in more general terms: "The liberty interest at issue in this case [is] the interest of parents in the care, custody, and control of their children [.]" *Troxel*, 530 U.S. at 65; *see also id.* at 70 (referring to "Granville's fundamental constitutional right to make decisions concerning the rearing of her own daughters"); *id.* at 75 (holding that the visitation statute as applied violated Granville's "due process right to make decisions concerning the care, custody and control of her daughters"). Thus, the court concludes that its earlier definitions of the asserted right in *Hodgkins II* and *Hodgkins III* were too specific and failed to appreciate the extent of the liberty interest at stake. *Cf. Lawrence v. Texas*, 539 U.S. 558,-, 123 S.Ct. 2472, 2478 (2003) (stating that *Bowers* misapprehended the claimed liberty as the fundamental right of homosexuals to engage in consensual sodomy).

*7 The claimed liberty in this case involves more than just the parents' right to allow their minor children to be in public places with their permission and without direct supervision during curfew hours. The curfew law restrains the parents' exercise of their authority to make decisions concerning their children's upbringing. The earlier view that the parental rights at stake were of a lesser quality than those at issue in cases such as *Troxel*, *Meyer* and *Pierce* was incorrect. That view was based on the description of the asserted right in too narrow terms. The court is now of the opinion that its earlier definitions, and that maintained by the Defendants in the instant case, confuse the question of defining the claimed right with the justification for the State's interference with that right. *See Hutchins v. Dist. of Columbia*, 188 F.3d 531, 554-55 (D.C.Cir.1999) (Rogers, J.) (concurring in part and dissenting in part) (explaining that to define a right as the "mirrorimage of a particular burden (i.e., the right to do the specific thing that a challenged rule prevents) tips the scales against recognizing the right"). It was the specificity in defining the claimed right in the earlier *Hodgkins* cases which led the court to conclude that (1) the asserted right was somehow "qualitatively different" than the fundamental parental rights recognized by the Supreme Court and (2) recognition of a fundamental right was contrary to common sense and sound judgment. *Hodgkins III*, 175 F.Supp.2d at 1162-63; *Hodgkins II*, 2000 WL 33128726, at *11-12. The Seventh Circuit's opinion in *Hodgkins III*, albeit in dicta, strongly implies that this court's distinction of the parental right at stake from fundamental parental rights was inappropriate. *Hodgkins III*, 355 F.3d at 1065.

The court believes that the liberty at stake in this case is the parents' interest in the care, custody, and control of their children. There can be no doubt that this a fundamental right protected by the Due Process Clause. *Troxel*, 530 U.S. at 65-66. A parent's fundamental right to control and direct her child's upbringing is "deeply rooted in this Nation's history

and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed ." *Glucksberg*, 521 U.S. at 720-21 (quotations and citations omitted). The court concludes that parents' fundamental rights to make decisions regarding the care, custody and control of their children includes the right to allow their minor children to be in a public place without direct parental supervision regardless of the time of day. *See Pierce*, 268 U.S. at 535 (recognizing that those who nurture and direct a child's destiny have the right, and the duty, to recognize and prepare their children for the additional obligations which adulthood brings); *see also Prince*, 321 U.S. at 166 ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom is to include preparation for obligations the state can neither supply nor hinder.").

***8** Because the right of parents to make decisions concerning the care, custody and control of their children is fundamental, that right may be infringed only if the infringement is narrowly tailored to serve a compelling state interest. *Glucksberg*, 521 U.S. at 721; *Reno v. Flores*, 507 U.S. 292, 302 (1993). On examination, the court concludes that Indiana's curfew law does not satisfy strict scrutiny.[FN11]

> FN11. The Court did not apply this standard in *Troxel*, employing instead a "combination of factors" test, 530 U.S. at 72-73; so, the appropriate standard may be unclear. However, the court employs strict scrutiny here because of the lack of clear direction from the Supreme Court to do otherwise and the parties agree that is the applicable standard for reviewing a law which infringes a fundamental right.

The Plaintiffs do not contest that the promotion of juvenile safety and reduction of juvenile crime are compelling state interests. The court finds that the State has a compelling interest in reducing juvenile crime and victimization.[FN12] *Cf. Hodgkins III*, 355 F.3d at 1059 (agreeing that government's interest in providing for the safety and well-being of children and combating juvenile crime is important and substantial). The dispute focuses on whether the curfew's infringement on parental rights is narrowly tailored to serve those interests. Though the Plaintiffs accept that there are potential harms to children (as well as adults) during nocturnal hours, they contend that the curfew law is not narrowly tailored because there has been no showing that it is necessary to substantially impinge on the fundamental rights of parents to further the State's interests.

> FN12. The Defendants also have asserted interests in assisting parents in child rearing and encouraging responsible parenting. However, as expressed in *Ramos v. Town of Vernon*, 353 F.3d 171 (2nd Cir.2003), the court "cannot help but observe the irony of the supposition that responsible parental decisionmaking may be promoted by the government removing decisionmaking authority from responsible parents and exercising that authority itself." *Id.* at 182. Anyway, it seems these interests are underpinned by the interests in preventing juvenile crime and victimization.

It is presumed that parents act in the best interests of their children. *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (plurality opinion) ("so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children"). Thus, it is the parents who are in the position to make the best decisions regarding the care and custody of their children, including whether their minor children are mature and responsible enough to be out during curfew hours. To overcome this constitutional presumption and justify removing that decisionmaking from the parents, it must be established by evidence that the infringement on parental rights advances the State's interests in reducing juvenile crime and victimization. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 230 (1972) ("This case ... is not one in which any harm to ... the child or to the public ... has been demonstrated or may be properly inferred. The record is to the contrary...."); *Stanley v. Illinois*, 405 U.S. 645, 652 (1972) ("We do not question the assertion that neglectful parents may be separated from their children. But we are here not asked to evaluate the legitimacy of the state ends, rather, to determine whether the means used to achieve these ends are constitutionally defensible."); *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944).

As noted in *Hodgkins I*, in every reported federal decision in which a curfew law was upheld against constitutional challenge, substantial evidence was produced by the government to support the law. *See*

Hutchins v. Dist. of Columbia, 188 F.3d 531, 542-44 (D .C. Cir.1999) (en banc) (plurality opinion) (the District's statistics showed that more than 50% of juvenile arrests took place during curfew hours, a substantial percentage (33%) of violent juvenile victimizations occurred on the streets, the deputy chief of police testified that the curfew had resulted in fewer juveniles on the streets and a 34% decrease in late-night juvenile arrests); *Schleifer ex rel. Schleifer v. City of Charlottesville*, 159 F.3d 843, 849-51 (4th Cir.1998) (finding the city "acted on the basis of information from many sources" including the city's own police department's records, a public opinion survey, Department of Justice reports, national crime reports, the curfew experiences of other cities, as well as evidence that the most serious juvenile crimes were committed during curfew hours, juvenile crime increased during curfew hours and the degree of violence and seriousness of crime as a whole increased at night), *cert. denied*, 526 U.S. 1018 (1999); *Qubt v. Strauss*, 11 F.3d 488, 493 (5th Cir.1993) (the city presented evidence that serious crimes such as murder, rape and aggravated assault were most likely to occur during curfew hours and in public), *cert. denied*, 511 U.S. 1127 (1994); *Bykofsky v. Borough of Middletown*, 401 F.Supp. 1242, 1255-56 (M .D. Pa.1975) (evidence presented that police received complaints against juveniles during nighttime hours, the plaintiff's expert testified minors under age 18 accounted for 25% of all nighttime arrests, the chief of police testified that nocturnal crime was increasing for youths age 16 and 17), *aff'd mem.*, 535 F.2d 1245 (3d Cir.), *cert. denied*, 429 U.S. 964 (1976).

***9** The Second Circuit's decision in *Ramos v. Town of Vernon*, 353 F.3d 171 (2nd Cir.2003) exemplifies what evidence is insufficient to support a curfew's infringement on constitutional rights. In *Ramos*, a mother and her two sons challenged the constitutionality of the Town of Vernon's juvenile curfew ordinance which prohibited any person under age eighteen to be in public during curfew hours with several exceptions. *Id.* at 172. The plaintiffs conceded that the protection of minors from harm and the protection of the community from juvenile crime were important government interests. *Id.* at 182. The court-applying intermediate scrutiny-determined that the ordinance was unconstitutional because the defendants did not establish that it was substantially related to an important governmental interest. *Id.* at 185-87. The court considered the evidence offered by the town to support the curfew, finding "a disconnect between the proof of purportedly problem hours and the curfew hours set out in the ordinance." *Id.* at 186. The court also found no showing "that the population targeted by the ordinance represented that part of the population causing trouble or that was being victimized (or that was even in particular danger of being victimized)." *Id.* The court held that the curfew ordinance was unconstitutional in that it infringed on the juvenile's equal protection rights insofar as it barred them from being on the streets with parental consent during curfew hours. *Id.* at 187.

A similar disconnect arises between the evidence and the curfew law in the instant case. While, of course, some crime and specifically juvenile crime occurs during curfew hours, the evidence is that the high crime hours are not the curfew hours. The evidence shows that crime builds up in the late afternoon and early evening and starts declining by 11:00 p.m.-the earliest at which the curfew takes effect-and juvenile crime in particular is more likely to occur in the afternoon and early evening. In fact, IPD's statistics show that the number of reported crimes in Indianapolis goes down in the late evening and early morning hours and, based on the number of arrests, serious juvenile crime also declines during curfew hours. Thus, the evidence refutes the "common sense" notion as well as the impressions of Officers Decker and Motsinger that crime and, specifically juvenile crime, increases during curfew hours.

Furthermore, the evidence does not show that most juvenile victimization occurs during curfew hours. Nor does the evidence suggest that the juvenile crime and victimization which does occur is more likely to occur in public rather than elsewhere. The statistics reveal that the hours between 12:00 p.m. to 12:59 p.m. and 6:00 p.m. to 6:59 p.m. are more dangerous in terms of crimes reported than any of the hours in which the curfew is in effect. Perhaps, then, it would make more sense to have a curfew during those hours. But most people would agree that would be absurd. The statistics also show that some of the hours in which the curfew is in effect are the safest hours of the day in terms of crimes reported. Finally, the evidence from Captain Allender is most juveniles who are going to commit a crime will not be deterred by the existence of a curfew law.

***10** Therefore, the evidence presently before this court fails to demonstrate the need for a juvenile curfew law to protect minors or reduce juvenile crime. Furthermore, the evidence produced by the Defendants does not show that Indiana's curfew law serves the State's interests of reducing juvenile crime or victimization so as to justify impinging on

fundamental parental rights.[FN13]

FN13. The court should not be understood as requiring the Defendants to establish to a scientific certainty the efficacy of Indiana's curfew law to withstand the parental rights challenge. The court imposes no such requirement. However, the Defendants must offer substantial evidence to support the infringement on parental rights. *Qutb v. Strauss*, 11 F.3d 488, 493 & n. 7 (5th Cir.1993) (requiring defendants to show that the means chosen fit the compelling goal), *cert. denied*, 511 U.S. 1127 (1994).

That leaves the Defendants with the following rationale: Even though the raw number of crimes committed during curfew hours is lower than during other hours, minors who are out in public late at night are more likely to become victimized because there are fewer people out and about. But this takes the Defendants back to nothing more than "common sense" or a hazard guess since no evidence has been offered to support this proposition. Deciding constitutional issues on such bases is a "dubious proposition." *Hodgkins v. Goldsmith*, No. IP99-1528-C-T/G, 2000 WL 892964, at *11 (S.D.Ind. July 3, 2000) (citing, *e.g.*, *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664, (1994) ("When the Government defends a regulation on speech as a means to address past harms or prevent anticipated harms, it must do more than simply posit the existence of the disease sought to be cured. It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.") (quotation omitted) (four-Justice plurality opinion); *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986) ("The First Amendment does not require a city ... to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.")). As the Second Circuit recently observed in *Ramos:*

[A]ssumptions about children may suffice to establish the significance of the government's interests and may even sustain the validity of a legislative enactment under a lower level of scrutiny, [but] assumptions will not carry the government's burden of showing the presence of the "requisite direct, substantial relationship," [*Miss. Univ. for Women v.*] *Hogan*, 458 U.S. [718] at 725, 102 S.Ct. 3331 [1982], between the factual premises that motivated the enactment of a curfew and its terms.

Ramos v. Town of Vernon, 355 F.3d 171, 186 (2nd Cir.2003).

To compound the lack of evidence of a need for or efficacy of a juvenile curfew law generally, the Defendants have no evidence of the crime or victimization rates of juveniles who are out in public during curfew hours with parental permission. Nor do they offer any evidence comparing these rates to those for juveniles who are out pursuant to one of the enumerated defenses to the curfew law. The court concludes that more specific, substantial evidence is necessary to sustain the curfew law against a constitutional challenge. *See Hodgkins I*, 2000 WL 892964, at *12.

***11** Even if the court were to assume without proof that minors out *without* parental permission may be likely to commit crimes or become victimized by crimes, it does not follow that minors out *with* parental permission are likely criminals or victims. Given the presumption that fit parents act in their children's best interests and the lack of evidence of specific dangers arising from parents granting their permission for their children to be out during curfew hours, the parents should be the ones who decide whether their children may go out in public places without direct parental supervision during curfew hours. *Cf. Troxel*, 530 U.S. at 73 ("the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a ... judge believes a 'better' decision could be made.").[FN14] And, thus, the claimed need to apply the curfew to minors who have parental permission to be out during curfew hours is not self-evident.

FN14. The right of a parent to allow her minor children to be out in public late at night or in the wee hours of the morning may be contrasted with a claimed parental right to permit a child to smoke, drink, drive or quit school. The State's interest in the child's health and well-being and in protecting the community justifies impinging on parental rights by setting the age at which children lawfully can do these types of things. *See Wisconsin v. Yoder*, 406 U.S. 205, 233-34 (1972) ("the power of the parent ... may be subject to limitation ... if it appears that parental decisions will jeopardize the health or safety of the child,

> or have the potential for significant social burdens.").

The Intervenor urges that evidence of the need to apply the curfew to children who have parental permission to be out during curfew hours is not required because the Plaintiffs offer no evidence that children out with parental permission have more benign experiences than children without such permission. *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002) (plurality opinion), cited as authority, does not support this proposition. The level of review in *Alameda Books* was the less exacting intermediate scrutiny, rather than strict scrutiny which is applied here. *Id.* at 434.[FN15] Lower levels of scrutiny, mostly rational basis review, also were applied by the courts in the cases cited by the Local Defendants in arguing that the courts defer to the legislative judgments of the states. (Br. Supp. Defs.' Mot. Strike Expert Test. at 6 (citing, *e.g.*, *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) ("in short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations *made in areas that neither affect fundamental rights nor proceed along suspect lines* .... ") (emphasis added); *Dima Corp. v. Town of Hallie*, 185 F.3d 823, 829 (7th Cir.1999) ("In response to a First Amendment challenge, the municipality bears the burden of showing that there is evidence that supports its proffered justification.").) What suffices to establish a rational basis for a law does not necessarily satisfy strict scrutiny.

> FN15. Los Angeles also had produced substantial evidence to support its ordinance. *Alameda Books*, 535 U.S. at 430 ("The city of Los Angeles may reasonably rely on a study it conducted ... to demonstrate that its ban on multiple-use adult establishments serves its interest in reducing crime.").

The Plaintiffs argue that the necessity of substantially impinging on parental rights cannot be shown given the many exceptions to the curfew law. The existing defenses do seem to undermine the assertion that the curfew law is narrowly tailored to serve the State's interests. Implicit in the defenses is the notion that children may be out late at night safely under certain circumstances, for example, when they are attending a school sanctioned activity or an activity conducted by a nonprofit or governmental entity with adult supervision. The expressed rationale behind these "adult custody" defenses is that an adult supervises the children and keeps them from getting into trouble and out of harm's way. Yet, the rationale does not extend to other statutory defenses. While the court may accept that an adult would be present at a school sanctioned activity and an activity conducted by a nonprofit or governmental entity, it is not evident that an adult would be present at other late-night activities such as lawful employment, religious events, emergencies, and First Amendment activities. It is asserted that a child attending a peace rally, employment or school activity is, because of the structured activity, at least arguably less likely to be a criminal or crime victim late at night. However, no evidence is offered to support this assertion. Moreover, no justification is offered for the defense for "going to" and "returning from" adult custody activities, when no adult supervision need be provided. And, it is not enough to say, as the Defendants do, that a defense was mandated by the courts. The courts concluded the First Amendment defense was necessary in order to protect constitutional rights. The same result should obtain where, as here, other constitutional rights are impermissibly impinged.

***12** Further, given the presumption that parents act in their children's best interests, *Troxel v. Granville*, 530 U.S. 57, 68-69 (2000), it becomes difficult to conclude that a parental permission defense would fail to safeguard against nighttime misconduct by minors and dangers to minors. It should be presumed that fit parents will make reasonable decisions regarding whether their children are mature and responsible enough to be allowed to be out after curfew and then, under what circumstances. If minors are out during curfew hours and engage in criminal activity, then they are subject to arrest and prosecution. Similarly, parents who fail to adequately supervise their children may be subject to criminal penalties under other state laws. *See, e.g.*, Ind.Code § § 35-46-1-4 (neglect of a dependent), 35-46-1-8 (contributing to the delinquency of a minor). The court agrees that laws such as these complement the *Troxel* plurality's statement that "so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of the parent to make the best decisions concerning the rearing of that parent's children." *Troxel*, 530 U.S. at 68-69. It is argued that law enforcement would have a difficult time in verifying the non-existence of a parental permission defense. However, Captain Allender testified that defenses available under the current curfew law present similar difficulties.

The Defendants contend that the curfew law's narrow time constraints and defenses limit its scope and establish that it is narrowly tailored to serve the State's compelling interests in reducing juvenile crime and victimization. Though Indiana's curfew law affects fewer hours of the day than the curfew law upheld in *Qutb v. Strauss,* the law sweeps more broadly overall than the law upheld in that case and, indeed, more broadly than any other curfew law which has withstood a parental rights challenge.

Courts cite curfew laws' exceptions and defenses as support for the conclusion that the laws' impingement on parental autonomy is minimal. *See* Hutchins v. Dist. of Columbia, 188 F.3d 531, 545-46 (9th Cir.1999) (en banc) (noting exceptions and concluding that "the curfew generously accommodates parental rights"); Schleifer ex rel. v. City of Charlottesville, 159 F.3d 843, 853 (4th Cir.1998) ("several of the exceptions to the Charlottesville curfew do accommodate the rights of parents"), *cert. denied,* 526 U.S. 1018 (1999); *Qutb v. Strauss,* 11 F.3d 488, 495-96 (5th Cir.1993) ("Because of the broad exemptions included in the curfew ordinance, the parent retains the right to make decisions regarding his or her child in all other areas"), *cert. denied,* 511 U.S. 1127 (1994); *Bykofsky v. Borough of Middleton,* 401 F.Supp. 1242, 1264 (M.D.Pa.1975) ("With its numerous exceptions ... the ordinance constitutes a minimal interference with the parental interest in influencing and controlling the activities of their offspring."), *aff'd mem.,* 535 F.2d 1245 (3d Cir.1976), *cert. denied,* 429 U.S. 964 (1976); *cf. Nunez ex rel. Nunez v. City of San Diego,* 114 F.3d 935, 938-39, 952 (9th Cir.1997) (curfew statute with exceptions for accompaniment by parent or guardian; emergency errand; meeting, entertainment or recreational activity directed, supervised or sponsored by local educational authorities; and legitimate employment unduly interferes with parental authority); *Johnson v. City of Opelousas,* 658 F.2d 1065, 1074 (5th Cir.1981) ("Since the absence of exceptions in the curfew ordinance precludes a narrowing construction, we are compelled to rule that the ordinance is constitutionally overbroad."). However, in every reported federal decision upholding a juvenile curfew law against a parental rights challenge, the law had broader exceptions defenses than the Indiana curfew law under scrutiny here, including broader "responsible entity" exceptions, *see* Hutchins, 188 F.3d at 535 ("in attendance at an official school, religious or other recreational activity sponsored by the District of Columbia, a civic organization, or another similar entity that takes responsibility for the minor"); *Schleifer,* 159 F.3d at 846 ("supervised activities sponsored by school, civic, religious, or other public organizations"); *Qubt,* 11 F.3d at 498 (an official school, religious, or other recreational activity supervised by adults and sponsored by the city of Dallas, a civic organization, or another similar entity that takes responsibility for the minor); *Bykofsky,* 401 F.Supp. at 1247 (also excepting an activity of a "voluntary association"); exceptions for errands at the direction of the minor's parent, *see* Hutchins, 188 F.3d at 535; *Schleifer,* 159 F.3d at 846; *Qubt,* 11 F.3d at 498; emergency exceptions, *see* Hutchins, 188 F.3d at 535; *Schleifer,* 159 F.3d at 846; *Qubt,* 11 F.3d at 498; and exceptions for being on the sidewalk in front of the minor's home or that of a next-door neighbor, *see* Hutchins, 188 F.3d at 535; *Schleifer,* 159 F.3d at 846; *Qubt,* 11 F.3d at 498; *Bykofsky,* 401 F.Supp. at 1247.[FN16] Though the curfew law in *Bykofsky* did not have an errand exception *per se,* it provided an exception for "a case of reasonable necessity" and also excepted minors who had "been authorized, by special permit ... to be on the streets during the curfew hours for normal or necessary nighttime activities inadequately provided for by other exceptions in the ordinance[.]" *Bykofsky,* 401 F.Supp. at 1247. Also in contrast with the Indiana law, the curfew laws involved in all of these cases either did not apply to seventeen-year-olds, *see* Hutchins, 188 F.3d at 534; *Schleifer,* 159 F.3d at 846; *Qubt,* 11 F.3d at 497; or allowed seventeen year olds to be excepted from application of the law, *see* Bykofsky, 401 F.Supp. at 1247.

> FN16. Indiana's emergency exception which excepts "an emergency involving the protection of a person or property from an imminent threat of serious bodily injury or substantial damage," Indiana Code § 31-37-3-3.5(b)(3)(D), is narrower than the emergency exception in these other cases.

***13** Review of these decisions supports the conclusion that the Indiana curfew law is not narrowly tailored enough to serve the State's interests while respecting parental rights. Because the defenses to Indiana's curfew law are less broad than those in these other cases, the curfew law's impingement on parental rights is greater here. While the curfew law's defenses do give parents some flexibility in deciding whether their children can stay out in public during curfew hours, it nonetheless impinges on their right to make that decision in many other situations likely to occur. For example, Indiana's curfew law precludes a parent from deciding that her child may

do something as innocent as pick up a prescription drug at the 24-hour pharmacy down the street, gaze at stars while sitting on the sidewalk adjacent to the family home, or walk the dog around the block during curfew hours.

The "power of the parent ... may be subject to limitation ... if it appears that parental decisions will jeopardize the health or safety of the child, or have the potential for significant social burdens." *Wisconsin v. Yoder*, 406 U.S. 205, 233-34 (1972). It does not appear from the evidence in the record that a parent's decision to allow her children to be out in public during curfew hours without direct parental or other adult supervision will jeopardize the children or the community. Further, the very existence of this case illustrates that the law can interfere with the relationships between parents and their minor children and usurp the parents' role in rearing their children.

In sum, the court has determined that the State has a compelling interest in reducing juvenile crime and victimization, and has assumed it has an interest in supporting and assisting parents in their child rearing roles. However, the curfew law has not been shown to be drafted sufficiently narrowly to serve those interests. Therefore, the court concludes that Indiana's juvenile curfew law is unconstitutional in that it infringes on the fundamental right of parents to direct the care, custody and control of their children. Accordingly, the Plaintiffs' motion for preliminary injunction will be GRANTED.

Indiana's juvenile curfew law also fails to survive a parental rights challenge under intermediate scrutiny, even if that is the correct standard. A law survives intermediate scrutiny if its "statutory classification is substantially related to an important governmental objective." *Clark v. Jeter*, 486 U.S. 456, 461 (1988); *see also Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724-25 (1982) (requiring a direct, substantial relationship between the objective and the means chosen). The same reasons which lead the court to the conclusion that the curfew law fails to withstand strict scrutiny lead to the conclusion that it cannot survive even under intermediate scrutiny. In short, the Defendants have shown no substantial relationship between the curfew law and the state interests it is intended to promote.[FN17] *See Ramos v. Town of Vernon*, 353 F.3d 171, 183-86 (2nd Cir.2003) (concluding defendants failed to show town's curfew ordinance was substantially related to the important government interests of protecting minors from harm and protecting the community from nighttime juvenile crime where there was a "disconnect" between the proof of purportedly problem hours and the curfew hours and no proof that the targeted population was causing trouble or being victimized).

FN17. Captain Allender stated that the curfew assists parents who need help with their children. Even assuming that this is an important governmental interest, however, it is difficult to see how the curfew law is substantially related to the objective of assisting parents where, as here, the parents object to the State's interference.

***14** Finally, the Plaintiffs claim that Indiana's juvenile curfew law unlawfully impinges on the due process rights of minors to be in public places. Since the court has determined that the curfew law is unconstitutional because it unlawfully impinges on the fundamental rights of parents, it is unnecessary to address the claimed violation of the minors' rights, and the court therefore declines to reach that claim.

IV. CONCLUSION

The court finds that Indiana's juvenile curfew law, Indiana Code § § 31-37-3-2 through 31-37-3-3.5 violates the fundamental rights of parents under the Due Process Clause. In opposing the motion for preliminary injunction, the Defendants dispute only whether the Plaintiffs can establish a likelihood of success on the merits. Because the court has concluded that the curfew law violates the substantive due process rights of parents, the Plaintiffs can demonstrate no adequate remedy at law, irreparable harm, and that the balance of harms favors an injunction and an injunction will serve the public interest.

Accordingly, the court will GRANT the motion for preliminary injunction. As the Defendants have not shown any likelihood of harm to them if enforcement of the curfew law is enjoined, the injunction will issue and no security bond will be required. *See Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir.2003); *Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975, 983 (2nd Cir.1996); *see also Scherr v. Volpe*, 466 F.2d 1027, 1035 (7th Cir.1972); (whether to require posting of bond before issuing injunction is within district judge's discretion). And, the motion to strike expert testimony is GRANTED.

The declaration that the curfew law is

unconstitutional because it unlawfully impinges on the fundamental rights of parents results in the issuance of a preliminary injunction-the relief requested by the Plaintiffs. Thus, the court declines to reach the claim that the curfew law violates the Due Process rights of minors.

A separate order enjoining the enforcement of Indiana's juvenile curfew law will be issued contemporaneously with this entry. An entry of a final judgment will await a disposition of the merits of the claims.[FN18]

> FN18. The court was prepared to consolidate the preliminary injunction matter with the trial on the merits pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure. However, the intention to do so was announced only shortly before the preliminary injunction argument. The Intervenor State of Indiana objected to the consolidation, and contends that it may have additional evidence to submit at a merits trial. The court sustained the objection to consolidation, so a trial on the merits will be scheduled in due course.

Once again, at least while this injunction is in effect, Indiana will not have a valid curfew law to enforce. Some may express concern about what effects may follow the loss of governmental control of minors' late night activities. It is doubtful that the lack of a statutory curfew will be disastrous, though. As stated in an entry in a prior case in the series of cases litigating Indiana's curfew law:
[T]his ruling should not be construed as an invitation to all Hoosier youth to run wild through the nights. Indiana law enforcement authorities retain full authority to enforce the substantive laws that prohibit juvenile delinquency, such as vandalism, trespass, underage alcohol consumption, drug use, theft and so on. Indiana parents also retain the right to set and enforce rules within the family unit-including curfews-for their children, and common sense dictates that they will.

***15** *Hodgkins v. Goldsmith,* IP99-1528-C-T/G, 2000 WL 892964, at *2 (S.D.Ind. July 3, 2000).

ALL OF WHICH IS ENTERED.

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- 2004 WL 2771392 (Trial Motion, Memorandum and Affidavit) Plaintiffs' Response in Opposition to Defendants' Motion to Strike Expert Testimony (Jun. 28, 2004) Original Image of this Document (PDF)
- 2004 WL 2771382 (Trial Motion, Memorandum and Affidavit) Brief in Support of Defendants' Motion to Strike Expert Testimony (Jun. 21, 2004) Original Image of this Document (PDF)
- 2004 WL 2771371 (Trial Motion, Memorandum and Affidavit) Plaintiffs' Reply Memorandum in Support of their Motion for Preliminary Injunction (Jun. 14, 2004) Original Image of this Document (PDF)
- 2004 WL 2771347 (Trial Motion, Memorandum and Affidavit) Local Defendants' Brief in Opposition to Motion for Preliminary Injunction (May 28, 2004) Original Image of this Document (PDF)
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- 2004 WL 2771339 (Trial Pleading) Answer of Defendants Bart Peterson, Frank Anderson and Carl Brizzi (May 24, 2004) Original Image of this Document (PDF)
- 2004 WL 2771317 (Trial Motion, Memorandum and Affidavit) Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction (Apr. 28, 2004) Original Image of this Document (PDF)
- 2004 WL 2771297 (Trial Pleading) Complaint for Declaratory and Injunctive Relief / Class Action (Mar. 29, 2004) Original Image of this Document (PDF)
- 1:04cv00569 (Docket) (Mar. 29, 2004)

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Briefs and Other Related Documents

Latour v. Riverside Beaver School Dist.W.D.Pa.,2005.Only the Westlaw citation is currently available.

United States District Court,W.D. Pennsylvania.

Anthony LATOUR, a minor, John A. Latour, and Denise Latour, as parents and natural guardians of Anthony Latour and in their individual capacity, Plaintiffs,

v.

RIVERSIDE BEAVER SCHOOL DISTRICT, Defendant.

No. Civ.A. 05-1076.

Aug. 24, 2005.

Kim M. Watterson, Reed Smith, Witold J. Walczak, ACLF of PA, Pittsburgh, PA, for Plaintiffs.

Anthony G. Sanchez, Andrews & Price, Pittsburgh, PA, for Defendant.

MEMORANDUM OPINION

AMBROSE, Chief J.

***1** This action arises out of the disciplinary action taken against Anthony Latour ("Anthony"), a student at Riverside Beaver Middle School. On May 5, 2005, Defendant, Riverside Beaver School District, suspended Anthony from school, and then on May 17, 2005, expelled him for two years because of four rap songs that he wrote and recorded in his home over a two-year period. None of these songs and recordings were brought to school by Anthony. *Id.* at ¶ 14. The four songs consist of the following:

1. A song written in 2003 that mentions another middle school student (Jane Smith);
2. The first track on a CD recorded in November 2004, titled "Murder, He Wrote";
3. A battle rap song with John Doe titled "Massacre"; and
4. Another battle rap song he wrote and uploaded onto his personal internet website titled "Actin Fast ft. Grimey."

On July 17, 2005, Defendant's School Board ratified the expulsion decision.

Anthony Latour and his parents (collectively referred to as "Plaintiffs") filed a Motion for Preliminary Injunction seeking an order from this Court enjoining Defendant from expelling Anthony, restraining Defendant from banning Anthony from attending school sponsored events and from being present on school grounds after hours, and enjoining Defendant from imposing any other sanctions against Anthony for expressions, or as retaliation for his expressions. (Docket No. 2). A hearing on the Motion for Preliminary Injunction was held on August 18, 2005. The issue is now ripe for review.

The following factors must be weighed in determining the propriety of a preliminary injunction:

a. The likelihood of success on the merits;
b. The possibility of harm to the non-moving party if relief were granted;
c. The probability of irreparable injury to the moving party in the absence of relief; and
d. The public interest.

Alessi v. Commonwealth of Pennsylvania Dept. of Public Welfare, 893 F.2d 1444, 1447 (3d Cir.1990). In First Amendment cases, the key element is the first element: the likelihood of success on the merits. *Sypniewski v. Warren Hills Regional Bd. of Educ.,* 307 F.3d 243, 252 (3d Cir.2002). With regard to the first element, the likelihood of success on the merits, the burden is on Defendant to show that its action in expelling Anthony based on the four songs was constitutional. At the hearing, Defendant attempted to meet this burden by showing that the songs were either "true threats" or that the songs caused a material and substantial disruption to the school day.

"True threats" are "those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals...." To determine if a statement is a true threat, I will consider the speaker's intent, how the intended victim reacted to the alleged threat, whether it was communicated directly to its victim, whether the threat was conditional, and whether the victim had reason to believe that the maker of the threat had a propensity to engage in violence. *Virginia v. Black,* 538 U.S. 343, 359, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003); *J.S. ex rel. H.S. v. Bethlehem Area School Dist.,* 569 Pa. 638, 807 A.2d 847, 858 (Pa.2002). In considering these factors, I must examine them in context. *Black,* 538 U.S. at 359; *Watts v. United States,* 394 U.S. 705, 708, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969).

*2 The evidence at the hearing shows that Anthony's songs were written in the rap genre and that rap songs are "just rhymes" and are metaphors. Thus, while some rap songs contain violent language, it is violent imagery and no actual violence is intended. (Preliminary Injunction Hearing testimony of Bakari Kitwana; Expulsion hearing testimony of John Doe).

Furthermore, there is no evidence that Anthony communicated these songs directly to Jane Smith, John Doe, or Defendant. Rather, they were published on the internet or sold in the community.

There is no evidence from Jane Smith, herself, that she felt threatened. Mrs. Smith, Jane's mother, did not testify that Jane was threatened by the song, but rather that she was humiliated and broken hearted. (Defendant's Ex. A, Ex. A, pp. 138-140). Furthermore, I find that John Doe was not threatened by "Massacre." As he admitted, he did not think Anthony's song was a threat, but that it was just a "bluff" and "a question of, you know, flexing your lyrical muscle...." (Defendant's Ex. A, Ex. A, pp. 152-153).

Moreover, there is no evidence that Anthony had a history of violence.

Additionally, I find Defendant's argument that the songs were true threats is weakened by the fact that it failed to do any type of its own investigation, regardless of the police involvement, from the end of March of 2005, until the time of the expulsion hearing on May 17, 2005. Defendant claims that it feared Anthony might cause imminent harm to Jane Doe, John Smith, and or the school, in general. Yet, it did not search Anthony's locker to determine whether he had any types of weapons, did not refer Anthony to counseling, did not talk to Anthony or his parents, did not remove John Doe from school, and did not talk to Jane Smith. Therefore, based on the testimony at the hearing and the exhibits presented, I find that there is a likelihood that Plaintiffs will prevail on the issue of whether the songs were true threats.

I next turn to whether the songs caused a material and substantial disruption to the school day or whether there was a specific fear of substantial disruption. *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 508-09, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969). Mr. Girting testified that Anthony's songs did not cause any disruptions prior to his expulsion. (Defendant's Ex. A, Ex. A, pp. 126-132). There was no evidence that copies of the songs were sold in school or otherwise distributed in school, no fights in the hallways about the songs, and no evidence that the classroom instruction was disrupted. The only argument Defendant has is that the disruption consists of (1) withdrawal of students, and (2) wearing of t-shirts. I find that Defendant's argument that it fears that it may lose up to three students (Jane Smith and the two Doe boys) due to Anthony's songs without merit. With regard to Jane Smith, Anthony's song was merely "the straw that broke the camel's back." *Id.* at p. 141. There obviously were a multitude of issues involving Jane Smith and why she decided to leave the District. *Id.* at pp. 141-42. John Doe was kept out of school by his mother, but not after she read Anthony's song. Rather, John Doe was kept out of school because of the fear that her son might be hurt in school as a result of Anthony's arrest, and "everything else." *Id.* at p. 95. Additionally, students wearing t-shirts stating "Free Accident" and students talking about Anthony's expulsion, are not because of Anthony's songs, but a result of the punishment by Defendant, and even if they were a result of the songs, these incidents do not rise to the level of a substantial disruption. Thus, based on the testimony at the hearing and the exhibits presented, I find that there is also a likelihood that Plaintiffs will prevail on the issue of whether the songs caused a material and substantial disruption or whether there was a specific fear of substantial disruption.

*3 Because Defendant has not demonstrated that the songs constituted true threats or caused a material and substantial disruption, Plaintiffs have prevailed in demonstrating a likelihood of success on the merits. Consequently, I find that the first factor weighs in favor of granting the preliminary injunction.

With regard to the second factor, the possibility of harm to Defendant, I find that there were no true threats and that the disruptions (or feared disruptions) identified by Defendant were not substantial and not attributable to Anthony's songs. (Defendant's Ex. A, Ex. A, pp. 126-132). Consequently, this factor weighs in favor of granting the preliminary injunction

As to the third and fourth elements, the probability of irreparable injury and the public interest, unquestionably, the loss of First Amendment freedoms, even for a minimal amount of time, constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976). Furthermore, there is a strong public interest in protecting First Amendment rights guaranteed by the United States Constitution. Thus, the third and fourth

factors weigh in favor of granting a preliminary injunction.

As a result, I find that the requirements for the issuance of a preliminary injunction have been met.

ORDER OF COURT

AND NOW, this 23rd day of August, 2005, after a Preliminary Injunction Hearing and for the reasons set forth above, it is ORDERED that Defendant, Riverside Beaver School District are enjoined and restrained as follows:
1. From expelling Anthony; and
2. From banning Anthony from attending school sponsored events and from being present on school grounds after hours.

W.D.Pa.,2005.
Latour v. Riverside Beaver School Dist.
Not Reported in F.Supp.2d, 2005 WL 2106562 (W.D.Pa.)

Briefs and Other Related Documents (Back to top)

- 2005 WL 4694481 (Trial Motion, Memorandum and Affidavit) Plaintiffs' Opposition to Defendant's Motion in Limine to Preclude Report and Testimony of ""Hip Hop" Expert (Aug. 18, 2005)
- 2005 WL 4694478 (Trial Motion, Memorandum and Affidavit) Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction (Aug. 16, 2005)
- 2005 WL 4694477 (Trial Motion, Memorandum and Affidavit) Plaintiffs' Motion for Preliminary Injunction (Aug. 8, 2005)
- 2:05cv01076 (Docket) (Aug. 03, 2005)
- 2005 WL 3692893 (Trial Pleading) Verified Complaint (Aug. 2, 2005)
- 2005 WL 4693629 (Trial Pleading) Answer and Affirmative Defenses (2005)
- 2005 WL 4694479 (Trial Motion, Memorandum and Affidavit) Brief in Opposition to Motion for Preliminary Injunction (2005)

END OF DOCUMENT

COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

ARMAND VANCE MILLER, BY HIS PARENTS, CHRISTINE LILLY AND VANCE MILLER	:	
VS.	:	NO. CI-03-11435
BOARD OF SCHOOL DIRECTORS OF THE SOLANCO SCHOOL DISTRICT	:	

OPINION

BY FARINA, J.

On December 31, 2003, Armand Vance Miller, by his parents (Appellant), filed a Petition for Review of Expulsion Decision of the Board of School Directors of the Solanco School District, Lancaster County (Board), expelling him from school for the remainder of the 2003-2004 academic year. Appellant would be permitted to return to school in August of 2004. A formal expulsion hearing was held on December 8, 2003. Appellant was informed of his expulsion at the public board meeting later that same evening. I heard oral argument from both parties on December 24, 2003, on Appellant's request for a Supersedeas and then reviewed their subsequently submitted briefs. On December 30, 2003, I granted the Appellant's request for a hearing and entered a Supersedeas permitting Appellant to re-enroll in school pending the hearing. The hearing was held on January 21, 2004, and the parties again made oral argument.

Appellant was expelled for violating prohibitions against theft, and violations of the penal law. (Student Handbook, pp. 23-24.) These infractions are enumerated in the Student

Handbook and Appellant acknowledges that he received a copy of the Handbook. (Adjudication of the Solanco School District Board of School Directors, p. 2, December 12, 2003.)

School expulsion proceedings are governed by the Local Agency Law. 2 Pa. C.S.A. §551; *Yatron v. Hamburg Area School District*, 631 A.2d 758 (Pa. Cmwlth. 1993). The judicial review of a local agency action is authorized by statute, which permits any person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication to appeal it to the court vested with jurisdiction of such appeals. *Id.*; 2 Pa. C.S.A. §§751-752.

In the event a full and complete record of the proceedings before the local agency is made, as is the case here, the court shall hear the appeal without a jury, on the record certified by the agency. 2 Pa.C.S.A. §754(b). The court must affirm the adjudication unless it finds that: (1) the adjudication is in violation of the constitutional rights of the appellant; (2) the adjudication is not in accordance with law; (3) the provisions relating to practice and procedure of local agencies were violated in the proceedings before the agency; or (4) any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence. *Id.* As explained by the Pennsylvania Commonwealth Court, a reviewing court is limited to determining whether the student's constitutional rights were violated, an error of law was committed, or the findings of fact are not supported by substantial evidence. *T.S. v. Penn Manor School District*, 798 A.2d 837, 838 n.3 (Pa.Cmwlth. 2002). If the adjudication is not affirmed, the court may enter any order authorized by 42 Pa.C.S.A. §706 (relating to disposition of appeals) including vacating, setting aside or reversing any order brought before it for review.

The facts are not in dispute. In the late evening hours of November 15, 2003, or the early morning hours of November 16, 2003, Appellant, along with another student, stole a school bus owned by the Solanco School District. The bus was parked at the home of a school district employed bus driver. District policy permits bus drivers to park their buses at their residences over the weekend. Appellant and his accomplice drove the bus several miles and abandoned it at the Susquehanna Truck Service where it was found on November 17, 2003. The bus suffered some damage to its rear quarter panel and could not be used for four days until it had been inspected and determined to be safe to be used to transport students.

Appellant argues that the Board had no power to discipline him for his actions because the theft of the school bus took place off school property, did not occur during a school activity and did not occur during school hours. The School Code provides that a Board may only enforce its rules "during such time as [students] are under the supervision of the board of school directors and teachers, including time necessarily spent in coming to and returning from school." 24 P.S. §5-510. The regulations promulgated by the Department of Education augment these restraints by stating: "A school board has only those powers which are enumerated in the statutes of this Commonwealth, or which may reasonably be implied or necessary for the orderly operation of the school." 22 Pa. Code §12.3(a).

Pursuant to the above statute and regulation, the Board adopted policy No. 218, Student Discipline. That policy provides that any rules and policies promulgated by the Board and administration "shall govern student conduct in school, at school-sponsored events and during the time in travel to and from school." (Board Policy No. 218, June 16, 2003).

Appellant claims that as his action of stealing the school bus did not occur under any of the above enumerated circumstances, the Board was without the power to discipline him.

Appellant argues that his situation is similar to the issue decided in *Fuska v. Windber Area School District*. No. 295 Civil, Somerset County 1999. In that case, the school principal found three students on the back porch of one of the student's homes during the lunch period. The student's home was approximately 200 feet from school property. The principal found a marijuana cigarette in the student's hand. The student was subsequently expelled and appealed. In overturning the expulsion, the court concluded that as the act did not occur on school property, or endanger the welfare or safety of students, the school board exceeded its authority in expelling the student.

During oral argument on December 21, 2003, Appellant's counsel conceded that Appellant did violate the prohibition against violations of the penal law enumerated in the Student Handbook. He did not, however, concede that the Student Handbook can operate to govern student behavior when the student is not under the jurisdiction of the School Board of Directors, pursuant to Board Policy 218.

I agree that Appellant did violate the Student Handbook prohibition against violations of the penal law when he stole the school bus. The issue, then, is whether a violation of the Student Handbook, by a theft of school property, though committed off school property and not occurring during school hours, or while traveling to or from school confers jurisdiction to expel Appellant. I find that it does.

Section 13-1318 of the School Code governs how school boards may go about suspending or expelling students. 24 P.S. §13-1318. It states that a student may be

suspended or expelled for disobedience or misconduct, without specifying when such misconduct must take place. *Id.* As such, courts have upheld the expulsion of students for essentially out of school conduct where there is a nexus between the conduct and a disruption of the educational process at some level. *See e.g. J.S. ex rel. H.S. v. Bethlehem Area School District*, 569 Pa. 638, 807 A.2d 847 (2002) (student expelled for creating a threatening website aimed at two teachers); *and see Giles on behalf of Giles v. Brookville Area School District*, 669 A.2d 1079 (Pa. Cmwlth. 1995) (student expelled for violation of drug policy where exchange of money for drugs actually took place off school property).

In both the above cases, the student's misconduct disrupted the educational process, though the acts occurred off school property. In *J.S.*, the student accessed the website from school computers and showed it to other students. *J.S.* at 852. Additionally, the threat to the teacher would clearly disrupt that teacher's ability to conduct an orderly class. *Id.* In the *Giles* case, the students agreed to the sale of drugs while in school, but actually exchanged the money for the drugs off school property. The court interpreted the school board policy prohibiting sales of drugs on school property as also encompassing an agreement to sell drugs on school property. *Giles* at 1082. The district's drug policy would be eviscerated if students were able to complete all aspects of a drug sale, except the actual exchange on school property.

The ability of School Boards to adopt and enforce disciplinary rules that may lead to expulsion arises from both the School Code and the State Board of Education Regulations. Neither the School Code, nor the regulations state that only school boards may make disciplinary rules for students. In the instant case, the Board adopted Policy 218 and Solanco

High School administration promulgated the Student Handbook. It is important for individual schools to be able to develop rules which address the populations they serve. The Board serves all students in the district, from kindergarten through high school seniors. It would be difficult for the Board to enact rules to suit every age level in the district. In contrast, each individual school administration can easily make appropriate disciplinary rules that suit the age group which attends the school.

In *Figueroa v. Thompson*, a court upheld the enforcement of a rule promulgated at the school level which supplemented the school board policy. 1 Pa. D & C 3d 266 (C.C.P. 1975). The court stated that requiring a school board to minutely spell out every regulation for every school within their purview would create an unreasonable burden. *Id.* at 280. I find Judge Wolfe's reasoning compelling. Under Regulations promulgated by the State Board of Education, a board's duty is more general. They must merely publish which infractions may lead to expulsion from school. 22 Pa. Code §12.6(a). The many, and occasionally creative, ways students may ultimately commit those infractions is appropriately left to the school administrations who deal with the students on a day to day basis.

Appellant was expelled for theft[1] and violations of the penal law[2] as proscribed by

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[1]The Student Handbook states:

Theft: The unlawful acquisition of property or materials from another person. Theft will involve the local law enforcement agency if deemed necessary. Discipline ranges from Saturday suspension through expulsion.

[2]The Student Handbook states:

Violation of the Penal Law: Any pupil of Solanco High School alleged to have violated the penal law of the United States of America or the Commonwealth of Pennsylvania in: (1) school district buildings; (2) on school district grounds; (3) in school vehicles; (4) while going to and from school or school related events; or (5) at school sponsored activities at home or

the Student Handbook. (Adjudication at 2.) The provision prohibiting theft is not sufficiently clear as to when it applies to students. As such, it was an inappropriate ground upon which to expel Appellant. The provision prohibiting violations of the penal law while in school vehicles, however, directly addresses the instant situation. Appellant has admitted stealing the school bus. As such, he clearly violated the penal laws of the Commonwealth of Pennsylvania when he boarded the bus and drove off in it. Further, Appellant's counsel conceded that he violated the terms of the Student Handbook by his conduct.

Appellant's misconduct also has the required nexus to a disruption of the educational environment. The theft of the school bus created a significant administrative problem. Time and resources committed to the running of the school were diverted to deal with the consequences of Appellant's criminal act. The bus was out of service for four days. Alternative transportation had to be found for the students normally transported on that school bus. Appellant's argument that the bus was only out of service for a minimal period of time and that replacement transportation was easily found does not diminish the fact that Appellant's actions caused the Solanco School District a great deal of disruption. As such, I find that the Solanco School District Board of Directors did not abuse its discretion in expelling Appellant.

Finally, during oral argument, the parties entered into a stipulation that the tutor sent to work with Appellant was unable to provide the physical education necessary for Appellant to graduate. The Board stated that they would provide a means for the Appellant

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away will be subject to disciplinary action. Such penal laws shall include but shall not be limited to the Controlled Substance Drug Device and Cosmetic Act, the Liquor Code and the Crimes Code. Discipline can range from detention to expulsion. (Numbers added for clarity.)

to complete that required course. I will direct that they now do so.

Accordingly, I enter the following:

ORDER

AND NOW, this 27Th day of January, 2004, upon consideration of Armand Vance Miller's Petition for Review of Expulsion Decision of the Board of School Directors of the Solanco School District, the briefs of the parties and oral arguments held on December 24, 2003, and January 21, 2004, it is hereby ORDERED and DECREED that the Petition is DENIED and the Decision of the Board to expel Appellant is AFFIRMED.

BY THE COURT:

LOUIS J. FARINA
JUDGE

ATTEST:

COPIES TO:
Christopher M. Patterson, Esq.
Jeffrey D. Litts, Esq.