



April 11, 2011

VIA FAX TO 281-420-4854

VIA EMAIL TO ctyork@gccisd.net

Toby York, Ed. D.
Superintendent
Goose Creek Consolidated Independent School District
P.O. Box 30
Baytown, Texas 77522

Dear Dr. York:

We write on behalf of the American Civil Liberties Union (ACLU) and the American Civil Liberties Union Foundation of Texas (ACLU Foundation of Texas). The ACLU and the ACLU of Texas work daily in courts, legislatures and communities across the United States and Texas to defend and preserve the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States.

It has come to our attention that Goose Creek Consolidated Independent School District ("Goose Creek CISD") utilizes Internet filtering software provided by Websense to improperly censor websites advocating the fair treatment of lesbian, gay, bisexual, and transgender ("LGBT") persons. The filtering software in your district currently blocks such sites because they fall into the category of "Gay or Lesbian or Bisexual Interest." On behalf of the ACLU and the ACLU Foundation of Texas, we are writing to inform you that this practice violates both the First Amendment and the Equal Access Act, 20 U.S.C. § 4071 *et seq.*, and the filter for "Gay or Lesbian or Bisexual Interest" must be removed immediately.

I. Factual Background

As reflected in the attached exhibits, the Internet filtering software at Goose Creek CISD improperly denies students access to the website for the GSA Network (gsanetwork.org), Texas GSA (www.texasgsa.org), and the It Gets Better Project (www.itgetsbetter.org). GSA Network is a youth leadership organization that connects school-based Gay-Straight Alliances ("GSAs") to each other and to community resources through peer support, leadership development, and training. Texas GSA is a local organization that provides support and youth-leadership training to LGBT students and GSAs. And the It Gets Better Project provides support to and resources to young people facing anti-LGBT harassment and bullying. When students seek to access these websites, the computers in your school district display a bright red stop sign and the image of a hand making a "stop" signal. The computers also display a message that incorrectly asserts that the websites contain material that violates the Children's Internet Protection Act ("CIPA"). When a student attempts to access GSA Network, the computers further display the demeaning and stigmatizing message that the site has been blocked because it has been categorized as "Gay or Lesbian or Bisexual Interest." *See* Exhibit A (attached). When a student attempts to access

Texas GSA or the It Gets Better Project, the computers display a message indicating that the website is “Uncategorized” without providing any additional reason for why it has been blocked. See Exhibits B and C (attached).

II. Legal Background

Goose Creek CISD does not have a legitimate pedagogical basis for censoring students’ access to GSA Network, Texas GSA, the It Gets Better Project, or other “Gay or Lesbian or Bisexual Interest” websites. None of these websites contains sexually explicit or harmful content that schools are obligated to block under CIPA. According to Websense, the filter for “Gay or Lesbian or Bisexual Interest” blocks “[s]ites that provide information about or cater to gay, lesbian, or bisexual lifestyles, but *excluding* those that are sexually or issue-oriented” (emphasis added). See Websense List of Filter Categories, at <http://www.websense.com/content/URLCategories.aspx>. The Websense filtering software has separate filter categories for “Adult Material” to block websites with pornographic or sexually explicit content. By contrast, the Websense filter for “Gay or Lesbian or Bisexual Interest” blocks access to speech that is fully protected under the First Amendment.

A. The First Amendment

Your students have a First Amendment right to access this information. “[J]ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.” *Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982) (plurality) (internal quotation marks and citations omitted). “[T]he issue of equal rights for citizens who are homosexual is presently a topic of fervent discussion and debate within the courts, Congress, and the legislatures of the States The nation’s high school students, some of whom are of voting age, should not be foreclosed from that national dialogue.” *Gillman v. Sch. Bd. for Holmes County, Fla.*, 567 F. Supp. 2d 1359, 1374 (N.D. Fla. 2008); see also *Fricke v. Lynch*, 491 F. Supp. 381, 385 (D.R.I. 1980) (holding that First Amendment protects non-sexual expression of a student’s gay sexual orientation).

Moreover, the filtering scheme employed by your school district appears to engage in unconstitutional viewpoint discrimination. Even though the “Gay or Lesbian or Bisexual Interest” filter blocks students from accessing sites that express acceptance and tolerance towards LGBT individuals, the web filter does not block access to sites that condemn homosexuality and sites that urge LGBT persons to change their sexual orientation or gender identity through so-called “reparative therapy.”¹ For example, your Internet filtering software allows access to the websites for People Can Change (www.peoplecanchange.com) and Parents & Friends of Ex-Gays (www.pfox.org). See Exhibits D and E (attached).

¹ “Reparative therapy” is a practice denounced as dangerous and harmful to young people by such groups as the American Psychological Association, the American Psychiatric Association, and the American Academy of Pediatrics. See *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel* (2006), available online at <http://apa.org/pi/lgbt/resources/just-the-facts.pdf>.

This viewpoint discrimination violates your students' First Amendment rights. Goose Creek CISD may not selectively censor students' access to information based merely on the "dislike [of] the ideas" in the censored materials. *Pico*, 457 U.S. at 872. "[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) (internal quotation marks and citation omitted). Whether or not school administrators agree with the content of the censored websites, secondary school students are mature enough to understand that a school does not endorse or support speech to which it merely permits access on a nondiscriminatory basis. See *Bd. of Educ. of Westside Cmty. Schools v. Mergens*, 496 U.S. 226, 250 (1990) ("[T]he proposition that schools do not endorse everything they fail to censor is not complicated.").

B. The Equal Access Act

In addition to violating students' First Amendment rights, the filtering scheme at high schools in your district also violates the Equal Access Act because it denies students who are seeking to form GSAs equal access to school resources that are generally available to other non-curricular clubs. See 20 U.S.C. § 4071 *et seq.*; *Mergens*, 496 U.S. at 247; *SAGE v. Osseo Area Schools Dist.*, 471 F.3d 908 (8th Cir. 2006); *Gonzalez v. Bd. of Educ.*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008). The Equal Access Act mandates that, when a public secondary school receiving federal financial assistance permits even one non-curricular group to use school resources, it must permit all other non-curricular student groups to do so on equal terms. See *Mergens*, 496 U.S. at 237, 247 (requiring equal access to school newspaper, bulletin boards, public address system, and club fair); *Boyd County High Sch. Gay Straight Alliance v. Bd. of Educ.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003) (school violated Equal Access Act by denying GSA clubs equal access to school bulletin board and intercom).

The Equal Access Act requires Goose Creek CISD to provide GSAs with equal access to all school resources -- including online resources -- that are made available to other non-curricular clubs. See *SAGE*, 471 F.3d at 912 (LGBT-related group must have "*equal* access to the same avenues of communication as other noncurriculum related groups") (emphasis in original). The websites for GSA Network, Texas GSA, and similar "Gay or Lesbian or Bisexual Interest" websites provide students with advice about how to establish a GSA at their school, suggestions for running an effective club, ideas regarding club activities, sample GSA club by-laws, and tips on how to work with teachers and administrators to address bullying and harassment in schools. But because Goose Creek CISD blocks access to GSA Network and Texas GSA, students who seek to form GSAs cannot access those resources. By contrast, students seeking to establish or develop activities for other non-curricular clubs such as the Key Club or 4-H Club are able to access their clubs' websites through the school's computers. See Exhibit E and F (attached). This unequal treatment violates the Equal Access Act.²

² Only a single decision has held that a school could deny equal access to a GSA in order to protect students' "well being." *Caudillo v. Lubbock Indep. Sch. Dist.*, 311 F. Supp. 2d 550 (N.D. Tex. 2004). The *Caudillo* court reasoned that the school could legitimately exclude a GSA for including referrals to resources that purportedly fostered criminal conduct because at the time the

III. Additional Considerations

Allowing students equal access to LGBT-related websites is not just a legal duty; it also makes sense from a safety perspective, particularly in light of the epidemic of LGBT-youth suicides and bullying. Prohibiting access to LGBT websites is especially problematic because many students do not have computers or Internet access at home and so can only access the Internet at school. As one court put it, “as any concerned parent would understand, this case [holding that members of the Gay-Straight Alliance must be permitted access to the school’s resources in the same way as other clubs], may involve the protection of life itself.” *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000).

IV. Conclusion

Please contact me by **April 18, 2011** to indicate whether you intend to provide students equal access to the websites for GSA Network, Texas GSA, and similar LGBT-related resources in accordance with your school district’s legal obligations under the First Amendment and the Equal Access Act. If you continue to censor these websites, you could be subject to legal liability and the expense of litigation, as the boards of education and superintendents of two Tennessee school districts that used a similar type of filtering software recently discovered. Ultimately, after being sued by the ACLU, both Tennessee school districts agreed to enter into a settlement agreement enforceable by the federal district court to stop blocking access of online information about lesbian, gay, bisexual, and transgender issues. *See Franks v. Metro. Bd. of Pub. Educ.*, No. 3:09- 00446 (M.D. Tenn. 2009).

Sincerely,



Lisa Graybill, Legal Director
ACLU Foundation of Texas
PO BOX 12905
Austin, Texas 78711-2905
512-478-7300 | Fax 512-478-7303
lgraybill@aclutx.org



Joshua Block, Staff Attorney
American Civil Liberties Union Foundation
Lesbian Gay Bisexual Transgender & AIDS Project
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2593 | 212-549-2650 (fax) | jblock@aclu.org

Enclosures:

underlying events in *Caudillo* occurred, the Supreme Court had not yet overturned Texas’ criminal prohibition on same-sex “sodomy.” *Id.* at 566-67. No court has ever cited approvingly to *Caudillo*, and the decision has been explicitly rejected on several occasions. *See, e.g., Gay-Straight Alliance of Yulee High Sch. v. Sch. Bd. of Nassau County*, 602 F. Supp. 2d 1233, 1236 (M.D. Fla. 2009).

EXHIBIT A



EXHIBIT B

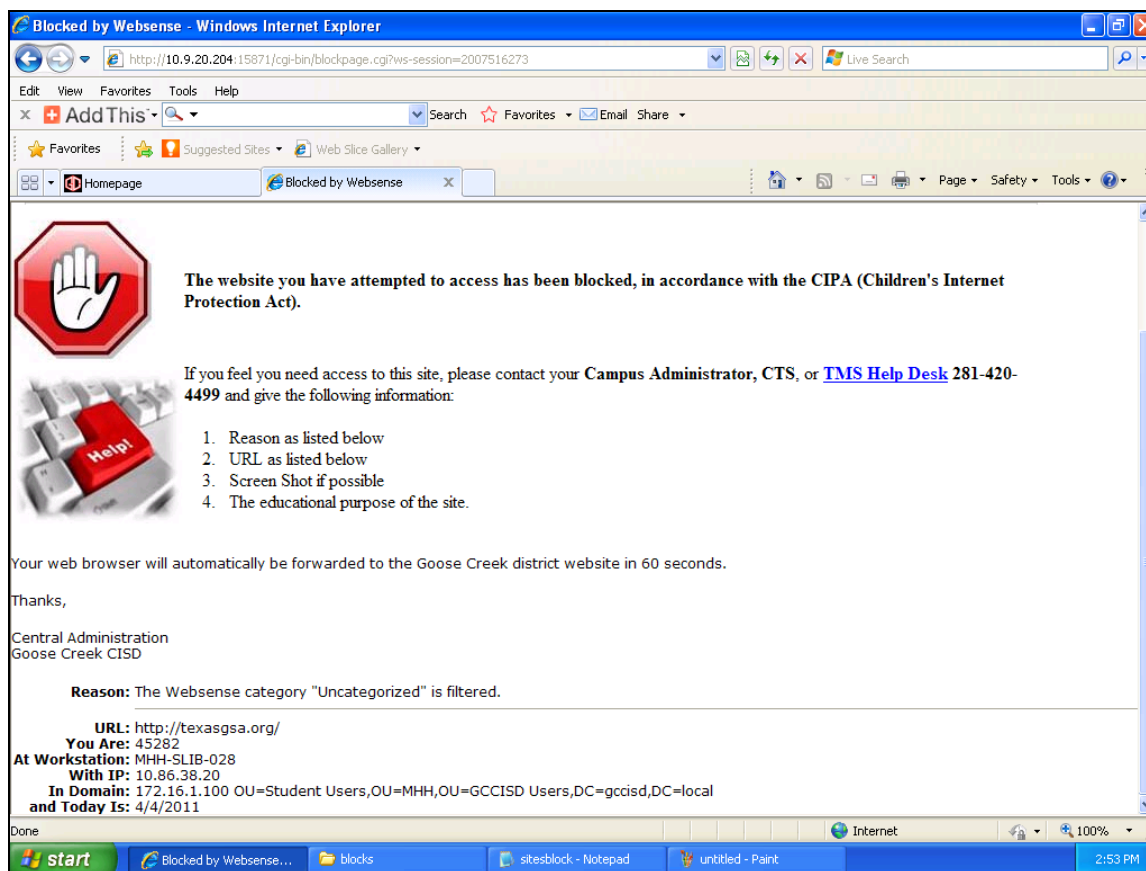


EXHIBIT C



EXHIBIT D



EXHIBIT E



EXHIBIT F

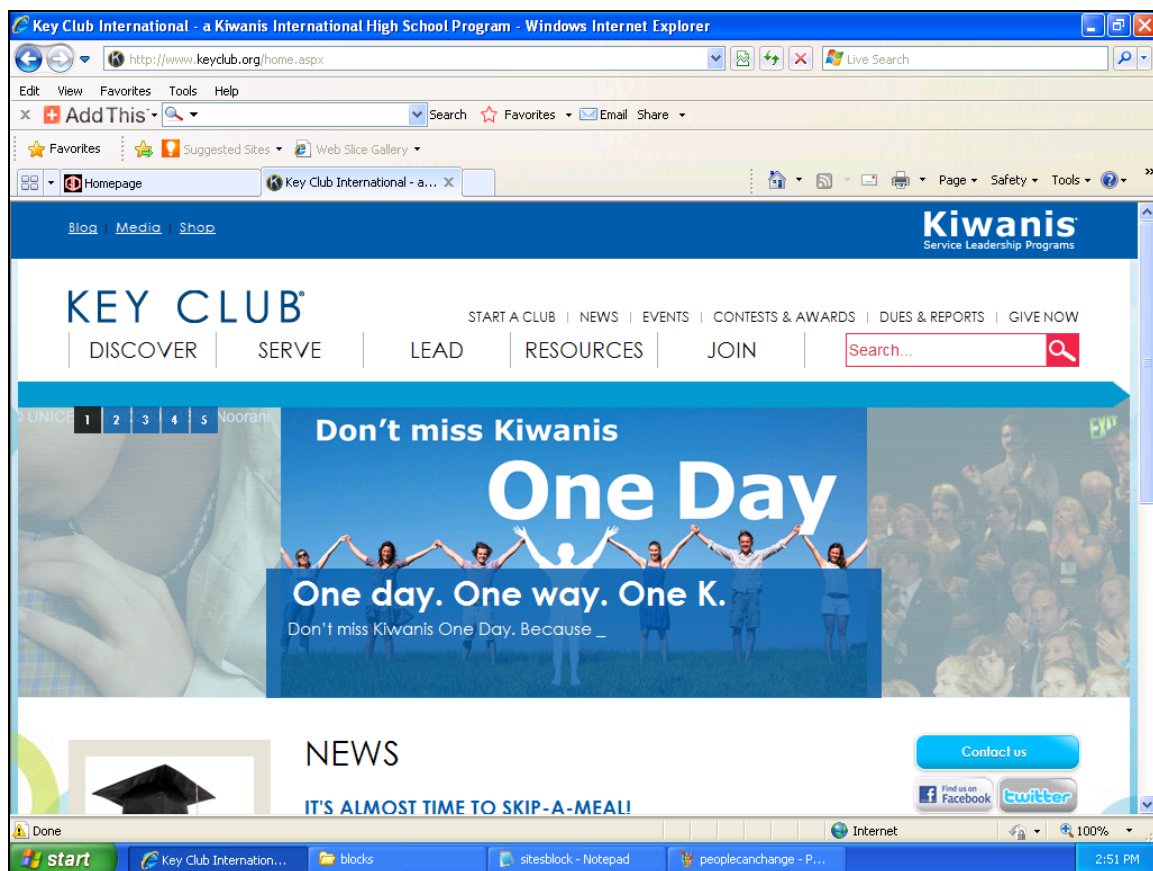


EXHIBIT G

