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April 11, 2011

Lawrence Mussoline, Ph.D.
Superintendent
Downingtown Area School District
540 Trestle Place
Downingtown, PA 19335
lmussoline@dasd.org

Re: Web Filtering in Downingtown Schools

Dear Dr. Mussoline:

It has come to our attention that the Downingtown Area School District utilizes internet filtering software provided by Lightspeed Systems ("Lightspeed") to censor websites advocating the fair treatment of lesbian, gay, bisexual, and transgender ("LGBT") persons. According to the district's response to a public records request, the filtering software at your school currently blocks such sites because they fall into the category of "education.lifestyles." See Exhibit A (attached). On behalf of the American Civil Liberties Union Foundation ("ACLU") and the ACLU of Pennsylvania, 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 that we respectfully request that you disable the "education .lifestyles" filter immediately.

As reflected in the attached exhibit, the Lightspeed internet filtering software used by the Downingtown Area School District has been configured to block sites that are categorized as "education.lifestyles." See Exhibit A at 9 (showing check mark next to education.lifestyles filter). According to the Lightspeed website, the filter for "education.lifestyles" blocks websites that provide: "Education about lifestyles -- gay, lesbian, alternate." See Lightspeed Filter Categories, available at <http://reports.lightspeedsystems.com/reports/Databases/CategoriesDefault.aspx>. Lightspeed's website also provides a database that allows users to determine how a particular website has been categorized by the filtering software. See Lightspeed Filter Database, available at <http://www.lightspeedsystems.com/resources/Databases.aspx>. According to the Lightspeed database, websites blocked under "education.lifestyles" include: GSA Network (gsanetwork.org), Gay Lesbian and Straight Education Network ("GLSEN") (www.glsen.org), and Day of Silence (www.dayofsilence.org).

The Downingtown Area School District does not have a legitimate pedagogical

basis for censoring students' access to "education.lifestyles" websites. The "education.lifestyles" filter is not designed to block sites that violate the Children's Internet Protection Act ("CIPA"). Sexually explicit materials covered by CIPA are already filtered through separate categories in Lightspeed's software for "Adult" content, including a filter for "adult.lifestyles." By contrast, the "education.lifestyles" filter is designated as a "Normally Unblocked Categor[y]," and is designed specifically to target LGBT-related websites that do not contain sexually explicit content. According to Lightspeed's own rating system, many websites in the "education.lifestyles" category – including the websites for GSA Network, GLSEN, and Day of Silence – contain "G-Rated Content" that is "[d]eemed suitable for viewers of all ages." See Lightspeed Filter Database, available at <http://www.lightspeedsystems.com/resources/Databases.aspx>.

Your students have a First Amendment right to access GSA Network, GLSEN, Day of Silence, and similar materials that are blocked by the "education.lifestyles" filter. "[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). These websites are relevant to all of your students, whether or not they are members of a gay-straight alliance: "[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).

The "education.lifestyles" filter engages in unconstitutional viewpoint discrimination by excluding LGBT viewpoints from a wide variety of topics. For example, when the "education.lifestyles" filter is enabled, students looking for scholarships can access Scholarships.com (which is categorized simply as "education") but cannot access LGBT-related scholarships from the Point Foundation (which is categorized as "education.lifestyles"). Similarly, students can access the website for the Olympics (which is categorized as "news") but not the website for the Gay Games (which is labeled "education.lifestyles"). And the "education.lifestyles" filter does not prevent students from accessing the website for the Church of Jesus Christ and Latter Day Saints, but it does prevent students from accessing Affirmation.org, a website that provides support for LGBT Mormons.

This viewpoint discrimination violates your students' First Amendment rights. When a school "permits the discussion of a topic from [one] perspective, it may not shut out speech that discusses the same topic from a [different] perspective." *Child Evangelism Fellowship of New Jersey Inc. v. Stafford Tp. School Dist.*, 386 F.3d 514,

528 (3d Cir. 2004) (Alito, J.). “[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.”).

In addition to violating students’ First Amendment rights, the “education.lifestyles” filter also violates the Equal Access Act because it denies student who are seeking to form gay-straight alliances (“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, where a public secondary school that receives 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, too, 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).

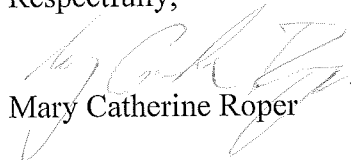
The Equal Access Act requires the Downingtown Area School District to provide GSAs with equal access to all school resources – including online resources – that are made available to other non-curricular clubs. *See SAGE*, 471 F.3d at 912 (LGBT-related group must have “*equal* access to the same avenues of communication as other noncurriculum related groups”) (emphasis in original). The websites for GSA Network, GLSEN, and Day of Silence 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 the “education.lifestyles” filter blocks access to those websites, students who seek to participate in GSAs in the Downingtown Area School District cannot access those online resources. By contrast, students seeking to establish or develop activities for other non-curricular clubs such as the Key Club are able to access their clubs’ websites through the school’s computers because the Key Club is categorized as “education,” not “education.lifestyles.”

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 can access the internet only 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).

Please contact me by **April 22, 2011** to indicate whether you intend to disable the filters for “education.lifestyles” and provide students equal access to the websites for GSA Network, GLSEN, Day of Silence, 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 superintendants 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).

Respectfully,



Mary Catherine Roper

Enclosure