

May 27, 2003

BY FACSIMILE AND OVERNIGHT MAIL

Andrew Rodriguez
Principal
Luther Burbank High School
1002 Edwards
San Antonio, TX 78204

Dear Mr. Rodriguez:

We at the American Civil Liberties Union represent Andrea Adame, Blanca Bazan, and Janet Molina as individual students at your school and organizational representatives of the Amnesty International Club, a non-curricular student club at your school. Based on the information that we have received from our clients, it is clear to us that your school violated the constitutional and statutory rights of our clients by preventing them from speaking about issues of concern to the lesbian, gay, bisexual, and transgender (LGBT) community and by abolishing the Amnesty International Club. We write to demand your school's compliance with the law.

Background

On March 25, 2003, the Amnesty International Club approached school officials seeking equal access to school facilities to publicize its intent to participate in the Day of Silence, a non-school-sponsored event through which participants may express their objection to the discrimination that has silenced the LGBT community. School officials forbade the Amnesty International Club from participating in the Day of Silence, thereby restraining the exercise of its right to free expression. In doing so, school officials denied the Amnesty International Club equal access to school facilities. The actions taken by school officials were based on nothing more than the content and viewpoint of the speech in which the Amnesty International Club intended to engage.

On April 9, 2003, individual students at your school participated in the Day of Silence. Hundreds of other individual students at your school expressed their support for the Day of Silence by wearing "I Support the Day of Silence" stickers. Although the students did not disrupt

the school environment, school officials interfered with the exercise of their right to free expression, censoring their speech based on nothing more than its content and viewpoint. In particular, school officials prevented the students from wearing their stickers. Indeed, school officials threatened and assaulted some of the students for doing so. Thus, if anyone, it was school officials who disrupted the school environment.

School officials retaliated against the Amnesty International Club by abolishing it. In doing so, they denied it equal access to school facilities vis-a-vis other non-curricular student clubs at your school.

Ironically, the actions taken by school officials reflect the very discrimination that the Day of Silence is intended to spotlight.

Your school's actions violated constitutional and statutory law

The First Amendment to the United States Constitution prohibits your school from restraining, interfering with, or retaliating against the types of expression in which our clients engaged. The United States Supreme Court has stated that “[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969). “In order for . . . school officials to justify prohibition of a particular expression of opinion, [they] must be able to show that [their] action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” Id. at 509. By preventing our clients from participating in the Day of Silence, your school violated federal constitutional law.

Moreover, the Equal Access Act requires your school to treat all non-curricular student groups alike. 20 U.S.C. § 4071. If your school grants one non-curricular student group access to school facilities, it must grant all non-curricular student groups access to school facilities. By abolishing and otherwise discriminating against the Amnesty International Club, your school violated federal statutory law. See, e.g., Boyd County High Sch. Gay Straight Alliance v. Board of Educ. Of Boyd County, Ky., __ F. Supp. 2d __, 2003 WL 1919323 (E.D. Ky. Apr. 18, 2003).

Your school's actions contravened sound public policy

Your school has demonstrated an unwillingness to allow students to speak about issues of concern to LGBT youth. On the most fundamental level, such censorship contradicts the essence of learning: an open exchange of ideas. But your school's unwillingness to allow students to speak about issues of concern to LGBT youth is particularly troubling. Student harassment is one of the most serious concerns facing schools today. Indeed, student harassment frustrates the fundamental mission of every school: enabling students to learn. Simply put, when a student is

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harassed, his or her ability to learn is jeopardized. A student who is harassed may perform poorly in class, abandon a school activity, or even suffer physical injury. The harm is no less when a student is harassed because he or she is lesbian, gay, bisexual, or transgender. Indeed, student harassment based on sexual orientation and gender identity is especially egregious and systemic. In a recent survey, 42% of LGBT students reported physical harassment based on their sexual orientation or gender identity. The severity of the harm of such harassment is recognized by the law. A school that does not act to stop student harassment based on sexual orientation or gender identity is subject to legal liability. See, e.g., Flores v. Morgan Hill Unified Sch. Dist., 324 F.3d 1130 (9th Cir. 2003).

Given the serious consequences that flow from student harassment based on sexual orientation and gender identity, it is especially important that every school discourage such harassment by encouraging discussions that foster tolerance and respect for LGBT peers. By participating in the Day of Silence, our clients were attempting to have precisely these types of discussions. Your school's unwillingness to allow our clients to have these types of discussions does a disservice to the best interests of your school's community.

On our behalf of our clients, we seek (1) immediate reinstatement of the Amnesty International Club and (2) written assurance that your school will not restrain, interfere with, or retaliate against the Amnesty International Club or individual students if they participate in the Day of Silence or engage in similar speech in the future. We ask you to contact us at (212) 549-2553 immediately so that we may discuss how best to resolve this situation.

Sincerely,

Kenneth Y. Choe
Staff Attorney
American Civil Liberties Union Foundation

William C. Harrell
Executive Director
American Civil Liberties Union of Texas

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cc: Ruben D. Olivarez
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