



Gene T. Harris, Ph. D.
Superintendent
Columbus City Schools
270 East State Street
Columbus, Ohio, 43215
FAX: (614) 365-5689

May 3, 2011 – *Sent via Fax and US Mail*

Dear Dr. Harris:

The ACLU recently launched a “Don’t Filter Me” initiative to help draw attention to discrimination and censorship facing the lesbian, gay, bisexual and transgender (LGBT) community in our public schools. We received several complaints from within the Columbus City Schools, and we wanted to bring these to your attention to help avoid any potential litigation. Two Tennessee school districts that used a similar type of filtering software recently were sued and agreed to enter into a settlement agreement enforceable by the federal court to stop blocking access of online information about LGBT issues. *See Franks v. Metro. Bd. of Pub. Educ.*, No. 3:09- 00446 (M.D. Tenn. 2009).

According to the complaints we received, Columbus City School officials utilize an Internet filtering system that blocks access to websites it labels “Gay or Lesbian or Bisexual Interest.” Among the websites that have been blocked are the GSA Network (gsanetwork.org), Colage (colage.org), and Parents, Families, and Friends of Lesbians and Gays (“PFLAG”) (pflag.org).¹ When students try to access these websites, the school computers display a message stating that the website has been blocked because it is categorized by the Websense filtering software as “Gay or Lesbian or Bisexual Interest.”

However, Columbus Schools’ filtering software does not censor ALL websites related to LGBT topics. 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.”² For

¹ 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. Colage is a national movement of children, youth, and adults with one or more lesbian, gay, bisexual, transgender and/or queer (LGBTQ) parents. Colage’s goals include fostering youth empowerment, leadership development, education, and advocacy. PFLAG promotes the health and well being of lesbian, gay, bisexual and transgender persons, their families and friends through support, education, and advocacy.

² “Reparative therapy” is a practice denounced as dangerous and harmful to young people by such

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org

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example, according to the complaints we received, Columbus Schools' computers allow access to the websites for People Can Change (www.peoplecanchange.com), Parents & Friends of Ex-Gays (www.pfox.org), and National Association for Research & Therapy of Homosexuality (narth.com).

REQUEST FOR INFORMATION

Pursuant to the Ohio Public Records Act, RC 149.43, we request additional information about Columbus Schools' web filtering policies. What is Columbus City Schools' policy regarding web filtering at the high school? Why are websites of LGBT supportive organizations, such as GSA Network, blocked? Why are websites critical of homosexuality, such as People Can Change, not blocked? Were these the result of the default configuration of Columbus Schools' web filtering software, decision to activate particular filters, and/or requests to block or unblock³ particular websites? Please also provide any contracts and agreements, including service and maintenance agreements, between the internet filtering provider and any representative or agent of the district.

LEGAL CONCERNS

1. United States Constitution--First Amendment

Censoring access to LGBT websites raises legal concerns under the First Amendment. Websense, the filtering software utilized by Columbus City Schools, has separate filters for "adult material" and "gay or lesbian or bisexual interest." Websense's filter for "Gay or Lesbian or Bisexual Interest" filter is designed specifically to block LGBT-related websites that would not otherwise be blocked

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>.

³ We wish to emphasize that unblocking individual LGBT-related websites upon request is not an appropriate solution to this problem. It is unfair and burdensome to require students to seek special permission every time they wish to access a website that reflects LGBT-related viewpoints when, in contrast, students may freely access other viewpoints (including viewpoints condemning homosexuality) without seeking such permission. Such unequal burdens on a particular viewpoint violate the First Amendment.

Moreover, in the particular context of LGBT-related websites, requiring students to make individualized requests is especially harmful and counterproductive. Some students seeking to access such websites may be in particularly vulnerable situations and fear the possibility that filing such a request would force them "out of the closet." There is no reason why the burden should be placed on a vulnerable population to affirmatively request that the school administrators unblock websites for LGBT-resources that they already have a legal right to access under the First Amendment and the Equal Access Act.

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4506 CHESTER AVENUE
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T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org

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as adult or sexually explicit. The software has separate filters that block sexually explicit or harmful content that schools are obligated to block under the Children's Internet Protection Act (CIPA). Thus, the filter for "Gay or Lesbian or Bisexual Interest" can easily be disabled on Websense filtering software without violating CIPA. See Websense List of Filter Categories, at <http://www.websense.com/content/URLCategories.aspx>.

When used by a public school, Websense's "Gay or Lesbian or Bisexual Interest" filter raises serious First Amendment problems. Restricting access to LGBT supportive groups while permitting access to websites that condemn homosexuality also raises concerns about viewpoint discrimination. "[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). 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). Whether or not school administrators agree with the content of the censored websites, the courts have recognized that 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).

2. Equal Access Act

Filtering LGBT websites also raises concerns under the Equal Access Act. See 20 U.S.C. § 4071 *et seq.* The Act requires schools to provide GSAs with equal access to all school resources -- including online resources -- that are made available to other non-curricular clubs. See *Mergens*, 496 U.S. at 247; *SAGE v. Osseo Area Schools Dist.*, 471 F.3d 908, 912 (8th Cir. 2006) (LGBT-related group must have "equal access to the same avenues of communication as other noncurriculum related groups") (emphasis in original); *Gonzalez v. Bd. of Educ.*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008).

The websites for GSA Network and similar blocked 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. Students seeking information for other non-curricular clubs such as the Key Club or 4-H Club are able to access those websites through the school's computers.

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WEB FILTERING SENDS STUDENTS THE WRONG MESSAGE

Allowing students equal access to LGBT-related websites is not just a legal concern; it also makes sense from a safety perspective, particularly in light of the epidemic of LGBT-youth suicides and bullying.

I am sure we can agree that part of an educator's job is to model good behavior for students. Blocking LGBT and GSA websites because they are labeled "Gay or Lesbian or Bisexual Interest" does not convey acceptance and support. Further, it sends students mixed messages that can hamper school districts' efforts to prevent bullying and harassment.

Many students do not have computers or Internet access at home, or may not be blessed with a supportive family environment, and so can only access the Internet at school. Restricting LGBT websites may cut these students off from the vital support they need.

We trust that you will accept this letter in the spirit in which it was intended, and we are hopeful that you will agree to remove the LGBT web content filters. Please let us know at your earliest convenience. Mr. Hardiman can be reached at (216) 472-2220 or jhardiman@acluohio.org.

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org



Sincerely,

James Hardiman
Legal Director
ACLU of Ohio

Joshua Block
Staff Attorney
ACLU Lesbian Gay Bisexual Transgender
& AIDS Project