

1 CHRISTINE P. SUN, SBN 218701  
2 CATHERINE E. LHAMON, SBN 192751  
3 CLARE PASTORE, SBN 135933  
4 PETER ELIASBERG, SBN 189110  
5 MARK D. ROSENBAUM, SBN 59940  
6 ACLU Foundation of Southern California  
7 1616 Beverly Boulevard  
8 Los Angeles, California 90026  
9 Telephone: (213) 977-9500, x263  
Facsimile: (213) 250-3919

JAMES ESSEKS, SBN 159360  
ACLU National Lesbian and Gay Rights Project  
125 Broad Street, 18th Floor  
New York, NY 10004  
Telephone: (212) 549-2500  
Facsimile: (212) 549-2650

Attorneys for Plaintiffs/Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

JOEL PARAMO; JANET RANGEL; MARIA E. KRAUTER, a minor, by Allan Krauter, her guardian ad litem; TRAVIS LEE MATTIAS, a minor, by Susan E. Nordstrom, his guardian ad litem; RUDY CACHU, a minor, by Cindy Cachu, his guardian ad litem; GAY-STRAIGHT ALLIANCE NETWORK,

Plaintiffs/Petitioners,

vs.

KERN HIGH SCHOOL DISTRICT, an entity; DONALD E. CARTER, Superintendent of Schools for Kern High School District, an individual and in his official capacity; JOHN L. GIBSON, Principal of East Bakersfield High School, an individual and in his official capacity,

Defendants/Respondents.

Case No.:

**PETITION FOR WRIT OF MANDATE (CCP §§ 1085, 1087) AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES**

California Constitution, Art. I, §§ 2, 7(a) and (b), Art. IV, § 16(a); Cal. Educ. Code §§ 200, 201, 220, 48907, and 48950; Cal. Code of Civ. Pro. §§ 525, 526, 1060, 1085, and 1087.

PRELIMINARY STATEMENT

1  
2 1. This action challenges a high school principal’s efforts to unilaterally stop lesbian, gay,  
3 bisexual, and transgender (“LGBT”) students, the parents of those students, and student  
4 newspaper editors from engaging in an open and honest dialogue about sexual orientation  
5 issues in the school newspaper. Principal John Gibson and the other defendants/respondents  
6 (hereinafter defendants) have ordered the Editor-in-Chief and the editorial board of the school  
7 newspaper, *The Kernal*, at East Bakersfield High School (“East High”) not to publish the  
8 school newspaper’s “Focus on Homosexuality” series on the pretext that its publication would  
9 “pose a risk of safety to the students interviewed and to the peace, safety, and orderly  
10 administration of this campus”—even though the paper covered just last December topics  
11 relating to teen sexuality such as teen rape and teen virginity that explicitly discuss the sexuality  
12 of East High’s heterosexual students, without either censorship from the school administration  
13 or in any way diminishing student safety or the peace, safety, and orderly administration of the  
14 campus. Moreover, the sexual orientation of all of the students interviewed in the stories is  
15 already well known on campus and no violent repercussions have resulted. Defendants’  
16 censorship of LGBT-focused articles betrays misguided, outdated, and illegal assumptions  
17 regarding the incendiary nature of the mere mention of same-sex sexual orientation. Such  
18 censorship violates the plaintiffs/petitioners’ (hereinafter plaintiffs) rights to free expression,  
19 equal educational opportunities, and non-discrimination. In addition, such censorship perverts  
20 defendants’ affirmative statutory obligation to maintain a safe and equal school environment  
21 for all students, including LGBT students. By his acts, Principal Gibson sends to gay and  
22 lesbian senior high students the unmistakable stigmatizing message that school officials insist  
23 that their sexuality (as opposed to the sexuality of heterosexual students) be closeted from both  
24 straight and gay students as likely to incite rampant violence. In any context, this blatant  
25 discrimination on the basis of sexual orientation and suppression of protected speech would be  
26 odious, but particularly at the level of high school wherein the censorship bears the imprimatur  
27 of the principal, the silencing of this discourse works an enduring injury in favor of ignorance  
28 and intolerance.

26 2. By this action, plaintiffs seek an order requiring Principal Gibson and other the other  
27 defendants to comply with their obligations under the Education Code and the state constitution  
28 by, *inter alia*, refraining from taking any action to stop the publication and distribution of the

1 articles at issue in the next edition of *The Kernal*, currently scheduled for May 27, 2005, or in  
2 any other future edition of *The Kernal*. The action also seeks an order requiring the defendants  
3 to comply with their affirmative obligations to provide a tolerant and welcoming learning  
4 environment for all students, including LGBT students, through measures designed to solve,  
5 and not ignore, homophobia and anti-gay attitudes.

6 3. Plaintiffs challenge defendants' censorship of the articles as violations of, *inter alia*,  
7 their free expression rights under California Education Code sections 48907 and 48950 and the  
8 California constitution, and their rights to a safe learning environment under California  
9 Education Code sections 200, 201, and 220. This action also challenges defendants' censorship  
10 as a violation of the non-discrimination and equal protection rights of the LGBT students and  
11 the parents of LGBT students under Education Code section 220 and the California  
12 constitution.

13 4. The California legislature has provided broad free expression rights to high school  
14 students that extend beyond the guarantees of the First Amendment of the United States  
15 Constitution. California Education Code section 48907 expressly protects student free  
16 expression rights in school newspapers and directs that, "There shall be no prior restraint of  
17 material prepared for official school publications," except under limited exceptions not  
18 applicable here. Under section 48907, school administrators have the burden of justifying any  
19 censorship of student expression "without undue delay."

20 5. California Education Code section 48950 further directs that, "School districts . . . shall  
21 not make or enforce any rule subjecting any high school pupil to disciplinary sanctions solely  
22 on the basis of conduct that is speech or other communication that, when engaged in outside of  
23 the campus, is protected from governmental restriction by the First Amendment to the United  
24 States Constitution or Section 2 of Article 1 of the California Constitution." By enacting  
25 section 48950, the California legislature intended to make clear that students have the same  
26 right to exercise free speech on campus as they enjoy off campus. (*See* Historical and Statutory  
27 Notes, 27B West's Ann. Ed. Code (1993 ed.) § 48950, p. 602).

28 6. California Education Code sections 200, 201, and 220 place upon school districts the  
affirmative obligation to provide a safe learning environment free from harassment and  
discrimination for all students, including LGBT students. In particular, section 201 states that,  
"There is an urgent need to teach and inform pupils in the public schools about their rights, as

1 guaranteed by the federal and state constitutions, in order to increase pupils' awareness and  
2 understanding of their rights and the rights of others, with the intention of promoting tolerance  
3 and sensitivity in public schools and in society as a means of responding to potential  
4 harassment and hate violence." Educ. Code § 201(e). In enacting Education Code section 201,  
5 the California legislature intended that "each public school undertake educational activities to  
6 counter discriminatory incidents on school grounds and, within constitutional bounds, to  
7 minimize and eliminate a hostile environment on school grounds that impairs the access of  
8 pupils to equal educational opportunity." Educ. Code § 201(f). Education code 220 further  
9 prohibits schools from discriminating against students on the basis of sexual orientation or  
gender identity.

10 7. Defendants' censorship violates plaintiffs' free expression rights. Defendants'  
11 censorship prevents plaintiffs from publishing articles discussing newsworthy, timely  
12 information solely because of the topic of discussion. In addition, defendants' directive that  
13 names of LGBT students be deleted from any articles discussing sexual orientation, without  
14 requiring that names of student and community members who oppose homosexuality be  
15 deleted, constitutes impermissible viewpoint discrimination.

16 8. Nothing justifies defendants' censorship. Defendants cannot meet their burden under  
17 Education Code section 48907 of showing that the articles in dispute "incite[] students as to  
18 create a clear and present danger of the commission of unlawful acts on school premises or the  
19 violation of lawful school regulations, or the substantial disruption of the orderly operation of  
20 the school." None of the articles encourages violence or any other harassing or discriminating  
21 behavior against LGBT students or any other students. Rather, in keeping with the intent of the  
22 California legislature, the articles promote tolerance and sensitivity at East High and its  
23 surrounding community by giving a human face to lesbian, gay, bisexual, and transgender  
24 students on campus and by addressing homophobia in a balanced and well-researched manner.  
25 To the extent that any unlawful acts might occur at some future point against LGBT students on  
26 campus, those acts would stem from existing LGBT bias and discrimination at East High,  
27 which defendants have not effectively countered. And, in any event, many students openly  
28 acknowledge and discuss—and long have openly acknowledged and discussed—their sexual  
orientation on campus and in the East High community.

1 9. Defendants' censorship also violates their affirmative obligations under Education  
2 Codes sections 200, 201, and 220 to provide a safe learning environment for all students.  
3 Defendants' censorship further silences already marginalized voices in the community by  
4 sending the clear message that discussion of LGBT sexual orientation and gender identity is  
5 inappropriate on campus. That is, defendants' censorship tells LGBT students that they should  
6 hide their identities on campus and should not express themselves or bring up issues of deep  
7 personal importance within East High's educational community. The censorship further  
8 violates defendants' safe schools obligations by hindering the ability of parents with students at  
9 East High and of organizations such as the GSA Network to use that information to work to  
10 ensure tolerance and equal educational opportunities at East High. Finally, by their suppression  
11 of speech about LGBT issues, defendants violate the California legislature's mandate that  
12 school districts *increase* students' awareness of their rights and the rights of others, including  
13 LGBT students, with the intention of promoting tolerance and sensitivity in public schools and  
14 in society as a means of responding to potential harassment and hate violence.

15 10. In addition, defendants have clearly articulated discriminatory bias by directing that if  
16 any articles referencing sexual orientation were to be published, names of LGBT students must  
17 be deleted whereas names of students and community members who oppose homosexuality  
18 need not be deleted and by suppressing the rights of LGBT students and their parents to express  
19 their views by means generally available to the East High community, *i.e.*, in an article that the  
20 editorial board of *The Kernal* deems newsworthy. These actions by defendants send the clear  
21 message to the entire East High community that LGBT students should stay in the closet and  
22 should not discuss openly their sexual orientation, whereas persons who wish to articulate  
23 opposition to the status of being gay, lesbian, bisexual, or transgender are welcome—and  
24 protected by the community—to express their views.

### 25 PARTIES

26 11. Plaintiff Joel Paramo resides in Bakersfield, California with his family. He is 18 years  
27 old and a 12<sup>th</sup> grader at East Bakersfield High School. He is a current member of the editorial  
28 board of *The Kernal*, East High's student paper, and the paper's Editor-in-Chief for the current  
academic year. Joel has been a member of *The Kernal* since he was a freshman.

12. Plaintiff Maria Krauter resides in Bakersfield, California with her family. She is 17  
years old and an 11<sup>th</sup> grader at East Bakersfield High School. Maria Krauter's parent has

1 already filed a petition with this Court to act as Maria's guardian ad litem. She is a current  
2 member of the editorial board of *The Kernal* and the editor of the "Focus" section in which the  
3 articles at issue were going to and will appear but for defendants' censorship. Maria is also the  
4 author of the "Editor's Notes," which defendants have also censored, explaining the editorial  
5 board's decision to address sexual orientation issues and the article about parents of LGBT  
6 students. Maria has been a member of *The Kernal* since she was a sophomore and is a member  
7 of the editorial board of *The Kernal* for the next academic year. Just recently, on May 13,  
8 2005, Maria won two awards from the Kern Press Club for best articles by high school  
9 journalists in the "news" and "editorial" categories.

10 13. Plaintiff Travis Mattias resides in Bakersfield, California with his family. He is 17  
11 years old and an 11th grader at East Bakersfield High School. Travis Mattias' parent has  
12 already filed a petition with this Court to act as Travis' guardian ad litem. Travis is a current  
13 member of the editorial board of *The Kernal* and the editor of the Features section of the paper.  
14 Travis also worked on the *The Kernal* as a freshman and is a member of the editorial board of  
15 *The Kernal* for the next academic year.

16 14. Plaintiff Janet Rangel resides in Bakersfield, California with her family. She is 18 years  
17 old and a 12<sup>th</sup> grader at East Bakersfield High School. Janet is one of the LGBT students  
18 interviewed and profiled in one of the articles at issue. In the article, Janet recounts her  
19 experience coming out to her family. Janet is a lesbian. She is comfortable with being gay and  
20 has been open and honest about her sexual orientation at school and with her mother and other  
21 family members.

22 15. Plaintiff Rudy Cachu resides in Bakersfield, California with his family. He is 17 years  
23 old and an 11th grader at East Bakersfield High School. The parent of Rudy Cachu has already  
24 filed a petition with this Court to act as Rudy's guardian ad litem. Rudy is one of the LGBT  
25 students interviewed and profiled in an article at issue. In the article, Rudy recounts his  
26 experiences as a gay student. Rudy is gay and has been open and honest about his sexual  
27 orientation at school and with his family.

28 16. Plaintiff Gay-Straight Alliance Network ("GSA Network") sues both on behalf of its  
members and to protect its own interests. The GSA Network is a youth-led nonprofit  
organization made up of gay, lesbian, bisexual, transgender, and heterosexual students and  
supportive adults who are dedicated to eliminating homophobia and intolerance in schools.

1 GSA Network is a project of the Tides Center in San Francisco, which is a 501(c)(3) nonprofit  
2 organization. GSA Network is headquartered in San Francisco, California, and has an office in  
3 Fresno, California, by which it monitors homophobia and intolerance in schools throughout  
4 central California, including East High. At present, there are five GSA clubs in Kern County,  
5 all of which are in Kern High School District. Plaintiff GSA Network has members who are  
6 current and prospective students at East High, including plaintiff Janet Rangel among others..

7 17. Defendant Kern High School District (the "District") is a school district established by  
8 the State of California and funded by the State and by Kern County. The District operates  
9 secondary public schools in Kern County, including East Bakersfield High School.

10 18. Defendant John Gibson is the Principal of East Bakersfield High School. He is sued in  
11 both his official and his individual capacity. As Principal, he is and was at all relevant times  
12 acting under color of state law.

13 19. Defendant Donald E. Carter is the Superintendent of the District. He is sued in both his  
14 official and his individual capacity. As Superintendent of the District, he is and was at all  
15 relevant times acting under color of state law and as a final policy-maker regarding student  
16 expression and student conduct and discipline in the District.

#### 17 STATEMENT OF FACTS

18 20. *The Kernal* is East High's official student newspaper. It is published on a monthly basis  
19 and publishes approximately nine issues per academic year. *The Kernal* is distributed to all  
20 students at East High and to its subscribers, who are generally parents of students at East High.  
21 *The Kernal* staff consists entirely of East High students, as advised by an East High journalism  
22 teacher. Consistent with Education Code section 48907, the editorial board of *The Kernal* is  
23 responsible for assigning and editing the news, editorial, and feature content of the paper,  
24 subject to the guidance of the paper's journalism advisor. As standard practice and policy, the  
25 East High administration does not review the content of *The Kernal* prior to its distribution to  
26 students and the East High community.

27 21. In the past, the "Focus" section has covered a wide range of subjects, from the more  
28 lighthearted, such as fitness and exercise methods, to the more serious, such as the 2004  
presidential election. The editorial board of *The Kernal* has also not shied away from tackling  
controversial subjects that directly affect the student body. For example, in the December 16,  
2004 edition, the "Focus" section, headlined "Let's Talk About Sex" and "Teen Rape," covered

1 virginity and rape among heterosexual teenagers. Despite *The Kernal's* regular coverage of  
2 serious and sometimes controversial subjects, including explicit articles about heterosexual  
3 sexuality, plaintiffs are unaware of any time, including any time during the past four years,  
4 besides the present dispute, in which the East High administration objected to the publication of  
5 or tried to censor articles in the paper.

6 The Standard Process for Selecting The "Focus" Subject for the Student Paper

7 22. For each edition of *The Kernal*, the editorial board chooses a topic to "focus" on. The  
8 process begins with the "Focus" section editor, who prepares a list of possible topics to present  
9 to the editorial board. About three weeks prior to distribution of each edition of *The Kernal*,  
10 the editorial board meets to discuss the proposed topics, judging the topics by, among other  
11 things, their newsworthiness, timeliness, and relevance to the East High students and  
12 community. As a result of this process, the topic for the "Focus" section is selected for that  
13 month's edition of the paper.

14 23. Next, the editorial board presents the chosen topic to the rest of the *Kernal* staff and the  
15 paper's journalism advisor. The purpose of the presentation is to provide the rest of the staff  
16 and the journalism advisor the opportunity to voice objections to the proposed topic, to ask  
17 questions, and to brainstorm about the types of articles that should appear. The "Focus" editor  
18 then assigns staff members to report on and author the specific articles to be included in the  
19 "Focus" section.

20 24. About two weeks prior to the distribution of the paper, the reporters turn in their articles  
21 for approval by, in order, the "Focus" editor, the Editor-in-Chief, and the paper's journalism  
22 advisor. The articles are then sent to the copy editor for final grammatical and stylistic edits  
23 and then set to be "laid out" for final printing of the paper. The "lay out" of the paper  
24 generally occurs the afternoon and evening of the day two days prior to the distribution of the  
25 paper.

26 The Selection of LGBT Issues For The April 29, 2005 Edition of *The Kernal*

27 25. According to the paper's standard practice, the editorial board of *The Kernal* chose to  
28 focus on the subject of homosexuality for the April 29, 2005 edition of the paper. Throughout  
the month of April, the Focus editors and reporters prepared the articles and the design of the  
section under the guidance of the paper's journalism advisor. The articles include an article  
about LGBT students, all of whom are already "out" on campus, and their struggle for



1 acceptance; an article about whether sexual orientation is biologically determined; an article  
2 about parents of LGBT children; and an article about a Christian East High student and a  
3 community pastor who oppose homosexuality because of their religious beliefs.

4 26. During that process, upon information and belief, no objections were raised to the topic  
5 or to the articles themselves on any grounds, much less on the grounds that the articles would  
6 incite unlawful acts, harassment, or violence against LGBT students. Indeed, all of the LGBT  
7 students in the articles were already open about their sexual orientation and gender identity to  
8 the school community. However, to ensure that the paper had permission to print private  
9 information about the students, the editorial board required the parents of students under 18  
10 years old to sign documents stating: "I, the undersigned, give permission to the East High  
11 Kernal to publish my child's name \_\_\_\_\_, identifying him/her as homosexual." The "Focus  
12 on Homosexuality" section was scheduled to appear as part of the April 29, 2005 edition of *The*  
13 *Kernal*.

13 The Censorship by Defendants of the "Focus on Homosexuality" Section

14 27. On or about April 26, 2005, two days prior to the layout day for the paper, Principal  
15 Gibson and Assistant Principal of Curriculum John Davis learned that the LGBT-focused  
16 articles would be part of the April 29 edition of the paper. Principal Gibson demanded that the  
17 editorial board send the articles to him for the administration's review. The next day, the  
18 editorial board, including plaintiffs Joel Paramo, Maria Krauter, and Travis Mattias, met with  
19 Assistant Principal Davis and Dean of Students Mark Balch for approximately three hours to  
20 discuss the inclusion of the articles in the paper.

21 28. At that meeting, Davis asserted that printing the articles would jeopardize the safety of  
22 the LGBT students in the articles, although he was not able to cite any specific physical or  
23 verbal threats or violence against those students or any other LGBT student at East High.  
24 However, Davis stated that the articles could be published on the condition that the editorial  
25 board hide the identities of the LGBT students, even though those students and the parents of  
26 the minor students had agreed that *The Kernal* could use the students' real names. Davis did  
27 not, however, make the same demand with respect to the student and community member who  
28 expressed the viewpoints opposing homosexuality. Although the editorial board disagreed with  
Gibson's demand because it would, among other things, lessen the impact of the articles by  
destroying the readers' personal connection to the LGBT students profiled, the board

1 consented. Following Davis' instructions, the board removed the real names of the LGBT  
2 students and blurred out the pictures of the LGBT students, but did not do the same with  
3 respect to the student and community member who had voiced religious objections to  
4 homosexuality.

5 29. The next evening, on or about April 27, 2005 and around 10 p.m., while *The Kernal*  
6 staff was finalizing the production of the April 29 edition, Principal Gibson told the editorial  
7 board that the articles could not be published at all, and implied that if the articles were  
8 published, the school would confiscate all copies of the paper immediately upon distribution.  
9 Principal Gibson asserted that the censorship was justified because he had received a vague  
10 report about the transgender student identified in one of the articles. Principal Gibson also  
11 asked that the board consider delaying publication of the paper. The board explained that they  
12 strongly disagreed with Principal Gibson's decision to censor the articles. But, rather than not  
13 publish the April 29 edition at all and because it was important to distribute the other news in  
14 that edition in a timely manner, *The Kernal* staff worked the rest of the night and through the  
15 early morning of April 28 to reconfigure the April 29 edition. On April 29, 2005, *The Kernal*  
was distributed to East High students and the paper's subscribers without the "Focus" section.

16 30. On or about May 1, 2005, Maria Krauter and her mother met with the transgender  
17 student to find out if there had been a threat against him, as Principal Gibson had claimed.  
18 Maria Krauter's mother acted as the translator for the conversation because the transgender  
19 student speaks primarily Spanish and Maria Krauter speaks primarily English. The transgender  
20 student responded that he had not suffered any threats against him recently, and that the only  
21 thing he thought that Mr. Gibson could have possibly been referring to was an incident where a  
22 boy once threw gum at him in class. But he told Maria something to the effect that the boy had  
thrown the gum at him because the boy was just being juvenile.

23 31. On or about May 3, 2005, Joel Paramo sent a letter on behalf of the editorial board to  
24 the East High administration reiterating that the board strongly believed that the LGBT-focused  
25 articles were newsworthy and "should still be printed and distributed to the student body to  
26 educate the East High community." Paramo requested that the East High administration decide  
27 by May 13, 2005, two weeks prior to the distribution date of the next edition of *The Kernal*,  
28 whether the administration would allow the articles to be published.

1 32. At or near the end of the school day on May 13, 2005, an administrative assistant to  
2 Principal Gibson handed Paramo a letter from Principal Gibson. In the letter, Gibson stated the  
3 East High administration would not permit the articles to be published on the ground that their  
4 publication would "pose a risk of safety to the students interviewed and to the peace, safety,  
5 and orderly administration of this campus." The letter directed Paramo not to publish the  
6 articles in future editions of *The Kernal*. After he received the letter, Paramo and plaintiff  
7 Travis Mattias, another member of the editorial board, attempted to meet in person with  
8 Principal Gibson. When they arrived at his office, Paramo and Mattias were told by Principal  
9 Gibson's secretary that the Principal had left the school for that day.

10 33. On May 17, 2005, Paramo and Mattias sent a letter to Assistant Superintendent Joe  
11 Carter to appeal Principal Gibson's decision. Paramo and Mattias offered to meet with the  
12 school district, but explained that because Principal Gibson had already set forth his  
13 justification for the censorship and because time was of the essence, they needed a decision by  
14 3 p.m. on May 19, 2005. As of the filing of this Complaint, the Superintendent has not  
15 reversed Principal Gibson's decision.

16 34. The next edition of *The Kernal* is scheduled to be distributed to East High students and  
17 the East High community on May 27, 2005. In order to meet this distribution date, the paper  
18 must be sent to the printers on the evening of May 25, 2005, or the early morning of May 26,  
19 2005. If necessary, the publication of the last edition could be delayed to June 3, 2005, which  
20 is the last day that seniors are required to be on campus. The paper will resume publication in  
21 the next academic year starting in August 2005. If the articles are not published in *The Kernal*  
22 by the end of this academic year, members of *The Kernal* editorial board for the academic year  
23 2005-2006, including plaintiffs Krauter and Mattias, intend to publish the articles during the  
24 2005-2006 academic year but several of the quoted students would already have graduated.

25 35. If the articles are not published this academic year, plaintiff Cachu, as a student at East  
26 High for the 2005-2006 academic year and plaintiff GSA Network as an organization with  
27 members at East High have a continued interest in the publication and distribution of the  
28 articles.

///

///

FIRST CLAIM FOR RELIEF OF PLAINTIFFS PARAMO, KRAUTER,  
AND MATTIAS AGAINST ALL DEFENDANTS

(Freedom of Speech, California Education Code sections 48907 and 48950 and Article 1,  
section 2 of the California Constitution)

36. Plaintiffs Paramo, Krauter, and Mattias repeat and reallege all the allegations of the preceding paragraphs of this complaint as if set forth in full.

37. Defendants, acting under color of state law, have prohibited the publication and distribution of the "Focus on Homosexuality" articles despite the fact that such expression did not and could not have been reasonably anticipated to incite students as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.

38. Defendants' censorship constitutes an unlawful prior restraint on expression, which violates Education Code sections 48907 and 48950 and plaintiffs' rights to free expression as guaranteed by Article 1, section 2 of the California Constitution.

39. These violations of plaintiffs' rights to free speech are the result of decisions by school personnel, including Principal Gibson, which the Superintendent refuses to reverse and thereby endorses, and thus, constitute official policy of the District.

40. The unconstitutional acts of defendants have caused plaintiffs Paramo, Krauter, and Mattias to fear that they will be disciplined for exercising their free expression rights. They have incurred damages including emotional distress.

41. Plaintiffs have no adequate remedy at law to redress the wrongs herein alleged. Unless enjoined by this Court, defendants will continue to violate their rights to free speech, which will continue to cause them irreparable harm.

SECOND CLAIM FOR RELIEF OF PLAINTIFFS CACHU AND RANGEL

(Freedom of Speech, California Education Code sections 48907 and 48950 and Article 1,  
section 2 of the California Constitution)

42. Plaintiffs Cachu and Rangel repeat and reallege all the allegations of the preceding paragraphs of this complaint as if set forth in full.

43. Defendants have suppressed Cachu's and Rangel's right to speak about their sexual orientation through means generally available to the East High student body, *i.e.*, in an article that the editorial board of *The Kernal* deems newsworthy. Defendants have censored Cachu's and Rangel's speech despite the fact that such expression was not and could not have been reasonably anticipated to incite students as to create a clear and present danger of the

1 commission of unlawful acts on school premises or the violation of lawful school regulations,  
2 or the substantial disruption of the orderly operation of the school.

3 44. Defendants' censorship constitutes an unlawful prior restraint on expression, which  
4 violates Education Code sections 48907 and 48950 and plaintiffs' rights to free expression as  
5 guaranteed by Article 1, section 2 of the California Constitution.

6 45. These violations of plaintiffs' rights to free speech are the result of decisions by school  
7 personnel, including Principal Gibson, which the Superintendent has refused to reverse and  
8 thereby endorses, and thus, constitute official policy of the District.

9 46. The unconstitutional acts of defendants have caused plaintiffs Cachu and Rangel  
10 emotional distress in that their acts send the clear and stigmatizing message that LGBT students  
11 should stay in the closet and should not discuss openly their sexual orientation, whereas  
12 persons who wish to articulate opposition to the status of being gay, lesbian, bisexual, or  
13 transgender are welcome—and protected by the community—to express their views.

14 47. Plaintiffs have no adequate remedy at law to redress the wrongs herein alleged. Unless  
15 enjoined by this Court, defendants will continue to violate their rights to free speech, which  
16 will continue to cause them irreparable harm.

17 THIRD CLAIM FOR RELIEF OF ALL PLAINTIFFS

18 (California Education Code sections 200, 201, and 220)

19 48. All plaintiffs repeat and reallege all the allegations of the preceding paragraphs of this  
20 complaint as if set forth in full.

21 49. Defendants have directed plaintiffs not to speak in print about, and not to publish  
22 discussion of, lesbian, gay, or bisexual sexual orientation or transgender gender identity—in  
23 contrast to permissible speech in print about and publication of discussion of heterosexual  
24 sexual orientation and traditional gender identity. Defendants' choice to silence print  
25 discussion of lesbian, gay, and bisexual sexual orientation and transgender gender identity fails  
26 to provide students the equal and safe learning environment to which they are entitled.  
27 Likewise, defendants' failure to offer nondiscrimination training or guidance to students and  
28 staff despite their concern for student safety and for the peace and orderly administration of the  
29 campus violates defendants' obligations to provide a safe learning environment for all students.

30 50. Through these intentional acts and the acts of deliberate indifference, Plaintiffs have  
31 been deprived of the equal rights and opportunities in a public educational institution as

1 guaranteed under the California Education Code sections 200, 201, and 220. As a result,  
2 Plaintiffs have suffered economic and non-economic damages in an amount to be determined at  
3 trial.

4 51. Plaintiffs have no adequate remedy at law to redress the wrongs herein alleged. Unless  
5 enjoined by this Court, defendants will continue to violate their rights to a safe learning  
6 environment and to equal educational opportunities at East High.

7 FOURTH CLAIM FOR RELIEF OF PLAINTIFFS CACHU AND RANGEL

8 (California Education Code section 220 and Article I, sections 7(a) and (b) and Article IV,  
9 section 16(a) of the California Constitution)

10 52. Plaintiffs Cachu and Rangel repeat and reallege all the allegations of the preceding  
11 paragraphs of this complaint as if set forth in full.

12 53. Defendants have suppressed the expression of Cachu and Rangel because of their sexual  
13 orientation. Defendants have singled out for censorship expression about sexual orientation,  
14 while not restraining similarly “controversial” expression about heterosexual teen virginity and  
15 racial tension at East High from being published in *The Kernal*. Moreover, defendants have  
16 directed that identities of LGBT student speakers be stricken from publication whereas  
17 identities of student and community speakers who express anti-gay bias need not be so  
18 censored. Nothing justifies this discriminatory treatment.

19 54. Thus, defendants, acting under color of state law, violated plaintiffs Cachu and Rangel’s  
20 rights to nondiscrimination and equal protection under California Education Code section 220  
21 and as guaranteed by Articles I, sections 7(a) and (b) and Article IV, section 16(a) of the  
22 California Constitution.

23 55. This violation of plaintiffs’ rights to nondiscrimination and equal protection are the  
24 result of decisions by school personnel, including Principal Gibson, which the Superintendent  
25 has not reversed and has thereby endorsed, and thus, constitute official policy of the District.

26 56. This discriminatory treatment of plaintiffs Rudy Cachu and Janet Rangel based on their  
27 sexual orientation has caused them damages including emotional distress.

28 57. Plaintiffs have no adequate remedy at law to redress the wrongs herein alleged. Unless  
enjoined by this Court, defendants will continue to violate their rights to nondiscrimination and  
to equal protection, which will cause them irreparable harm.

///

1 FIFTH CLAIM FOR RELIEF OF ALL PLAINTIFFS

2 (California Code of Civil Procedure sections 525, 526, and 1060)

3 58. Plaintiffs repeat and reallege all the allegations of the preceding paragraphs of this  
4 complaint as if set forth in full.

5 59. An actual and existing controversy exists between plaintiffs and defendants because  
6 plaintiffs contend, and defendants dispute, that defendants' actions and inactions as described  
7 above have violated California Education Code sections 200, 201, 220, 48907, and 48950 and  
8 Article 1, sections 2 and 7(a) and (b), and Article IX, section 16(a) of the California  
9 Constitution.

10 60. Plaintiffs seek a judicial declaration, pursuant to California Code of Civil Procedure  
11 section 1060, that defendants have violated these constitutional and statutory provisions.

12 61. In addition, plaintiffs seek an injunction pursuant to California Code of Civil Procedure  
13 sections 525 and 526. Defendants' wrongful conduct, unless enjoined by this Court, will  
14 continue to cause great and irreparable injury to plaintiffs, who will be denied free speech rights  
15 and rights to safe and equal schools.

16 62. Plaintiffs have no adequate remedy at law to redress the wrongs herein alleged. Unless  
17 enjoined by this Court, defendants will continue to violate their rights to nondiscrimination and  
18 to equal protection, which will cause them irreparable harm.

19 SIXTH CLAIM FOR RELIEF OF ALL PLAINTIFFS

20 (California Code of Civil Procedure sections 1085 and 1087)

21 63. Plaintiffs repeat and reallege all the allegations of the preceding paragraphs of this  
22 complaint as if set forth in full.

23 64. Defendants have a clear, present, and ministerial duty to permit publication in the  
24 school newspaper of timely, newsworthy articles that satisfy professional journalistic standards  
25 unless such articles are obscene, libelous, or slanderous, or so incite students as to create a clear  
26 and present danger of the commission of unlawful acts on school premises or the violation of  
27 lawful school regulations, or the substantial disruption of the orderly operation of the school.  
28 Likewise, defendants have a clear, present, and ministerial duty to maintain safe and equal  
school environments for all students, including LGBT students. Defendants are refusing to  
comply with their duty to allow freedom of expression, including publication in the school  
newspaper of balanced, non-incendiary articles discussing the topic of sexual orientation.

1 Defendants also are refusing to comply with their duty to maintain safe and equal school  
2 environments.

3 65. Plaintiffs are beneficially interested in this litigation because defendants' refusal to  
4 comply with their constitutional and statutory obligations is depriving each plaintiff of his or  
5 her or its rights to freedom of speech and to safe and equal schools, which is causing each  
6 plaintiff to suffer actual and substantial legal, financial, social, expressive, associational, and  
7 psychological harms.

8 66. Defendants' wrongful conduct is of a continuing nature for which plaintiffs have no  
9 plain, speedy, or adequate remedy at law. Plaintiffs present important constitutional and  
10 statutory questions and the public interest in immediate disposition of those questions is  
11 significant.

12 67. Plaintiffs seek a writ of mandate, pursuant to California Code of Civil Procedure  
13 sections 1085 and 1087 commanding that defendants (a) permit publication of the "Focus on  
14 Homosexuality" in *The Kernal*, including the names and identities of lesbian, gay, bisexual,  
15 and transgendered students interviewed in the articles; and (b) satisfy their statutory and  
16 constitutional obligations to provide a safe and equal school environment for all students,  
17 including LGBT students.

#### 18 REQUEST FOR RELIEF

19 WHEREFORE, plaintiffs pray for the following relief:

20 1. a declaration that defendants' prohibition against publication of the "Focus on  
21 Homosexuality" in *The Kernal* violates California Education Code sections 48907 and 48950  
22 and Article 1, section 2 of the California Constitution; an injunction prohibiting defendants  
23 from stopping the timely publication of articles in *The Kernal*; an order prohibiting retaliation  
24 against plaintiffs based on their exercise of their rights to free speech and to petition the Court;  
25 and compensatory and punitive damages in an amount to be determined by the Court;

26 2. a declaration that defendants' prohibition against publication of the "Focus on  
27 Homosexuality" in *The Kernal* violates California Education Code sections 200, 201, and 220;  
28 an injunction prohibiting defendants from stopping the timely publication of articles in *The  
Kernal*; an order prohibiting retaliation against plaintiffs based on their exercise of their rights  
to free speech and to petition the Court; and compensatory and punitive damages in an amount  
to be determined by the Court;



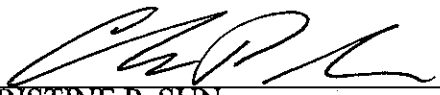
1           3.       a declaration that defendants' prohibition against publication of the "Focus on  
2 Homosexuality" in *The Kernal* and defendants' decision that names and identities of lesbian,  
3 gay, bisexual, and transgendered students need be deleted whereas names and identities of  
4 persons who express views opposing homosexuality need not be deleted violates California  
5 Education Code section 220 and Article I, § 7(a), (b) and Article IV, § 16(a) of the California  
6 Constitution; an injunction prohibiting defendants from stopping the timely publication of  
7 articles in *The Kernal*, including names and identities of identified LGBT students; and  
8 compensatory and punitive damages in an amount to be determined by the Court;

9           4.       a writ of mandate against defendants, pursuant to Code of Civil Procedure §§  
10 1085 and 1087 commanding that defendants (a) permit publication of the "Focus on  
11 Homosexuality" in *The Kernal*, including the names and identities of lesbian, gay, bisexual,  
12 and transgendered students interviewed in the articles; and (b) satisfy their statutory and  
13 constitutional obligations to provide a safe and equal school environment for all students,  
14 including LGBT students.

15           5.       an award to plaintiffs of their costs, including reasonable attorney's fees; and

16           6.       such other and further relief as the Court deems just and proper.

17 Dated: May 18, 2005

18  
19 By:   
20 CHRISTINE P. SUN  
21 CATHERINE E. LHAMON  
22 CLARE PASTORE  
23 PETER ELIASBERG  
24 MARK D. ROSENBAUM  
25 ACLU FOUNDATION OF SOUTHERN  
26 CALIFORNIA

27 JAMES ESSEKS  
28 ACLU NATIONAL LESBIAN  
AND GAY RIGHTS PROJECT