

October 18, 2012

Dr. Scott Walker
Principal
Jefferson County High School
115 W. Dumplin Valley Road
Dandridge, TN 37725

Dr. Charles Edmonds
Director of Schools
Jefferson County Schools
1221 Gay Street, P.O. Box 190
Dandridge, TN 37725

Re: Violation of Student Free-Speech Rights

Dear Principal Walker and Dr. Edmonds:

We have been notified that on October 11, 2012, Jefferson County High School (JCHS) denied Hannah Bradley and other members of the Jefferson County High School Gay-Straight Alliance (GSA) the opportunity to wear nametags that displayed their sexual orientation in celebration of National Coming Out Day. National Coming Out Day is an internationally observed civil-awareness day for discussion about gay, lesbian, bisexual, and transgender (LGBT) issues. In the context of our nation's schools, it is frequently dedicated to ending homophobic bullying.

Last week, Principal Scott Walker required Hannah Bradley, a senior at JCHS, to report to his office when he learned that she was wearing a nametag with the term "demisexual" written on it. Principal Walker, along with Vice Principal Monty Sharp, refused to allow Hannah to leave the Principal's office until she removed her nametag. In separate incidents that same day, Principal Walker and other school authorities required other students to remove their nametags or belittled them for their participation in National Coming Out Day.

On behalf of the Southern Poverty Law Center, which has been retained to investigate Hannah's claims, I write to inform you that unless you discontinue the practices of prohibiting Hannah, or any other student, from wearing slogans and other similar expressions of support for non-heterosexual people, the SPLC plans to bring an action to end those misguided practices.

Background

Hannah is a student at JCHS and identifies as demisexual. Demisexual refers to an individual who does not experience sexual attraction unless they form a strong emotional connection. Last week on October 11, Hannah and other members of the GSA wore nametags that identified their

sexual orientation in support of National Coming Out Day. Hannah explains that she and other students wore nametags in order “to support one another regardless of sexual orientation.” Hannah, who is the President of the GSA, wanted to help put an end to bullying at JCHS. Her intent was to communicate that all people, including those who identify as other than heterosexual, should be accepted and respected.

Hannah was summoned to Principal Walker’s office, where she saw a fellow GSA member sitting in front of the Principal’s desk. Hannah walked in as Vice Principal Sharp shut the door behind her with his hands crossed at his chest. She thought it was strange that both the Principal and the Vice Principal were in one office and that the Vice Principal stood blocking the office door. Principal Walker demanded that they remove their nametags, saying that it was inappropriate to indicate one’s sexual orientation at school. Hannah stated that she would comply with his demand and began to depart, but the Principal insisted that they remove the name tags in front of him before they could leave.

In a related incident the same day, while speaking in front of a classroom of students, after a student wearing a nametag displaying her orientation made an announcement about the GSA, a teacher told the student to stop “throwing her sexual orientation in his face.” When another student made an announcement concerning a different student club, this teacher turned to the student wearing the nametag and said “at least someone has a real announcement.”

JCHS Policies Violate Fundamental Rights

JCHS’s censorship of Hannah’s speech violates both the First and Fourteenth Amendments and must immediately cease. *See, e.g., Romer v. Evans*, 517 U.S. 620 (1996) (Fourteenth Amendment protects against government discrimination based on sexual orientation.). The U.S. Supreme Court has emphasized that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gates.” *Tinker v. Des Moines Indep. Cmty. School Dist.*, 393 U.S. 503, 506 (1969) (upholding rights of high-school and middle-school students to wear black arm bands to protest the Vietnam War).

Indeed, schools cannot prevent students from wearing expressions like the one on Hannah’s nametag. In *Gillman v. School Bd. for Holmes Cnty.*, 567 F. Supp.2d 1359 (N.D. Fla. 2008), a school board banned students from wearing inclusive symbols or slogans such as “I Support My Gay Friends” and “Sexual Orientation is not a Choice. Religion, however, is.” In striking down the ban, the court held that such slogans are “not vulgar, lewd, obscene, plainly offensive, or violent, but [are] pure, political . . . express[ions of] tolerance, acceptance, fairness, and support” for a marginalized group. *Id.* at 1370. The court ruled that by banning such slogans, the school board violated the students’ free-speech rights under the First Amendment and discriminated against their viewpoint in violation of the Fourteenth Amendment. The court also ordered the school board to pay \$325,000 for the students’ legal fees and expenses. *Id.* at 1364; *see also Fricke v. Lynch*, 491 F. Supp. 381, 385 (D.R.I. 1980) (holding that the First Amendment protects non-sexual expression of a student’s non-heterosexual orientation).

No Valid Reason to Deny Hannah’s Rights

Hannah, and all other students at JCHS, have the right to express their views freely, so long as their expression does not “materially and substantially disrupt the work and discipline of the school.” *Tinker*, 393 U.S. at 513. A school administrator’s fear of disruption must have a genuine basis in fact and be reasonable – “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.” *Id.* at 508. Instead, “there must be demonstrable factors that would give rise to a reasonable forecast . . . of ‘substantial and material’ disruption of school activities before expression may be constitutionally restrained.” *Holloman ex. rel. Holloman v. Harland*, 370 F.3d 1252, 1273 (11th Cir. 2004). The Supreme Court has explained:

Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk . . . and our history says that it is this sort of hazardous freedom – this kind of openness – that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

Tinker, 393 U.S. at 508-09. If there are students who will react disruptively to Hannah's speech, JCHS has a duty to punish the disruptive students, not to prohibit Hannah's speech. "If a student's conduct traverses the threshold of acceptable heated exchange into the realm of material and substantial disruption, the law requires school officials to *punish the disruptive student, not the student whose speech is lawful.*" *Gillman*, 567 F. Supp.2d at 1374 (emphasis added); *see also Holloman*, 370 F.3d at 1275 (To curtail a student's freedom of expression because of potential disruptive behaviors by other students "is to sacrifice freedom upon the altar of order, and allow the scope of our liberty to be dictated by the inclinations of the unlawful mob."). If the denial of Hannah's rights to freedom of expression were out of concern that other students would behave disruptively, your school has allowed those disruptive students to exercise a "heckler's veto" over Hannah's free-speech rights. The First Amendment does not permit such an outcome.

Conclusion

Please confirm in writing by **5 p.m., Monday, October 29th, 2012** that Hannah and all other students within the District may wear slogans and other similar expressions of support for non-heterosexual people. Without prompt and meaningful action to remedy the constitutional violations suffered by our client and to compensate her for the harm caused by JCHS, we intend to file a federal lawsuit seeking full redress, including but not limited to injunctive and declaratory relief, damages, and attorneys' fees and expenses.

Thank you for your careful attention to this important matter.

Sincerely,



Christine Sun
Deputy Legal Director



Alesdair Ittelson
Skadden Fellow/Staff Attorney

cc: Randy Bradley (via e-mail and first-class mail to the Director of Schools)
Bill Jarnigan
Ralph Lowery
Anne Marie Potts
Jonathan Rogers
Jim Vines
Judy Cavanah