

ANOKA-HENNEPIN SCHOOL DISTRICT

EDUCATIONAL SERVICE CENTER

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May 26, 2011

Sent Electronically and Via U.S. Mail

Sam Wolfe
Southern Poverty Law Center
400 Washington Avenue
Montgomery, Alabama 36104

Shannon Minter
National Center for Lesbian Rights

Dear Mr. Wolfe and Ms. Minter,

Thank you for your letter of May 24, 2011 bringing to the District's attention the experiences of District students who were victims of anti-LGBT harassment and violence. We accept your invitation to meet and discuss these allegations and your other concerns. Unfortunately the week of June 6 presents conflicts; however, we can be available June 14, 15 or 16. Please let me know your availability on those dates.

Meanwhile, the District would like to address some of the statements made in your letter and hopefully obtain some additional information from you.

Student Harassment.

The District is committed to promoting and protecting students' safety, health, well-being, and ability to learn, and takes the allegations of student harassment in your letter very seriously. Your letter includes allegations that harassment was both reported to, and witnessed by, District personnel with no appropriate response by the District. If the facts are as described, these are clear violations of the District's policies; District personnel who fail to address harassment when they see or hear about it are in violation of clear and unequivocal District policy. We ask that you provide us with additional information regarding the identity of these students—and their experiences—so that we can investigate. This information will certainly facilitate a more productive discussion at our meeting.¹

The District has worked hard to create and promote an effective anti-harassment program, and feels strongly that these measures are much more than "superficial" as your letter suggests. It has sought out and partnered with individuals and entities identified as able to help it develop effective prevention and response strategies and assemble resource materials.

¹ While this is not the forum to debate the factual issues relating to the tragic suicides of students in the District, the District disagrees with your statement that, since November 2009, at least four LGBT students in the District have died by suicide. The District's inquiry led it to believe that two of the suicide victims were LGBT.

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Indeed, the District was a leader in this State in establishing anti-harassment and anti-bullying policies relating to sexual orientation, developing an anti-bullying policy and enacting it two years before the Minnesota Legislature required it of all school districts.

These policies are communicated to the entire school community, and District personnel are required to hold students accountable for their actions. The District has in place both formal and informal procedures for reporting harassment. It has instituted specific steps to respond to harassment claims immediately in order to stop the harassment and prevent recurrence. The District offers and provides education and training to the entire school community in an effort to create awareness and foster respect and appreciation for diversity. It assesses the effectiveness of its efforts and welcomes input from the school community, parents, and others to prevent harassing and discriminatory behaviors. The District cannot stress enough that the anti-bullying and anti-harassment policies, programs, and training provided to personnel are clear that harassment and bullying on the basis of sexual orientation is *not to be tolerated*.

The Sexual Orientation Curriculum Policy Does Not Inhibit Teachers from Confronting Harassment of LGBT Students and Supporting LGBT Students, Nor Does It Bar Classroom Discussion of LGBT Issues

The District strongly disagrees that there is a link between the harassment experienced by LGBT students and the Sexual Orientation Curriculum Policy (“Neutrality Policy” or “Policy”). That Policy is exactly what its title makes explicit – a *curriculum*² policy. This Policy is separate and distinct from the district’s policies and practices relating to harassment and bullying of *any* student, LGBT or other. The Policy itself is clear on this point:

It is the primary mission of the Anoka-Hennepin School District to effectively educate each of our students for success. District policies shall comply with state and federal law as well as reflect community standards. As set forth in the Equal Education Opportunity Policy, it is the School District’s policy to provide equal educational opportunity and to prohibit harassment of all students. The Board is committed to providing a safe and respectful learning environment and to provide an education that respects the beliefs of all students and families.

² “Curriculum” refers to District or school adopted programs and written plans for providing students with learning experiences that lead to expected knowledge and skills. Minn. Stat. § 120B.11(b).

The School District employs a diverse and talented staff committed to serving students and families from diverse backgrounds. The School District acknowledges that one aspect of that diversity regards sexual orientation. Teaching about sexual orientation is not a part of the District adopted curriculum; rather, such matters are best addressed within individual family homes, churches, or community organizations. Anoka-Hennepin staff, in the course of their professional duties, shall remain neutral on matters regarding sexual orientation including but not limited to student led discussions. If and when staff address sexual orientation, it is important that staff do so in a respectful manner that is age-appropriate, factual, and pertinent to the relevant curriculum.

Your letter grossly mischaracterizes the policy when it states, for instance: “as made abundantly clear in the District’s own guidance about the policy, the gag policy . . . prevents teachers and other district employees from supporting, or even protecting, those students within the classroom.” Likewise, the District believes that your characterization of the neutrality policy as a “gag policy” is misleading, as is your suggestion that the policy imposes a “mandatory silence” that “leaves teachers without tools to handle LGBT bullying.”

In fact, the September 2010 guidance to teachers regarding the Neutrality Policy, i.e., a document entitled “Defining Neutrality in Anoka-Hennepin’s Sexual Orientation Curriculum Policy: An Overview for Schools,” provides just the opposite. It states:

IMPORTANT

The Sexual Orientation Curriculum Policy relates to curriculum and classroom discussions – it is separate from Anoka-Hennepin’s harassment and bullying policies. Staff are not to remain neutral when they see or hear harassment or teasing (including during class) – they are to intervene, stop the harassment, explain that the language/behavior is not tolerated in school and, if necessary, refer the student to the school office.

This direction has been reinforced by way of staff training and repeated directives from Superintendent Carlson to all District personnel.

What the Overview of the Neutrality Policy underscores is that “class time is not the appropriate venue” to discuss personal beliefs. In this regard, the Neutrality Policy serves an important and legitimate education-related purpose. Under the Policy, a teacher’s expression during class time of his or her personal belief that homosexuality is wrong would not be “neutral” and would violate the Policy. Such an expression of a personal belief in the classroom setting would surely intimidate or alienate LGBT students and other students who take a different view. The opposite is true as well: it would violate the Policy for a teacher - in the classroom setting - to express his or her pro LGBT personal views on issues such as gay marriage. Again, expressing such a view would likely intimidate or alienate those students with a different view, whether based on their religious ideology or otherwise.

Yet teachers are not prohibited from, for instance, wearing a rainbow flag or pink triangle button, or otherwise offering their support to our LGBT students and their families. For instance, the District fully supports student groups such as the Gay Straight Alliance (“GSA”) in its schools. The Superintendent encourages teachers to offer help and assistance to LGBT students who reach out to them, and to otherwise offer their support to LGBT students.

In short, teachers are responsible for maintaining a positive learning environment for all students and being sensitive to the fact that there are students who have differing viewpoints on controversial issues. Again, the primary concern of every District employee should be the safety of each student and the ability of every child to get an education in a school free from intimidation and harassment.

To be clear, discussions of LGBT issues within the context of the curriculum are *not* prohibited; rather the Policy only dictates that *teachers* remain neutral in such discussions. Students, on the other hand, who engage in fact-based, age-appropriate discussion on a topic relevant to the class curriculum, may advocate for their position in a respectful way. Therefore, contrary to what your letter states, the Policy *does not preclude* “meaningful classroom discussion about history, literature, current events, or any other relevant lessons involving LGBT people.” Teachers may guide and facilitate such curriculum-related discussions. This exchange of ideas and views is the essence of education and the District’s policies do not attempt to silence or “gag” that expression; however, should a student abuse the freedom and use the discussion as an opportunity to make disrespectful comments or use derogatory language, teachers are required to promptly intervene, stop the harassment, explain that the language/behavior is not tolerated in school and, if necessary, refer the student to appropriate staff for further follow-up and consequences. Staff is not to remain neutral when they see or hear harassment. These corrective steps would be taken *pursuant to the District’s harassment and bullying policies*, which are in place to ensure a safe and respectful learning environment for every student. Thus, the neutrality Policy allows student-led classroom discussions pertinent to the curriculum on matters regarding sexual orientation; the harassment and bullying policies ensure those discussions remain respectful.

The Sexual Orientation Curriculum Policy Complies With State and Federal Law

The Neutrality Policy plainly complies with federal law and does not run afoul of the Fourteenth Amendment. First, in order for a government action to violate equal protection, it must be shown that the action resulted in similarly situated individuals receiving disparate treatment. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1984) (violation of equal protection found when city required special use permit for home for developmentally disabled individuals, but not for other residences). The Policy does not result in disparate treatment; it does not impose any special benefits or obligations on any group of students. Further, the Policy is clearly rationally related to a legitimate government interest. *See, e.g., Romer v. Evans*, 517 U.S. 620, 631 (1996) (“[I]f a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end.”); *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992); *Cleburne*, 473 U.S. at 440. The Policy is rationally related to the District’s legitimate interest in providing a respectful, focused, and effective learning environment for all students.

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The Policy also is consistent with state law, including the Minnesota Human Rights Act. Minn. Stat. § 363A.27 clarifies that the protection afforded to LGBT students shall not be construed to “require the teaching in education institutions of homosexuality or bisexuality as an acceptable lifestyle.”

Neutrality in sexual orientation curriculum is analogous to neutrality on matters of religion. Teachers are expected to remain neutral on matters of religion, and the District has a longstanding neutrality policy with respect to religious activities. When it relates to curriculum, these types of issues invoke First Amendment freedoms including free speech and the Establishment Clause. The importance of protecting the fundamental constitutional freedoms in the First Amendment cannot be overstated. The Establishment Clause is to protect the integrity of both the Church and the State by keeping these hallowed institutions at arms lengths from one another. The Supreme Court has been a vigilant enforcer of this separation, and in particular, has taken great care to monitor and enforce compliance with the Establishment Clause in our elementary and secondary schools. Long ago, Justice Frankfurter eloquently explained the importance of patrolling the edges of the Establishment Clause in the public school setting:

Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously free from entanglement in the strife of sects. The preservation of the community from divisive conflicts, of government from irreconcilable pressures by religious groups, of religion from censorship and coercion, however subtly exercised, requires strict confinement of the State to instruction other than religious, leaving to the individual’s church and home indoctrination in the faith of his choice.

People of the State of Illinois ex re. McCollum v. Board of Education of School District No. 71, 333 U.S. 203, 216-17(1948) (Frankfurter, J., concurring)

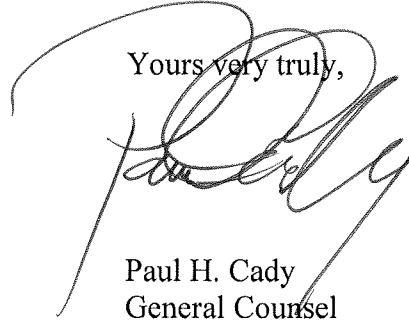
The Establishment Clause of the First Amendment provides “Congress shall make no law respecting an establishment of religion . . .” It was intended to erect a wall of separation between Church and State. The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another. *See Zorach v. Clauson*, 343 U.S. 306, 314(1952)(“The government must be neutral when it comes to competition between sects”); *Epperson v. Arkansas*, 393 U.S. 97, 104(1960)(“The First Amendment mandates government neutrality between religion and religion. . . the State may not adopt a program or practices. . .which aid or oppose any religion. . . This prohibition is absolute.”)

Conclusion

Again, the District thanks you for bringing these allegations and concerns to its attention, and awaits further details. We look forward to the opportunity to sit down with you and hear your ideas with respect to improving the District's efforts to provide a safe and respectful learning environment for all of our students.

Please let me know your availability June 14, 15 or 16, as well as who will be in attendance, so that the District can address any student privacy concerns in advance of the meeting if necessary.

Yours very truly,

A handwritten signature in black ink, appearing to read "Paul H. Cady", written over the typed name and title.

Paul H. Cady
General Counsel

Cc: Dennis Carlson, Superintendent