



April 29, 2016

Superintendent Mark Adams
Greenway Public Schools
PO Box 170
201 Kate Street
Marble, MN 55764
markadams@isd316.org

VIA U.S. MAIL AND E-MAIL

Dear Superintendent Adams,

It has recently come to our attention that the Greenway Public School email server utilizes filtering software provided by Red Condor, an EdgeWave, Incorporated product ("Red Condor") that censors communications with references to lesbian, gay, bisexual, and transgender ("LGBT") rights. As reflected in the attached exhibits, the filtering software used by your school currently blocks such communications because it "...contains content that violates school policies." See Exhibits A and B (attached). On behalf of the ACLU of Minnesota, I am writing to inform you that this practice violates both the First Amendment and the Equal Access Act, 20 U.S.C. § 4071 *et seq.*, and the filter blocking references to LGBT rights in email communications must be disabled immediately.

As reflected in Exhibit A, an attempt was made to respond to a request for an ACLU-MN advocate to speak on the topics of discrimination, gay and lesbian rights, and student and youth rights. The response to this request was sent to the student email account of the individual that requested ACLU-MN services. It should be noted that the response explicitly contained the phrase "gay and lesbian rights." See Exhibit A. The e-mail response was rejected by your school's e-mail filtering system "...because it may have contained content that violates school policies." See Exhibit B. A subsequent e-mail to the same student, in which we deleted the phrase "gay and lesbian rights," was not blocked by your school's e-mail filtering system.

According to the Red Condor system administrator guide, the e-mail filtering software allows local system administrators to block "offensive" e-mail content in their environment. See Red Condor System Administrator's Guide: Overview, available at http://www.redcondor.com/dox/MAG-Help_080411/Red_Condor_System_Administrators_Guide.htm. The local administrator is able to set particular filtering settings for a number of generalized categories of suspicious emails. However, local personnel are able to set more

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stringent settings for the filtering of e-mail communications and can establish lists of words and phrases that are banned and filtered automatically. See Red Condor System Administrator's Guide: Filtering Options, available at http://www.redcondor.com/dox/MAG-Help_080411/Red_Condor_System_Administrators_Guide.htm.

Because an e-mail response that contained the phrase "gay and lesbian rights" was rejected by your school district's e-mail filtering system, and local system administrators are able to create specific lists of words that are banned by the Red Condor filtering software, it is our belief that local school administrators have added "gay and lesbian" to a list of terms that are automatically banned from electronic communications within your school district.

If the terms "gay and lesbian" are being blocked by your administration out of a fear of exposing students to potential sexually explicit content, it should be noted that Red Condor filtering software automatically filters adult and sexually explicit materials, without the addition of individual words to a banned word list. See Red Condor System Administrator's Guide: Filtering Options, available at http://www.redcondor.com/dox/MAG-Help_080411/Red_Condor_System_Administrators_Guide.htm. Prohibiting electronic communications from simply mentioning the terms "gay and lesbian" serves no purpose other than to hinder student dialogue regarding LGBT issues.

Your students have a First Amendment right to freely discuss gay and lesbian issues without the fear of being censored by electronic filtering software. "[J]ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members." *Bd. Of Educ. V. Pico*, 457 U.S. 853, 868 (1982) (plurality) (internal quotation marks and citations omitted). "[T]he issue of equal rights for citizens who are homosexual is presently a topic of fervent discussion and debate within the courts, Congress, and the legislature of the States... The nation's high school students, some of whom are of voting age, should not be foreclosed from that national dialogue." *Gillman v. Sch. Bd. For Holmes County, Fla.*, 567 F. Supp. 2d 1359, 1374 (N.D. Fla. 2008); see also *Fricke v. Lynch*, 491 F. Supp. 381, 385 (D.R.I. 1980) (holding that First Amendment protects non-sexual expression of a student's gay orientation).

In addition to violating students' First Amendment rights, filtering "gay and lesbian" from student electronic communications also violates the Equal Access Act because it denies students who are seeking to form gay-straight alliances ("GSAs") equal access to school resources that are generally available to other non-curricular clubs. See 20 U.S.C. § 4071 *et seq.*; *Mergens*, 496 U.S. at 247; *SAGE v. Osseo Area Schools Dist.*, 471 F.3d 908 (8th Cir. 2006); *Gonzalez v. Bd. of Educ.*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008). The Equal Access Act mandates that, when a public secondary school that received federal financial assistance

permits even one non-curricular group to use school resources, it must permit all other non-curricular student groups to do so on equal terms. *See Mergens*, 496 U.S. at 237, 247 (requiring equal access to school newspaper, bulletin boards, public address system, and club fair); *Boyd County High Sch. Gay Straight Alliance v. Bd. of Educ.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003) (school violated Equal Access Act by denying GSA clubs equal access to school bulletin board and intercom).

The Equal Access Act requires Greenway Public Schools District to provide GSAs with equal access to all school resources -- including electronic communications -- that are made available to other non-curricular clubs. *See SAGE*, 471 F.3d at 912 (LGBT-related group must “*equal* access to the same avenues of communication as other non-curriculum related groups”) (emphasis in original). By prohibiting electronic communications regarding gay and lesbian issues, students interested in forming a GSA would be unable to utilize the same means of communication available to other non-curricular student organizations.

Allowing students to communicate freely about gay and lesbian issues is not just a legal duty; it also makes sense from a safety perspective, particularly in light of the epidemic of LGBT youth suicides and bullying. Prohibiting students from communications regarding LGBT issues is especially problematic because many students do not have computers or Internet access at home and can access the Internet only at school. As one court put it, “as any concerned parent would understand, this case [holding that members of the Gay-Straight Alliance must be permitted access to the school’s resources in the same way as other clubs], may involve the protection of life itself.” *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000).

Please contact me by **May 13, 2016** to indicate whether you intend to remove the software filter blocking email communications involving LGBT rights and issues and provide all students equal access to email communications in accordance with your school district’s legal obligations under the First Amendment and the Equal Access Act. If you continue to censor electronic communications, the ACLU-MN will consider further actions to address this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Teresa J. Nelson", with a stylized flourish at the end.

Teresa J. Nelson
ACLU-MN Legal Director

EXHIBIT A

Teresa Nelson

From: Jana Kooren <jkooren@aclu-mn.org>
Sent: Tuesday, April 5, 2016 1:50 PM
To: [REDACTED]@student.isd316.org
Subject: Speaking request

Dear [REDACTED]

Thank you for inviting the ACLU to come out for [REDACTED]. We would love to come out, unfortunately we cannot make it to Bovey at this time. Our staff is small and it is difficult to travel long distances for one event. Thank you

Jana Kooren
Public Education and Communications Director
American Civil Liberties Union of Minnesota
2300 Myrtle Ave, Suite 180
St. Paul, MN 55114
651.529.1693
www.aclu-mn.org



Contact Information

Name: [REDACTED]
Organization: [REDACTED]
Address: [REDACTED]
[REDACTED]
Phone: [REDACTED]
Phone Other: [REDACTED]
Email: [REDACTED]@student.isd316.org

Contact Preference: Email

Topic(s)

- Discrimination
- Gay & Lesbian Rights
- Student & Youth Rights

Event Details

Date First Choice: 04/14/2016

Date Second Choice:

Date Third Choice:

Start Time:

End Time:

Audience:

Program Format: Other

Length Of Speech:

Honorarium: No

Open To Public: Yes

Handicapped Accessible: Yes

Number Of Attendees: more than 60

Event Overview

Event Publicity

I will make posters that are describing the event. I can put them up in the gas stations and in the school. I need to talk to my principal and ask him about this and figure out a time and date.

EXHIBIT B

Teresa Nelson

From: Jana Kooren <jkooren@aclu-mn.org>
Sent: Tuesday, April 5, 2016 1:55 PM
To: 'Teresa Nelson'
Subject: FW: Undeliverable: Speaking request
Attachments: details.txt; Speaking request (15.5 KB)

Jana Kooren
Public Education and Communications Director American Civil Liberties Union of Minnesota
2300 Myrtle Ave, Suite 180
St. Paul, MN 55114
651.529.1693
www.aclu-mn.org

-----Original Message-----

From: Mailer Daemon [mailto:postmaster@popp.redcondor.net]
Sent: Tuesday, April 5, 2016 1:50 PM
To: jkooren@aclu-mn.org
Subject: Undeliverable: Speaking request

The attached message could not be delivered to the recipients listed below.

The original message was rejected at Tue, 05 Apr 2016 13:49:50 -0500

Delivery attempt from MAG: popp.redcondor.net to receiving MTA failed.

----- The following addresses had permanent fatal errors -----

<[REDACTED]@student.isd316.org>

550-5.7.1 "Your email was rejected because it may have contained content that

550 5.7.1 violates school policies." A record has been kept and logged.

- gcdp 4si9091738ioc.78 - smtp