



June 28, 2011

Via Email (Dennis.Carlson@anoka.k12.mn.us) and U.S. Mail

Mr. Dennis Carlson
Superintendent
Anoka-Hennepin School District
11299 Hanson Boulevard NW
Coon Rapids, MN 55433

Re: Alliance Defense Fund's ("ADF") Response to Southern Poverty Law Center's ("SPLC") and National Center for Lesbian Rights' ("NCLR") Litigation Threat Against Anoka-Hennepin School District

Dear Mr. Carlson,

The Alliance Defense Fund ("ADF") has been notified about SPLC's and NCLR's threat to sue Anoka-Hennepin School District (the "District") unless it repeals its Sexual Orientation Curriculum Policy (the "Policy"). We are writing this letter to advise you that SPLC and NCLR's letter has no basis in law, and to affirm the appropriateness of the District's Policy.

As discussed below, SPLC and NCLR's letter plainly misinterprets the District's Policy, is inaccurate as to the law, and is heavy on hyperbole. These obvious shortcomings create the inescapable impression that these groups are trying to use the recent tragic suicides of several students who attended District schools to push their narrow political and social agenda.

These suicides are tragic. Indeed, it is difficult to imagine the depth of pain and confusion they have caused the students' families and friends and the local community, and will continue to cause them for years to come. But to link the Policy and these suicides—as SPLC and NCLR do in their letter—is a leap in logic suggesting that they are more concerned with pushing their agenda than with offering real solutions to the problems of bullying and suicide, which, as highlighted below, are faced equally by all students, regardless of their sexual orientation.

ADF's Response To SPLC And NCLR's Claims About The District's Policy

The letter SPLC and NCLR sent to the District badly misconstrues the Sexual Orientation Curriculum Policy and is legally inaccurate. It also relies primarily on hyperbole and appeals to emotion to support the demand that the District repeal its Policy. The District should not be swayed by these unfortunate tactics, which are discussed in separate subsections below.

The Policy serves a legitimate educational purpose

SPLC and NCLR are simply wrong that the Policy “serves no legitimate education-related purpose.” (SPLC and NCLR letter, p. 2.) Rather, the Policy serves a simple purpose oft-pursued by public school districts: ensuring official neutrality on controversial issues. As the Policy itself states:

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.

School districts across the nation often adopt policies that require their employees to remain neutral regarding sensitive matters upon which there is likely a wide range of diverse opinions within the community, like religion and politics. In fact, the District’s Religious Activities Policy, similar to its Sexual Orientation Curriculum Policy, requires “neutrality in matters of religion.” Such policies are not adopted because of animus toward a certain group of people, as SPLC and NCLR wrongly claim of the District’s Sexual Orientation Curriculum Policy, but rather from the sensible judgment that public schools should steer clear of taking official positions on sensitive and controversial matters.

Like religion and politics, issues related to sexual orientation often evoke strong emotions and are presently being hotly debated in communities across the country. There is little doubt the same is true of Anoka and Hennepin counties. The District simply made the wise choice of not taking sides in this debate by requiring, as they do with religion, that their employees remain neutral on such matters.

The Policy does not ban the discussion of issues related to sexual orientation from the curriculum

SPLC and NCLR claim that the Policy results in “the total exclusion of issues related to LGBT people from the curriculum.” (SPLC and NCLR letter, p.2.) The Policy requires no such thing. In fact, the Policy assumes that discussions involving sexual orientation may occur during classroom discussions, and simply requires neutrality, age-appropriateness, and factual accuracy when they occur. As the Policy says: “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.”

SPLC and NCLR’s concocted requirements are directly contradicted by the terms of the Policy. They appear to be nothing more than overstatements designed to advance the groups’ agenda.

The Policy does not target students who identify as homosexual, bisexual, or transgendered for mistreatment

SPLC and NCLR wrongly claim that the Policy “singles out LGBT students” for disfavored treatment, in violation of the Fourteenth Amendment to the United States Constitution. (SPLC and NCLR letter, p.2.) The Equal Protection Clause is “essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). The Policy does not violate this rule for several reasons.

First, the Policy, on its face, does not mention (let alone target) students who identify as homosexual, bisexual, or transgendered. Rather, it requires neutrality regarding “sexual orientation.” Sexual orientation is a broad concept that encompasses all sexual orientations, including lesbian, gay, bisexual, transgender, and *heterosexual*. The Policy does not target anyone, but rather treats all persons the same, regardless of their claimed sexual orientation.

Second, SPLC and NCLR claim that the Policy denies students who identify as homosexual, bisexual, or transgendered equal protection by prohibiting “them and them alone any affirmation of their identity.” But this does not create an equal protection violation because the District does not affirm any student’s sexual orientation. Rather, the District requires complete neutrality on the issue, regardless of whether a student identifies as homosexual, bisexual, transgendered, or *heterosexual*. Put simply, the Policy is not treating students who identify as homosexual, bisexual, or transgendered different than any other students because the District does not affirm any student’s sexual orientation, whatever they claim it may be.

Third, SPLC and NCLR claim that the Policy denies students who identify as homosexual, bisexual, or transgendered equal protection because it “categorically preclude[s] any meaningful classroom discussion about history, literature, current events, or any other relevant lessons involving LGBT people.” (SPLC and NCLR letter, p. 2.) This claim is wrong on at least two counts. As discussed above, the Policy does not in fact ban the discussion of issues related to sexual orientation from the curriculum. Further, the law clearly establishes that public school district have broad authority to determine their curriculum. *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987) (“States and local school boards are generally afforded considerable discretion in operating public schools”); *Brown v. Li*, 308 F.3d 939, 951 (9th Cir. 2002) (“[T]he curriculum of a public educational institution is one means by which the institution itself expresses its policy, a policy with which others do not have a constitutional right to interfere”). Accordingly, the District need not adopt a curriculum consistent with SPLC and NCLR’s pro-homosexual agenda.

The Policy does not stigmatize students who identify as homosexual, bisexual, or transgendered

SPLC and NCLR claim that the Policy “imposes a stigma on LGBT students as pariahs, not fit to be mentioned within the school community,” and that this alleged message has “grave repercussions for the psychological and emotional development of LGBT students.” (SPLC and NCLR letter, p. 2.) This claim makes no sense, considering that the policy does not mention

students who identify as homosexual, bisexual, or transgendered at all. And, once again, the Policy is not a “gag policy” that bans the mere mention of matters regarding sexual orientation in class. Rather, it simply requires neutrality from school personnel when such matters are discussed. SPLC and NCLR’s claims to the contrary are hyperbole designed to advance their agenda, and nothing more.

SPLC and NCLR’s concerns over the link between bullying and suicide by students who identify as homosexual, bisexual, or transgendered are misplaced

SPLC and NCLR suggest that bullying and hostility toward students who identify as homosexual, bisexual, or transgendered at District schools has led to at least four recent suicides by targeted students. (SPLC and NCLR letter, p. 2.) From our review of the press reports regarding these tragic deaths, it appears that the District investigated the deaths and found that neither bullying nor harassment played a role in them. Nonetheless, and disappointingly, SPLC and NCLR continue to point to these students’ deaths to advance their political ends.

The District’s conclusion that bullying played no part in these students’ deaths is consistent with recent studies regarding risk factors for suicide. Dr. Ritch C. Savin-Williams, professor of developmental psychology at Cornell University and director of its Sex and Gender Lab, recently gave an interview to the New York Times in which he explained that the studies have found that “the risk factors for suicide are identical for gay and straight youth.” Jane E. Brody, *Gay or Straight, Youths Aren’t So Different*, NYTimes.com, <http://www.nytimes.com/2011/01/04/health/04brody.html>, Jan. 3, 2011. These risk factors include “prior mental illness, depression, bipolar disorder, dysfunctional families, breakups in relationships, suicide in the family and access to means.” Notably missing from this list: bullying. As Dr. Savin-Williams remarked, “whether there’s a direct link between bullying and suicide among gay teens has not been shown.”

SPLC and NCLR’s legitimate concerns over the alleged bullying of students who identify as homosexual, bisexual, or transgendered can be addressed through appropriate anti-bullying policies

SPLC and NCLR highlight several disturbing incidents of alleged bullying suffered by students who identify as homosexual, bisexual, or transgendered within District schools. (SPLC and NCLR letter, p. 1.) Such mistreatment of students is unacceptable, regardless of the underlying reason for it. Indeed, bullying is not unique to students who identify as homosexual, bisexual, or transgendered. The bully will target any student, for any reason. Accordingly, anti-bullying policies should broadly prohibit bullying against all students, regardless of the reason for the bullying, while at the same time carefully protecting the free speech rights of all students as well.

We have reviewed the District’s anti-bullying policy. The policy is a good start in the right direction, in that it prohibits all bullying, rather than picking and choosing which students will be protected from bullying and which will not. However, we are concerned that the policy is so broadly written that it reaches speech protected by the First Amendment, thus endangering the fundamental constitutional rights of students. We have attached ADF’s Model Anti-

Bullying Policy to this letter for your consideration. We carefully researched and drafted our Model Policy to strike the right balance between prohibiting bullying and protecting First Amendment rights. We would be happy to assist the District in amending its policies so as to reduce the risk that they will be used to restrict First Amendment freedoms.

The upshot here is that the District already has in place policies that address SPLC and NCLR's concerns that students who identify as homosexual, bisexual, or transgendered within the District's schools are bullied and harassed. If SPLC and NCLR's allegations regarding the mistreatment of their clients are true, the District simply needs to better enforce its already existing policies. The District does not need to cede control over its curriculum to national groups whose primary concern is advancing their pro-homosexual agenda.

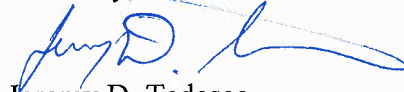
Conclusion

The District should not allow SPLC and NCLR to browbeat them into abandoning its sensible Policy of requiring District personnel to remain neutral on issues regarding sexual orientation. Their claim that this Policy creates a hostile environment for students who identify as homosexual, bisexual, or transgendered within District schools makes little sense. Neutrality does not equal hostility. Rather, neutrality respects all sides of a controversial issue, and advocates none.

To the extent SPLC and NCLR have identified actual instances of bullying aimed at students who identify as homosexual, bisexual, or transgendered within District schools, those concerns can and should be addressed through better enforcement of the District's anti-bullying policy. The District has no legal obligation, however, to follow the dictates of the SPLC and NCLR in relation to curriculum matters. Clearly, the members of the Anoka-Hennepin School District Board know what policies best serve the community that elected them.

Please feel free to call me at 480-388-8051 if you would like to discuss these important matters.

Sincerely,



Jeremy D. Tedesco
Legal Counsel
Alliance Defense Fund

cc: Tom Heidemann, Chair, Anoka-Hennepin School Board
Via U.S. Mail
John Hoffman, Vice Chair, Anoka-Hennepin School Board
Via U.S. Mail
Scott Wenzel, Director, Anoka-Hennepin School Board
Via U.S. Mail
Marci Anderson, Clerk, Anoka-Hennepin School Board
Via U.S. Mail

Michael Sullivan, Treasurer, Anoka-Hennepin School Board
Via U.S. Mail
Kathy Tinglestad, Director, Anoka-Hennepin School Board
Via U.S. Mail

MODEL ANTI-BULLYING POLICY

I. PURPOSE

The [INSERT NAME OF SCHOOL DISTRICT] (the “District”) recognizes that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. The District finds that bullying, like other disruptive or violent behavior, is conduct that disrupts both a student’s ability to learn and a school’s ability to educate its students in a safe environment.

II. DEFINITIONS

A. “Bullying” means systematic, repeated, or recurrent conduct committed by a student or group of students against another student that causes measurable physical harm or emotional distress. Verbal expression, whether oral, written, or electronic, is included within the definition of “bullying” only to the extent that (1) such expression is lewd, indecent, obscene, advocating for illegal conduct, intended to incite an immediate breach of peace, or the severe and pervasive use of threatening words that inflict injury; or (2) District administrators or officials reasonably believe that such expression will cause an actual, material disruption of school work.

B. “School Premises” means any building, structure, athletic field, sports stadium or other real property owned, operated, leased or rented by the District or one of its schools, including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school.

C. “School-Sponsored Functions or Activities” means a field trip, sporting event, or any other function or activity that is officially sponsored by the District or one of its schools.

D. “School-Sponsored Transportation” means a motor vehicle owned, operated, leased, rented or subcontracted by the District or one of its schools.

III. PROHIBITION

The District prohibits all bullying on school premises, at school-sponsored functions or activities, or on school-sponsored transportation.

IV. REPORTING

Any student who believes he or she has been or is currently the victim of bullying should immediately report the situation to the school principal or assistant principal. The student may also report concerns to a teacher or counselor who will be responsible for notifying the appropriate school administrator.

Every student is encouraged, and every staff member is required, to report any situation that they believe to be bullying behavior directed toward a student. Reports may be made to those identified above.

All complaints about bullying behavior that may violate this policy shall be promptly investigated.

If the investigation finds an instance of bullying behavior has occurred, it will result in prompt and appropriate disciplinary action. This may include up to expulsion. Individuals may also be referred to law enforcement officials.

The complainant shall be notified of the findings of the investigation, and as appropriate, that remedial action has been taken.

Retaliation against any person who reports, is thought to have reported, files a complaint, or otherwise participates in an investigation or inquiry concerning allegations of bullying is prohibited and will not be tolerated. Such retaliation shall be considered a serious violation of Board policy and independent of whether a complaint is substantiated. Suspected retaliation should be reported in the same manner as bullying. Making intentionally false reports about bullying for the purpose of getting someone in trouble is similarly prohibited and will not be tolerated. Retaliation and intentionally false reports may result in disciplinary action as indicated above.

V. INTERPRETATION

This policy shall not be interpreted to infringe upon the First Amendment rights of students, and is not intended to prohibit expression of religious, philosophical, or political views, provided that such expression does not cause an actual, material disruption of the work of the school.

Disclaimer: *This model policy is intended to be used and applied only as a guide for legislators, educators, administrators, and concerned parents to develop appropriate policies related to student harassment and bullying. The Alliance Defense Fund does not represent or warrant that this model policy addresses all of the facts and circumstances of any particular situation. The model policy should not be applied uniformly without reviewing the specific nature of the facts and circumstances before you, and gathering independent legal advice in that regard. Changes to the language of the model policy may be necessary to address other laws or policies, or any particular facts and circumstances, or to comply with applicable statutes, regulations, rules, or other laws unique to any given situation.*