



September 13, 2022

Dr. Trey Robertson
Assistant Superintendent of Teaching and Learning
Bryan County Board of Education
8810 Highway 280 East
Black Creek, GA 31308
via troberson@bryan.k12.ga.us

Re: *Unconstitutional Viewpoint Discrimination and Retaliation*

Dear Dr. Robertson:

We represent Lindsey Barr, a mother of three children enrolled in Bryan County Schools (“BCS”), regarding her recent termination as a BCS substitute teacher in direct retaliation for views she shared with Heather Tucker, principal of McAllister Elementary School, where two of her children attend. Mrs. Barr’s views, which concern McAllister library’s new “read aloud” program, constitute protected speech, and BCS’s termination of her for expressing them was unconstitutional.

By way of introduction, ADF’s Center for Academic Freedom is dedicated to ensuring freedom of speech and association for students and teachers so that everyone can freely participate in the marketplace of ideas without fear of government censorship. We have a track record of success.¹

Factual Background

Mrs. Barr served as a full-time teacher at BCS for roughly ten years, four of which were at McAllister. During the 2021-22 academic year, she was approved to serve as a BCS substitute, completed orientation, and began working at McAllister, where all three of her children then were enrolled. Throughout all the years she

¹ Alliance Defending Freedom has consistently achieved successful results for its clients before the United States Supreme Court, including 13 victories before the highest court in the last 11 years. *See, e.g., Thomas More Law Center v. Bonta*, 141 S. Ct. 2372 (2021) (overturning law forcing charitable organizations to disclose donor lists); *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021) (student free speech); *March for Life Educ. & Def. Fund v. California*, 141 S. Ct. 192 (2020); *Thompson v. Hebdon*, 140 S. Ct. 348 (2019) (overturning ruling upholding a law limiting political contributions); *NIFLA v. Becerra*, 138 S. Ct. 2361 (2018) (upholding ADF client’s free speech rights against the State of California); *Masterpiece Cakeshop, LTD. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719 (2018) (upholding ADF client’s First Amendment rights).

has taught at BCS, as full-time teacher and substitute, Mrs. Barr's teaching and treatment of students has not been the subject of discipline of any kind.

At the beginning of the 2022-23 school year, Mrs. Barr's presence at McAllister alerted her to a new "read aloud" library program, where the school librarian was presenting the same book to every class in the school. The picture book being used, "All Are Welcome," caused Mrs. Barr concern, because it contained illustrations of same-sex couples with school-age children: two females (one of whom is pregnant) embrace as they walk to and later arrive at school with their young daughter; and two co-parenting males are shown at school with their young son. On August 17, Mrs. Barr told the school principal, Ms. Tucker, that she believed the book was inappropriate for young children and conflicted with her Christian faith and further that it appeared to be part of an effort to indoctrinate children into a "woke" and progressive agenda. She asked that her own children be excused from this reading program.

On August 18, the day after she expressed these views, Mrs. Barr was without explanation blocked from the account she used to pick up substitute assignments. She emailed Ms. Tucker to ask whether she had been removed as a substitute, but she did not receive an answer for five days. Finally, on August 23, Mrs. Barr was called to a meeting with Ms. Tucker, who informed her that she would no longer be permitted to serve as a substitute in light of her alleged biases and views, but that her own children would be excused from the "read aloud" program.

Analysis

The First Amendment clearly prohibits BCS from engaging in "viewpoint discrimination," or the punishment of speech where "the opinion or perspective of the speaker" is the rationale for the punishment. *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995). The First Amendment also prohibits BCS from retaliating against its employees for speaking on matters of public concern. "[A] teacher's exercise of [her] right to speak on issues of public importance may not furnish the basis for [her] dismissal from public employment." *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 574 (1968).

Mrs. Barr's concerns about multiple illustrations of same-sex couples with children being shown to the young students at McAllister, including her children, was undoubtedly expression in her private capacity on a matter of public concern. See *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps.*, 138 S. Ct. 2448, 2476 (2018) (identifying "sexual orientation and gender identity" as "sensitive political topics" that "are undoubtedly matters of profound 'value and concern' to the public"). Indeed, Mrs. Barr made clear that she was presenting her views as a mother when she asked that her children be excused from the library program.

Dr. Robertson
September 13, 2022
Page 3

Terminating a substitute teacher for engaging in First Amendment-protected expression creates an atmosphere of fear and is intended to send a message to Mrs. Barr and others in the community that if they criticize the school's approach to "sensitive political topics," *Janus*, 138 S. Ct. at 2476, or express viewpoints contrary to the school's preferred viewpoints, they will face the consequences. *Cf. Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005) ("plaintiff suffers adverse action if the defendant's allegedly retaliatory conduct would likely deter 'a person of ordinary firmness' from the exercise of First Amendment rights").

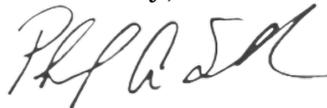
The First Amendment does not countenance such viewpoint discrimination and retaliation.

Demand

We demand that Bryan County Schools immediately reinstate Mrs. Barr so she can resume working as a substitute teacher at McAllister, and that it refrain from any future retaliation against Mrs. Barr for her protected speech.

Please respond to this demand by no later than 5:00 p.m. ET on Friday, September 16. Absent prompt reinstatement, Mrs. Barr will be forced to pursue other legal options to vindicate her rights.

Sincerely,



Philip A. Sechler
Senior Counsel