



December 3, 2019

Joseph Mikulski
Principal of Gulf Coast High School
mikulsjo@collierschools.com

Re: *Follow-up Regarding Operation of Sharks 4 Life*

Dear Principal Mikulski,

I am writing to follow up on your meeting with my client Gabrielle Gabbard on Monday, November 11, 2019. I am encouraged that you are willing to recognize Sharks 4 Life and help them secure an advisor. To ensure that Sharks 4 Life is able to operate freely and that Ms. Gabbard and Gulf Coast's faculty can develop mutual respect and trust with one another, I want to ensure that you will grant her the same access, benefits, and privileges that other clubs at school receive.

At the November 11 meeting, you told Ms. Gabbard that the school has to approve any information that Sharks 4 Life wants to distribute, and that there may be certain things Sharks 4 Life would not be allowed to distribute. As set forth in our letter, the Equal Access Act and First Amendment prohibit the school from (i) treating Sharks 4 Life differently than other groups, and (ii) requiring Sharks 4 Life, or any other student group, to obtain permission before posting material pursuant to a policy which does not contain objective criteria and instead allows school officials to deny the posting of materials based upon the content of the message.

It is well-established that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

It is also well-established that school officials cannot censor material just because it is political or controversial. "Undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.... 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" *Tinker*, 393 U.S. at 508; *see Heinkel ex rel. Heinkel v. Sch. Bd. of Lee Cty., Fla.*, 194 F. App'x 604, 608–09 (11th Cir. 2006) (policy prohibiting religious and political symbols facially unconstitutional); *see also Holloman ex rel.*

Holloman v. Harland, 370 F.3d 1252, 1275 (11th Cir. 2004) (silencing viewpoints because of anticipated student disagreement “turns reason on its head.”).

Such actions would also violate the Equal Access Act by denying a group like Gabbard’s the ability to express and promote its core ideas and messages. The fact that the school may want to prohibit any material it considers controversial or political across the board is of no moment. *Hsu by and Through Hsu v. Roslyn Union Free Sch. Dist. No. 3*, 85 F.3d 839, 860 (2d Cir. 1996) (“The Act mandates that students be given ‘equal access,’ not that the School’s internal rules be administered uniformly.”).

Similarly, imposing a preapproval requirement on a noncurricular club is an unconstitutional prior restraint on speech. Because prior restraints censor speech before it occurs, they “are the most serious and least tolerable infringement on First Amendment rights.” *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). This blanket policy cannot survive constitutional scrutiny by any stretch. *See, e.g., Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 133 n.10 (1992) at 133 n.10 (success of prior restraint claim “rests not on whether the administrator has exercised his discretion in a content-based manner, but whether there is anything in the ordinance preventing him from doing so”).

And while the school undoubtedly has power to control content that is part of its educational curriculum, the same is not true for noncurricular student groups. *Burch v. Barker*, 861 F.2d 1149, 1159 (9th Cir. 1988) (school could not require student group that was “in no sense ‘school-sponsored’” to seek prior permission before distributing content at school).

I am confident that you will take this advice and act appropriately to respect these laws and promote these freedoms at your school. I know that Ms. Gabbard looks forward to working with you on Sharks 4 Life advertisements, meetings, and events. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Michael Ross
Legal Counsel

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