



May 2, 2013

<p><u>Via U.S. Mail and Fax:</u></p> <p>Les Winning-Chairman Terry Kenninger-Vice Chairman Laurie Hazard Curt Beattie Roger Lausch Lori Stokka Jodi Somerville Board Members Griggs County Central School District #18 1207 Foster Ave NE Cooperstown, ND 58425 Fax: (701) 797-3130</p>	<p><u>Via U.S. Mail and Fax:</u></p> <p>Mr. Wade Faul Superintendent Griggs County Central School District #18 1207 Foster Ave NE Cooperstown, ND 58425 Fax: (701) 797-3130</p> <p><u>Via U.S. Mail, Fax, and Email:</u></p> <p>Travis Jordan Principal Griggs County Central High School 1207 Foster Ave NE Cooperstown, ND 58425 Fax: (701) 797-3130 Email: travis.d.jordan@sendit.nodak.edu</p>
--	--

Re: Unconstitutional Ban on Pro-Life Speech at Griggs County Central School District #18

Dear Mr. Faul, Mr. Jordan, and Griggs County Central School District (GCCSD) Board Members:

Alliance Defending Freedom has been contacted by Sharon Maertens, the mother of Michayla Maertens, concerning an incident where GCCSD officials censored Michayla's pro-life speech at Griggs County Central High School. By way of introduction, Alliance Defending Freedom is an alliance-building legal ministry that advocates for the right of people to freely express their religious and pro-life beliefs. We are dedicated to ensuring that students with pro-life beliefs are free to exercise their First Amendment rights. We are writing to inform you that the action taken toward Michayla, and the policies authorizing it, violate Michayla's constitutional rights. We are also writing to demand that you immediately rectify this situation.

Relevant Facts

Michayla is a freshman at Griggs County Central High School. In March 2013, Michayla received an "advocacy" assignment in her Health and Facts class. According to this assignment, students had to pick an issue that was "relevant, current, and based on an actual need observed

by the participant.” Students then had to conduct research on this issue and advocate for their position through a specified “method of action.” One such method was to create and display items at school. Faced with this assignment, Michayla chose to address and advocate for her pro-life viewpoint because the issue of abortion and contraception was health-related and quite relevant to current events. Michayla also believed that addressing this issue was quite needed based on her prior observations of others. Therefore, she created a poster with a collage of pro-life messages and images. For example, the largest message on the poster said “Life Not Abortion.” Another message said “Every Human Life Has Dignity and Value.” In mid-March, Michayla then hung her poster in the hallway at school in a location that student groups commonly use throughout the year to display messages and announcements. Since Michayla hung her poster, other students from the Health Class have hung their posters and flyers in the hallways to complete the health assignment.¹

Michayla’s poster hung in the school for approximately one to two weeks. During this time, no disturbance, disruption, or problem occurred at school because of the poster. But then, on Wednesday April 3, a parent apparently learned about the poster and voiced her objections to it on Facebook. A parent also called the school’s principal, Travis Jordan, and complained about the poster. Based on that complaint, Principal Jordan took Michayla out of class on Thursday April 4 and confronted her about the poster. According to Jordan, Michayla had to take down her poster because a parent called and complained about it. So Michayla complied with Jordan’s order and took down her poster. Jordan then called Michayla’s mom on April 5. As Jordan explained to Mrs. Maertens, Michayla did an outstanding job on her poster, but the poster still had to come down because it had created controversy. According to Jordan, he did not make his decision quickly but consulted other school officials, and they confirmed to him that the poster must come down.

Not satisfied with this explanation, Mrs. Maertens spoke with Jordan again on April 9. During this conversation, Jordan again confirmed that he took down the poster because a parent called and complained about it. Jordan admitted that school policies governing this situation were vague and needed clarification, but these policies still allowed him to remove the poster. Thus, Jordan stood by his decision to remove the poster and he confirmed his ability to do so under school district policies.

Legal Analysis

The blatant censorship of Michayla’s pro-life speech violates the First Amendment. The Supreme Court has clearly held that students retain their free speech rights while in school. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Consequently, student expression in high schools may only be proscribed if a) the expression is vulgar, b) the expression encourages illegal drug use, c) the expression is school sponsored and the censorship is reasonably related to legitimate pedagogical concerns, or d) the expression materially and substantially interferes with the operation of the school. *See Lowry ex rel. Crow v. Watson*

¹ These posters and flyers from other students addressed a variety of topics including diabetes, heart disease, and texting while driving.

Chapel Sch. Dist., 540 F.3d 752, 759-61 (8th Cir. 2008) (summarizing standards used to evaluate student expression in high schools).

But none of these categories apply to Michayla's poster. Clearly, nothing on this poster was drug related or vulgar. Nor could anyone think that the poster was school sponsored since many other students placed their own posters and flyers in the school hallway, and each of these posters and flyers communicated a wide variety of viewpoints on behalf of their authors. *See, e.g., Bowler v. Town of Hudson*, 514 F.Supp.2d 168, 177-78 (D.Mass. 2007) (applying *Tinker* standard to posters erected by students at school). *Accord Gold v. Wilson Cnty. Sch. Bd. of Educ.*, 632 F. Supp. 2d 771, 789-91 (M.D. Tenn. 2009).² Finally, the poster did not materially and substantially interfere with the school since the poster hung for approximately two weeks without causing any problems. The only thing the poster caused was a complaint from a parent. But a mere complaint cannot justify silencing expression. *See, e.g., Tinker*, 393 U.S. at 509 (noting that school must show "more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint" when regulating expression). For this reason, Principal Jordan clearly violated Michayla's First Amendment rights when he removed her poster simply because someone complained.

But to make matters worse, Principal Jordan relied on school district policy when removing Michayla's poster. When confronted by Michayla's mother, Principal Jordan defended his action and noted that he did not act quickly but relied on advice from other school officials. In light of Jordan's actions and statements, GCCSD evidently has a policy of censoring private student speech any time someone complains about it. But such a standard is vague, overbroad, and content and viewpoint-based and thus will not stand up in court. *See, e.g., Saxe v. State College Area Sch. Dist.*, 240 F.3d 200, 211-17 (3d Cir. 2001) (invalidating policy as overbroad because it allowed censorship of speech simply if speech deemed offensive). Indeed, Principal Jordan even admitted to Mrs. Maertens that GCCSD policies were vague. And his determination that Michayla could not display her poster is a perfect example of how GCCSD's overbroad and vague policies can result in censorship of student expression protected by the First Amendment.

Demand

I trust this information helps clarify Michayla's First Amendment rights and the School District's responsibilities in relation to them. In summary, the First Amendment does not allow GCCSD (or district officials) to single out and silence Michayla's pro-life message because one person complains about it. Accordingly, we request that you respond to this letter by May 24, 2013, and assure us that students' free speech rights will be respected at Griggs County Central High School. Specifically, we request that you (1) formally apologize to Michayla for

² While Michayla's poster is not school-sponsored under *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), censorship of it would still be improper under the *Hazelwood* standard since the censorship served no legitimate pedagogical concern. Moreover, censorship of the poster constituted viewpoint discrimination since it singled out and prohibited Michayla's pro-life viewpoint while allowing many other viewpoints. Schools may not commit viewpoint discrimination, even if the expression is deemed school-sponsored. *See, e.g., Peck v. Baldwinsville Cent. Sch. Dist.*, 426 F.3d 617, 632-33 (2d Cir. 2005); *Planned Parenthood of S. Nev., Inc. v. Clark Cnty. Sch. Dist.*, 941 F.2d 817, 829 (9th Cir. 1991); *Searcey v. Harris*, 888 F.2d 1314, 1324 (11th Cir. 1989).

Page 4
May 2, 2013

unconstitutionally removing her poster, (2) allow Michayla to hang her poster where she originally hung it for the same duration that other students hung posters they made for health class, and (3) assure us that Michayla will be allowed to express her peaceful, pro-life message in the future in non-disruptive ways at GCCSD.

If we do not hear from you in writing before the specified deadline, we can only assume that GCCSD will continue to enforce its policy of banning pro-life messages anytime someone complains. Under that scenario, we will be forced to take legal action to ensure the exercise of Michayla's First Amendment freedoms. Therefore, if we do not receive assurances by May 24, 2013, we will begin the process of seeking judicial review of the actions and policies outlined above in federal court. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Scruggs', written over a horizontal line.

Jonathan Scruggs
Legal Counsel
Alliance Defending Freedom