



June 8, 2022

BY EMAIL

Tracy J. Miller
President, Board of Education
Jordan School District
7387 S. Campus View Dr.
West Jordan, UT 84084
tracy.miller@jordandistrict.org

Re: *Unconstitutional Viewpoint Discrimination and Unlawful Denial of Equal Access to Turning Point USA at Copper Hills High School*

Dear Ms. Miller,

Alliance Defending Freedom (ADF) represents the Turning Point USA chapter at Copper Hills High School and student Matthew Parkinson. 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.¹

This letter concerns Jordan School District and Copper Hills High School's censorship of Turning Point USA's speech and denial of Turning Point USA's access

¹ Alliance Defending Freedom has consistently achieved successful results for its clients before the United States Supreme Court, including thirteen victories before the highest court since 2011. See *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021) (representing Thomas More Law Center in consolidated case; striking down state law requiring charities to disclose identities of donors to government authorities); *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); *Nat'l Inst. of Fam. & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018) (upholding ADF client's free speech rights against the State of California); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm'n*, 138 S. Ct. 1719 (2018) (upholding ADF client's First Amendment rights); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (upholding ADF client's First Amendment rights); *Zubik v. Burwell*, 578 U.S. 403 (2016) (representing Geneva College and Southern Nazarene University in two consolidated cases; upholding ADF clients' First Amendment rights); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015) (unanimously upholding ADF client's free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (representing Conestoga Wood Specialties Corp. in consolidated case; striking down federal burdens on ADF client's free-exercise rights); *Town of Greece v. Galloway*, 572 U.S. 565 (2014) (upholding a legislative prayer policy promulgated by a town represented by ADF); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011) (upholding a state's tuition tax credit program defended by a faith-based tuition organization represented by ADF).

to the same rights, benefits, and privileges that the district and school provide to other student groups. District and school officials' actions violate clearly established law, including the Equal Access Act and First Amendment.

To avoid legal action, Jordan School District and Copper Hills High School must immediately provide equal access to Turning Point USA and implement policies to ensure all clubs receive equal access and treatment consistent with the First Amendment.

Factual Background

Turning Point USA is a national organization with over a thousand student-led chapters at high schools and colleges throughout the United States, including at Copper Hills High School. The district and school first recognized the Turning Point USA chapter in October 2021. Its mission, like that of other chapters, is to educate students about the importance of freedom, free markets, and limited government. Toward that aim, the chapter holds periodic meetings and pre-approved tabling events during noninstructional time.

From the beginning, district and school officials have been hostile to Turning Point's views. In a February 9, 2022 meeting with the school's club leaders, Copper Hills Principal Bryan Veazie referred to Turning Point USA as a "radical Republican group." In a discussion with the chapter's officers the next day, Principal Veazie elaborated that he viewed Turning Point USA as a "far-right" and "extreme" group based on the views expressed on the national organization's website. In that same meeting, the principal informed the chapter's officers that school and district officials barred the chapter from affiliation with the national Turning Point USA organization. Thus, the district and school only allowed the chapter to use the name "Turning Point" instead of its desired moniker, "Turning Point USA."

Officials' hostility has also extended to censorship. The chapter sought and received the school's pre-approval to table at lunch during the week of March 7, 2022 to share its views with other students and recruit for the chapter. At the table on March 7, the group displayed posters, pins, and stickers expressing its views, such as "Socialism Sucks," "Always Love America," "I'm a Conservative," and "Don't Tread On Me." The table proved popular, attracting fourteen new members to the group. And it caused no disruption to school activities.

The chapter again tabled at lunch on March 9. It displayed the same posters, pins, and stickers as at the previous table. The table again proved popular, drawing in seven new members. But this time, school officials abruptly put an end to the group's speech. When she became aware of the table, Assistant Principal Rufine Einzinger instructed the chapter's officers to take down the "Socialism Sucks," "I'm a Conservative," and "Always Love America" posters. She reasoned that the posters did not represent "both sides." She also informed the group that—notwithstanding the

school's pre-approval—it did not have permission to table. The assistant principal shut the table down and marched the chapter's officers to Principal Veazie's office.

Despite recognizing that the district and school created a limited open forum for student groups, Principal Veazie told the club's officers that they needed to balance out their speech with viewpoints they opposed. He wanted the chapter to focus on creating a "welcome, safe, and comfortable" environment. In pursuit of that end, Principal Veazie told students that no law, policy, guideline, or rule told him what speech he could allow at school. Rather, he reserved for himself the power to make those censorship decisions based on his own assessment of the—otherwise unidentified—"good-bad, pros-cons, [and] unintended consequences." And he even went so far as to accuse the chapter's posters of "defam[ing]" other forms of government—if that's even possible.

Two weeks later, Principal Veazie gave a different rationale for shutting down the chapter's speech. In a March 23, 2022 meeting with the chapter's officers, Principal Veazie claimed that the chapter's tabling had actually violated the district's pre-approval requirement for speech and that the chapter did not need to balance its speech with opposing viewpoints. The two district policies at issue, AA425 and AA443, require students to seek the school's consent before distributing printed materials at school. In Principal Veazie's estimation, the policies vest him with the authority to regulate speech for the "safety and well-being of all students." The chapter's officers engaged in a question-and-answer session to probe the depths of Principal Veazie's discretion. Principal Veazie gave his censorship decisions on the fly. For example, the word "sucks" was out because the school apparently did not want to endorse that terminology. But "scares" was ok. Principal Veazie urged the students to avoid saying things that some may "perceive[]" to be "offensive." He again stressed his mission to ensure that all students feel "welcome, safe, and comfortable."

But district and school officials do not require other student groups to abide by these restrictions. Numerous other student groups use the same name as their associated national organizations. For example, officials allow Copper Hills' SkillsUSA club to use the same name as the national organization, instead of limiting it to "Skills." Compare Copper Hills High School Club Descriptions, <https://bit.ly/3jvKXNL> (last accessed June 8, 2022), with SkillsUSA, <https://www.skillsusa.org/> (last accessed June 8, 2022). And the FCCLA – Family, Career and Community Leaders of America also shares the same name as its national organization. Compare Copper Hills High School Club Descriptions, <https://bit.ly/3jvKXNL> (last accessed June 8, 2022), with FCCLA, *About*, <https://fcclainc.org/about> (last accessed June 8, 2022). Many similar examples exist.

Nor do district and school officials limit the similar or even vulgar speech of other student groups. The Slam Poetry club posted a video—publicly available on the school's website—proclaiming that "being dead sucks." Copper Hills High School, *The 2019 Poetry Slam Review!*, <https://bit.ly/3uxJmgC> (last accessed June 8, 2022). And

the W.I.S.E. (Women Inspiring Strength & Empowerment) club also has a video on the school's website with song lyrics claiming repeatedly that girls "run this mutha." Copper Hills High School, *W.I.S.E. Rush Video*, <https://bit.ly/37Gxlwk> (last accessed June 8, 2022).

Analysis

The district and school's restrictions on Turning Point USA violate the Equal Access Act and the First Amendment.

The Equal Access Act, 20 U.S.C. §§ 4071–74, requires the district and school to provide Turning Point USA with exactly the same rights, benefits, and privileges that all other non-curricular clubs receive. As Principal Veazie recognized, the district has opened itself to student clubs as a limited open forum. Jordan School District, Policy AA443 – Student Clubs (Limited Open Forum), § I.A. That triggers the Act's requirements. The district and school "may not deny other clubs, on the basis of the content of their speech, equal access to meet on school premises during noninstructional time." *Bd. of Educ. v. Mergens*, 496 U.S. 226, 236 (1990).

The First Amendment provides broad protection from government interference with speech and associational freedoms. The Supreme Court has "made clear that students do not shed their constitutional rights to freedom of speech or expression, even at the school house gate." *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2044 (2021) (cleaned up). School officials cannot restrict student speech out of the "mere desire to avoid the discomfort and unpleasantness that always accompany" a potentially "unpopular viewpoint." *Tinker v. Des Moines Ind. Cnty. Sch. Dist.*, 393 U.S. 503, 509 (1969). And, even in the school setting, prior restraints on speech come with a "heavy presumption" of unconstitutionality. *Burch v. Barker*, 861 F.2d 1149, 1154 (9th Cir. 1988).

Specifically, the district and school violate both the Act and the Constitution by: (1) prohibiting the chapter from using the same name as the national Turning Point USA organization; (2) prohibiting the chapter from using its desired posters to communicate its message; and (3) requiring the chapter to receive pre-approval to distribute its materials.

First, district and school officials cannot deny the chapter its desired name, especially when they allow other student groups to use the name associated with their respective national organizations. Other groups, like SkillsUSA, use the same name as the national organization and even the exact same term, "USA," that district officials prohibited the Turning Point USA chapter from using. That unequal treatment violates the Equal Access Act. It also violates the First Amendment because group names have "profound expressive meaning." *Colin ex rel. Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000). A chapter retains the First Amendment freedom to associate with a national group and present

its message in alignment with that national group. *See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 574–75 (1995). And Principal Veazie made clear that he regarded the content and viewpoint of the national organization’s speech as “extreme” and “far-right.” But the First Amendment does not permit that viewpoint discrimination. *Tinker*, 393 U.S. at 509.

Second, school officials targeted the chapter’s posters, flyers, and pins for the message expressed while allowing other similar—and even vulgar—speech from other groups. Equal access means administrators cannot “discriminate against” a group because of the “political . . . content”—like “Socialism Sucks”—of its speech. 20 U.S.C. § 4071(a). It also means administrators cannot prohibit the chapter from criticizing socialism by using the term “sucks” when another student group has used that exact same term in a video on the school’s website. And the school’s website even features another student group’s video with vulgar song lyrics. That unequal treatment violates the Act.

The First Amendment also forbids such censorship. The chapter tabled on March 7 with the same signs and with no evidence of any disruption to school activities. The “mere . . . discomfort,” *Tinker*, 393 U.S. at 509, of a school administrator on March 9 caused the administration to censor the chapter’s speech. And Principal Veazie later said the school did not want to endorse the chapter’s chosen terminology. Neither justification meets “*Tinker*’s demanding standard.” *Mahanoy*, 141 S. Ct. at 2048; *accord Mergens*, 496 U.S. at 250 (“schools do not endorse” student speech “they fail to censor”). “District officials are not at liberty to suppress or punish speech simply because they disagree with it, or because it takes a political or social viewpoint different from that subscribed to by the majority.” *Taylor v. Roswell Ind. Sch. Dist.*, 713 F.3d 25, 51 (10th Cir. 2013) (cleaned up).

Third, the district’s prior approval requirement also violates the First Amendment and the Act. The policy requires the “consent of the school principal” to distribute “printed material of any nature.” Jordan School District, Policy AA425 – Printed Materials – Speech and Manners, § II.B.1. The policy provides no factors to guide the principal’s exercise of consent. As Principal Veazie admitted, he can weigh—in his own estimation—the “good-bad, pros-cons, [and] unintended consequences” of any speech. But school policies are only “safe” from constitutional “attack” when they provide both “procedural safeguards” and “substantive constraints on official discretion.” *Taylor*, 713 F.3d at 43 (reviewing school prior restraint that required “prompt and transparent decision making,” two levels of appellate review, and a determination that student literature distribution “would cause a substantial disruption or a material interference with the normal operation of the school” (cleaned up)). The policy here provides neither. Indeed, it has *no* procedural or substantive safeguards. When, as here, a prior restraint “involves appraisal of facts, the exercise of judgment, and the formation of an opinion,” then “the danger of censorship and of abridgment of our precious First Amendment

freedoms is too great to be permitted.” *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992).

As for the Act, when school officials first shut down the chapter’s speech, they said that the group needed to present “both sides” of the issue. Only two weeks later did Principal Veazie mention the prior approval requirement. That delay raises the strong inference that school officials do not enforce the prior approval requirement against other student organizations. But the Act demands equal treatment among student groups. The district and school cannot selectively enforce their policies against Turning Point USA.

Conclusion

Based on the above, we request that you assure us in writing that Turning Point USA at Copper Hills High School will receive the same rights, benefits, and privileges as other noncurricular student groups at the school, including assuring us that:

- (1) the district and school will recognize the chapter by its desired name, Turning Point USA;
- (2) the district and school will not censor or otherwise discriminate against the chapter based on the content or viewpoint of the chapter’s speech and will allow the chapter to display materials with the messages “Socialism Sucks,” “Always Love America,” “I’m a Conservative,” “Don’t Tread On Me,” and other similar messages; and
- (3) the district and school will not enforce their prior approval requirement against the chapter.

Additionally, to prevent the district and school from future statutory and constitutional violations, we also request that the Jordan School District Board of Education adopt at its July 26, 2022 meeting policies that, in compliance with the Equal Access Act and First Amendment, prohibit the District’s schools, administrators, and teachers from denying a club its desired name, discriminating against the content and viewpoint of a club’s speech, and subjecting student literature distribution to an unlawful prior restraint.

If you fail to grant these requests by June 24, 2022, we will have no option but to advise our clients of other avenues for vindicating their rights. Please immediately place a litigation hold on all email accounts, document collections, social media accounts, and all other sources of information or communications (including electronically stored information) that reference in any way the facts discussed above, Turning Point USA, or Mr. Matthew Parkinson.

If you are willing to comply with these requests, we are happy to discuss this matter as needed and help formulate policies that comply with the Equal Access Act and the Constitution. We also refer you to the Department of Education's *Legal Guidelines Regarding the Equal Access Act and the Recognition of Student-Led Noncurricular Groups* available at <https://bit.ly/3dsfFEL>.

Respectfully yours,



Frank Mylar
MYLAR LAW, P.C.
2494 Bengal Blvd.
Salt Lake City, Utah 84121

Gregory R. Walters
Senior Legal Counsel
Mathew W. Hoffmann
Legal Counsel
ALLIANCE DEFENDING FREEDOM

cc: Bryce Dunford
First Vice President
Board of Education
Jordan School District
bryce.dunford@jordandistrict.org

Darrell Robinson
Member
Board of Education
Jordan School District
drdarrellrobinson@gmail.com

Marilyn Richards
Second Vice President
Board of Education
Jordan School District
marilyn.richards@jordandistrict.org

Matthew Young
Member
Board of Education
Jordan School District
matthew.young@jordandistrict.org

Jen Atwood
Member
Board of Education
Jordan School District
jen.atwood@jordandistrict.org

Anthony Godfrey
Superintendent
Jordan School District
superintendent@jordandistrict.org

Niki George
Member
Board of Education
Jordan School District
niki.george@jordandistrict.org

Bryan Veazie
Principal
Copper Hills High School
bryan.veazie@jordandistrict.org