

March 2, 2011

Via facsimile to 361-694-9800

Via email to jcarbajal@flourbluffschoools.net

Via first class mail

Board of Trustees and Superintendent Carbajal
Flour Bluff Independent School District
2505 Waldron Road
Corpus Christi, Texas 78418

Dear Board of Trustees and Superintendent Carbajal:

We write on behalf of Bianca “Nikki” Peet, who is a senior at Flour Bluff High School (“Flour Bluff High” or “FBHS”), regarding the Flour Bluff Independent School District’s (“the District” or “FBISD”) attempts to stop Ms. Peet and other students from organizing a Gay Straight Alliance (“GSA”). GSAs are student-run extra-curricular clubs that bring together lesbian, gay, bisexual, transgendered and questioning students and straight students to support each other and promote tolerance, and are common in public school districts throughout Texas and the nation.

For the reasons set forth below, we believe the District’s actions in denying Ms. Peet’s request violate federal law and we require the District take immediate steps to remedy the situation and avoid legal action. Additionally, we request copies of all public information, including but not limited to all correspondence between FBISD administrators concerning Ms. Peet’s request to form a GSA.

I. Background

Ms. Peet approached Flour Bluff High School Principal Crenshaw with a proposal to start a Gay-Straight Alliance club (“GSA”), complete with a faculty advisor, in November 2010. After delaying consideration of Ms. Peet’s request until after the winter break, Principal Crenshaw unlawfully instructed Ms. Peet, via the faculty advisor, to change the name of the club to the “Tolerance Club.” Ms. Peet complied with Principal Crenshaw’s instruction and then renewed her request to form a GSA. However, even with that name change, Principal Crenshaw still refused to permit the club.

Students who support the efforts to form a GSA have reported intimidation and censorship by Principal Crenshaw and other administrators. Recent media reports further suggest that Superintendent Carbajal agrees with the

decision to deny the group's application and will not allow the formation of a GSA at Flour Bluff High. Rather than permitting the club to form, it appears that the District intends to shut down some or all other non-curricular clubs at the high school.

II. Applicable Law

FBISD's actions violate federal law and the First Amendment. Under the federal Equal Access Act (EAA) and the First Amendment, if a public high school allows any student group whose purpose is not directly related to the school's curriculum to meet on school grounds during lunch or before or after school, it has created a limited public forum or limited open forum and thus cannot deny other student groups the same access to the school because of the content of their proposed discussions. *See* 20 U.S.C. § 4071(b); *Gay-Straight Alliance of Yulee High Sch. v. School Board of Nassau Cty.*, 602 F. Supp. 2d 1233 (M.D. Fla. 2009) (granting preliminary injunction requiring school district to permit a GSA so long as the district maintained a limited forum under the EAA and the First Amendment).

Because Flour Bluff High has opened the door to non-curricular clubs on campus, it is required by law to permit the GSA club. Under United States Supreme Court precedent, a non-curricular student group is any group that does not "directly relate" to courses offered by the school. *Board of Education v. Mergens*, 496 U.S. 226 (1990) (holding that a "curriculum-related student group is one that has more than just a tangential or attenuated relationship to courses offered by the school"). Flour Bluff High's website lists under the heading, Extracurricular Activities, clubs of the type that courts have held to be non-curricular, including:

- the chess club; *see id.* at 240;
- the Key Club; *see Boyd County High Sch. Gay Straight Alliance v. Bd. of Educ. of Boyd County*, 258 F. Supp. 2d 667, 679 (E.D. Ky. 2003) (holding that an academic honors club is presumptively non-curricular); and
- the Family, Careers, Community Leaders of America; *see Mergens*, 496 U.S. at 240 (holding that a community service club is presumptively non-curricular).

Furthermore, although not listed on the school's website, according to media reports, Flour Bluff High also has allowed the Fellowship of Christian Athletes to meet on campus. This type of club has also been found to be a non-curricular club. *Boyd County High Sch. Gay Straight Alliance*, 258 F. Supp. 2d at 677-78 (holding that a Bible Club formerly known as Fellowship of Christian Athletes is presumptively non-curricular). Accordingly, because the District has permitted these and other non-curricular clubs on campus, your refusal to permit the GSA club violates the EAA and the First Amendment regardless of whatever District policy you believe makes the Equal Access Act inapplicable to this situation.

To the extent that the District intends on shutting down all non-curricular clubs to avoid the formation of the GSA, doing so constitutes an unlawful prior restraint on Ms. Peet's

and other students' protected expression. Recently, a federal court in Mississippi held that when the school district canceled the prom in response to a student's request to bring a same-sex date, the district violated the student's First Amendment rights. *McMillen v. Itawamba County Sch. Dist.*, 702 F. Supp. 2d 699 (N.D. Miss. 2010). The proposed action by the District here is no different than the cancellation of the prom that the court held in *McMillen* to be unconstitutional.

You have no basis for refusing to allow the GSA on campus. There is nothing inherent about a GSA club that violates school policies. *Gay-Straight Alliance of Yulee High Sch.*, 602 F.Supp.2d at 1236-37; *Gonzalez v. School Bd. of Okeechobee County*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008). Moreover, the purpose of the GSA, as clear from Ms. Peet's proposal, is to "bring[] together LGBTQ [lesbian, gay, bisexual, transgender, and questioning] youth as well as its straight allies to bring tolerance and acceptance to the school and community, to be a support system to LGBTQ students, and to raise awareness of many LGBTQ related issues."

Indeed, the proposed activities of the GSA are all activities typical and appropriate for a high school club, including giving toys to children at Driscoll Hospital and participating in the Relay for Life, an event that raises awareness for cancer. The GSA would also participate in the Day of Silence, an event where students take a vow of silence to bring attention to anti-LGBT name-calling, bullying and harassment in their schools. These activities, which serve the community as a whole and bring awareness to the serious issue of bullying on campus, are ones that you, as educators, should be encouraging, not censoring.

To the extent that you are concerned about other students, parents, or community members acting disruptively in reaction to the GSA, it is the District's obligation to protect—not censor—Ms. Peet's expression. The law does not permit a "heckler's veto" over protected speech. *Butts v. Dallas Independent Sch. Dist.*, 436 F.2d 728 (5th Cir. 1971). As a federal court in Kentucky ruled, even extensive disruption in the community and in school (thousand-person rallies, a boycott by half the student body) is not enough to justify shutting down a GSA where the GSA members themselves are not causing the commotion. *Boyd County*, 258 F. Supp. 2d 667 ("To rule otherwise would completely subvert free speech in the school by granting other students a 'heckler's veto,' allowing them to decide through prohibited and violent methods what speech will be heard.").

We also are deeply concerned with reports that the Flour Bluff High principal may be retaliating against students and others who are supporting the GSA. Although this should be self-evident, please note that advocating for the GSA or for the rights of LGBTQ students generally does not constitute activity that violates school policies against "secret societies" or "illegal organizations." *Gillman v. School Board for Holmes County*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008) (granting permanent injunction against school district and awarding \$325,000 in attorneys' fees to plaintiff).

III. Required Remedy

We write to demand that you rescind your unlawful policies, and permit the GSA to form at Flour Bluff High. Because your statements in the media have created hostility against the GSA, we also demand that you issue a statement affirming that the District will permit a GSA to form on campus, that it will be treated the same as any other non-curricular club on campus, and that the District will not tolerate any retaliation against a student, teacher, or any other staff member for supporting the GSA.

In permitting the GSA on campus, please be aware that the District may not impose conditions on the GSA that do not apply to other clubs. *Straights and Gays for Equality v. Osseo Area Schools-Dist. No. 279*, 540 F.3d 911 (8th Cir. 2008). Nor may the District require the club to change its name to the “Tolerance Club” or other name that does not specifically reference the purpose of the club – to serve as a safe space for LGBTQ students and their allies. Courts have specifically ruled that school cannot tell a GSA to remove the term “gay” from its name. *See Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1147-48 (C.D. Cal. 2000), *Gay-Straight Alliance of Yulee High Sch.*, 602 F.Supp.2d at 1236.

IV. Texas Public Information Act Records Request

In addition to our demands above, pursuant to the Texas Public Information Act, Texas Government Code Ch. 552, we request the following information¹ maintained by the District and its officers, employees, and agents and/or Flour Bluff High School and its officers, employees and agents (“campus”):

A. Noncurricular student organizations

1. All district and campus policies, guidelines and instructions in effect during the 2009-2010 and 2010-2011 school years relating to the formation, recognition and operation of noncurricular or extracurricular student organizations²;
2. Information identifying each noncurricular or extracurricular student organization at FBHS during the 2009-2010 and 2010-2011 school years, disaggregated by school year;
3. All district and campus policies, guidelines and instructions in effect during the 2009-2010 and 2010-2011 school years for permitting noncurricular or extracurricular student organizations and/or their sponsors or members to:
 - a. include items in campus announcements,
 - b. distribute literature, including but not limited to posting flyers or signs on campus property,

¹ The term “information” as used herein includes all records or communications in written or electronic form, including but not limited to correspondence, documents, data, videotapes, audio tapes, emails, faxes, telephone messages, logs, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, training manuals, other manuals, or studies.

² The terms “noncurricular group” and “extracurricular groups” as used herein includes any group that does not directly relate to courses offered by FBISD or FBHS.

- c. be included on lists of noncurricular or extracurricular student organizations published to the district and/or campus websites and/or in print;
 - d. have an organization webpage hosted on the district and/or campus website
4. All requests by noncurricular or extracurricular student organizations and/or their sponsors or members during the 2009-2010 and 2010-2011 school years to:
 - a. include items in campus announcements,
 - b. distribute literature, including but not limited to posting flyers or signs on campus property,
 - c. be included on lists of noncurricular or extracurricular student organizations published to the district and/or campus websites and/or in print;
 - d. have an organization webpage hosted on the district and/or campus website
5. All information reflecting the consideration and disposition of each request identified in item 4;

B. Request to form a GSA

6. All information regarding meetings or discussions involving FBHS administrators, faculty, and/or staff in response to Nikki Peet's request to form a GSA or Tolerance Club, or in response to media reports regarding the same, including the substance of what was discussed;
7. All information regarding meetings or discussions between FBHS administrators and Nikki Peet and any other student regarding a request to form a GSA or Tolerance Club, in response to student petitions regarding the same, or in response to media reports regarding the same, including the substance of what was discussed;
8. All information regarding meetings or discussions between FBHS administrators and FBHS faculty members interested or willing to serve as faculty or adult sponsors of a GSA or Tolerance Club, including the substance of what was discussed;

C. Bullying and Harassment

9. All formal and informal reports of student bullying or harassment at FBHS during the 2009-2010 and 2010-2011 school years, disaggregated by basis for the harassment;
10. All information reflecting the investigation or and any discipline related to each report identified in item 9 above.

We agree that all student-identifying information may be redacted from materials responsive to the requests above. Materials may be sent by e-mail to lgraybill@aclutx.org, by fax to (512) 478-7303, or by mail to P.O. Box 12905, Austin,

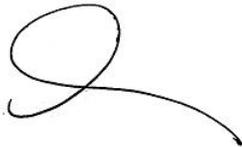
TX 78711. We are willing to pay the statutory fee for copying these materials. If the fee exceeds \$40.00, please provide the written estimate of costs via fax or email.

Please respond to this letter on or before **Wednesday, March 9, 2011** confirming that you will meet the demands in this letter or explaining why you believe your actions to be lawful. We can be reached by telephone as follows: Christine Sun at 212-549-2661, Lisa Graybill at 512-478-7300, ext. 116, and Manuel Quinto-Pozos at 512-478-7300, ext. 128. If you refuse to comply with your obligations under the EAA and the First Amendment, we will take whatever steps necessary to protect the rights of our client, Ms. Peet.

Very Truly Yours,



Christine P. Sun
Senior Counsel
ACLU National LGBT Project



Lisa Graybill
Legal Director
Manuel Quinto-Pozos
Staff Attorney
ACLU Foundation of Texas

cc: Flour Bluff High School Principal James Crenshaw (via fax to 361-694-9802 and
via email to jcrenshaw@flourbluffschoools.net)
Nikki Peet