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May 23, 2011

VIA EMAIL, FACSIMILE and U.S. MAIL

J. Alvin Wilbanks
CEO/Superintendent
Gwinnett County Public Schools
473 Old Peachtree Road, NW
Suwanee, GA 30024
E-Mail: Alvin_Wilbanks@Gwinnett.k12.ga.us

Dear Mr. Wilbanks:

As part of its “Don’t Filter Me” initiative, the ACLU has received complaints from students across the country that their school district’s filtering software has been configured to improperly censor websites advocating the fair treatment of lesbian, gay, bisexual, and transgender (“LGBT”) persons or reflecting the viewpoints of LGBT people. We have found that the software provided by filtering companies frequently includes a filter that is designed specifically to block access to LGBT-related materials that would not otherwise be blocked as sexually explicit or pornographic.

We have received complaints that Gwinnett County Public Schools has recently activated the “LGBT” filter on software provided by Blue Coat. The “LGBT” filter is designed to discriminate against LGBT viewpoints and does not serve a legitimate pedagogical purpose. Regardless of whether the “LGBT” filter was activated deliberately or unintentionally, your continued use of the “LGBT” filter violates the First Amendment and the Equal Access Act. On behalf of the ACLU and the ACLU of Georgia, we are writing to alert you to this problem and request that the filter for “LGBT” be removed immediately.

We are also sharing a copy of this letter with the press in order to raise awareness about this issue. In some cases, we have discovered that school districts have been blocking websites without even realizing that the anti-LGBT filter has been activated. We hope that by promptly disabling the “LGBT” filter, your school district will set a positive example and prompt other school districts to make sure that similar filters have not been activated on their own filtering software.

I. Factual Background

As reflected in the attached exhibits, your filtering system currently blocks access to the website for the It Gets Better Project, the Georgia Safe Schools Coalition, Parents, Families, and Friends of Lesbians and Gays (“PFLAG”), GSA Network, and the Gay Lesbian and Straight Education Network (“GLSEN”). See Exhibits A through E (attached). When students attempt to access any of these websites, your software displays a message stating “Access Denied,” accompanied by a red sign with an “x” on it. The computer screen states that website has been categorized as “LGBT” and warns the student that his or her “internet usage is logged and monitored.”

Before the Blue Coat software was installed, your students were able to freely access each of these websites. None of the blocked websites contains material that is pornographic or sexually explicit in any way. Indeed, according to another filtering company, these websites all contain “G-Rated Content” that is “[d]eemed suitable for viewers of all ages.”

The Blue Coat software has an array of filter categories that can be activated to filter out specific types of content. One of those categories -- labeled “LGBT” -- is specifically designed to block access to LGBT-related websites. According to Blue Coat’s description of each category, the LGBT category is defined as:

Sites that provide information regarding, support, promote, or cater to one’s sexual orientation or gender identity including but not limited to lesbian, gay, bisexual, and transgender sites. ***This category does not include sites considered sexually gratuitous in nature that would typically fall under the Pornography category.***

See Blue Coat Categories at www.bluecoat.com/doc/10826 (emphasis added). Blue Coat lists GSA Network and GLSEN as examples of the very type of websites the LGBT filter is specifically designed to target. See Blue Coat Category Map at <https://bto.bluecoat.com/packetguide/current/reference/catmap.htm>.

Gwinnett County Public Schools does not have a legitimate pedagogical interest for blocking websites classified by Blue Coat as “LGBT.” The “LGBT” filter may be disabled without posing any risk of violating the Children’s Internet Protection Act (“CIPA”). As the definition itself explains, the “LGBT” filter category is designed to block sites that would not otherwise be blocked as sexually explicit or pornographic.

II. Legal Background

Your continued use of the “LGBT” filter violates your students’ rights under the First Amendment and the Equal Access Act and could give rise to legal liability.

A. The First Amendment

Your students have a First Amendment right to access the websites that are blocked by the “LGBT” filter. “[J]ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.” *Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982) (plurality) (internal quotation marks and citations omitted). “[T]he issue of equal rights for citizens who are homosexual is presently a topic of fervent discussion and debate within the courts, Congress, and the legislatures of the States The nation’s high school students, some of whom are of voting age, should not be foreclosed from that national dialogue.” *Gillman v. Sch. Bd. for Holmes County, Fla.*, 567 F. Supp. 2d 1359, 1374 (N.D. Fla. 2008); see also *Fricke v. Lynch*, 491 F. Supp. 381, 385 (D.R.I. 1980) (holding that First Amendment protects non-sexual expression of a student’s gay sexual orientation).

The First Amendment does not require the school district to provide students with internet access, but once the school provides such access, it may not selectively censor access to websites in a manner that discriminates against particular viewpoints. “[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.” *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) (internal quotation marks and citation omitted). When a school “permits the discussion of a topic from [one] perspective, it may not shut out speech that discusses the same topic from a [different] perspective.” *Child Evangelism Fellowship of N.J. Inc. v. Stafford Tp. Sch. Dist.*, 386 F.3d 514, 528 (3d Cir. 2004) (Alito, J.).

The Blue Coat LGBT filter engages in unconstitutional viewpoint discrimination by blocking sites that express acceptance and tolerance towards LGBT individuals but not blocking sites that urge LGBT persons to change their sexual orientation or gender identity through so-called “reparative therapy.”^a For example, the LGBT filter does not block the website for People Can Change (which is categorized as “Health”) or the website for Exodus International (which is categorized as “Religion”). See Blue Coat Web Page Review, at <http://sitereview.bluecoat.com/sitereview.jsp>. By contrast, if a religiously oriented website such as Affirmation or Dignity USA preaches acceptance of LGBT people, the website is categorized as “LGBT” and blocked by the Blue Coat software.

This viewpoint discrimination violates your students’ First Amendment rights and exposes your school to legal liability. The school district should promptly disable the “LGBT” filter so that students once again have viewpoint-neutral access to Internet resources.

B. The Equal Access Act

In addition to violating students’ First Amendment rights, the “LGBT” filter also violates the Equal Access Act because it denies students who are seeking to form gay-straight alliances (“GSAs”) equal access to school resources that are generally available to other non-curricular clubs. See 20 U.S.C. § 4071, *et seq.*; *Westside Cmty. Schools v. Mergens*, 496 U.S. 226, 247 (1990); *SAGE v. Osseo Area Schools Dist.*, 471 F.3d 908 (8th Cir. 2006); *Gonzalez v. Bd. of Educ.*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008). The Equal Access Act mandates that, when a public secondary school that received federal financial assistance permits even one non-curricular group to use school resources, it must permit all other non-curricular student groups to do so on equal terms. See *Mergens*, 496 U.S. at 237, 247 (requiring equal access to school newspaper, bulletin boards, public address system, and club fair); *Boyd County High Sch. Gay Straight Alliance v. Bd. of Educ.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003) (school violated Equal Access Act by denying GSA clubs equal access to school bulletin board and intercom).

^a “Reparative therapy” is a practice denounced as dangerous and harmful to young people by such groups as the American Psychological Association, the American Psychiatric Association, and the American Academy of Pediatrics. See *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel* (2006), available online at <http://apa.org/pi/lgbt/resources/just-the-facts.pdf>.

The Equal Access Act requires that Gwinnett County Public Schools provide GSAs with equal access to all school resources -- including online resources -- that are made available to other non-curricular clubs. See *SAGE*, 471 F.3d at 912 (LGBT-related group must have “equal access to the same avenues of communication as other noncurriculum related groups”) (emphasis in original). The websites for GSA Network and GLSEN provide students with advice about how to establish a GSA at their school, suggestions for running an effective club, ideas regarding club activities, sample GSA club by-laws, and tips on how to work with teachers and administrators to address bullying and harassment in schools. But because the “LGBT” filter blocks access to the sites for GSA Network and GLSEN, students who seek to form GSAs in Gwinnett County Public Schools cannot access those online resources. By contrast, students seeking to establish or develop activities for other non-curricular clubs, such as the Key Club, are able to access their clubs’ websites through the school’s computers. This unequal treatment violates the Equal Access Act.

III. Additional Considerations

Allowing students equal access to LGBT-related websites is not just a legal duty; it also makes sense from a safety perspective, particularly in light of the epidemic of LGBT youth suicides and bullying. Prohibiting access to LGBT websites is especially problematic because many students do not have computers or Internet access at home and can access the Internet only at school. As one court put it, “as any concerned parent would understand, this case [holding that members of the Gay-Straight Alliance must be permitted access to the school’s resources in the same way as other clubs], may involve the protection of life itself.” *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000).

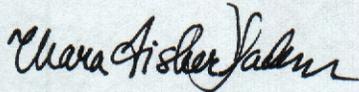
We wish to emphasize that unblocking individual LGBT-related websites upon request is not an appropriate solution to this problem. It is unfair and burdensome to force students to seek special permission every time they wish to access a website that reflects LGBT-related viewpoints when, in contrast, students may freely access other viewpoints without seeking such permission. Such unequal burdens violate the Equal Access Act and the First Amendment. Moreover, in the particular context of LGBT-related websites, requiring students to make individualized requests is especially harmful and counterproductive because it would force some LGBT students to risk “outing” themselves by requesting that a website be unblocked. There is no reason why the burden should be placed on a vulnerable population to affirmatively request that school administrators unblock websites for LGBT-resources that they already have a legal right to access.

IV. Conclusion

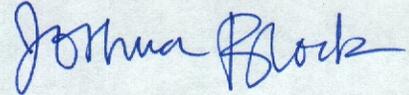
Please contact us by **May 30, 2011** to indicate whether you intend to disable the filter for “LGBT” and provide students equal access to the websites for It Gets Better, the Georgia Safe Schools Coalition, PFLAG, GSA Network, GLSEN, and similar LGBT-related resources in accordance with your school district’s legal obligations under the First Amendment and the Equal Access Act. After being contacted by the ACLU, several other school districts across the country have disabled similar anti-LGBT filters on their filtering software. We urge Gwinnett County Public Schools to do the same.

If you continue to censor these websites, you could be subject to legal liability and the expense of litigation, as the boards of education and superintendants of two Tennessee school districts that used a similar type of filtering software recently discovered. Ultimately, after being sued by the ACLU, both Tennessee school districts agreed to enter into a settlement agreement enforceable by the federal district court to stop blocking access of online information about lesbian, gay, bisexual, and transgender issues. *See Franks v. Metro. Bd. of Pub. Educ.*, No. 3:09-00446 (M.D. Tenn. 2009).

Sincerely,



Chara Fisher Jackson
Legal Director
ACLU of Georgia



Joshua Block
Staff Attorney
ACLU Foundation
125 Broad Street, 18th Floor,
New York, NY 10004

EXHIBIT A

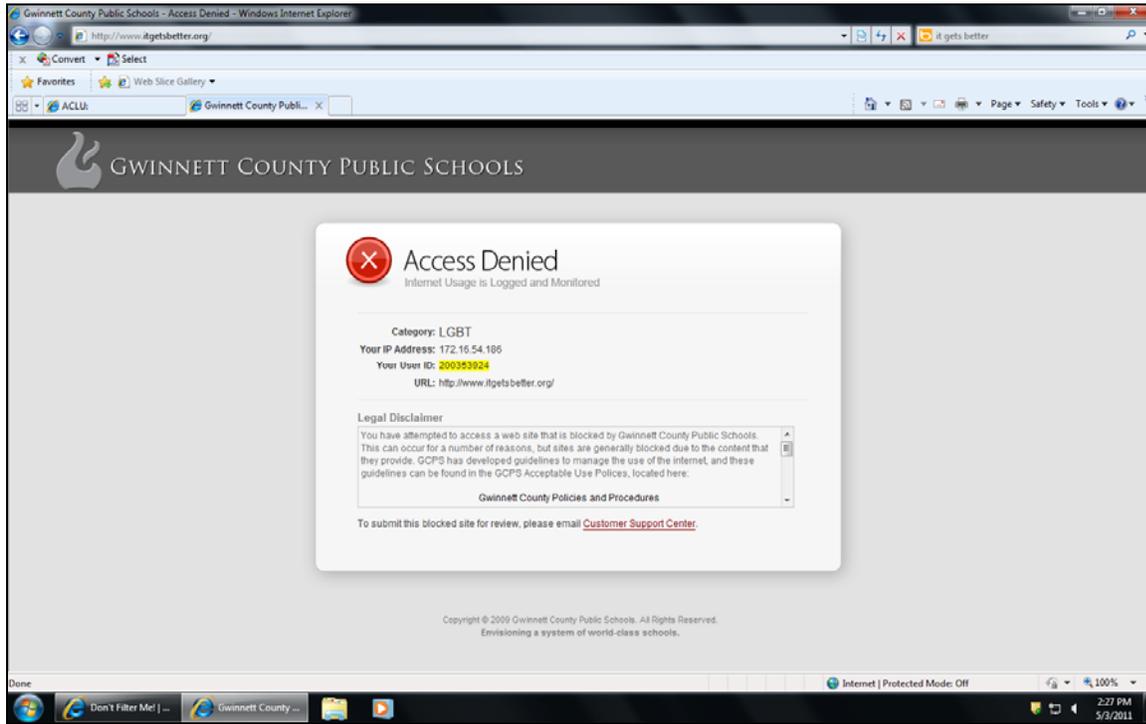


EXHIBIT B

Gwinnett County Public Schools - Access Denied - Windows Internet Explorer

http://www.georgiasafeschoolscoalition.org

Convert Select

Favorites Web Slice Gallery

Gmail - Inbox (1) - nowme... eLibrary Results Don't Filter Me | American... Gwinnett County Public...

Page Safety Tools

GWINNETT COUNTY PUBLIC SCHOOLS

Access Denied
Internet Usage is Logged and Monitored

Category: Education, LGBT
Your IP Address: 172.16.54.186
Your User ID: 200253824
URL: http://www.georgiasafeschoolscoalition.org/

Legal Disclaimer
You have attempted to access a web site that is blocked by Gwinnett County Public Schools. This can occur for a number of reasons, but sites are generally blocked due to the content that they provide. GCPS has developed guidelines to manage the use of the internet, and these guidelines can be found in the GCPS Acceptable Use Policies, located here:
[Gwinnett County Policies and Procedures](#)

To submit this blocked site for review, please email [Customer Support Center](#).

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Done Internet | Protected Mode: Off 100% 2:27 PM 5/3/2011

EXHIBIT C

Gwinnett County Public Schools - Access Denied - Windows Internet Explorer

http://www.pflag.org/

Convert Select

Favorites Web Slice Gallery

ACLU: Gwinnett County Publi...

Page Safety Tools

GWINNETT COUNTY PUBLIC SCHOOLS

Access Denied
Internet Usage is Logged and Monitored

Category: LGBT
Your IP Address: 172.16.54.186
Your User ID: 200253924
URL: http://www.pflag.org/

Legal Disclaimer
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Done Internet | Protected Mode: Off 100% 2:23 PM 5/3/2011

EXHIBIT D

Gwinnett County Public Schools - Access Denied - Windows Internet Explorer

http://www.gsanetwork.org

Convert Select

Favorites Web Slice Gallery

ACLU: Gwinnett County Publi...

gsa network

Page Safety Tools

GWINNETT COUNTY PUBLIC SCHOOLS

Access Denied
Internet Usage is Logged and Monitored

Category: Education, LGBT
Your IP Address: 172.16.54.186
Your User ID: 200253924
URL: http://www.gsanetwork.org/

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Done

Internet | Protected Mode: Off

100%

2:26 PM
5/3/2011

EXHIBIT E

Gwinnett County Public Schools - Access Denied - Windows Internet Explorer

http://www.glsen.org

Convert Select

Favorites Web Slice Gallery

ACLU: Gwinnett County Publi...

Page Safety Tools

GWINNETT COUNTY PUBLIC SCHOOLS

Access Denied
Internet Usage is Logged and Monitored

Category: Education, LGBT
Your IP Address: 172.16.54.186
Your User ID: 200253924
URL: http://www.glsen.org/

Legal Disclaimer
You have attempted to access a web site that is blocked by Gwinnett County Public Schools. This can occur for a number of reasons, but sites are generally blocked due to the content that they provide. GCPS has developed guidelines to manage the use of the internet, and these guidelines can be found in the GCPS Acceptable Use Policies, located here:

[Gwinnett County Policies and Procedures](#)

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Done Internet | Protected Mode: Off 100% 2:25 PM 5/3/2011