

August 8, 2016

Dear Principal or Superintendent,

We are writing in support of students at your school who would like to participate in Ally Week (<http://www.glsen.org/allyweek>). This event is a time for students to engage in a national conversation and action to become better allies to lesbian, gay, bisexual, and transgender (LGBT) youth. Allies are people who support this community by standing against the bullying and harassment many LGBT youth face in school. Anyone who takes a stand against anti-LGBT bullying and harassment can be an ally. As evidenced by recent tragedies, awareness of and attention to anti-LGBT bullying, harassment, and name-calling is needed now more than ever.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
LESBIAN GAY BISEXUAL
TRANSGENDER &
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On September 26-30, 2016, students will be participating in a variety of Ally Week activities at schools across the United States. How students celebrate Ally Week can take many forms, like organizing discussion groups, film screenings, and workshops; handing out pamphlets, ribbons, or stickers; asking their classmates to pledge to be an ally to LGBT students; or having coalition meetings with leaders of various student groups.

Ally Week is an opportunity for students to take the initiative to teach one another about diversity, respect, and safety for all students. Students gain leadership skills, provide a valuable service to the school community and empower themselves by realizing their ability to make a difference in their school.

We hope that you will support students celebrating Ally Week in the peaceful expression of their beliefs during the non-curricular portions of the school day. Although you may be concerned that other students may react disruptively to Ally Week, school officials may not prohibit students from engaging in speech out of “an urgent wish to avoid the controversy which might result from the expression.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 505, 510-11 (1969). Nor may school officials censor student expression out of “a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” *Id.* at 509; see also *Hatcher ex rel. Hatcher v. DeSoto Cnty. Sch. Dist. Bd. of Educ.*, No. 2:13-cv-138, 2013 WL 1395829, at *5 (M.D. Fla. Apr. 5, 2013) (a blanket school policy against “protests” such as Ally Week violates the First Amendment).

Moreover, student speech that promotes the fair and equal treatment of LGBT people is constitutionally protected political speech. As a federal court explained in *Gillman v. Sch. Bd. for Holmes Cnty.*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008):

[P]olitical speech involving a controversial topic such as homosexuality is likely to spur some debate, argument, and conflict. Indeed, the 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, including Florida. The nation's high school students, some of whom are of voting age, should not be foreclosed from that national dialogue.

Id. After a two-day trial, the court in *Gillman* issued an injunction against the school district and ultimately the district had to pay \$325,000 in attorneys' fees.

If you have a reasonable belief that other students may react hostilely to those who are participating in Ally Week, we encourage you to take appropriate steps to protect those students who are peacefully engaging in their right to free expression. The law is clear that school officials may not censor peaceful expression solely because other students will have a hostile reaction. *See Holloman v. Harland*, 370 F.3d 1252 (11th Cir. 2004) (concluding that school officials have the duty to address disruptive behavior, not prohibit the plaintiff's speech, because "allowing a school to curtail a student's freedom of expression based on such factors turns reason on its head"); *Boyd Cnty. High Sch. Gay Straight Alliance v. Bd. of Educ. of Boyd Cnty., Ky.*, 258 F. Supp. 2d 667, 691 (E.D. Ky. 2003) (even "protests" and "public uproar" could not justify restricting the rights of students who were not responsible for causing the disruption).

Please do not hesitate to contact us if you have any questions about the above or if we can be of any assistance to you. We can be reached at 212-549-2627.

Sincerely,



James D. Esseks
Director
ACLU Lesbian Gay Bisexual Transgender & HIV Project

Students and parents: Feel free to use this letter as an advocacy tool in your own school.