



January 31, 2008

Mr. Robert Aumaugher
Superintendent
Esmeralda County School District
P.O. Box 560
Goldfield, NV 89013

Mr. Aumaugher:

We write to ask the Esmeralda County School District to reconsider and rescind the policy adopted by your office prohibiting public high school students in the district from speaking Spanish while riding the school bus. (A letter from your office describing the policy is attached.) The American Civil Liberties Union ("ACLU") of Nevada and the national ACLU Immigrants' Rights Project are committed to protecting and enforcing the fundamental rights guaranteed by the Constitution and laws of the United States, especially the rights of those who are immigrants and minorities in our communities. We believe that the policy adopted by your office (1) runs afoul of the Constitution and other federal laws and (2) disproportionately impacts and significantly harms children of certain minority backgrounds.

The policy violates the Constitution. The U.S. Supreme Court has long held that the Constitution protects the right of individuals to communicate in a foreign language. *See Meyer v. Nebraska*, 262 U.S. 390 (1923); *Bartels v. State of Iowa*, 262 U.S. 404 (1923); *Farrington v. Tokushige*, 273 U.S. 284, 409 (1927). "The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution[.]" *Meyer*, 262 U.S. at 401.

It is well-established that students enjoy free speech rights. The Supreme Court has repeatedly emphasized that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 (1969). In particular, it is clear that public "schools may not prohibit student speech because of 'undifferentiated fear or apprehension of disturbance' or 'a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.'" *Morse v. Frederick*, 127 S.Ct. 2618, 2629 (2007) (quoting *Tinker* 393 U.S. at 506).

A speculative belief that a disruption *may* occur because a student *may* be making disrespectful comments in a foreign language amounts to exactly the kind of "undifferentiated fear or apprehension of disturbance" that the Supreme Court

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has found insufficient to support restrictions on student speech. The school district may not censor, consistent with the First Amendment, speech in the way it has done here simply because a bus driver or other school employee assumes out of ignorance or paranoia (or prejudice) that disrespectful comments are being made in Spanish. Nor is the mere discomfort of the bus driver or others a proper basis for such a restriction.

Further, even assuming that there might arguably be some educational merit to requiring students to refrain entirely from speaking Spanish while on the bus – a doubtful proposition – it is questionable whether an educational purpose could justify the policy in these circumstances, where the school district has not arranged for instructional activities to occur on the buses and where English speakers presumably are permitted to carry on personal conversations that do not further any educational goal as long as those conversations occur in English. The prohibition in fact *deters* educational goals and is completely irrational given that it would even prevent students enrolled in a Spanish class from practicing speaking in Spanish.

The federal courts have also specifically recognized that restrictions on language may constitute illegal discrimination because an individual's choice of language is an expression of or closely related to their culture and national origin. In particular, the U.S. Court of Appeals for the Ninth Circuit, which has jurisdiction over federal appeals from the Nevada district courts, has observed that “[s]ince language is a close and meaningful proxy for national origin, restrictions on the use of languages may mask discrimination against specific national origin groups or, more generally, conceal nativist sentiment.” *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 948 (9th Cir. 1995), *vacated on other grounds*, 520 U.S. 43 (1997). Similarly, a California district court concluded in another case that because “the use of foreign languages is clearly an expression of national origin,” a local ordinance restricting the use of foreign language “overtly discriminate[d] on the basis of national origin” and was therefore unconstitutional. *See Asian American Business Group v. City of Pomona*, 716 F. Supp. 1328, 1332 (C.D. Cal. 1989). *See also, e.g., Yu Cong Eng v. Trinidad*, 272 U.S. 500, 525 (1926) (invalidating on Equal Protection grounds ordinance requiring certain business records to be kept in English, Spanish, or certain local Philippine dialects, and excluding use of the Chinese language). Similarly here, the policy adopted by your office may constitute unconstitutional discrimination and be viewed by the community as a whole as a discriminatory measure.

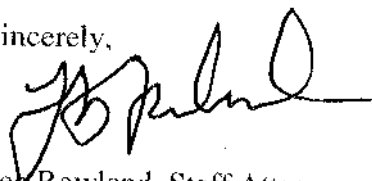
In addition to these serious constitutional problems, the policy may violate other federal laws, including the prohibition on discrimination on the basis of national origin contained in Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulations. *See* 42 U.S.C. § 2000d (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).

Further, the school district should be concerned about the serious harms its policy causes children. Because the policy specifically prohibits the speaking of

Spanish, students of certain minority backgrounds are obviously disproportionately impacted. By singling out and prohibiting use of a specific language, the school district sends an incorrect message that Spanish-speakers, the majority of whom are presumably Latino, are inferior. The school district's policy, indeed, may promote feelings of shame and humiliation in some school children, especially those who continue to struggle with their English. *Cf. Brown v. Bd. of Educ.*, 347 F.3d 483, 494 (1954) ("To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."). Those whose English skills are weak must refrain almost entirely from speaking during a bus ride that takes over an hour each way. This could affect some students' ability to discuss or complete their homework assignments while on the bus. This could also prevent some students from participating in the ordinary social interaction with other students that is an equally important part of being a youngster in school, leading to feelings of isolation. Given these serious harms, as well as the constitutional problems identified above, the school district should rescind the policy.

In light of the numerous concerns discussed above, we request that the school district immediately rescind the policy and inform all affected students and parents in writing (in English and in Spanish) that the policy has been terminated. To the extent that any students have been disciplined or have otherwise had negative entries made in their student records, we ask that you take immediate action to reverse any such disciplinary action or negative entries. We are happy to discuss this matter with you and ask that you keep us informed of the school district's actions on this matter, and we would appreciate the chance to do so in order to avoid unnecessary conflict and controversy concerning a matter that can be amicably resolved. We will call you to set up a time to address this matter, which we would like to resolve within two weeks of the date of this letter.

Sincerely,

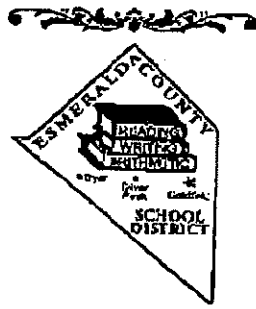


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October 12, 2007

Fish Lake Valley High School Parents
Dyer, Nevada

Dear Parents:

As the County Superintendent, there are days when my job does not have easy answers to difficult questions. One difficult question I have had to deal with is why students on the high school bus are not permitted to speak Spanish. I was raised in Michigan and had Spanish both in high school and college. Unfortunately, I was young and foolish and did not follow through well enough to retain my Spanish skills. I deeply regret that decision. This is especially true now that I have a Spanish speaking daughter-in-law who we dearly love and a grandson who is being raised to be bilingual.

I recently attended a forum put on by the Nevada University System. At the meeting, I was told that 75% of the white students in Nevada graduate from high school while only 55% of the Hispanic students do so. Similar numbers take place for college graduation rates where Hispanics are considerably behind others. I find this information totally unacceptable. I feel I have an obligation as a school official to do everything I can do to see that this disparity in graduation rates does not exist.

Whether we like it or not, we must appreciate that English is a power language. Being proficient in reading, writing and speaking English will be your child's key to economic success. Having them get a good paying job will hinge upon their English skills. That is one of the key reasons I support having every child practice their English speaking skills as much as possible. Thus, when your youngster is in school and on the bus we ask them to practice speaking English. Sure it is more comfortable for many to speak their native language. But what is always more comfortable is not always what is in their best interest.

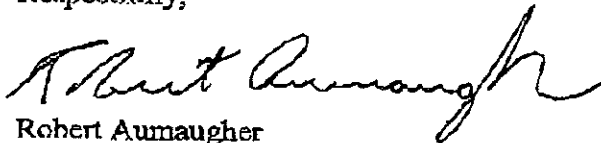
I am frightened for all of our young people and their future ability to make a decent living. They are facing huge competition from around the world from well educated individuals that have sound English language skills and who are willing to work for wages far below ours. We must compete or our standard of living will fall tremendously.

A second reason for encouraging English to be spoken on the bus is for the bus drivers who are not bilingual to maintain order and discipline. I was a kid and all of us can remember times when we were disrespectful to others. It is our belief that when a different language is being spoken and not understood by the driver it opens the door for a few to take advantage of the situation and exhibit disrespect. That we will not tolerate.

I am determined that your children will have the same opportunities that my children have had to become whatever they desire. I do not want their choices in life limited because of a lack of English skills.

Thanks for giving me the opportunity to express my point of view on this difficult issue. We very much appreciate your support.

Respectfully,

A handwritten signature in cursive script, appearing to read "Robert Aumaugh".

Robert Aumaugh
Superintendent/Principal