



March 17, 2009

Via Facsimile and U.S. Mail

Dr. Denton Santarelli
Superintendent of Schools
Peoria Unified School District
6330 West Thunderbird Road
Glendale, AZ 85306
Fax: 623-486-6023

Re: Chris Quintanilla

Dear Dr. Santarelli,

We are writing on behalf of Chris Quintanilla, who is currently in the Eighth Grade at Parkridge Elementary.

In mid-February 2009, Chris wore a rainbow-colored wristband to school with the words "rainbows are gay" printed on it. On the first day Chris wore the wristband, Monday, February 23, we understand Principal David Svorinic stopped him in the school yard and asked to take a look at it. Although Chris wore the wristband without incident for the next few days, on Wednesday, February 25, Principal Svorinic called Chris's mother—Natali Quintanilla—with a demand that Chris stop wearing the wristband or turn it inside out.

On the call, Ms. Quintanilla reports that Principal Svorinic informed her that some of Chris's teachers found the wristband "offensive" and that it had therefore "caused a disruption." When Ms. Quintanilla asked Principal Svorinic to explain how the wristband had "caused a disruption," he focused on the offense the wristband was purportedly generating among Chris' teachers. It is our understanding that he also distinguished statements by students such as "that's gay" from the message on Chris's wristband by saying that what Chris was doing was "putting his sexuality out there." Principal Svorinic then demanded that Chris cease wearing the wristband or turn it inside out, so that the words "rainbows are gay" would not be visible.

Exactly forty years ago, in *Tinker v. Des Moines Community School Dist.*, 393 U.S. 503 (1969), the Supreme Court held that three teenage students had a constitutional right to protest U.S. involvement in the Vietnam War by wearing black armbands to school. Because the school provided no evidence that the student's expressive conduct would "materially or substantially interfere with school work or discipline," the school's prohibition on armbands violated the students' First Amendment right to freely express their views on controversial matters. *Tinker*, 393 U.S. at 511.

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Under *Tinker*, the simple desire to avoid the controversy, disagreement, or discomfort that might result from the expression of an unpopular view does not justify the expulsion of those views from a public school. *Tinker*'s protest took place in 1965, a year in which few topics were likely to generate more controversy or disagreement than our government's involvement in the Vietnam War. Yet even the school board's fear of potential disorder arising from the students did not overcome the students' strong First Amendment interest in the open expression of their opinions. See *Id.* at 508 ("Undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.").

On the contrary, the Supreme Court held that school officials must make a specific showing that the expressive conduct is likely to disrupt the classroom or interfere with the rights of other students before they may constitutionally regulate student speech. *Id.* The Court particularly noted that the student protest had not led to any disruption of class time, there had been no threats or acts of violence on school property, and there was no noticeable infringement on the rights of the other students. The school board's ban was therefore unconstitutional.

The Court further noted that to impose such a ban is to contravene one of "the principal uses to which the schools are dedicated: personal intercommunication among students." *Id.* at 512. "The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues.'" *Id.*

There is no question that Chris's rainbow wristband with the words "rainbows are gay" constitutes expressive conduct within the meaning of *Tinker*. In fact, we recently won a case in Florida involving a school that had banned students from wearing or otherwise displaying similar messages, including: "Gay? Fine By Me," "Gay Pride," "I Support My Gay Friends," and "I Support Gays." *Gillman v. School Board*, 567 F. Supp.2d 1359 (2008).

The *Gillman* court, applying *Tinker*, concluded that the prohibition on expression involving the word "gay"—as well as all other words and symbols in support of equal rights for lesbian, gay, bisexual and transgender ("LGBT") people—"did not and would not 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school' or 'collid[e] with the rights of others.'" *Id.* at 1374. The court explicitly held that the messages at issue were "clearly not sexual in nature," noting: "The innocuous expressions of tolerance and acceptance inherent in the banned expressions are far less inappropriate for middle school students than . . . the sexually explicit content to which children are exposed daily in the popular culture." *Id.* And like the *Tinker* Court, the *Gillman* court also emphasized that "[t]he robust exchange of political ideas is essential in a vibrant, progressive society and is precisely the type of speech that is sacrosanct under the First Amendment." *Id.* at 1375.

The same analysis applies here. By wearing the wristband at issue, Chris was expressing his support for LGBT rights, as the rainbow has long been recognized as a symbol of LGBT pride and diversity. And the school can offer no rationale that would satisfy the burden set forth in *Tinker*. The wristband is plainly not obscene, libelous, or slanderous. Nor do the words "rainbows are gay" pose any risk (let alone a "clear and present danger") of causing a "substantial disruption of the orderly operation of the school." *Tinker*, 393 U.S. at 513.

Dr. Denton Santarelli

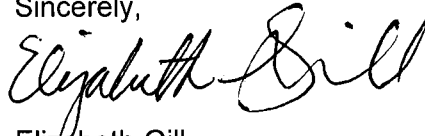
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We appreciate that school administrators are extremely busy and that the full importance of this particular decision may not have been clear at the time of its making. That Chris be able to express himself at school in accordance with the U.S. Constitution is, however, of great importance to Chris, as well as to the ACLU. Indeed, the entire academic community and our democratic society benefit from the free and open exchange of ideas.

It is our hope that the District will now allow Chris and other students to wear or otherwise display messages or symbols expressing their support of LGBT rights. Please confirm that this is the case within 10 days of receipt of this letter. It is in the interest of all to resolve this on an informal basis without resort to formal proceedings.

Sincerely,



Elizabeth Gill
Staff Attorney
LGBT & AIDS Project

Dan Pochoda
Legal Director
ACLU of Arizona

cc: Natali Quintanilla, Parent (by e-mail)
David Svorinic, Principal, Parkridge Elementary