



LEGAL DEPARTMENT

ACLU of Kansas & Western Missouri

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By First Class Mail & E-mail: superintendent@nkesd.k12.mo.us

March 28, 2011

Dr. Todd E. White
Superintendent
North Kansas City Schools
2000 NE 46th Street
Kansas City, Missouri 64116-2042

Dear Dr. White:

It has come to our attention that Oak Park High School, one of the high schools in your school district, utilizes internet filtering software that improperly censors websites advocating the fair treatment of lesbian, gay, bisexual, and transgender ("LGBT") persons. On behalf of the American Civil Liberties Union Foundation ("ACLU") and the ACLU of Kansas & Western Missouri, I am writing to inform you that this practice violates the First Amendment and the Equal Access Act, 20 U.S.C. § 4071 et seq., and must immediately cease.

As reflected in the attached exhibits, the internet filtering software at Oak Park High School improperly denies students access to websites for GSA Network (gsanetwork.com) and Day of Silence (dayofsilence.org). When a student attempts to access either of these websites, the computers at Oak Park High School display a message in red capitalized letters stating: ACCESS DENIED. The message further states that the websites have been blocked because they are categorized as "education.lifestyles." See Exhibits A and B (attached).

The North Kansas City Schools do not have a legitimate pedagogical basis for censoring students' access to these websites. Neither of these websites contains (or has ever contained) sexual or other content that schools are obligated to block under the Children's Internet Protection Act (CIPA) Pub. L. No. 106- 554. GSA Network is a youth leadership organization that connects school-based Gay-Straight Alliances to each other and to community resources through peer support, leadership development, and training. The Day of Silence website contains information about the national day of silence, April 15 of each year, when hundreds of thousands of students nationwide take a vow of silence to bring attention to anti-LGBT name-calling, bullying and harassment in their schools.

The content on the GSA Network and Day of Silence websites is fully protected speech under the First Amendment. “[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 North Kansas City Schools may not censor students’ access to this information based merely on the “dislike [of] the ideas” in the censored materials. *Bd. of Educ. v. Pico*, 457 U.S. 853, 872 (1982). Whether or not school administrators agree with the content of these websites, secondary school students are mature enough to understand that a school does not endorse or support speech to which it merely permits access on a nondiscriminatory basis. *See Bd. of Educ. of Westside Cmty. Schools v. Mergens*, 496 U.S. 226, 250 (1990). (“[T]he proposition that schools do not endorse everything they fail to censor is not complicated.”).

In addition to violating students’ First Amendment rights, the filtering scheme at Oak Park High School also violates the Equal Access Act because it denies student gay-straight alliances equal access to school resources and privileges that are generally available to other student non-curricular clubs. 20 U.S.C. § 4071 *et seq*; *see, e.g., Mergens*, 496 U.S. at 247; *SAGE v. Osseo County 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, where 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, too, 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).

The internet filtering software at Oak Park High School violates the Equal Access Act by providing unequal access to the school’s internet resources. By blocking access to the websites of GSA Network and Day of Silence, the North Kansas City Schools hinder the ability of GSA clubs to access valuable information such as guidance about how to run 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. Imposing this burden on GSAs but not on other non-curricular clubs violates the Equal Access Act. *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); *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).

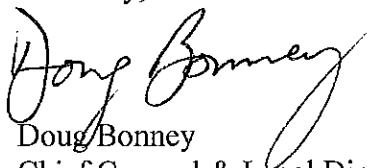
Allowing students equal access to LGBT-related websites is not just a legal duty; it also makes sense from a safety perspective, particularly in light of the epidemic of LGBT youth suicides and bullying. Prohibiting access to LGBT websites is especially

Dr. Todd E. White
March 28, 2011
Page 3

problematic because many students do not have computers or internet access at home and so can only access the internet 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).

Please contact me no later than **April 4, 2011** to indicate whether you intend to provide students equal access to GSA Network, Day of Silence, and similar LGBT-related resources, in accordance with your school district’s legal obligations under the First Amendment and the Equal Access Act. 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,



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EXHIBIT A

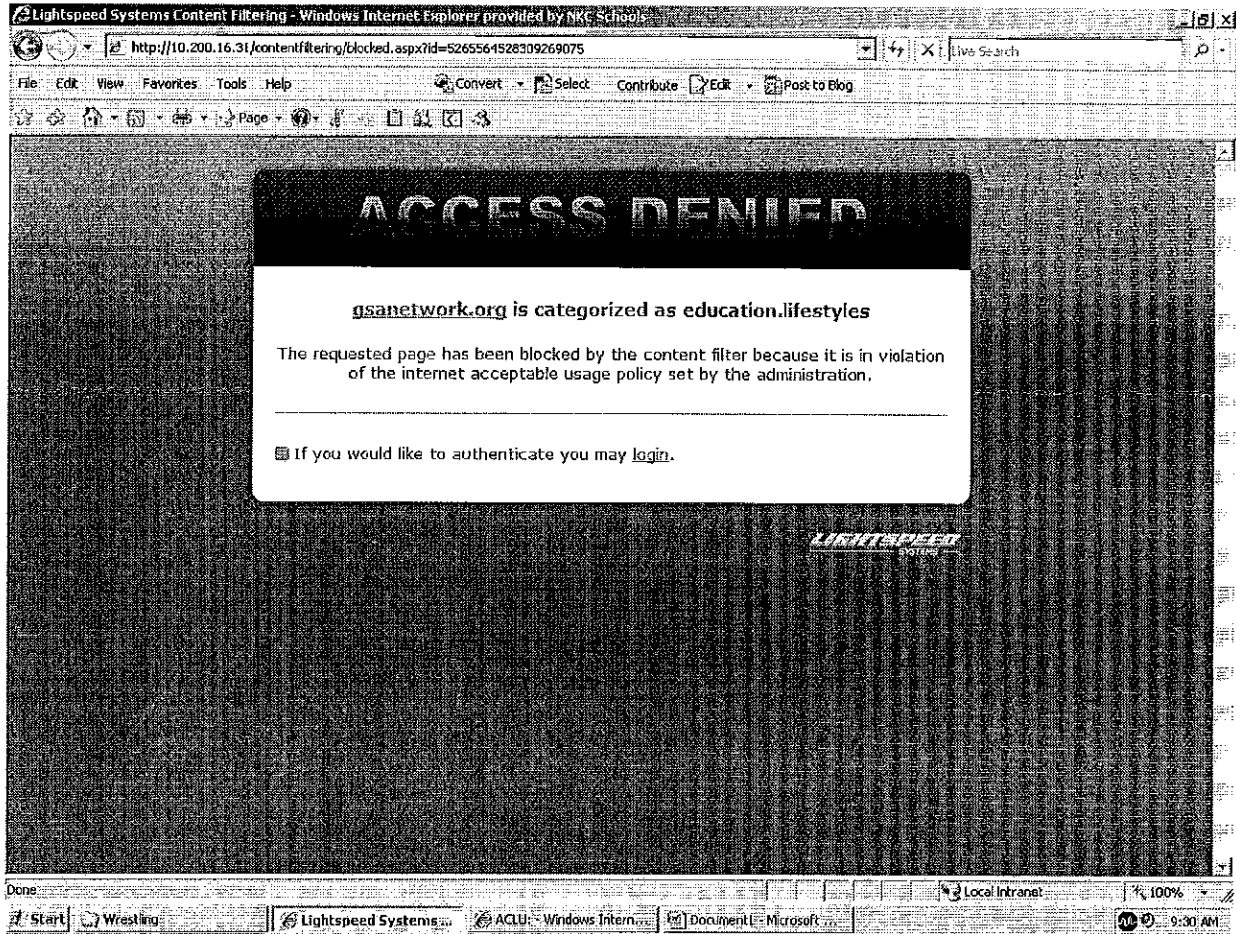


EXHIBIT B

