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Reply to: Florida

June 22, 2018

VIA EMAIL ONLY

Michael Schilder, Ed.D.,
Superintendent of Schools
East Penn School District
800 Pine Street
Emmaus, PA 18049

Re: Disclosure of links to YouTube videos shown to students and other records

Dear Superintendent Schilder:

By way of brief introduction, Liberty Counsel is a non-profit litigation, education, and public policy organization with an emphasis on First Amendment and religious liberty rights. We have offices in Florida, Virginia, and Washington, D.C., and hundreds of affiliate attorneys across the nation, including Pennsylvania. We provide *pro bono* legal representation to a variety of individuals, entities, and groups, including public school districts, teachers, parents and students.

I am writing to request that the East Penn School District (“District”) immediately provide to all parents requesting them the specific links to the four pro-homosexuality YouTube videos shown by the District to 2,800 high school students at Emmaus High School, as part of the District’s “Unity Week” and “Day of Silence” promotional activities. The videos are described in the attached letter from Emmaus High School (“EHS”) Principal Kate Kieres.

It does not pass the straight face test for the District to claim it need not provide parents with the actual video links, although the District required more than 2,800 students to view these videos, with no prior notice to their parents, and no opportunity to opt-out. This is a gross violation of parental rights.

The links to the videos are public records, notwithstanding claimed “selection” of the videos by the ostensibly “student-led” Gay-Straight Alliance (“GSA”) as part of an alleged “student project.” It would be convenient indeed if school districts could bypass all public records laws and parental notice and consent requirements for objectionable content, by finding a willing “student group” to “select” the material for them.

I understand that the District has promoted a “Unity Week” for several years now, in the days prior to the “Day of Silence,” which is proclaimed by the Gay Lesbian Straight

Education Network's ("GLSEN") every year in April. This year, as part of these events, students were subjected to short videos normalizing homosexuality and gender dysphoria, all without the knowledge of many parents. YouTube videos were shown Monday, April 23, through Thursday April 26, following which Principal Kieres read statistics from a GLSEN-manufactured "school climate survey" on Friday, April 27, 2018, this year's so-called "Day of Silence." Numerous students have privately confirmed that they found the District's promotion of "Day of Silence" and mandatory viewing of the videos unwelcome. They do not wish to be subjected to this in the future.

Parents have met with Principal Kieres and have spoken to the School Board at the June 11, 2018 board meeting. Chief among parents' concerns, aside from the coercive nature of the "Day of Silence" promotional activities and claims being made to children, is the District's refusal to confirm to them the actual video content the District showed to their children. Parents have requested the actual YouTube video links, but the District claims that the parents cannot receive the links to the videos because the whole week's activities were supposedly part of a "student project."

At the outset, and for the record, either Liberty Counsel nor parents who have contacted us object to the District promoting kindness amongst students or fighting actual bullying where it exists, or promoting a "Unity Week" that does not delve into matters of sexuality.

However, numerous parents and students, as well as Liberty Counsel, object to forced public participation in anything sponsored by GLSEN. GLSEN is a political activist organization and seeks to co-opt good people's opposition to bullying and name-calling, and everyone's support for promoting "kindness," to normalize same-sex sexual activity and gender confusion as good, especially among children. GLSEN bills itself as teaching "tolerance," but [teaches and promotes intolerance and social activism](#).¹ The Gay-Straight Alliance is the [student activism arm of GLSEN](#). GSA "advisors" frequently plan and instigate the activities of the GSA, and pass them off as "student-led" and initiated. If the District chooses to have a "Unity Week" of its own, it should do so 1) on a different week than GLSEN's "Day of Silence;" 2) in a completely non-endorsing manner, 3) without lending its imprimatur to a politically activist organization, or 4) establishing a government orthodoxy in favor of homosexuality and gender dysphoria.

The law is clear that **parents**, not agents of the state, including teachers, and certainly not GLSEN or its teacher or student affiliates with the GSA, **have the right to direct the upbringing and associations of minor children**. The law presumes that **parents** possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions, not activist school employees or student groups. "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children. . . **The child is not the mere creature of the State;**" *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). (Emphasis added). "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. **This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.**" *Wisconsin v. Yoder*, 406 U.S. 205 (1972). (Emphasis added). If "there is any fixed star in our constitutional

¹ <http://www.truetolerance.org/2011/what-parents-should-know-about-glsen/>

constellation, it is that **no official**, high or petty, **can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.**" *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

Accordingly, the Pennsylvania Administrative Code requires that the District provide parents the opportunity to review all instructional material shown to their children, prior to it being shown. This is particularly important where the material discusses matters of sexuality, as the videos in question did. Parents have the "right to have their children excused from specific instruction that conflicts with their religious beliefs, upon receipt by the school entity of a written request from the parent or guardians." See 22 Pa. Code § 4.4. The District has violated this requirement by not providing parents with notice and the opportunity to consent, prior to the videos in question being shown, regardless of claimed "student selection." The District cannot avoid its responsibility to respect parental rights.

Next, regardless of whether the students of the GSA "selected" the YouTube video links shown to the other students (against the will of many) and without their parents' knowledge or permission, those video links must be provided to parents upon request. District [Policy 815](#), Acceptable Use of Technology Resources, Electronic Communication, and Information Systems clearly states there is "**no expectation of privacy**" in videos "sen[t]" or "display[ed]" with its technology resources:

The district's technology resources, user accounts and information are the property of the district. **Users shall have no expectation of privacy in anything they create, store, send, delete, receive or display on or over the district's Intranet/Internet, computers or network or technology resources**, including personal files or any use of the district's Intranet/Internet, websites, computers or network or technology resources.(Emphasis added).

Parents have not asked for the names of students "selecting" the videos; only the actual links to the videos themselves. The links to the YouTube videos implicate no "student privacy" interest, regardless of whether they were actually "selected" by student members of the Gay-Straight Alliance. There is a general presumption that a record in the possession of a Commonwealth agency or local agency is "presumed to be a public record." The presumption does not apply if the record is exempt under section 708; the record is "protected by a privilege;" or the record "is exempt from disclosure under any other Federal or State law or regulation of judicial order or decree." 65 P.S. § 67.305. "A local agency **may not deny** a requester access to a public record . . . unless otherwise provided by law." (Emphasis added). 65 P.S. § 67.302.

The requested links to the YouTube videos shown to students are public records. None of the exceptions in 65 P.S. § 67.305, nor § 67.708, apply to the YouTube video links, despite any claim they are "student projects." Note as well that the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g; 34 CFR Part 99) also does not apply to the YouTube links. Principal Kieres confirmed that the videos were not created by the students, just (supposedly) selected by them.

If litigation becomes necessary to obtain the actual YouTube video links, the court may award reasonable attorney fees and costs of litigation, if the court finds either of the following:

(1) the agency receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of this act; or

(2) the exemptions, exclusions or defenses asserted by the agency in its final determination were not based on a reasonable interpretation of law.

See 65 P.S. § 67.1304. It is not reasonable to withhold the actual links to YouTube videos the District required students to watch, under these facts, and a court would likely find the District was acting in bad faith.

Finally, despite the District's claim that the GSA's selected videos and speech are entirely "student-selected," concern exists that "student-led" activities are the projects of the GSA advisor, Kristen Grim. If the "student project" claim is indeed true, by allowing GSA a week's worth of promotional videos, and a school-wide "Day of Silence," the District has created a limited open forum for student speech. The law therefore requires (and Liberty Counsel expects) that future requests by other students or groups of students for similar announcement resources, on other subjects, will be met with the same level of response by the District. In other words, the District must roll out the red carpet for the same access to the forum, regardless of the message other student groups wish to share, including announcements, and including videos selected by the students on the topic of their choosing. Such topics might include the right to life, and adoption vs. abortion, Second Amendment rights, or other topics selected by students, including religious topics.

For now, Pursuant to 65 P.S. §§ 67.301, 67.701, 67.702, and 67.703, the Pennsylvania "Right to Know Law," please provide the following:

- 1. All 2018 emails containing the links to YouTube videos shown during homeroom the week of April 23-27, 0218;**
- 2. All 2018 emails (not subject to attorney-client privilege) regarding "Day of Silence," GLSEN or any of the videos shown.**
- 3. All 2018 emails sent or received by Kristen Grim and Principal Kieres regarding "Day of Silence," GLSEN or any of the videos shown.**

If any of the requested records require redaction of student names to protect student privacy, please do so. I request these records be made available in electronic format.

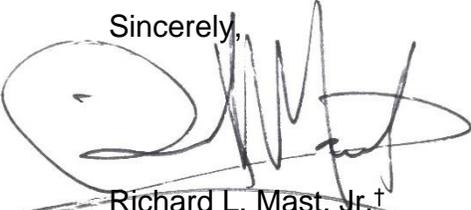
Further, since Liberty Counsel is a non-profit organization, and since the disclosure of the information I seek is not primarily for commercial interest, and is likely to contribute significantly to public understanding of the operations or activities of the government, making the disclosure a matter of public interest, pursuant to 65 P.S. § 67.1307(f)(2), I request a waiver of all fees associated with this document request.

Should you deny this request, or any part of it, please state in writing the basis for the denial, including the exact statutory citation under 65 P.S. §§ 67.708, 67.903, or elsewhere authorizing the denial.

The District is required by 65 P.S. § 67.901 to respond “as promptly as possible” after receiving this request. However, the East Penn School District has had ample time since April 2018 to review and compile these records in response to parental complaints, and is already well familiar with them.

Therefore, if I do not receive these items, **by close of business on July 23, 2018**, Liberty Counsel will take further action to prevent irreparable harm to the rights of local parents.

Thank you for your prompt assistance in this matter.

Sincerely,

Richard L. Mast, Jr.†

Attachment

CC

Via Email

Ken Bacher, Vice President

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Charles H. Ballard

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RLM/tge

2: Communications from high school principal with whom I met initially as directed by school board.

May 1 (11 days ago)

Principal Kieres,

I am requesting links to each video that was shown to the Emmaus High School student body last week regarding LGBT and your comments delivered to the students during second period on Friday.

Thank you,

Michael Huff

05-01-18

Kieres, Kate <KKieres@eastpennsd.org>

May 1 (11 days ago)

to me

Dear Mr. Huff,

Here is the text of my announcement made Friday morning with regard to Day of Silence with a link to the source of the statistics in the first paragraph. I have asked the teachers who run the TV studio to send me links to the videos that aired on the morning announcements and can provide them to you as soon as I receive them. I look forward to seeing you later this morning.

Good Morning, Emmaus! Today as you may have noticed, many of your classmates are choosing not to speak in respect of the Day of Silence. This is a day in which students across the country take a vow of silence to call attention to the silencing effect of anti-LGBTQ bullying and harassment in schools. In a state-wide survey conducted in 2015, 69% of students surveyed reported having been verbally harassed for their sexual orientation. 27% had been physically harassed and 12% had been physically assaulted. 50% had been verbally harassed for their gender expression. Most LGBTQ students in Pennsylvania had been victimized at school and the majority of LGBTQ students in Pennsylvania regularly heard anti-LGBT remarks.

According to the National Transgender Discrimination Survey: 74% of Trans and Gender Non-Conforming youth in grades K-12 reported harassment, 23% physical assault and 9% sexual violence. Harassment was so severe that it led 11% to leave a school in K-12 settings or leave higher education. These statistics are alarming.

At EHS, we continually work hard to make our school a safe place for all students to learn. We ask that you please be respectful of those participating in Day of Silence today as well as respectful towards each other every day. Thank you for supporting your fellow students and continuing to make EHS a safe and inclusive learning environment.

<https://www.glsen.org/sites/default/files/Pennsylvania%20State%20Snapshot%20-%20NSCS.pdf>

Dr. Kate Kieres, Principal
Emmaus High School

May 2 (10 days ago)

Dear Mr. Huff,

Thank you for taking the time to come in and meet with me yesterday to discuss your concerns. I have looked further into the 1-2 minute video clips that were shown last week as part of the morning announcements. I learned that they were not created by the students in the communications class but were pulled from YouTube and other online sources by the students in our GSA club and sent to the TV studio as part of their "Day of Silence" project. I also learned that this practice was not new this year. Similar videos have been shown during the week leading up to the "Day of Silence" for at least the past four years.

Our Board Solicitor has advised us that these videos cannot be sent to you, because they are part of a student project. However, in the interest of providing you as much information as possible, I viewed each of them and wanted to provide you with a brief description of each video clip:

Video 1 – Was entitled "9 Questions Gay People Have About Straight People." It included a series of individuals who posed questions reacting to common misconceptions about LGBT people.

Video 2 – Was a clip from a CBS News story the features individuals who identify as gender fluid, briefly explaining what that means and the sometimes negative experiences these people have when interacting with others.

Video 3 – Was a compilation of clips celebrating marriage equality. It included: footage of people coming out to their loved ones, clips of famous people coming out publicly, clips from same-sex weddings, and footage of legislative sessions where marriage equality was debated and passed into law.

Video 4 – Was entitled "Show your pride. Share your love" and included clips similar to those featured in Video 3.

The students' intent in sharing these videos with the student body was to promote empathy by raising awareness about the daily challenges and lived experiences of individuals in the LGBT community. However, I understand the concerns that you raised yesterday, and have already met with the club's advisor and the teachers who run our TV studio. Moving forward, we will make adjustments to the way this event is promoted and implemented in the future. If you would like to document your concerns in writing, please feel free to respond to this email and copy the superintendent, Dr. Schilder (mschilder@eastpennsd.org).

I appreciated the quality of our dialogue yesterday and encourage you to reach out to me in the future with any concerns or questions you may have.

Sincerely,

Kate

Dr. Kate Kieres, Principal

Emmaus High School