

August 26, 2020

Dear Principal or Superintendent:

You're being given this letter because your school or a school in your district may have a policy prohibiting students from wearing clothing or accessories with slogans or symbols expressing support for acceptance and fair treatment of lesbian, gay, bisexual, transgender, queer, or questioning (LGBTQ) people (e.g., a t-shirt with the slogan "Gay, Fine By Me," a rainbow wristband, or an LGBTQ pride sticker). Any such rule violates the First Amendment and must be rescinded immediately.



The U.S. Supreme Court has made clear that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gates.” *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969) (upholding rights of high school and middle school students to wear black armbands to express their disapproval of the Vietnam War). As long as it isn’t lewd and doesn’t constitute a threat of violence, a student’s speech may be lawfully censored only if it would substantially disrupt the work of the school or interfere with the rights of others. *Tinker*, 393 U.S. at 513.

There is nothing lewd, violent, or disruptive about a student peacefully displaying their support for fairness and equality for LGBTQ people. In *Gillman v. School Board for Holmes County, Florida*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008), a school board banned students from displaying rainbows, pink triangles, and pro-gay slogans such as “Gay Pride,” “I Support My Gay Friends,” “Pro-Gay Marriage,” and “Sexual Orientation is not a choice. Religion, however, is.” The district court held that the board’s censorship violated the First Amendment and subsequently ordered the district to pay \$325,000 for the students’ legal fees and expenses.

The school board in *Gillman* tried to justify censorship by claiming that the LGBTQ-positive expressions were sexually suggestive or lewd. The court in *Gillman* rejected this argument as “an obvious mischaracterization of the speech.” 567 F. Supp. 2d at 1377. Instead, the court found that the school had improperly “imposed an outright ban on speech by students that is not vulgar, lewd, obscene, plainly offensive, or violent, but which is pure, political, and expresses tolerance, acceptance, fairness, and support for... a marginalized group.” *Id.* at 1370.

The court in *Gillman* also rejected the school’s argument that the speech could be censored because it would allegedly cause disruption. The court explained that “student expression may not be suppressed simply because it gives rise to some slight, easily overlooked disruption, including but not limited to a showing of mild curiosity by other students, discussion and comment among students, or even some hostile remarks or ‘discussion outside of the classrooms’ by other students.” *Id.* at 1359 (internal quotation marks and citations omitted). “Obviously, political 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 The nation's high school students, some of whom are of voting age, should not be foreclosed from that national dialogue.” *Id.* at 1374.

To comply with the law, you must ensure that your policy permits students to express their support for the respect, equal treatment, and acceptance of LGBTQ people regardless of the conflicting personal views of faculty, staff, students, or parents.

Please do not hesitate to contact the ACLU if you have any questions about this letter or wish to discuss it further. We can be reached at 212-549-2673.



Sincerely,

A handwritten signature in blue ink that reads "James D. Esseks". The signature is written in a cursive style with a large, stylized initial "J".

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 school.