

February 10, 2017

Dear Principal or Superintendent,

We are writing in support of students at your school who would like to participate in the Day of Silence. Day of Silence (www.dayofsilence.org) is one of the largest annual student-led actions in the country. The purpose is to silently and peacefully protest anti-lesbian, gay, bisexual, and transgender (LGBT) bullying, harassment, and name calling. As evidenced by recent tragedies, awareness of and attention to this issue is needed now more than ever. Because students who are targeted for anti-gay or anti-transgender bullying often do not identify as LGBT, the Day of Silence represents a peaceful protest of a problem that affects *all students no matter their sexual orientation or gender identity*.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
LESBIAN GAY BISEXUAL
TRANSGENDER &
HIV PROJECT

PLEASE RESPOND TO:
NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2627
F/212.549.2650
WWW.ACLU.ORG/LGBT

SAN FRANCISCO OFFICE:
39 DRUMM STREET
SAN FRANCISCO, CA 94111

CHICAGO OFFICE:
180 NORTH MICHIGAN AVENUE
SUITE 2300
CHICAGO, IL 60601-7401

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

On Friday, April 21, 2017, students will be taking a vow of silence to represent the silencing effect of bullying and harassment on LGBT people, their allies, and those perceived to be LGBT. Typically, on the Day of Silence, rather than speaking, participants hand out “speaking cards” explaining their reasons for remaining silent throughout the day. There are numerous ways in which Day of Silence participants can meet their academic responsibilities without speaking. With the support of teachers, students could lead or take part in a “silent lesson” or complete a written assignment.

We hope that your administration will support the students who wish to participate in the Day of Silence. The Day of Silence is an opportunity for students to take the initiative to teach one another about diversity, respect, and safety for all students. Students gain leadership skills, provide a valuable service to the school community, and empower themselves by realizing their ability to make a difference in their school.

If you are unwilling to accommodate the students’ desire to remain silent during classroom instruction, we hope that you will nonetheless support them in the peaceful expression of their beliefs (for example, through t-shirts, “speaking cards,” or other materials about the Day of Silence) during the non-curricular portions of the school day. Although you may be concerned that other students may react disruptively to the Day of Silence, school officials may not prohibit students from engaging in speech out of “an urgent wish to avoid the controversy which might result from the expression.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 505, 510-11 (1969). Nor may school officials censor student expression out of “a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” *Id.* at 509; *see also Hatcher ex rel. Hatcher v. DeSoto Cnty. Sch. Dist. Bd. of Educ.*, No. 2:13-cv-138, 2013 WL 1395829, at *5 (M.D. Fla. Apr. 5, 2013) (a blanket school policy against “protests” such as the Day of Silence violates the First Amendment).

Moreover, student speech that promotes the fair and equal treatment of LGBT people is constitutionally protected political speech. As a federal court explained in *Gillman v. Sch. Bd. for Holmes Cnty.*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008):

[P]olitical 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 within the courts, Congress, and the legislatures of the States, including Florida. The nation's high school students, some of whom are of voting age, should not be foreclosed from that national dialogue.

Id. After a two-day trial, the court in *Gillman* issued an injunction against the school district and ultimately the district had to pay \$325,000 in attorneys' fees.

If you have a reasonable belief that other students may react hostilely to those who are participating in the Day of Silence, we encourage you to take appropriate steps to protect those students who are peacefully engaging in their right to free expression. The law is clear that school officials may not censor peaceful expression solely because other students will have a hostile reaction. *See Holloman v. Harland*, 370 F.3d 1252 (11th Cir. 2004) (concluding that school officials have the duty to address disruptive behavior, not prohibit the plaintiff's speech, because "allowing a school to curtail a student's freedom of expression based on such factors turns reason on its head"); *Boyd Cnty. High Sch. Gay Straight Alliance v. Bd. of Educ. of Boyd Cnty., Ky.*, 258 F. Supp. 2d 667, 691 (E.D. Ky. 2003) (even "protests" and "public uproar" could not justify restricting the rights of students who were not responsible for causing the disruption).

Please do not hesitate to contact us if you have any questions about the above or if we can be of any assistance to you. We can be reached at 212-549-2627.

Sincerely,



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 own school.