



American Civil Liberties Union of Utah Foundation, Inc.

355 North 300 West #1 ♦ Salt Lake City, UT 84103 ♦ (801) 521-9862 phone
(801) 532-2850 fax ♦ aclu@xmission.com ♦ www.acluutah.org

May 11, 2004

Superintendent Barry Newbold
Jordan School District
9361 South 300 East
Sandy, Utah 84070

Via US Post and Facsimile (801) 567-8030

Principal Linda Sandstrom
Assistant Principal David Breen
Hillcrest High School
7350 S. 900 East
Midvale, UT 84047

Via US Post and Facsimile (801) 256-5488

Dear Superintendent Newbold, Principal Sandstrom, and Assistant Principal Breen,

We have been contacted by several Hillcrest High School students about the administration prohibiting them from wearing t-shirts reading "Queers Kick Ash." I write so that we can work to resolve this matter quickly.

It is our understanding that on May 6, 2004, at least three students wore the shirts to school. The shirts are part of an anti-smoking campaign aimed specifically at lesbian and gay youth in the community. The campaign is funded by a government grant awarded to the Gay and Lesbian Community Center. That morning, a hall monitor stopped ----- and ----- and told them the shirts were not appropriate. ----- and ----- went to their respective classes, and were called out by hall monitors to go to the front office. Although students can be called out of class through the use of a "yellow slip," which is less disruptive than sending a hall monitor to get a student, hall monitors pulled ----- and ----- out of class.

----- and ----- then met with Assistant Principal Breen, who said the shirts were inappropriate. Mr. Breen was not direct about which part of the shirt, "queer," "kick ash," or the cigarette crossing the Q, he thought was inappropriate. ----- and ----- were given three options: take the shirts off, turn them inside out, or be suspended. Because ----- is a senior and wanted to ensure his participation in graduation, he turned the shirt inside out and stayed in school. -----, however, refused to take off the shirt, and was suspended.

----- also wore the “Queers Kick Ash” t-shirt on May 6. She wore the shirt all day with no incident, until a hall monitor pulled her aside around 1 p.m., and told her to go see Mr. Breen. ----- was offered a fourth choice that was not offered to either of the boys—to be checked out for the rest of the day. ----- chose this option and left school for the day.

We understand that on May 7, -----, -----, ----- and ----- wore the shirts again. -----, -----, and ----- were sent home for wearing the shirts. -----, however, had taped over the extinguished cigarette crossing the Q and over the word “ash.” She wrote the word “tobacco” over the tape so that the shirt read, “Queers Kick Tobacco.” Despite this change, ----- was again told she would be checked out from school and was sent home.

During this time, the students had several conversations with Mr. Breen. Mr. Breen referred to sections C.1. and C.2. of the Administration Policy on School Dress. He also told the students that he would interpret the policy under which the shirt was prohibited, that the slogan “kick ash” was inappropriate, that the word “queer” was inappropriate, and that the Gay Straight Alliance (GSA) at Hillcrest High School was at risk of being shut down because of these student’s actions. The students explained that the shirts were not a GSA project, and that the GSA had nothing to do with the anti-smoking campaign or the government grant sponsoring it. Nevertheless, Mr. Breen said that he could pull the GSA and prevent it from meeting in the future because some of the students wearing the t-shirts are GSA members.

We write on behalf of the students for several reasons. First, we are concerned with Mr. Breen’s explanations of why the shirts are prohibited. The students are unclear about what policy prohibits the shirts. For instance, Mr. Breen told the students that he disapproved of the word “queer.” Students have a right to political speech or expression, including expression of their sexual orientation, unless the administration can demonstrate that the forbidden conduct would “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.” *Tinker v. Des Moines Indep. Comty. Sch. Dist.*, 393 U.S. 503, 508 (1969). We are unaware of any substantial or material disruption resulting from the wearing of the shirts. In fact, the only disruptions seem to be a result of the administration’s actions.

There is nothing lewd, vulgar or obscene about expressing one's sexual orientation. Identifying oneself as lesbian, gay, bisexual, transgender, intersex or questioning - i.e., as queer - is a core element of self-expression, and schools are not permitted to deny students that freedom of self-expression. The term queer provides LGBTIQ youth with a way to describe their community in a unified, shorthand fashion and is routinely used today as a term of positive self-identification, including in two popular television shows: *Queer Eye for the Straight Guy* and *Queer as Folk*. And in the academic world, many universities, including the University of Utah, have queer studies or queer theory classes now.

Mr. Breen also told the students that the shirts could be prohibited because of the cigarette crossing the Q. However, the school’s policy states: “Items which bear advertising, promotions *and* likeness of tobacco . . . shall not be allowed.” (Emphasis added.) While the shirt bears the likeness of a cigarette, it in no way advertises or

promotes tobacco. Indeed, the opposite is true because the shirt is part of an anti-smoking campaign. The campaign and its slogan is similar to the Campaign for Tobacco Free Kids slogan, "Kids Kick Butts." See <http://kickbuttsday.org>. Further, if the shirts were inappropriate merely because of the likeness of an extinguished cigarette, then ----- should have been permitted to wear her shirt with the cigarette taped over. Instead, she was sent home.

You may not be aware that LGBT teenagers are particularly at risk for nicotine addiction. See Ethan Jacobs, Programs Aim to Reduce GLBT Smoking: Citing high rates among community, advocates push for a clearing of the air (available at <http://www.baywindows.com/news/2003/09/11/LocalNews/Programs.Aim.To.Reduce.Glbt.Smoking-463098.shtml>) ("A number of factors come into play that make GLBT youth good candidates to pick up smoking. Many youth start smoking to relieve stress . . . and GLBT kids dealing with issues around homophobia and coming out may be more prone to stress than their straight peers."). 90% of smokers start smoking as teenagers, *id.*, and a recent study found that 34% of LGBT adults smoke as compared to 24% of heterosexual adults. See *Witeck-Combs Communications/Harris Interactive survey*, January 2003 (available at <http://www.witeckcombs.com/show.news.asp?id=154&format=pdf>). Despite those figures, 89% of LGBT adults said that they had not seen an anti-smoking education or awareness campaign targeted toward them. *Id.* The "Queers Kick Ash" effort is part of a larger campaign to address that gap and uses peer advocacy to discourage LGBT youth from smoking.

The administration also suggested that the phrase "Kick Ash" is inappropriate. The courts have made clear that students do not "shed their constitutional rights to freedom of expression at the schoolhouse gate." *Tinker*, 393 U.S. at 507. While schools can prohibit students from engaging in speech that is vulgar, lewd or indecent, "Kick Ash" is none of these. The phrase is merely a play on words, and is not sexual innuendo. Moreover, the students' t-shirts do not appear to be school sponsored, but simply express the political views of the students wearing them. Because the shirts did not cause a substantial disruption, do not contain sexual innuendo, and are not school sponsored speech, the shirts should not be prohibited. See *id.*; *contra Bethel School District v. Fraser*, 478 U.S. 675 (1986) (prohibiting vulgar speech to a captive audience at a school-sponsored event because it may be viewed as a substantial disruption to the school's educational mission).

Second, we are concerned with the disparate treatment the students received. ----- and ----- were offered three choices, while ----- was offered a fourth choice that allowed her to refuse to remove the shirt, but to avoid a suspension. This decision to treat a student who self-identifies as straight differently than the other students strongly suggests that the school is intentionally violating the First Amendment rights of lesbian, gay and bisexual students by trying to prevent them from publicly expressing their sexual orientation.

Finally, Mr. Breen threatened to abolish the GSA based on the shirts, although the GSA is not involved in the anti-smoking campaign. Some of the students were told that wearing the word "queer" on a shirt effectively makes the student a target for harassment. However, some of the students state that they have been experiencing harassment, which

the administration is aware of, for some time. Moreover, none of the students experienced harassment as a result of the shirts. As you are aware, the school has an affirmative duty to take steps to prevent harassment, and this duty must be implemented with policies that do not limit students' First Amendment rights to self-expression. Specifically, there is no justification for silencing students in order to prevent others from reacting to their message in ways that might be disruptive. See, e.g., *Boyd County High School GSA v. Board of Education, Boyd County*, 258 F. Supp. 2d 667 (E.D. Ky. 2003).

To resolve this matter, we ask you to do the following:

- 1) reverse any suspensions students received related to the shirts at issue;
- 2) remove any suspensions related to wearing the shirts from the students' records;
- 3) provide reassurance that none of the students will be punished solely for the expression of their political views on their t-shirts and that the students will be able to wear appropriate shirts expressing their political views; and
- 4) provide reassurance that the GSA at Hillcrest will not be punished or prevented from meeting based on these events.

If there are reasons unknown to us that the shirts are causing a material disruption to the educational environment of the school, we would like to be informed of those reasons. Please respond to this letter by May 20, 2004, so we will know how to pursue remedies. Please contact me if you would like to discuss the matter in more detail.

Thank you for your time and consideration,

Margaret Plane
Staff Attorney