



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC  
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October 20, 2005

*Re: First Amendment Rights of Ashley Cruise*

Dear Superintendent ----- and Principal -----:

I am writing on behalf of former ----- High School student Ashley Cruise who contacted the American Civil Liberties Union of Utah because she was concerned about her First Amendment rights at ----- High School. I write to clarify this issue, as well as to inform you of the parameters of the law in this area.

It is our understanding that on September 20, 2005, Ashley wore a t-shirt to school with a logo of two cartoon-like females, standing side-by-side. The t-shirt contained no words, sexual innuendo, or otherwise vulgar content. That morning, Assistant Principal ----- asked Ashley to step out of class. When she complied, she was confronted by Mr. ----- and Mrs. ----- who informed her that she could no longer wear the t-shirt. They gave her three options. She could turn the t-shirt inside out, return home to change her shirt, or be suspended and/or expelled. When Ashley questioned why she was being forced to remove her shirt or risk expulsion, Mr. ----- and Mrs. ----- informed her that the shirt contained inappropriate sexual content and promoted same-sex orientation. Ashley subsequently drove home, changed her shirt, and returned to school.

We also understand that after Ashley returned to school in a different shirt, she decided she was uncomfortable about how the situation had been handled. As a result, she again returned home and put on the original t-shirt, which she wore until the end of fifth hour. After class she was again pulled aside by Mr. ----- and questioned about her unwillingness to comply with his original request. Ashley told him she felt that what the school was doing was wrong.

Ashley tried but was unable contact her mother and was subsequently directed to the principal's office. Once there, Mrs. ----- asked Ashley why she continued to wear the t-shirt. Ashley informed her that she thought it was wrong for the school to ask her to remove her shirt, she then asked Mrs. ----- if it was "wrong for a kid to be gay." Mrs. ----- indicated that it was not, but that the Student Handbook forbids clothing that displayed any kind of pride for one's sexual orientation. At this point, Ashley contacted her father and he recommended that until they knew exactly what rights she had, she should not risk expulsion. Although he disagreed with the school's position, he advised Ashley to abide by their requests until they sought legal advice. After she was given the

same three options listed above, Ashley changed her shirt and finished the day at school without incident.

We write on behalf of Ashley because we are concerned with the administration's explanations of why the t-shirt is prohibited. Mrs. ----- claimed that the Student Handbook barred clothing demonstrating pride for one's sexual orientation. However, while ----- School District's official dress code articulates several dress standards, there is no explicit prohibition of clothing displaying a message which might be construed as a statement about sexual orientation. Student Handbook. § 452.11a-k. (Indeed, such a prohibition would be unlikely to pass constitutional muster.) The handbook states that printed apparel is acceptable if it is in "good taste." § 452.11e. Ashley's t-shirt meets this standard. There is nothing lewd, vulgar, or obscene about the prohibited logo, nor does it display "profanity, suggestive slogans or promot[e] substances illegal for consumption (alcohol, tobacco, drugs, etc.)." §452.11e. In fact, the t-shirt logo is extremely benign. The two female figures appear side by side, holding hands; they are not engaged in any questionable conduct, nor does the logo contain a slogan suggesting such behavior. The t-shirt can reasonably be interpreted as a celebration of female friendship and camaraderie.

More importantly, in the present case, the administration's limitation of Ashley's first amendment rights is unconstitutional. It is well-settled law that students do not shed their first amendment rights at the schoolhouse door. *Tinker v. Des Moines Indep. Comty. Sch. Dist.*, 393 U.S. 503, 506 (1969). To the contrary, students have the 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." *Id.* at 509. Further, a "material and substantial" interference must be based on "something identifiable in the school setting, rather than on an unsubstantiated fear that a minority viewpoint will engender opposition." *Barber v. Dearborn Public Schools*, 286 F.Supp.2d 847, 851-52 (E.D. Mich. 2003) (holding that no material and substantial interference occurred when only two or three students and faculty were upset by the content of a student's t-shirt). Additionally, a school administration must be able to show that its prohibition was caused by "something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." *Tinker*, 393 U.S. at 509. "Where a students' expressive activity does not materially interfere with school's vital educational mission, and does not raise a realistic chance of doing so, it may not be prohibited simply because it conceivably *might* have such an effect." *Holloman v. Harland*, 370 F.3d 1252, 1274 (11th Cir. 2004).

Aside from the disruption caused by the teachers who removed Ashley from her classes, it is our understanding that no material or substantial interference occurred as a result of the prohibited t-shirt. In fact, Ashley indicates that she never tried to draw attention to the shirt and never discussed her t-shirt unless "it was secretly with a friend" that she trusted. Further, it is our understanding that there was no student response to the t-shirt, nor was the vital educational mission of the school disrupted. As such, prohibiting Ashley from wearing her t-shirt was in direct violation of the first

amendment. Although Ashley has since moved to a different school district, please be advised that the same constitutional standard would apply to any future student(s) desiring to wear similar apparel at ----- High School.

Thank you for you time and consideration in this matter. You may reach me at 801.521.9862 ext. 103 if you have any questions or would like to discuss this matter.

Yours,

Margaret Plane  
Staff Attorney