



ROGER BALDWIN FOUNDATION
OF ACLU, INC.

Illinois

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December 18, 2018

VIA E-MAIL

Ms. Kate Williams
Principal
Germantown Hills Middle School
103 Warrior Way
Germantown Hills, IL 61548

kwilliams@ghills69.com

Dear Ms. Williams:

The ACLU of Illinois was concerned to read your letter to parents regarding “students who are openly discussing their sexual identity in classrooms, lunch times, recess and the hallways.” Based on the facts outlined in the letter, we see no basis to prohibit such discussions. We urge you not to implement such a prohibition, which would violate the First Amendment and state and federal anti-discrimination laws.

We commend your commitment to every student’s right to obtain an education without having to endure bullying or harassment. Unfortunately, the approach reflected in your letter undermines that goal. The letter suggests that sexual orientation or gender identity are not suitable topics to discuss publicly with one’s friends and peers, that it is inappropriate to express pride in one’s identity using symbols like rainbow heart stickers, and that students who wish to talk about such matters should do so in private, with a trusted adult. Even if not intended, the message to LGBTQ students is that they should be ashamed of and keep secret their identity. Their peers receive the same message.

The predictable effects of such a message are isolation of LGBTQ students, and increased likelihood of bullying by their peers, for which the school may be liable. Additionally, a prohibition on discussions of sexual identity is likely to be disproportionately enforced against LGBTQ students who are sexual and gender minorities, because expressions of cisgender heterosexuality (e.g., a girl talking about asking a boy to a dance), are so commonplace that they may not be perceived as expressions of sexual identity at all. Such disparate enforcement may also constitute discrimination under Illinois Human Rights Act and other statutes.

Moreover, the First Amendment does not allow a public school to prohibit speech about sexual identity in lunchrooms and other areas where students may otherwise speak freely, unless the school can reasonably forecast *substantial* disruption of school activities. If students were

interested enough in the subject that they talked about it during class, such disruption is not properly attributable to the discussion of, or distributions of stickers about, sexual orientation or gender identity. Instead, it suggests that students need more opportunities to talk about sexual orientation and gender, rather than fewer, or that they need to exercise greater classroom discipline, or both.

Your letter is not clear as to whether the disruption extended beyond talking during class to teasing or bullying of LGBTQ students who spoke about their identity. If so, the First Amendment does not allow the school to respond by banning the innocent speech. That would amount to a “heckler’s veto,” a situation where the prejudice and bad behavior of one person or group determines what another person or group is allowed to say.

Discussions of sexual orientation or gender identity are typical and appropriate for middle-school-aged students. If other students respond “disruptively” to such speech, they are likely in need of further education about the inherent worth of all students and the various identities they express.

Should you wish to discuss this matter, please do not hesitate to contact me at rglenberg@aclu-il.org or [REDACTED]. Thank you for your attention to this matter.

Sincerely,



Rebecca K. Glenberg
Senior Staff Attorney

cc: Mr. Dan Mair, Superintendent (dmair@ghills69.com)