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Superintendent Susan Moxley
Lake County School Board
Attn: Stephen Johnson, Sch. Bd. Atty
201 West Burleigh Blvd.
Tavares, FL 32778

January 23, 2013

VIA U.S. MAIL & Email:
MoxleyS@lake.k12.fl.us
SteveJ@mclinburnsed.com

Re: Carver Middle School Gay-Straight Alliance

Dear Mr. Johnson,

We represent a student at Carver Middle School, Bayli Silberstein, along with her mother, Erica Silberstein. Bayli wishes to form a Gay-Straight Alliance (“GSA”) at Carver Middle School in order confront bullying, educate the school community, and promote acceptance and equality for lesbian, gay, bisexual, and transgender (“LGBT”) students at Carver Middle School. To this end, she wishes the GSA to be recognized as an official student club with all the attendant benefits afforded any other noncurricular student club. However, despite her efforts, school officials have thus far not permitted her to form this club. She asked that if the request were denied that she be provided reasons in writing for the denial; instead of denying the request, school officials have simply avoided providing her an answer either way. We therefore request the Superintendent and the School Board’s assistance in reversing the school’s inaction and ensuring that the GSA is immediately approved as a student club.

As we understand it, students tried to form a GSA at Carver Middle School during the last school year, but then-Principal David Bordenkircher denied it. This school year, one of Bayli’s friends submitted on their behalf a packet of materials regarding the club in early November, and they have yet to receive a statement from the school that the club has been approved or denied. After submitting the packet of materials, Bayli and her friend also had a lengthy conversation with current Principal Mollie Cunningham, who acknowledged the potential utility of the club but indicated that she needed to consult with the school board. Since then, there has been no definitive statement that the request to form the club has been approved or denied.

Both the First Amendment of the U.S. Constitution and federal law require that school officials treat GSAs the same as any other noncurricular clubs at the

school. As explained by the United States Department of Education, the Equal Access Act (20 U.S.C. §§ 4071-4074) guarantees students the right to form and participate in school clubs, with wide latitude given to the proposed content of their discussions.¹ Where schools have refused to allow GSAs to form or have otherwise denied these groups equal treatment, federal courts in Florida and across the country have repeatedly held them to be in violation of the law.²

Under the Equal Access Act, schools may not pick and choose among clubs based on what they think students should or should not discuss. If a public school allows any student group whose purpose is not directly related to the school's curriculum to meet on school grounds during lunch or before or after school, then it cannot deny other student groups the same access to the school because of the content of their proposed discussions. The Act specifically provides that a school cannot deny equal access to student clubs because of the "religious, political, philosophical, or other content of the speech at such meetings." 20 U.S.C. § 4071(a). Thus, school officials cannot prohibit a GSA because of their personal views about LGBT people or issues. As a federal judge concluded in one GSA case:

The Board Members may be uncomfortable about students discussing sexual orientation and how all students need to accept each other, whether gay or straight. . . . [But School Officials] cannot censor the students' speech to avoid discussions on campus that cause them discomfort or represent an unpopular viewpoint.

¹ See U.S. Dep't of Education Secretary Duncan's Letter to Colleagues Announcing Release of *Legal Guidelines Regarding the Equal Access Act and the Recognition of Student-Led Noncurricular Groups* (June 14, 2011), available at <http://www2.ed.gov/policy/elsec/guid/secletter/110607.html>; see also U.S. Dep't of Education, *Legal Guidelines Regarding the Equal Access Act and the Recognition of Student-Led Noncurricular Groups*, available at www2.ed.gov/policy/elsec/guid/secletter/groupsguide.doc.

² See *Gay-Straight Alliance of Yulee High Sch. v. Sch. Bd of Nassau Cnty.*, 602 F. Supp. 2d 1233 (M.D. Fla. 2009); *Gonzalez v. Sch. Bd. of Okeechobee Cnty.*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008); see also Consent Decree & Order (DE 23), *Vanguard High Sch. GSA v. Yancey*, No. 5:12-cv-268 (M.D. Fla. Aug. 14, 2012); *Straights and Gays for Equality v. Osseo Area Schs.-Dist. No. 279*, 540 F.3d 911 (8th Cir. 2008); *White Cnty. High Sch. Peers Rising in Diverse Educ. v. White Cnty. Sch. Dist.*, No. 2:06-cv-29, 2006 WL 1991990 (N.D. Ga. July 14, 2006); *Boyd Cnty. High Sch. Gay Straight Alliance v. Bd. of Educ. of Boyd Cnty.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003); *Franklin Cent. Gay-Straight Alliance v. Franklin Township Cmty. Sch. Corp.*, No. IP01-1518, 2002 WL 32097530 (S.D. Ind. Aug. 30, 2002); *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000); *E. High Gay-Straight Alliance v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp. 2d 1166 (D. Utah 1999).

Colin v. Orange Unified Sch. Dist., 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000). Silencing ideas because some people do not like them is not only incompatible with the educational values of open inquiry and wide-ranging debate that are central to our free political system – it is against the law.

Our understanding is that Carver Middle School does have noncurricular clubs. For instance, Bayli contends that there is a “speed stacking club,” and that the club formerly known as Fellowship of Christian Athletes (“FCA”) now meets under the name “BR8” at the same time and place that the former FCA met. Because these clubs are noncurricular, the school must provide equal treatment to all clubs – including the GSA – pursuant to the Equal Access Act.

Allowing the proposed GSA to form is not just a legal duty, but it would also be beneficial to the school community. It is well documented that LGBT students face significant bullying, violence, and isolation in schools.³ Some of the most common epithets that teens use today to disparage each other are “faggot,” “dyke,” and “queer.” GSAs are part of the solution. A recent national survey on school safety found that the presence of a GSA at a school significantly reduces the amount of bullying experienced by LGBT students and makes them feel safer.⁴ As one federal judge wrote in a GSA case, “[t]his injunction [to allow the GSA to form] is not just about student pursuit of ideas and tolerance for diverse viewpoints. As any concerned parent would understand, this case may involve the protection of life itself.” *Colin*, 83 F. Supp. 2d at 1150.

The benefits of having a GSA on campus do not flow only to LGBT students. A disproportionate amount of physical violence against LGBT people of all ages is perpetrated by teenage boys. Creating an atmosphere in which bullying and violence are not tolerated and everyone is valued and respected will help make all students better citizens and better equipped for participation in the workforce that is comprised of people from all walks of life.

By protecting students’ right to form a GSA, you are not only obeying the law and avoiding potential legal liability, you are promoting school safety and helping address the serious problem of anti-LGBT bullying. Given the legal

³ See Gay, Lesbian & Straight Education Network (GLSEN), The 2011 National School Climate Survey, available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/002/2105-1.pdf, (finding that more than 80% of LGBT students experienced harassment at school and nearly two-thirds felt unsafe).

⁴ See note 3, *supra*.

obligation to provide equal access and the perfectly appropriate subject matter of the proposed GSA, we expect this situation can be resolved quickly. Please advise us by February 1, 2013, that the request to form a GSA at Carver Middle School has been approved and that it may immediately begin having meetings and activities as an approved noncurricular student club.

Sincerely,



Randall C. Marshall

c: Bayli Silberstein
Erica Silberstein