



November 18, 2014

OPEN LETTER REGARDING PROSELYTIZING, HARASSMENT AND
DISCRIMINATION AGAINST STUDENT BASED UPON SEXUAL
ORIENTATION

Via Regular Mail and Email to
Dr. Bernard Taylor, Jr.
Superintendent of Schools
East Baton Rouge Parish School System
1050 South Foster Drive
Baton Rouge, LA 70806
bernardtaylor@ebrschool.org

Via Regular Mail and Email to
Shalonda T. Simoneaux, Principal
Broadmoor High School
10100 Goodwood Boulevard
Baton Rouge, LA 70815
ssimoneaux@ebrschools.org

Via Regular Mail and Email to
Gary J. Reese
Interim Administrative Director of Transportation
6013 Choctaw Drive
Baton Rouge, LA 70805
greese@ebrschools.org

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
LOUISIANA
PO BOX 56157
NEW ORLEANS, LA 70156
T/504.522.0617
WWW.LAACLU.ORG

Dear Dr. Taylor, Ms. Simoneaux and Mr. Reese:

It has been brought to the attention of the ACLU Foundation of Louisiana that an East Baton Rouge Parish School System school bus driver for Broadmoor High School has used her position of authority to detain a student on the bus and proselytize him in clear violation of the Establishment Clause of the First Amendment of the United States Constitution. Moreover, the bus driver used her position of authority to harass and discriminate against that student because of his perceived sexual orientation in violation of Title IX of the Education Amendments Act of 1972.

This letter is to inform you that it is your legal responsibility to: 1) fully investigate this student's complaint; 2) educate all employees, including bus drivers, of East Baton Rouge Parish School System regarding the First Amendment Establishment Clause, specifically that proselytizing to a student is not permitted; and regarding Title IX's prohibition of harassment and discrimination of lesbian, gay, bisexual or transgender (LGBT) students; and 3) ensure that harassment and discrimination against students in violation of the law is not tolerated and is stopped.

Background

On the morning of Friday, October 10, 2014, sixteen-year-old student John Doe and his sister Jane Doe were exiting the school bus (#17230) at Broadmoor High School when the driver instructed John Doe to stay behind. After the last student exited the bus the driver told her elementary aged children to go sit in the back of

the bus. The driver then asked John Doe if he went to church or participated in any church-like activity. When John Doe told the driver no, she told him that “going to church is how he can avoid sin.” She proceeded to tell John Doe that homosexuality is a “sin” and that he can go to hell for it. The driver told John Doe that he needed to go to church, pray and repent and god would forgive him of his “sinful ways.” The driver told John Doe what bible he should get and that she could give him the name of a church if his mother would bring him.

During this time Jane Doe, John Doe’s sister, waited for him outside of the bus. As the driver and her brother began to talk Jane knew something was wrong because her brother’s facial expressions indicated he was very upset. When John Doe exited the bus he told his sister what the driver had said to him. Jane Doe immediately informed the principal, Shalonda Simoneaux, of what the driver said to her brother. Ms. Simoneaux’s response was “call transportation because I’m not her boss.” To our knowledge, Ms. Simoneaux did not report the bus driver’s inappropriate behavior, and she did not advise John or Jane Doe of the procedure for reporting the bus driver, or provide any support or guidance to John and Jane Doe.

When John and Jane Doe told their mother what had occurred she immediately telephoned both the driver’s supervisor and the superintendent, but reached the voicemail of both. Ms. Doe then contacted the Assistant Principal, Mr. McDonald, who emailed the transportation office. Ms. Doe eventually spoke with Ms. Tolliver in the transportation department who said she would investigate the matter. The following week Ms. Tolliver informed Ms. Doe that she had spoken with the driver and explained to her that she could not talk about bibles or sexuality with a student. John and Jane Doe were never asked for their statements, nor did any school official speak with either John or Jane to resolve this issue. The school bus driver continues to drive the bus that both John and Jane Doe must use to attend school every day, subjecting them to the prospect of future harassment.

Constitutional Analysis

The United States Constitution requires public schools to ensure that state-supported activity is not used for religious indoctrination.¹ Public school employees are not entitled to use their government positions to promote and impose their personal religious beliefs on students.² When school staff crosses

¹ *Helland v. S. Bend Cmty. Sch. Corp.*, 93 F.3d 327, 331 (7th Cir. 1996); citing *Edwards v. Aguillard*, 482 U.S. 578, 597 (1987); *Grand Rapids School Dist. v. Ball*, 473 U.S. 373, 385 (1985); *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971).

² *See, Grossman v. S. Shore Pub. Sch. Dist.*, 507 F.3d 1097, 1099 (7th Cir. 2007) (“teachers and other public school employees have no right to make the promotion of religion a part of their job description and by doing so precipitate a possible violation of the First Amendment’s [E]stablishment [C]lause.”); *Helland v. S. Bend Cmty. Sch. Corp.*, 93 F.3d 327, 329, 331 (7th Cir. 1996) (holding that public-school district had properly dismissed substitute teacher for, among other infractions, “the unconstitutional interjection of religion” into classes “by reading the Bible aloud to middle and high school students, distributing Biblical pamphlets, and professing his belief in the Biblical version of creation in a fifth grade science class”);

the constitutional line, as the school bus driver did here, by proselytizing students and subjecting them to religious indoctrination, the courts have declared these activities unlawful.³

There is no question that the school bus driver crossed a clear line when she instructed John Doe to stay behind on the bus and proselytized him in front of elementary aged students.. No school employee may tell a student that they are going to hell for any reason, nor may a school employee tell a student that they need to pray and repent so that god will forgive their “sinful ways.” Nor may a school employee direct a student to obtain a specific bible or any religious book or what church or religious institution they should attend.

Title IX of the Education Amendments Act of 1972 Analysis

Federal courts throughout the United States have recognized the Constitutional requirement of equal protection of gays and lesbians for decades, including in public schools.⁴ It is therefore incumbent on school officials to take seriously claims of LGBT-related harassment and fully and effectively resolve them.⁵ It is also incumbent upon public schools to train staff and teachers on harassment based upon sexual orientation. Public schools that ignore or inadequately respond to harassment and discrimination of LGBT students can be held responsible for such discriminatory treatment. Cases challenging a school district’s deliberate indifference to harassment against students because of actual or perceived LGBT status have led to damages awards or settlements as high as \$1.1 million.⁶ In addition to clearly established case law, the U.S. Department of Education issued official guidance declaring that Title IX prohibits sexual harassment based on a student’s failure to conform to stereotypical notions of masculinity and femininity.⁷

The school bus driver’s inappropriate and hurtful actions and comments are a clear indication that the employees of the East Baton Rouge School System are

Williams v. Vidmar, 367 F. Supp. 2d 1265, 1275 (N.D. Cal. 2005) (“In the view of the Court, there is a well-defined difference between being an elementary school teacher who is an avowed Christian, which Williams is free to be, and expressing the Christian faith in the classroom.”).

³ *S.D. v. St. Johns Cnty. Sch. Dist.*, 632 F. Supp. 2d 1085, 1095 (M.D. Fla. 2009) (holding that school’s selection of “a patently religious and proselytizing” song to be performed by third-graders during an end-of-year assembly failed the endorsement test).

⁴ *See, Nabozny v. Podlesny*, 92 F.3d 446, 458 (7th Cir. 1996) (“[R]easonable persons in the defendants’ positions... would have concluded that discrimination against [public school student] Nabozny based on his sexual orientation was unconstitutional.”); *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134-35 (9th Cir. 2003) (“The plaintiffs are members of an identifiable class for equal protection purposes because they allege discrimination on the basis of sexual orientation.”).

⁵ *See, Flores* at 1135-36 (“[F]ailure to take any further steps once he knew his remedial measures were inadequate supports a finding of deliberate indifference”).

⁶ *See, e.g. Flores* at 1130 (\$1.1 million in damages and attorneys’ fees); *Nabozny* at 446 (\$962,000 in damages); *Dickerson v. Aberdeen School Dist. No. 5*, No. 3:10-cv-5886 (W.D. Wash. 2010) (\$100,000 in damages); *Theno v. Tonganoxie Unified School Dist. No. 464*, 404 F. Supp. 2d 1281 (D. Kan. 2005) (\$440,000 in damages and attorneys’ fees); *Gay-Straight Alliance Network v. Visalia Unified School Dist.*, 262 F. Supp. 2d 1099 (E.D. Cal., 2001) (\$130,000 in damages).

⁷ <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

not properly trained regarding the prohibition of harassment of students based upon sexual orientation or the Establishment Clause. Furthermore, Principal Simoneaux's response, or rather non-response, to Jane Doe's complaint demonstrates that administrative staff does not take seriously complaints of harassment of LGBT students or violations of the Constitution, and do not have a procedure for effectively resolving complaints.

Conclusion

Not all students would have reported this incident to their parents and not all parents would have been as vigilant as Ms. Doe in reporting the school bus driver's behavior. It is the School Board's responsibility to ensure that employees do not violate the Establishment Clause or any other Constitutional provisions, as this bus driver did. The School Board must also ensure that students are not confined or detained by employees without legitimate school related or disciplinary reasons, as John Doe was, and must follow all laws concerning discrimination, including discrimination against LGBT students.

With this information in mind, I urge you to:

1. Educate all school staff regarding The Establishment Clause of the First Amendment of the United States Constitution and its prohibitions against religious proselytization;
2. Educate all school staff regarding Title IX's prohibition of harassment and discrimination of LGBT students and offer counseling to the LGBT students as required by Louisiana law; and
3. Establish a procedure for administrative staff and teachers to respond to students' complaints of harassment and discrimination that is respectful of the students' rights and needs and informs students of available counseling.

These policies and procedures must be communicated to all students and their parents or guardians.

Moreover, the School Board must ensure that John and Jane Doe are not retaliated against for reporting the school bus driver's inappropriate and harmful behavior.

Please confirm to this office that the School Board will take the necessary measures to ensure compliance with the law. I look forward to hearing from you.

Sincerely,



Marjorie R. Esman
Executive Director