

December 4, 2024

**VIA ELECTRONIC MAIL**



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

**North Carolina**

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Dr. Stephen Fisher  
Superintendent  
Cleveland County Schools  
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**Re: Free Speech Violations at ██████ High School**

Dear Dr. Fisher and Cleveland County School Board Members:

We are attorneys with the American Civil Liberties Union of North Carolina, a nonprofit organization dedicated to defending the civil rights of all North Carolinians. We write on behalf of ██████, a ██████ High School junior, and ██████ father, ██████. During the 2024 spring and fall semesters, the school district prohibited ██████ and other members of the Activism Club from playing a Jeopardy-style quiz game highlighting LGBTQ+ individuals who have made significant contributions to American society. For the reasons discussed below, this decision violates the First Amendment and the Equal Access Act, 20 U.S.C. § 4071.

We demand that you cease this conduct immediately, permit ██████ and ██████ fellow Activism Club members to proceed with their presentation, and assure our clients that you will not in the future prohibit students from simply acknowledging that LGBTQ+ people exist and play important roles in all walks of life in this country.



## I. Background

█████ founded the Activism Club during █████ freshman year. This club meets once a week during the school’s regular “flex period,” which occurs during the school day from 10:45 am to 11:15 am. During this time, students may choose to attend meetings of student clubs, such as the Activism Club, Bible Club, Dungeons and Dragons Club, Spanish Club, and others. The Activism Club focuses on discussing subjects not covered by the standard curriculum. Over the last three years, these have included Women’s History Month, suicide prevention, the Black Lives Matter movement, breast cancer awareness, and the war in Gaza.

The Activism Club meets during the school day, but it is not sponsored by the school, nor is it part of the curriculum. Student members receive no academic credit for participation; the Club receives no school funding; and the Club has a counselor advisor, but she does not provide instruction, grade students’ work, or direct what subject matter will be covered. Before now, school officials had never prohibited the Club from discussing proposed subjects. At most, parent permission slips were required for more sensitive topics.

Last spring, █████ wanted the Club to play a Jeopardy-style quiz game highlighting LGBTQ+ individuals and their contributions to American society. It is a text-only PowerPoint with no depiction of anything sexual or inappropriate. The PowerPoint consists only of simple fact-based questions asking students to identify people like Harvey Milk, Ellen DeGeneres, and Pete Buttigieg.

█████ presented the game to the club’s advisor who approved it and then presented the game to the school’s principal. The principal suggested that permission slips may be needed as the topic is “sensitive,” and stated he would have to present the material to Dr. Fisher over the summer.

When █████ again requested to play the game this fall, the school

district prohibited the activity. Originally, ██████ was told Dr. Fisher was concerned with the game’s “sensitive” topic and how it relates to the Parents’ Bill of Rights.<sup>1</sup> But, in a letter to ██████’s father, Dr. Fisher cited two district policies as the basis for the decision — “Selection of Instruction Materials,” which deals only with materials related to the official school curriculum, and “Distribution and Display of Non-School Materials,” which deals only with materials not related to the official curriculum. Dr. Fisher provided no further explanation as to how these two policies, or the Parents’ Bill of Rights, were applied.



The Selection of Instruction Materials policy<sup>2</sup> defines instructional materials as “all materials, whether print, non-print, digital, or any combination thereof, used in the instructional program.” According to the policy, instruction materials “shall not be excluded . . . because of the ideological, political or religious viewpoint expressed in the material.”

The Distribution and Display of Non-School Materials policy<sup>3</sup> defines non-school materials as “any publication or other written information that is not a school-sponsored or curriculum-related publication or material.” According to the policy, students can only be prohibited from distributing non-school material if it (1) is lewd or obscene; (2) contains libelous statements, abusive language, or personal attacks; (3) threatens to cause a substantial disruption of school activity; (4) encourages unlawful acts or violations of school rules; (5) is inappropriate based on the age of the students; (6) contains inaccurate information; or (7) advertises a product not legal for minors.

The school district’s reference to both policies appears contradictory. Either the district believes the Activism Club is related to the curriculum and subject to the instructional materials pol-

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<sup>1</sup> N.C. Gen. Stat. § 115C–76.1, *et seq.*

<sup>2</sup> <https://go.boarddocs.com/nc/ccs/Board.nsf/goto?open&id=CGFS6W7136FF>

<sup>3</sup> <https://go.boarddocs.com/nc/ccs/Board.nsf/goto?open&id=CHPKA650E0B0>

icy, or that it is non-curricular and subject to the non-school materials policy. The school district has not explained which provisions of which policy provided the real basis for its decision.

## II. First Amendment and Equal Access Act Violations

The school district’s decision to prohibit students from discussing LGBTQ+ individuals imposes content and viewpoint discrimination in violation of the First Amendment.

Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). And “[a] student’s rights [] do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects[.]” *Id.* at 512-13.

School officials may only prohibit student speech if they have “a specific and significant fear of disruption” to school activity, “not just some remote apprehension of disturbance.” *Newsom ex rel. Newsom v. Albemarle Country School Bd.*, 354 F.3d 249, 255 (4th Cir. 2003) (quotations marks omitted). They cannot proscribe speech simply because they are uncomfortable with the subject matter. *Tinker*, 393 U.S. at 509.

This matter involves a student-created, student-run club where participants receive no academic credit, the school provides no funding, teachers provide no instruction, and the Club focuses on non-curricular subjects. In other words, it is “an exercise of wholly private speech that merely happened to have occurred on school grounds and does not constitute school-sponsored speech.” *Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98, 120 (D. Mass. 2003). The school district cannot prohibit this speech without a legitimate fear of disruption to school activities — something the district has never suggested to be the case.

If club activities are viewed as part of a school-created limited public forum, the school district still may not arbitrarily censor student speech. In a limited public forum, any “restriction must





not discriminate against speech on the basis of viewpoint, and the restriction must be reasonable in light of the purpose served by the forum.” *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106–07 (2001) (cleaned up). Here, the school district is discriminating against ██████’s speech precisely because of its viewpoint: that LGBTQ+ people have made significant contributions to American society.

Nor can the school district justify its decision under the policy prohibiting “lewd or obscene” non-school materials. The proposed activity is a text-only PowerPoint presentation that does not depict sex, illegal activity, or anything else that could arguably be considered obscene.

Even if the Activism Club is properly viewed as curricular, any censorship must still be “reasonably related to legitimate pedagogical concerns.” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988). The school district here has not articulated any such concern, such as age appropriateness. *See Robertson v. Anderson Mill Elem. Sch.*, 989 F.2d 282, 289-90 (4th Cir. 2021) (finding age-appropriateness of topic for fourth grade essay a legitimate concern justifying curricular censorship). Nor can it. Again, the prohibited material only asks high schoolers to identify LGBTQ+ people who have made significant contributions to our country.

Furthermore, the school district’s conduct also violates the Equal Access Act. That statute makes it “unlawful for any public secondary school which receives federal financial assistance and which [maintains] a limited open forum to deny equal access or . . . discriminate against any students who wish to conduct a meeting within that limited open forum on the basis of religious, political, philosophical, or other content of the speech at such meetings.” 20 U.S.C. § 4071(a).

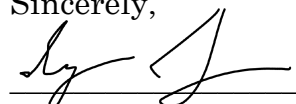
By creating a “flex” period and allowing student groups unrelated to the curriculum, such as Dungeons and Dragons Club and Bible Club, the school district has created a limited open forum. *See* 20 U.S.C. § 4071(b). Once schools create such a forum, they are prohibited “from denying equal access to any other student group on the basis of the content of that group’s

speech.” *Bd. of Educ. of Westside Community Schools v. Mergens*, 496 U.S. 225, 241 (1990). Prohibiting █████ from discussing LGBTQ+ individuals therefore violates the Equal Access Act. See, e.g., *Franklin Central Gay/Straight Alliance v. Franklin Twp. Cmty. Sch. Corp.*, No. IP01-1518 C-M/S, 2002 WL 32097530, at \*17 (S.D. Ind. Aug. 30, 2002) (holding that school’s decision to deny Gay Straight Alliance official club status violated the Equal Access Act).

Finally, the Parents’ Bill of Rights is inapplicable here. That statute only covers K-4 materials. N.C. Gen. Stat. § 115C-76.55. And even if it applied here, compliance with state law cannot justify a violation of federal law.

We ask that you let us know how you intend to resolve this situation within thirty days. If the school district does not permit the proposed activity to proceed, we intend to take prompt legal action on our clients’ behalf.

Sincerely,



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