



July 16, 2007

***Via facsimile - 301-279-3860  
and UPS Overnight Delivery***

Nancy Navarro  
President, Montgomery County Board of Education  
Carver Educational Services Center, Room 123  
850 Hungerford Drive  
Rockville, Maryland 20850

Dear President Navarro:

Regina Griggs, Executive Director of the national organization Parents and Friends of Ex-Gays and Gays ("PFOX"), has requested that the Alliance Defense Fund notify the Montgomery County Board of Education of a violation of PFOX's constitutional rights.

PFOX is a non-profit organization that qualifies under Montgomery County Board of Education Policy CNA-RA to distribute information to students. PFOX has, in fact, distributed materials at several Montgomery County schools pursuant to this policy. Recently, several school employees and at least one principal (Dr. Joan Benz of Winston Churchill High School) have encouraged and incited students to throw out the materials distributed by PFOX. This was accomplished primarily by school personnel placing PFOX's name on trash cans in the main lobby of Winston Churchill High School and encouraging students to throw PFOX's materials out.

In addition, several teachers have sent disparaging emails to PFOX in their capacity as Board employees and via their school issued email accounts. One teacher from Winston Churchill High School vowed that he "and many of [his] colleagues" would "fight further intrusions of your group into our public schools." Another teacher from Wootton High School wrote to PFOX: "STAY OUT OF OUR SCHOOLS AND LEAVE OUR CHILDREN ALONE!" This teacher also charged PFOX with being "like the KKK but only in the form of religion." Whatever the feelings of teachers and administrators at Montgomery County Schools may be, they have no right, and indeed violate the constitutional rights of PFOX, when they encourage students to throw out materials provided by PFOX.

The Fourth Circuit Court of Appeals, whose decisions are binding on school districts in Maryland, has held that community organizations have a First Amendment right to have information distributed by schools to students free of content- and view-point based discrimination. *Child Evangelism Fellowship of South Carolina v. Anderson Sch. Dist. Five*, 470 F. 3d 1062 (4<sup>th</sup> Cir.

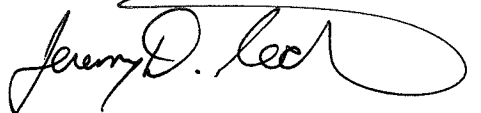
2006); *Child Evangelism Fellowship of Maryland, Inc. v. Montgomery County Pub. Sch.*, 457 F. 3d 376 (4<sup>th</sup> Cir. 2006). This is, of course, why the Board has adopted policies permitting the distribution of literature by outside organizations and community groups.

This well-established right, however, does not end when a school board permits non-profit organizations to distribute materials to students. Other actions, like those taken by the Board's employees described above, can also violate this right. And certainly, actively encouraging students to throw PFOX's materials in a trash can, while not interfering in any way with the dissemination of materials by other non-profit organizations, violates PFOX's First Amendment right to distribute materials at Montgomery County Schools. Such conduct is a blatant example of unlawful viewpoint discrimination. *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

The speech at issue here (PFOX's flyers) is private speech fully protected by the First Amendment. *Child Evangelism Fellowship of New Jersey Inc. v. Stafford Tp. Sch. Dist.*, 386 F.3d 514, 526 (3<sup>rd</sup> Cir. 2004) (treating flyers of nonprofit organizations distributed to students by school teachers as "private, not school-sponsored, speech"). The flyers are not the school's speech, and are not endorsed by the school in any way. *Id.* at 524-26. The School Board has no right to silence a private speaker's message based solely on that speaker's point of view, and that is precisely what the Board is permitting to be done here.

PFOX plans to distribute materials to students attending Montgomery County Schools, in compliance with Board policies, in the fall of this year and in future semesters. The Board is responsible for the actions of its employees, especially in light of the fact that it has sat idly by permitting the violations to occur, and has an affirmative obligation to ensure that its employees comply with the law. *See Spell v. McDaniel*, 824 F. 2d 1380, 1391 (4<sup>th</sup> Cir. 1987) (holding that policymaker's actual or constructive knowledge of unconstitutional actions of employees, coupled with a failure to correct or stop those actions, subjects a policymaker to municipal liability). The Board therefore must not permit its employees to discriminate against PFOX's materials in the manner described above, or in any similar manner. Should PFOX's materials meet with the same or similar discriminatory treatment this fall at the hands of Board employees, and the Board does nothing to stop these actions, we will recommend that PFOX file a federal civil rights lawsuit against the Board seeking an injunction and an award of damages and attorneys' fees.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy D. Tedesco". The signature is written in a cursive style with a large, sweeping flourish at the end.

Jeremy D. Tedesco  
Legal Counsel

cc: David A. Cortman, Senior Counsel, Alliance Defense Fund  
Regina Griggs, Executive Director, PFOX  
Shirley Brandman, Vice President, Montgomery County Board of Education  
Stephen Abrams, Member, Montgomery County Board of Education  
Christopher S. Barclay, Member, Montgomery County Board of Education  
Sharon W. Cox, Member, Montgomery County Board of Education  
Judy Docca, Member, Montgomery County Board of Education  
Patricia O'Neill, Member, Montgomery County Board of Education  
Sarah Horvitz, Student Member, Montgomery County Board of Education  
Jerry D. Weast, Superintendent, Montgomery County Public Schools  
Joan Benz, Principal, Winston Churchill High School  
Michael J. Doran, Principal, Wootton High School