

Arlington
Public
Schools

Superintendent's Office 1426 N. Quincy Street • Arlington, Virginia 22207

November 24, 2008

Mary E. McAlister, Esq.
Liberty Counsel
P.O. Box 11108
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Re: Donation of Books by PFOX to APS Libraries

Dear Ms. McAlister:

This letter responds to yours of October 31, 2008. I have reviewed the allegations you make and discussed them with others, as appropriate. I do not believe they are factually correct, nor will the Arlington Public Schools (APS) reverse its decision on the materials offered for donation by Parents and Friends of Ex-Gays and Gays (PFOX).

First, the rejection of the materials submitted by PFOX is not inconsistent with the handling of prior materials. APS accepts only those materials for which it can find professional reviews indicating that the materials are of good quality and appropriate for the age group served by the library in which they will be placed, and those that it can otherwise determine are of high quality and appropriate for the applicable age group. Our libraries staff uses many sources to try to find reviews, but leans toward using those prepared especially for the kindergarten through twelfth grade population. This procedure enables APS to determine whether materials are of high quality, irrespective of their point of view. A search turned up no professional reviews for the materials PFOX wished to donate. In addition, the librarians' inspection of the material did not reveal any reason to include them in the collection. Consistent with APS' practice, it does not accept donors' offers where the materials have neither been professionally reviewed nor otherwise appear to merit inclusion in the collection. Any materials offered by any source are subject to the same process.

APS libraries do not limit the materials they accept based on point of view; the collection overall contains materials from all points of view, and does not "prescribe what shall be orthodox" for APS students, as you claim.

Finally, I note that the Supreme Court case on which you base the arguments in your letter states specifically that "nothing in our decision today affects in any way the discretion of a local school board to choose books to *add* to the libraries of their

schools...our holding today affects only the discretion to *remove* books. Board of Education, Island Trees Union Free School District No. 26 v. Pico, 457 U.S. 853, 871-872 (1982). Therefore, even if your statements were true, APS' refusal of PFOX's offer would not be judged by the standards announced in that case.

Thank you for your interest in this matter.

Sincerely,



Robert G. Smith,
Superintendent

C: Carol McCoskrie
Linda Erdos
Mark Johnston
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Arlington School Board



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Reply to: Virginia

October 31, 2008

Via U.S. Mail and Email

Dr. Robert G. Smith, Superintendent
Arlington Public Schools
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Re: Censorship of Library Material Based on Unconstitutional Prescription
of Orthodoxy in Politics, Nationalism, Religion or Matters of Opinion

Dear Superintendent Smith:

Liberty Counsel writes on behalf of a number parents in your school district who at this point wish to remain anonymous. Parents and Friends of Ex-Gays and Gays (PFOX) was informed dated letter May 12, 2008, from the Supervisor of Library Media Services, Charlie Makela, of the Arlington Public Schools, that a donation of six books had been rejected. Without explanation, Ms. Makela stated that she did not believe that "the books are appropriate for our high school library collection." This rejection is inconsistent with prior approvals and acceptance of donations from other groups, particularly those from the Arlington Gay and Lesbian Alliance (AGLA). It is therefore evident that the Arlington Public Schools have taken a position that allows it to prescribe what shall be orthodox for its students, a direct violation of constitutional law and its own duly enacted policies. I write now to demand an immediate reversal of that decision.

By way of introduction, Liberty Counsel is a non-profit litigation, education and policy organization with offices in Florida, Virginia, Texas and Washington, DC and hundreds of affiliate attorneys across the country. Liberty Counsel specializes in constitutional litigation, including student's constitutional rights, and has had great success in vindicating those rights.

PFOX is a therapeutic and counseling organization that supports families, advocates for the ex-gay community, and educates the general public on sexual orientation. PFOX supports a philosophy of unconditional love and believes that communities and families

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should provide support to all of its children regardless of sexual preference or orientation.

I understand the following facts to be true. PFOX generously offered to donate the following books to the Arlington Public Schools high school libraries:

Parent's Guide to Preventing Homosexuality by Joseph and Linda Nicolosi;
You Don't Have to be Gay by Jeff Konrad;
My Genes Made Me Do It! By Neil and Briar Whitehead;
Gay Children, Straight Parents: A Plan for Family Healing by Richard Cohen;
This Side of Jordan by Bill Kassel; and
Marriage on Trial by Glenn Stanton and Dr. Bill Maier.

By way of letter, dated May 12, 2008, the Arlington Public Schools through its Department of Instruction - Library and Media Services department rejected this donation. This rejection, signed by Ms. Makela, Supervisor, Library Media Services, provided no further explanation beyond, "we do not believe the books are appropriate for our high school collection." A copy of that letter is enclosed for your ready reference.

It is also my understanding, that the Arlington Gay and Lesbian Alliance (AGLA) has a history of regularly donating books to the Arlington Public School's Libraries, including the following:

Rainbow Boys by Alex Sanchez;
Free Your Mind: The Book for Gay and Lesbian Bisexual Youth – and their Allies by Ellen Bass and Kate Kauffman;
The Gay and Lesbian Self-Esteem Book: A Guide to Loving Ourselves: New Harbinger Publications;
Becoming Visible: A Reader in Gay and Lesbian History for High School & College Students; Alyson Publications;
Coming Out to Parents: A Two-Way Survival Guide for Lesbians and Gay Men and Their Parents by Mary V. Borhek;
Two Teenagers in Twenty: Writing by Gay and Lesbian Youth by Ann Heron;
Lesbian and Gay Youth Care and Counseling: Columbia University Press;
and
Straight Parents, Gay Children: Keeping Families Together by Robert Bernstein.

Those, along with other donated books by AGLA, are readily available for Arlington Public Schools' high school students through the high school library system.

This arbitrary discretion undertaken by the Arlington Public Schools has been exercised in a narrowly partisan or political manner and is forbidden under the First Amendment. In fact, the acceptance of the AGLA's library materials simultaneous with its

rejection of similar materials with an opposing viewpoint from PFOX is an attempt by the Arlington Public School System to "prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion." Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico, 457 U.S. 853, 872 (1982). The U.S. Supreme Court has further declared that a student's "right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his or her own right of speech." Pico, at 867. The Court has also stated that students do not shed their constitutional rights at the schoolhouse gate, and thus local school boards are required to exercise their discretionary functions within the limits of the First Amendment. Tinker v. Des Moines School District, 393 U.S. 503, 507 (1969).

The Supreme Court affirms and does not deny that local school boards have broad discretion in the management of school affairs and therefore agrees that the federal courts should not ordinarily intervene in the resolution of conflicts which arise in the daily operation of school systems. Pico at 862. However, the Court has also recognized that the considerable discretion which school boards have in education must nevertheless comport with the requirements of the First Amendment. School Boards must apply their discretion within the limits of the Bill of Rights, whose First Amendment gives a mandate to safeguard our nation's fundamental values of speech and free inquiry. Id. at 862, 863. Not only is the First Amendment to foster individual self-expression, it is also intended to afford public access to discussion, debate and dissemination of information and ideas. Id. at 866.

In addition to demonstrating its disregard of the First Amendment, the Arlington Public School's failure to place "principle above personal opinion" and "reason above prejudice" is in direct violation of its own Library Media Services Handbook Policies, Policy for Selection of Library Resources (see page 34). Further, relevant American Library Association (ALA) policies, including the "Library Bill of Rights" adopted by the Arlington Public School system, expressly state:

ALA 53.1.2: "Libraries should provide materials and information presenting *all* points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval."

ALA 53.1.3: "Members of the school community involved in the collection development process employ educational criteria to select resources unfettered by their *personal, political, social or religious views*. ... School library media specialists resist efforts by individuals or groups to define what is appropriate for all students or teachers to read, view, hear or access via electronic means."

ALA 53.1.15: "The American Library Association stringently and unequivocally maintains that libraries and librarians have an obligation to resist efforts that *systematically exclude* materials dealing with any subject matter, including sex, gender identity or sexual orientation. The Association also encourages librarians to

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proactively support the First Amendment rights of all library users regardless of sex, gender identity or sexual orientation.”

ALA 53.9, Libraries: An American Value: “We value our nation’s diversity and strive to reflect that diversity by providing a *full spectrum* of resources and services to the communities we serve.” ... “We celebrate and preserve our democratic society by making available the *widest possible range of viewpoints*, opinions and ideas so that all individuals have the opportunity to become lifelong learners - informed, literate, educated, and culturally enriched.”

ALA 53.12, Threats to Library Materials Related to Sex, Gender Identity or Sexual Orientation: “The (ALA) affirms the inclusion of library collections of materials that *reflect the diversity of our society*, including those related to sex, gender identity or sexual orientation. ALA encourages all ALA chapters to take active stands against all legislative or other government attempts to proscribe materials related to sex, gender identity or sexual orientation and encourages all libraries to acquire and make available materials representative of all the people in our society.”

The Arlington Public Schools has an obligation to exercise its discretion over the contents of its libraries in a broad, nonpartisan and/or nonpolitical manner and has clearly failed to do so. See Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico, 457 U.S. 853, 870 (1982). AGLA’s apparent partnership with the Arlington Public Schools and the receipt of its recommended books in conjunction with the school’s direct refusal to accept any of PFOX’s recommended books, demonstrates that the Arlington Public Schools’ Library Media Services is exercising its discretion in the narrow, partisan and political manner prohibited under the First Amendment. Arlington Public Schools’ refusal to allow PFOX’s books to be placed on the public school library shelves alongside those of AGLA’s is a direct attempt to prescribe for the students what shall be orthodox in such matters of opinion. Pico 457 U.S. at 872. “Access to ideas makes the exercise of free speech and the free press meaningful, and prepares students for active and effective participation in our pluralistic, contentious society.” Id. at 864. Schools must always apply their discretion within the limits of the First Amendment’s mandate to safeguard our nation’s fundamental values of free speech and free inquiry. Id. at 865.

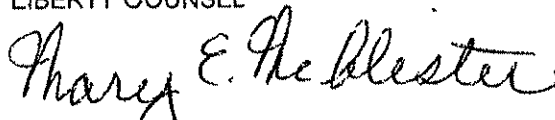
Based on the legal authorities discussed in this letter, we demand that you respond on behalf of the Arlington Public Schools, in writing, by close of business on Monday, December 1, 2008 and confirm that the Arlington Public Schools and the Department of Instruction - Library and Media Services will not enforce any policy or action that promotes the arbitrary censorship of library materials. Specifically, that the Arlington Public Schools cease and desist all censorship activities that prevent its student bodies’ access to a variety of viewpoints on those matters of politics, nationalism, religion or any other matters of opinion, specifically those related to providing a spectrum of viewpoints on the public

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matter of sexual orientation and preference by agreeing to accept the donation of books offered by PFOX. Liberty Counsel requires your timely response to forestall further action. If I do not receive the reply requested in this letter, I will conclude that the statements of Ms. Makela, Supervisor, Library Media Services and the attached letter to PFOX accurately reflect the final position of the Arlington Public Schools.

Sincerely,

LIBERTY COUNSEL



Mary E. McAlistler¹

MEM:sc/bmg
Attachment

cc: **Via U.S. Mail and Email**

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