



March 17, 2017

Jane Shamieh, Superintendent
Vacaville Unified School District
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Re: School District Censorship of Black Lives Matter article in Student Yearbook

Dear Superintendent Shamieh,

I am writing on behalf of Ariana Coleman and Vanessa Mewborn, two students at Buckingham Charter Magnet High School in Vacaville Unified School District who are members of the yearbook staff. I am concerned that Principal Boles' has censored Ariana and Vanessa's Black Lives Matter article page in the yearbook, which is an unlawful restriction on student speech in violation of § 48907 of the California Education Code. I ask the District rectify this problem.

The Buckingham yearbook advisor, Ms. Fitchhorn, assigned Ariana and Vanessa the task of creating a Black Lives Matter article page for the yearbook. Ariana and Vanessa polled the school for months, gathered information and interviews from their classmates, and created an article page that reflected the collective product of Buckingham student experiences. The students originally titled the article "Celebrating being American: Clarity on Black Lives Matter," included a question that read, "How do you feel about the Black Lives Matter movement?" and included pictures of students holding up fists raised as a symbol of solidarity and Black unity. It is unclear what Principal Boles' role is in the editing process. Although he is not the yearbook advisor, Principal Boles censored the title to read, "We are Buckingham," the interview question to read, "How do you feel about the current world climate that has caused cultural divisions?" and removed all references to "Black Lives Matter."

The censored content in the school yearbook is protected speech. Education Code § 48907 gives students the "right to exercise freedom of speech and press, including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions....and *the right of expression in official publications.*" *Smith v. Novato Unified School District* clarified that students have a right to free speech, even in a student publication. 150 Cal. App. 4th 1439, 1464 (2007). The Black Lives Matter content is protected speech because it is student speech that will be printed in a school publication, the yearbook, and the speech is not "obscene, libelous, or slanderous." Cal. Ed. Code § 48907(a).

A district cannot prohibit speech merely because it presents controversial ideas. Here, the District chilled basic free speech rights by removing references to Black Lives Matter and symbols of unity for Black students. In *Smith v. Novato Unified School District*, Novato Unified School District removed a published student editorial because it believed the topic of immigration was too disruptive for students. 150 Cal. App. 4th 1439. Novato Unified removed the speech based on some follow-up student and parent conversation. The Court held the district's action violated the California Education Code and reasoned that the editorial was "a communication of ideas, the expression of a viewpoint on an emotionally debated contemporary issue." *Id.* at 1458. Here, the principal told Ariana and Vanessa that the topic was too "controversial" to be printed. This is not a change in direction, but clear censoring to remove Black Lives Matter references from the publication.

This censorship is particularly disturbing because the Black Lives Matter yearbook article aids in helping the school community "understand the meaning of different cultures." *Novato*, 150 Cal. App. 4th at 1464. In *Smith v. Novato Unified School District*, the Court concluded that speech that results in a "useful exchange regarding how different persons and communities might view" a topic, was "wholly consistent with free speech values." *Id.* The article pages were clearly within a yearbook section that interviewed students and administrators regarding their views on Black Lives Matter. Students now lack the opportunity to have robust conversation in the original language and symbols regarding Black culture and what being Black in the country means today. For example, the District removed the initial question that asked people how they felt regarding the topic Black Lives Matter. But this question was critical for interviewees to explain their perspectives on stereotypes, racism, and what race meant for them. Black Lives Matter is a movement and centers in having pride in being a Black person. And that is a multi-faceted discussion. Additionally, the District removed a picture of students holding up fists, which is a common sign of Black unity and power. The District cannot demonstrate any lawful basis to remove symbols of unity within the Black community at Buckingham, reactions to Black Lives Matter, and references to Black experiences from this publication.¹

Additionally, the District cannot impose a "prior restraint of material prepared for official school publications" except in very limited exceptions. Ed. Code § 48907(d). The District removed all references to Black Lives Matter in Buckingham's yearbook article. California courts have clarified that this type of prior restraint is unconstitutional. In *Smith v. Novato Unified School District*, the Court held that when the district stated that the piece should not have been published in the first place and retracted future copies, the district violated Education Code § 48907. *Novato*, 150 Cal. App. 4th at 1462. The District's actions clearly restrained student speech by removing all "Black Lives Matter" references prior to publication.

Lastly, yearbook advisors specifically, not all administrators, have a limited role in editing student publications. Under Cal. Educ. Code § 48907(c), the "journalism adviser" is the


¹ We find it troubling that the District's action of removing references to Black Lives Matter prompted students and teachers to bully and harass the student yearbook staff who worked on this page. It seems that the increased animosity against Black students is at the crux of why this article was timely and is still necessary. We do appreciate the District's responsiveness in handling this harassment.

primary individual to make limited edits to pupil publications while also “maintain[ing] the provisions of this section,” which includes allowing student speech that is protected under subdivision (a). The principal stated in follow-up emails to parents that “the yearbook advisor has the right to change the direction and composition of any article submitted.”² Indeed, there are limits to how staff can edit printed materials. This is consistent with Vacaville Unified School District Board Policy 5145.2(a) that provides that the District believes that “free inquiry and exchange of ideas are essential parts of a democratic education...even when such speech is controversial or unpopular.” Here, it is unclear whether the principal has any role in yearbook advising, yet Principal Boles had a role in censoring the content. Students in the class report to Ms. Fitchhorn – not Principal Boles – for assignments, grades, and other adviser duties for their publication. We strongly urge the District to rectify this clear free speech violation.

School districts do not have a right to violate protected speech based on arbitrary reasons or because they think a topic is controversial. Given the significance of fostering robust conversation regarding Black Lives Matter, racial justice, and promoting diversity across the District, we strongly urge you to permit the students to include all of the original references to Black Lives Matter statements, pictures and symbols illustrating their Black Lives Matter viewpoints and remove the censored version of the article including language such as “We are Buckingham.” We understand that the school has already granted the yearbook staff a two-week extension until March 27, 2017 for final publication. If that is not the case, please contact us immediately. If that is the case, we request the District or its legal representative respond to us with their decision by March 20, 2017, regarding how it plans to rectify this problem.

Thank you in advance for your prompt consideration in this matter.

Sincerely,



Abre' Conner

Staff Attorney, ACLU of Northern California

² *But see* Ed. Code § 48907(c) (“Pupil editors of official school publications shall be responsible for assigning and editing the news, editorial, and feature content of their publications”).

Enclosures

Original Black Lives Matter article

Edited Black Lives Matter article

CC: Mike Boles, Principal, Buckingham Charter Magnet High School

Nadja Fitchhorn, Visual Media Arts Teacher, Buckingham Charter Magnet High School