



November 1, 2017

Sean McPhetridge, Superintendent
Alameda Unified School District
2060 Challenger Drive
Alameda, CA 94501
smcphetridge@alameda.k12.ca.us

Re: School District Censorship of Black Lives Matter stickers, signs, and speakers

Dear Superintendent McPhetridge,

We are writing on behalf of [REDACTED] two students at Maya Lin Elementary School in Alameda Unified School District ("District"). We are deeply concerned that the District may be refusing to let students distribute and wear Black Lives Matter stickers as well as hold signs or host speakers on that topic on District campuses. This refusal, if correct, poses unlawful restrictions on student speech in violation of § 48907 and § 48950 of the California Education Code, Article I, § 2(a) of the California Constitution as well as the First Amendment. Additionally, we are concerned that the District is treating student support of the Black Lives Matter movement differently than similar situations involving bias. We ask that the District immediately rectify the problems described in this letter.

It is our understanding that on September 7, 2017, District staff removed Black Lives Matter signs and possibly stickers from a common area at Maya Lin Elementary School. These stickers and signs were generally available if students wanted to pick them up, and some of those students did, including Dede Lewis' daughter, [REDACTED]. It is likely that these stickers and signs were a response to two deeply troubling incidents at the school earlier in the week. First, a piece of student public art at the school containing the phrase "Black Lives Matter" was vandalized at Maya Lin Elementary. The vandalized sign had the word "Black" crossed out and replaced with "All." And on September 5th, a noose was found hanging from a fence at Alameda High School. The students we represent and many others wore the stickers to show their support for Black students in the District.

On September 10, 2017, Dede Lewis wrote to Superintendent McPhetridge expressing her concern that "school administrators are saying Black Lives Matter signs aren't allowed at AUSD unless they are a student's art work." In response to that email, the Superintendent stated that he had received a complaint from an angry parent because their child picked up a Black Lives Matter sticker at school. The Superintendent then attempted to justify the censorship based on an AUSD policy that evidently states that "The Superintendent, principal, or designee shall not accept for distribution any materials or advertisements that... 4. Proselytize or position the district on any side of a controversial issue."

As an initial matter, Superintendent McPhetridge is incorrect in his suggestion that allowing students to wear or display Black Lives Matters stickers or posters would bear the District's imprimatur. *See Morse v. Frederick*, 551 U.S. 393,405 (2007) (no reasonable person would believe that a student sign bore the school's imprimatur). Nothing about the stickers or posters "proselytize or position the district on any side of a controversial issue," and accordingly, this cannot be the lawful basis for the censorship here.

Moreover, Black Lives Matter stickers and signs are protected speech even if the Superintendent believes that they are "controversial." Education Code § 48907 gives students the right to "exercise freedom of speech and of the press *including, but not limited to*, the use of bulletin boards, the distribution of printed materials or petitions, *the wearing of buttons, badges, and other insignia*." Cal. Ed. Code § 48907(a) (emphasis added). This speech must not be "obscene, libelous, or slanderous." Cal. Ed. Code § 48907(a). First, Black Lives Matter signs, stickers, and shirts are protected speech because they communicate a student's expression of their thoughts, ideas, and beliefs regarding the support of Black lives. Additionally, the California Legislature squarely contemplated speech such as Black Lives Matter stickers, shirts, and signs to ensure speech, like the type meant to uplift Black students and other marginalized groups, was protected under the California Education Code. The District has not and cannot make a serious argument that Black Lives Matter speech is obscene, libelous, or slanderous. Indeed, this type of speech meant to create a more inclusive campus is quite the opposite. The District is aware that on September 5, 2017, right before students decided to wear Black Lives Matter stickers, a noose was found on a fence at Alameda High School that likely made Black students feel unwelcome on campus.¹ Students have a legal right to support their classmates and others within the Black community through protected speech by wearing and holding Black Lives Matter signs and stickers.

In addition, the California and federal constitutions protect speech such as Black Lives Matter stickers and signs. The California Constitution, Article I, Section 2(a) provides that "...A law may not restrain or abridge liberty of speech or press." The California Constitution provisions are "more protective, definitive and inclusive of rights to expression of speech than their federal counterparts." *San Diego Unified Port District v. U.S. Citizens Patrol*, 63 Cal.App.4th 964, 970 (1998). Additionally, the First Amendment guarantees students a right to freedom of speech and expression. *Tinker v. Des Moines Indep. Cnty. Sch. Dist.*, 393 U.S. 503, 506 (1969). A district must meet the high burden of demonstrating the student expression "would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school" or "collide with the rights of others" to limit student speech. *Id.* at 513. Similar to protections under the California Education Code, courts have firmly decided that school districts cannot strip students of their free speech and expression rights merely because they are at a school. *See Tinker*, 393 U.S. at 512; *Bible Club v. Placentia-Yorba Linda Sch. Dist.*, 573 F. Supp. 2d 1291 (C.D. Cal. 2008). Wearing Black Lives Matter stickers and holding signs present constitutionally protected opportunities for Alameda Unified students to express their support for classmates, community members, and for some, their cultural identity. The District has not claimed that this showing has

¹ "Noose found near Bay Area high school prompts hate crime investigation" ABC 30 News, Sept. 7, 2017, <http://abc30.com/noose-found-near-bay-area-high-school-sparks-outrage/2387052/>. (An Alameda High parent stated her frustration with the District's response to supporting Black students after the District found the noose by saying "If it's an unknown thing or [Black students] don't feel backed up or protected by the school, then it creates a sort of hostile environment for them.").

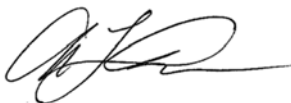
materially and substantially disrupted school classes. The fact that a parent may have complained clearly does not satisfy this exacting standard.²

School districts do not have a right to censor protected speech based on arbitrary reasons or because they believe a topic is controversial. The District has and continues to allow students to wear other content-based shirts and stickers as well as hold signs with different messages. For example, students wear sports team shirts, “love wins” messages, shirts opposing anti-Semitism, and other messages that express students’ views. The District has no legitimate basis for allowing students to express these views, but dismiss student support for their Black classmates. We were happy to see that the District did not interfere with student support for other issues, but the District cannot decide that it draws the line when Black students need support.

Given the significance of fostering robust conversation regarding Black Lives Matter, racial justice, and promoting inclusiveness and diversity across the District, we strongly urge you to allow students to wear stickers and shirts stating Black Lives Matter or any variation with similar meanings. We also urge the District to clarify students can have and hold Black Lives Matter signs on campus and that speakers with Black Lives Matter messages are permitted on campus. Given the seriousness of this issue, we request that the District or its legal representative respond to us with their decision by November 13, 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

Enclosures:

- Emails from Superintendent
- Pictures of removed Black Lives Matter stickers and signs

CC: Alameda Unified School Board

² To the extent that the Superintendent is claiming that community members are not permitted to distribute materials at school, that is a different issue than whether students are permitted to distribute, wear, and/or display Black Lives Matters stickers and posters at school.

From: "McPhetridge, Sean" <smcphetridge@alameda.k12.ca.us>
Date: September 11, 2017 at 5:05:47 PM PDT
To: Dede Lewis <[REDACTED]>
Cc: "Zazo, Kirsten" <kzazo@alameda.k12.ca.us>
Subject: Re: BLM signs at AUSD

I'd be happy to meet with you to discuss, Dede. Clearly you and I both have personal viewpoints that would probably be best explored together when we would have time to unpack the issues.

Please know I do not see these issues or groups espousing these concerns as equivalent, but nonetheless Board Policy and legal precedents guiding us in this work prevent us from opening up to one viewpoint without opening up to the other viewpoint, regardless of beliefs or values that are espoused. I hope the case is illustrative of the point of why schools are known as limited public forums: it is simply the case that once we allow a particular viewpoint then we have to allow other viewpoints to have the same access, and that is why Board Policy 1325 exists in AUSD and in many California districts. Indeed, that policy is based on California School Boards Association's model policy for all the districts in the state. But, that said, I can understand your frustration with the issue, and I can find it frustrating as well while also understanding the need for us legally to adhere to the policy and follow legal precedent.

Anyway, should you want to meet to discuss further, I look forward to doing so and will ask Kerri Lonergan to reach out to you to schedule a time convenient for us both.

Sincerely,

Sean McPhetridge

On Sep 11, 2017, at 4:21 PM, Dede Lewis <[REDACTED]> wrote:

Hi Sean,

Thanks for your response. I find it upsetting to say the very least, and I am happy to gather other parents arhat feel the same way. It really sounds like you are playing both sides here.

My kindergartener also came home with a sticker on. I don't know where it came from, but I was so pleased to see the community rallying around our students of color after this sign was defaced. What did the other parent not appreciate about it? The radical notion that black kids matter, too?

White Lives Matter is a false equivalency, because there are no systems in place that have been marginalizing white folks for generations. Our country wasn't built on enslaving white lives and the value of white lives in our society have never been in question. Kids and families were leaving school feeling unsafe and unwelcome after the sign was altered. This was the day after the DACA decision and the noose being found at Alameda High. Altering that sign is not just a matter of semantics or trying to be more inclusive.

Saying "Black Lives Matter" does not imply anything about any other lives. It is not anti police, or anti any other "kind" of life. It is simply acknowledging that Black Lives Matter, too. Today when you see "9/11 Never Forget" wouldn't interpret that as meaning 9/11 is the only tragic event worth remembering. You wouldn't respond with "All Days Matter!" today we are acknowledging 9/11. A sticker that said "Keep Tahoe Blue" wouldn't lead you to presume that you are anti preservation of other lakes. Would you say "what about Crater Lake? All Lakes Matter?" Probably not.

My final thought on this is as the superintendent, do you truly feel that acknowledging the value black lives in our community is "positioning the district on the side of a controversial issue?" Why is that one parent's feeling of discomfort over a sticker, more important than the feelings of black families at our school who felt unsafe when the sign was defaced by a member of the community. Please provide me with clarity on these points. If we are going to be the "Everyone Belongs Here" district we have a lot of work to do.

I look forward to hearing when we can meet.

Thanks,

Dede

Sent from my iPhone

On Sep 11, 2017, at 3:02 PM, McPhetridge, Sean <smcphetridge@alameda.k12.ca.us> wrote:

Dear Dede:

Thanks for your email.

Please note I heard about this issue late last week when a parent called to complain about their kindergarten child coming home with a Black Lives Matter sticker which the family did not appreciate and did not solicit.

Per your request, please know AUSD Board Policy 1325 guides us in this regard. The specific relevant language in that policy is excerpted as follows: "The Superintendent, principal, or designee shall not accept for distribution any materials or advertisements that... 4. Proselytize or position the district on any side of a controversial issue." But I think this language probably now merits some unpacking and explaining to define the issue further for you.

As you are probably aware, public schools are considered to be limited public forums where principals are given discretion to determine what kind of invited speakers and/or print media are allowed on campus. And, in this case, because one cannot open the school to the public and allow one kind of controversial speech to exist without opening up to the other side, it becomes problematic to allow certain parents/guardians that ability to speak or share posters/stickers without offering same to those of opposite viewpoints. To take this to the logical next step to

explain why public schools are considered limited public forums and why Board policies like this exist in most districts, can you imagine how students and families and staff would feel if we were required to allow a White Lives Matter sign/speaker on the property? Legal precedents in cases on this type of issue mandate we establish public schools as limited public forums to safeguard against that kind of situation wherein we would have to open up to all viewpoints once we open up to one viewpoint, no matter what personal feelings we might have about any viewpoint.

So it is more than just AUSD Board Policy that guides us in this regard. Like most school districts, this policy exists in AUSD because of court cases and legal precedents that require us to establish schools as limited public forums.

I hope that answers your question. Should you have additional questions, please feel free to reply so we can work to answer them. I am happy to arrange a meeting with you and our staff to help explain further if need be.

Sincerely,

Sean McPhetridge
Superintendent
Alameda Unified School District

-----Original Message-----

From: Dede Lewis [REDACTED]
Sent: Sunday, September 10, 2017 10:12 PM
To: McPhetridge, Sean <smcphetridge@alameda.k12.ca.us>; Zazo, Kirsten <kzazo@alameda.k12.ca.us>
Subject: BLM signs at AUSD

Hi Sean and Kirsten,

Hope you are well. I'm hoping you can help me with something. I've heard second hand, that school administrators are saying Black Lives Matter signs aren't allowed at AUSD unless they are a student's art work. I found that shocking to be coming from the "Everyone Belongs Here" school district. I was unable to find a specific policy or language that does not allow these signs.

Please advise.

Thanks so much,

Dede

Sent from my iPhone

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MADE IN THE U.S.A.
M
REGULATED FINISHING
MADE IN
DOMESTICATED FIBER

Love to

**BLACK LIVES
MATTER**

ShowingUpForRacialJustice.org

You are

The Maya Lin

Community believes

that:

Love is Love

Black Lives Matter

ALL

Kindness Matters

We all belong here

There is no place for hate

We care for one another