



## MEMORANDUM

RE: Erie Community Unit School District Vote to Cease Using GLSEN “Ready, Set, Respect!” Curriculum

DATE: June 21, 2012

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By way of introduction, the Alliance Defense Fund (ADF) is a legal alliance defending the right to free speech through strategy, training, funding, and litigation. ADF exists to educate the public and the government about important constitutional rights of citizens. ADF was recently notified of the vote by the Board of the Erie Community Unit School District to discontinue use of GLSEN’s “Ready, Set, Respect!” Curriculum. The purpose of this memorandum is to support the Board’s decision and the constitutional authority given to the Board to decide what curriculum it will use in its schools.

### ANALYSIS

**1. The School Board Has The Constitutional Authority To Decide What Curriculum It Will Use In Its Schools, And GLSEN Has No Standing To Demand That The Board Continue To Use Its Materials.**

This is not a situation involving a book ban. Rather, it involves the authority of a school board to control the curriculum and decide what materials to use in its schools. The Supreme Court “has long recognized that local school boards have broad discretion in the management of school affairs.” *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 863 (1982).

[P]ublic education in our Nation is committed to the control of state and local authorities, and . . . federal courts should not ordinarily intervene in the resolution of conflicts which arise in the daily operation of school systems. . . . [L]ocal school boards must be permitted to establish and apply their curriculum in such a way as to transmit community values, and . . . there is a legitimate and substantial community interest in promoting respect for authority and traditional values be they social, moral, or political.

*Id.* at 864. *See also id.* at 921 (“If the school board can set the curriculum, select teachers, and determine initially what books to purchase for the school library, it surely can decide which books to discontinue or remove from the school library so long as it does not also interfere with the right of students to read the material and to discuss it.”) (O’Connor, J., dissenting).

Indeed, the Seventh Circuit Court of Appeals, which has jurisdiction over Illinois, has reaffirmed “the broad discretion of a school board to select its public school curriculum,” even when challenged by parents and community members. *Fleischfresser v. Directors of Sch. Dist. 200*, 15 F.3d 680, 686 (7th Cir. 1994). This is particularly true of elementary schools.

[A] public elementary school can shield its five through thirteen-year-olds from topics and viewpoints that could harm their emotional, moral, social, and intellectual development. The “marketplace of ideas,” an important theme in the high school student expression cases, is a less appropriate description of an elementary school, where children are just beginning to acquire the means of expression. Grammar schools are more about learning, including learning to sit still and be polite, than about robust debate.

*Muller by Muller v. Jefferson Lighthouse Sch.*, 98 F.3d 1530, 1538 (7th Cir. 1996).

The Erie School Board is simply exercising its constitutional authority to manage the affairs of its schools, including the selection of curriculum. GLSEN’s complaint is not that the School Board is not teaching these topics; rather, GLSEN is complaining that the Board is not using its pro-homosexual materials to teach these topics. But GLSEN has no constitutional right to demand that its materials be used, just as no other publishing company has any such right. Nor can GLSEN demand that the Board continue to use its materials after giving them a one-year trial run. School boards must remain free to evaluate curriculum and decide what is best for their elementary students. Here, the Erie School Board did just that: it reviewed the materials, received input from the community, and made the decision to find other resources to use in its elementary schools.

## **2. This Is An Effort By GLSEN To Indoctrinate Children With Its Radical Pro-Homosexual Agenda, Trampling Parental Rights In The Process.**

GLSEN’s push to have its materials taught at Erie schools is merely part of its continuing effort to indoctrinate our society into supporting homosexual behavior. These efforts are targeted at the most vulnerable and impressionable among us—our children. Schools are thus being transformed from places of safety and learning to places of unprecedented sexual education. Children as young as five are now routinely subjected to books, programs, and teachings designed to undermine traditional notions of sexuality and the family. Nowhere is this more true than in the GLSEN materials.

GLSEN’s program is targeted for grades K-5. It provides lesson plans on topics such as “Family Diversity” where students are taught that there are a variety of acceptable types of families, including families with two moms or two dads—thus expressly endorsing same-sex “marriage.” In these lessons, students are encouraged to watch television and keep track of all the different types of families that are portrayed. By doing so, it encourages children to watch television shows that promote GLSEN’s pro-homosexual agenda—shows that parents may not want their elementary-age children watching. At the end of the assignment, teachers are required to ask children “Did you see any families that had two moms or two dads? If not, why do you think it would be important to show this family structure along with other family structures?” As

a result, both teachers and students are required to affirm same-sex “marriage” and to agree that it should be portrayed in television and movies on an equal basis with traditional marriage.

The GLSEN curriculum also provides suggested books for use that promote homosexual ideas and acceptance of same-sex “marriage.” Among the books are:

- *My Princess Boy* by Cheryl Kilodavis (K-2). Dyson loves pink, sparkly things. Sometimes he wears dresses. Sometimes he wears jeans. He likes to wear his princess tiara, even when climbing trees. He’s a Princess Boy. This is a story about unconditional love and acceptance.
- *Families* by Susan Kuklin (3-5). This book consists of interviews with the children from 15 different families, including mixed-race, immigrant, gay, lesbian, and divorced, as well as single parents and families for whom religion is a focal point.
- *Uncle Bobby’s Wedding* by Sarah Brannen (PreK-2). Guinea pig Chloe is worried her favorite uncle, Bobby, won’t have time for her anymore when he announces that he is getting married to his boyfriend, Jamie. The book is a celebration of family happiness and the special bonds of family members.
- *The Family Book* by Todd Parr (PreK-2). Celebrating a wide array of family structures and differences, this book also highlights the ways that all families are alike: all like to hug each other, are sad when they lose someone they love, enjoy celebrating special days together, and can help each other to be strong.

### **3. GLSEN Is A Radical, Pro-Homosexual Organization That Has A Long History Of Promoting Inappropriate Materials To Elementary And High School Students.**

While GLSEN seeks to portray itself as a neutral party simply offering harmless anti-bullying curriculum to the Eric Community School District, GLSEN is in fact a radical organization that actively promotes a pro-homosexuality agenda and recommends sexually explicit materials to students.

On its website, GLSEN has a program called BookLink that recommends pro-homosexuality books to educators and students. (See <http://www.glsen.org/cgi-bin/iowa/all/booklink/index.html?state=tools&type=educator>.) Among the books that GLSEN has recommended for use by students are:

- *Reflections of a Rock Lobster* that describes First graders having serial homosexual encounters in elementary school restrooms (p.13), and five and six year old boys playing “sex therapist” (pp. 13-14). (See <http://www.glsen.org/cgi-bin/iowa/all/booklink/record/1593.html>.)
- *Queer 13* which tells of several vivid descriptions of masturbating (pp. 13, 16–17, 222–23), a thirteen-year-old having a graphic, violent homosexual encounter with an adult in a

high school restroom (pp. 43-45), and vivid descriptions of sexualized public restroom experiences (p. 17). (See <http://www.glsen.org/cgi-bin/iowa/all/booklink/record/2156.html>.)

- *Revolutionary Voices: A Multicultural Queer Youth Anthology* which contains stories about two men having anal sex as Boy Scouts watch (p. 103), a S/M “sex worker” describing how he entered the “industry,” praising it as a liberating endeavor (pp. 171–72, 176), and a man fantasizes in a poem about mutilating himself to become a woman (p. 7). (See <http://www.glsen.org/cgi-bin/iowa/all/booklink/record/1473.html>.)

And there are several more books just like this that are recommended on GLSEN’s website. In fact, GLSEN’s recommended books contain explicit themes so frequently that it includes the following disclaimer with many of its summaries: “All BookLink items are reviewed by GLSEN staff for quality and appropriateness of content. However, some titles for adolescent readers contain mature themes. We recommend that adults selecting books for youth review content for suitability.”

The Erie School Board is well within its rights to determine that an organization that recommends these types of books to students cannot be trusted to provide unbiased teaching on the topics of tolerance and anti-bullying. GLSEN dresses itself in sheep’s clothing through curriculum like “Ready, Set, Respect!” But underneath is a radical group with an agenda to encourage and promote homosexuality and to expose children to sexually explicit materials. The School Board acted with great wisdom in determining that materials from a group like GLSEN will not be used in its schools.

#### **4. The Curriculum Stigmatizes Students Who Believe That Marriage Is Between One Man And One Woman And Could Lead To Punishment Of Students For Expressing Religious Viewpoints At School.**

By teaching pro-homosexual viewpoints, the GLSEN curriculum picks one side in a controversial subject and creates the risk that it will be used to punish student expression that is critical of homosexual behavior. Thus, if during one of the class discussions, a student spoke up to express her belief that it is wrong for two people of the same gender to marry, that student could be told to keep quiet, and possibly even subject to punishment. But to overcome students’ First Amendment rights, public schools must demonstrate a regulation is necessary to support a strong governmental interest. Specifically, public school officials must reasonably conclude that individual student expression will result in a “material and substantial disruption” of the school environment before it may be proscribed. *Tinker*, 393 U.S. at 506. Neither “a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint,” *id.* at 509, nor an “undifferentiated fear or apprehension of disturbance [are] enough” to limit student speech. *Id.* at 508.

Speech expressing Biblical viewpoints on family, marriage, and morality, however, does not rise to the level of a material and substantial disruption of the work of the school. The GLSEN curriculum could be used to ban constitutionally protected speech in order to avoid the discomfort caused by an unpopular viewpoint. But the very idea that students should be insulated

from competing ideas they may find unsettling is contrary to the First Amendment. As the Supreme Court has explained, “[t]he Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.” *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

Of course, exposure to opposing views will naturally lead to some discomfort. For “[a]ny variation from the majority’s opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance.” *Tinker*, 393 U.S. at 508. But, as the Supreme Court has explained, “our Constitution says we must take this risk.” *Id.*

Accordingly, the Court has rejected schools’ attempts to condemn or ban student expression that others find “plainly ‘offensive.’” *See Morse v. Frederick*, 551 U.S. 393, 409 (2007). “[M]uch political and religious speech might be perceived as offensive to some.” *Id.* Regardless, “offensive” speech is clearly protected under our Constitution. *See, e.g., Texas v. Johnson*, 491 U.S. 397, 414 (1989) (explaining that “a bedrock principle underling the First Amendment . . . is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”).

The GLSEN curriculum adopts a perspective supporting homosexual behavior without allowing other viewpoints to be discussed. Throughout the curriculum, teachers are instructed to correct students who do not agree with GLSEN’s radical agenda promoting same-sex marriage. By expressly favoring pro-homosexual viewpoints, the GLSEN curriculum takes sides on a controversial matter and fails to teach tolerance of opposing views on this controversial subject. Public schools are constitutionally precluded from favoring speakers with positive views of homosexual behavior over those with differing viewpoints. *See, e.g., Hansen v. Ann Arbor Pub. Sch.*, 293 F. Supp. 2d 780, 790 (E.D. Mich. 2003) (declaring unconstitutional a public school’s hosting of diversity week activities at which views supportive of homosexual behavior were welcomed, while opposing views were banned). Indeed, there is no more clear violation of the First Amendment, which forbids the government from “regulat[ing] speech in ways that favor some viewpoints or ideas at the expense of others.” *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993).

## **5. The GLSEN Curriculum Compels Students and School Officials to Affirm and Promote the Acceptability of Homosexual Behavior.**

The GLSEN curriculum requires both students and school officials to affirm the morality of homosexual behavior and to promote acceptance of such behavior. Teachers are required to teach that same-sex “marriages” are normal, and students are judged upon whether or not they learn to accept and welcome same-sex “marriage.” While all school personnel should obviously seek to teach students to respect differing viewpoints and to not tolerate bullying against anyone, the GLSEN curriculum requires school personnel and students to promote acceptance of homosexual behavior, even when doing so would violate their personal beliefs.

“The First Amendment protects the right of individuals to hold a point of view different from the majority and to refuse to foster . . . an idea they find morally objectionable.” *Wooley v. Maynard*, 430 U.S. 705, 715 (1977). The government transgresses this principle when it “compel[s] affirmance of a belief with which the speaker disagrees,” *Hurley*, 515 U.S. at 573, or “requires the utterance of a particular message favored by the Government,” *Turner Broad. Sys. v. F.C.C.*, 512 U.S. 622, 641 (1994). By requiring both students and school personnel to actively affirm and even promote the acceptance of homosexual behavior and same-sex “marriage,” the GLSEN curriculum intrudes upon the First Amendment rights of both teachers and students, neither of whom forfeit their First Amendment rights at the school house gate.

### CONCLUSION

In sum, the School Board was acting well within its constitutional authority to manage the affairs of its schools when it voted to cease using the GLSEN curriculum. GLSEN has no legal claim to demand that its curriculum must be used. The Board is free to decide what curriculum it believes best teaches community values and accomplishes the state educational goals. Furthermore, the GLSEN curriculum injects lessons promoting homosexual behavior in the curriculum, and intrudes upon the rights of parents to decide when and how these subjects will be discussed with their children. The GLSEN curriculum also infringes students’ and teachers’ First Amendment rights.

We support the School Board’s decision to refuse to use GLSEN’s radical propaganda disguised as “curriculum” in its schools. ADF attorneys are available as a resource to the School Board to answer any questions about the Board’s legal rights.

Sincerely,



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