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Timeline: The Anoka-Hennepin School District's experience with sexual orientation issues

by Elizabeth Dunbar, Minnesota Public Radio

June 20, 2011

1980s: The Anoka-Hennepin School District begins a series of discussions about a new AIDS education curriculum.

1991: The Anoka-Hennepin School Board orders teachers to emphasize sexual abstinence and marriage and monogamy as part of the new AIDS education curriculum.

Summer 1995: The Anoka-Hennepin School Board votes to adopt recommendations for health curriculum as submitted by a health curriculum committee. They also accepted language from a minority report saying homosexuality would not be taught as a "normal, valid lifestyle" in the schools.

November 1998: A transgendered music teacher is hired in the Anoka-Hennepin School District.

February 1999: The transgendered music teacher resigns after a parents group and clergy raised concerns about her hiring.

May 2008: The mother of a high school student in the Anoka-Hennepin School District files a complaint with the Minnesota Department of Human Rights, alleging that two teachers had harassed her son because they thought he was gay.

Feb. 9, 2009: The Anoka-Hennepin School Board adopts a new sexual orientation curriculum policy to get rid of the controversial board directive from 1995. The new policy says sexual orientation topics aren't a part of the curriculum and if the subject comes up in class teachers should take a neutral stance.

Aug. 13, 2009: The Anoka-Hennepin School District pays \$25,000 to settle a case with a former student who claimed two teachers harassed him because they thought he was gay.

September 2009: Two teachers accused of harassing a student they thought was gay are placed on leave.

September 2010: MPR News reports seven students in the Anoka-Hennepin School District committed suicide in the last year. Some of them were gay, and parents and friends said bullying played a role.

Oct. 25, 2010: The Anoka-Hennepin School Board votes to clarify the school district's bullying and harassment policies but leaves the sexual orientation curriculum policy untouched. Gay rights groups had asked the district to remove the part of the policy dealing with neutrality.

December 2010: Superintendent Dennis Carlson sends a voicemail to teachers saying the district determined none of the recent suicides were connected to bullying or harassment.

Jan. 31, 2011: Two lesbian students walk together as part of Snow Days royalty court at Champlin Park High School after the Southern Poverty Law Center and National Center for Lesbian Rights sued to make district officials change a new rule saying court members would walk in individually or accompanied by a parent or favorite teacher rather than as couples.

May 24, 2011: The Southern Poverty Law Center and National Center for Lesbian Rights threaten to file a lawsuit against the Anoka-Hennepin School District for allegedly failing to adequately protect gay students. In a letter, the groups also ask the district to get rid of the sexual orientation curriculum policy, calling it a "gag policy."

June 8, 2011: In an op-ed piece for MPR News, Anoka-Hennepin Superintendent Dennis Carlson defends the district's policy.

June 14, 2011: School district officials and representatives from the Southern Poverty Law Center meet about the policy. The two sides don't reach an agreement but agree to keep talking.

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Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
334.956.8200
www.splcenter.org

January 28, 2011

Dennis Carlson
Superintendent
Anoka-Hennepin School District
11299 Hanson Blvd. N.W.
Coon Rapids, MN 55433

Michael George
Principal
Champlin Park High School
6025 109th Ave. N
Champlin, MN 55327

Dear Superintendent Carlson and Principal George:

The National Center for Lesbian Rights, the Southern Poverty Law Center, and Faegre & Benson, LLP represent Desiree Shelton and Sarah Lindstrom, seniors at Champlin Park High School (CPHS). They have informed us that the school has canceled the royalty processional, a traditional part of its Snow Days Pep Fest and Coronation, in order to keep them from participating as a same-sex couple. We are writing to notify you that the school's actions violate their rights under the First and Fourteenth Amendments to the United States Constitution, the Minnesota Constitution, and the Minnesota Human Rights Act. **If the school does not notify Desiree and Sarah before 12:00 noon on Friday, January 28, 2011, that it is rescinding these discriminatory actions, we will file an action for a temporary restraining order with the U.S. District Court for the District of Minnesota.**

Desiree and Sarah are lesbians and have identified themselves as lesbians to school administrators and many of their fellow students. They are in a dating relationship together. Both girls were selected by their peers as "royalty" for the Snow Days winter formal dance at CPHS. In keeping with tradition, CPHS has planned a school-wide Snow Days Pep Fest and Coronation, scheduled for Monday, January 31, 2011 at 1:27 pm at the Fieldhouse, to promote the Snow Days Week and dance. At this assembly, CPHS has a long tradition of holding a "processional" in which the members of the court enter the assembly walking in pairs. Historically, CPHS allows students elected as royalty to choose their processional partner if they have a preference. When two students who are boyfriend and girlfriend are selected, it has been common practice to allow them to walk in the processional together.

In this case, it was known to staff organizers and school administrators that Desiree and Sarah intended to walk together in order to make a statement about their relationship and their sexual orientation. They told the school officials that two of their male friends on the court had agreed

Exhibit A

to walk together, so no student would have to walk alone. Nevertheless, CPHS told Desiree and Sarah they could not walk together, solely because both girls are of the same sex. When Desiree and Sarah persisted in their request, CPHS responded by informing them on Thursday, January 27, 2011, that it would cancel the traditional processional part of the assembly entirely and the Pep Fest and Coronation would begin with the student royalty already seated.¹

The Minnesota Human Rights Act explicitly prohibits schools from discriminating against students based on their sex or sexual orientation. Minn. Stat. § 363A.13, Subd. 1. Such discrimination is also prohibited by the Fourteenth Amendment to the United States Constitution, see *Romer v. Evans*, 517 U.S. 620 (1996), and the equal protection provision of the Minnesota Constitution, art. I, § 2. The school's actions also violate the First Amendment, which protects the rights of students to bring same-sex dates to school-sponsored events. See *McMillen v. Itawamba County Sch. Dist.*, 702 F.Supp.2d 699 (N.D. Miss. 2010); *Fricke v. Lynch*, 491 F.Supp.381 (D.R.I. 1980).

This case bears a striking similarity to a case decided by a federal court in Mississippi just last year, *McMillen v. Itawamba County School District*. There, a high-school senior, Constance McMillen, sought permission to bring a same-sex date to the senior prom and to wear a tuxedo. 702 F.Supp.2d at 701. The school initially informed her that the two girls could not attend prom together as a couple or slow dance together, because it could "push people's buttons." *Id.* The school also told her that all girls must wear dresses. *Id.* Upon receiving a letter informing the district that these policies were unlawful, the district elected to cancel the prom altogether. *Id.* The court held that Constance's effort to "communicate a message by wearing a tuxedo and to express her identity through attending prom with a same-sex date" was "the type of speech that falls squarely within the purview of the First Amendment," *id.* at 705, and concluded that the district had violated her First Amendment rights under "the clearly established case law." *Id.* at 704. The court also concluded that Constance had shown a substantial threat of irreparable injury and the harm to Constance would "clearly outweigh" the burden that an injunction might cause the district. *Id.* at 705.²

The decision in *Fricke v. Lynch* also affirmed the First Amendment right of students to bring a same-sex date to a school dance. In that case, the principal of the school testified that the school's policy against same-sex dates was based on concern about the potential for disruption and violence at the prom by objecting students. While the court noted that the principal had apparently acted out of a sincere belief that prohibiting the plaintiff from attending prom with another boy was necessary to protect the plaintiff's safety, it nonetheless held that the school could not attempt to protect him by "stifl[ing his] free expression." 491 F.Supp at 388. To permit such actions even in the name of safety or good order "would completely subvert free speech in

¹ According to a telephone call with Paul Cady, attorney for the District, as of this morning, the plan for the procession has evolved to a single-file processional. The discriminatory effect is the same.

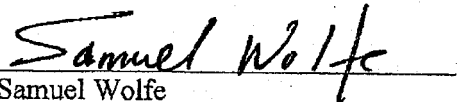
² The court declined to order a preliminary injunction in that case only because the district assured the court that a privately sponsored prom would go forward at which all students, including Constance, would be welcome. *Id.* at 705. When in fact the private prom excluded Constance, she sued again, and district agreed to a substantial settlement. See ACLU Press Release, *Victory for Constance McMillen!* (July 20, 2010), at <http://www.aclu.org/blog/lgbt-rights/victory-constance-mcmillen>.

the schools by granting other students a 'heckler's veto.'" *Id.* at 387. The court granted the plaintiff's request for a preliminary injunction against the district. *Id.* at 389.

Because CPHS's actions in this matter violate clearly established law, we respectfully demand that the Anoka-Hennepin School District and CPHS immediately inform Desiree and Sarah that they may walk in the procession together. We further request that the District make clear to Principal George and to all District staff that it is unlawful and a violation of the First Amendment for schools to censor student expression of their sexual orientation, gender identity, or support for lesbian, gay, bisexual, and transgender (LGBT) rights.

If we do not receive an acceptable response by 12:00 noon today, we will file a motion for a temporary restraining order with the U.S. District Court for the District of Minnesota. In the absence of immediate and satisfactory corrective action by CPHS, judicial intervention will be necessary to prevent an imminent and irreparable violation of Desiree and Sarah's statutory and constitutional rights to participate in the assembly planned for Monday afternoon.

Sincerely,


Samuel Wolfe
Staff Attorney, LGBTQ Rights Project
Southern Poverty Law Center

Shannon Minter
Legal Director
National Center for Lesbian Rights

Michael A. Ponto
Partner
Faegre & Benson LLP

cc: Paul Cady
School District Attorney
Anoka-Hennepin School District
11299 Hanson Blvd. N.W.
Coon Rapids, MN 55433

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

DESIREE SHELTON, SARAH
LINDSTROM;

Civil No. _____

Plaintiffs,

vs.

ANOKA-HENNEPIN SCHOOL
DISTRICT; CHAMPLIN PARK HIGH
SCHOOL; DENNIS CARLSON, in his
official capacity as the Superintendent of
Anoka-Hennepin School District;
MICHAEL GEORGE, in his official
capacity as the Principal of Champlin Park
High School;

COMPLAINT

Defendants.

Plaintiffs DESIREE SHELTON and SARAH LINDSTROM, through their undersigned counsel, sues Defendants ANOKA-HENNEPIN SCHOOL DISTRICT; CHAMPLIN PARK HIGH SCHOOL; DENNIS CARLSON, in his official capacity as the Superintendent of Anoka-Hennepin School District; and MICHAEL GEORGE, in his official capacity as the Principal of Champlin Park High School. By this Complaint, Plaintiff seeks preliminary and permanent injunctive relief, declaratory relief, damages, and costs and attorneys fees.

NATURE OF THE ACTION

1. This is a free speech and civil rights case on behalf of Plaintiffs Desiree Shelton and Sarah Lindstrom, both of whom are twelfth-grade student at Champlin Park

High School ("CPHS"), which is within the Anoka-Hennepin School District (the "District"). Desiree and Sarah are both eighteen years old. Like many of their classmates, Desiree and Sarah have been excited to participate in the annual Snow Days Week celebration, scheduled for January 31 through February 5, 2011. In particular, Desiree and Sarah were both elected by their peers to be members of the Snow Days Royalty Court, and desired to process across the CPHS Field House as a couple during the Pep Fest and Coronation Ceremony.

2. Desiree and Sarah would like to participate in the Pep Fest and Coronation procession as a couple, but are prohibited from doing so because CPHS Principal Defendant Michael George has told them that the Royalty Court procession has been canceled and, instead, the assembly will begin with the Royalty Court seated on stage.¹ Such actions were taken for the purpose of suppressing the viewpoint of Plaintiffs' constitutionally protected speech.

3. Prior to bringing this lawsuit, Desiree and Sarah attempted to informally resolve these issues with the District, including meeting with George, and requesting in writing through their counsel that Defendants reinstate the Pep Fest and Coronation procession and allow Plaintiffs to participate as a couple. *See* Letter from Sam Wolfe to Defendants Carlson and George, dated January 28, 2011, attached hereto as Exhibit A. Plaintiffs' efforts were unsuccessful.

¹ Based on a telephone conversation with school-district attorney Paul H. Cady on Friday, January 28, 2011, it appears that the Defendants are still considering other alternatives to the traditional procession—for example, having the Royalty Court enter the assembly in a single-file line. Any alternative to the traditional procession, however, constitutes a violation of the Plaintiffs' constitutional and statutory rights, and the analysis remains the same.

4. The Defendants' prohibitions and actions against Desiree and Sarah constitute impermissible viewpoint discrimination under the First Amendment to the United States Constitution, violate their equal protection rights under the Fourteenth Amendment to the United States Constitution and the Minnesota Constitution, and constitute prohibited discrimination under the Minnesota Human Rights Act.

JURISDICTION AND VENUE

5. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 for violations of the freedom of expression under the First Amendment to the United States Constitution and violation of equal protection rights under the Fourteenth Amendment to the United States Constitution. Plaintiffs also bring this action pursuant to Minn. Stat. §§ 363A.28, subd. 1 and 363A.33, subd. 1 for violations of Plaintiffs statutory rights as outlined in the Minnesota Human Rights Act.

6. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights). This Court has supplemental jurisdiction over the state law claims being asserted herein pursuant to 28 U.S.C. § 1367.

7. This Court has jurisdiction to declare the rights of the parties and to award any further necessary and proper relief pursuant to 28 U.S.C. §§ 2201 and 2202. Rule 65 of the Federal Rules of Civil Procedure authorizes injunctive relief. This Court has authority to award costs and attorney's fees under 42 U.S.C. § 1988 and Minn. Stat. § 363A.33, subd. 7.

8. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391(b) because the events or omissions giving rise to Plaintiffs' claims occurred in Champlin, Minnesota, which is within the District of Minnesota.

PARTIES

9. Plaintiff Desiree Shelton is, and was at all relevant times to this Complaint, a twelfth-grade student at CPHS. She is eighteen years old. As a student at CPHS, Desiree remains subject to the authority and directives of the Defendants.

10. Plaintiff Sarah Lindstrom is, and was at all relevant times to this Complaint, a twelfth-grade student at CPHS. She is eighteen years old. As a student at CPHS, Sarah remains subject to the authority and directives of the Defendants.

11. Defendant Anoka-Hennepin School District is a school district operating in Minnesota under color of state law and is located in Anoka and Hennepin Counties, Minnesota.

12. Defendant Champlin Park High School is a high school operated by the Anoka-Hennepin School District.

13. Defendant Dennis Carlson is, and was at all relevant times to this Complaint, the Superintendent of Anoka-Hennepin School District. Carlson is sued in his official capacity.

14. Defendant Michael George is, and was at all relevant times to this Complaint, the Principal of CPHS. George is sued in his official capacity.

FACTS GIVING RISE TO THIS ACTION

15. Desiree Shelton is eighteen years old and a senior at CPHS.
16. Desiree is a lesbian.
17. Desiree's sexual orientation is known by many of the students at CPHS as well as the teachers and administrators at CPHS.
18. Sarah Lindstrom is eighteen years old and a senior at CPHS.
19. Sarah is a lesbian.
20. Sarah's sexual orientation is known by many of the students at CPHS as well as the teachers and administrators at CPHS.
21. Desiree and Sarah are currently in a relationship and consider themselves to be girlfriends.
22. Snow Days Week is an annual celebration at CPHS held during the winter. It consists of a week of events starting with a Pep Fest and Coronation assembly on Monday and ends with a formal dance on Saturday. In 2011, Snow Days Week takes place from January 31 through February 5.
23. Every year, the student body at CPHS elects students that comprise the Snow Days Week Royalty Court. Selection as a member of the Royalty Court is considered an honor as the Royalty Court is a central component of Snow Days Week. A Snow Days Week Royalty Court has existed at CPHS since the school was founded in 1992. Freshman, sophomore, and junior classes each select two males and two females from their class to serve on the Royalty Court. The senior class elects six males and six females to serve as royalty. In 2011, voting for royalty occurred on Wednesday, January

19.

24. All CPHS students are encouraged to attend the Snow Days Pep Fest and Coronation Ceremony. The assembly is staged with a decorated arch on one end of the Field House and a stage on the other end.

25. At the beginning of the assembly, the Royalty Court processes into the Field House through the arch. The members of the Royalty Court are coupled as they process into the Field House.

26. Historically, members of the Royalty Court were allowed to choose their processional partner if they had a particular preference. When the students do not have a preference, a CPHS staff member pairs-up the students randomly as opposite-sex couples. When two students who are boyfriend and girlfriend are selected, it has been common practice to allow them to walk in the processional together.

27. As the coupled royalty process into the Field House, the couple is announced, then usually does something humorous in front of the school body, and finally processes across the Field House and onto the stage. As each couple is processing to the stage, an announcer states facts about the particular students. The entire procession of all twelve Royalty Court couples takes approximately five minutes.

28. The rest of the Pep Fest and Coronation Ceremony consists of the announcement of the Snow Days Queen and King, a fun activity, and various performances by the Dance Team and the winner of the Talent Show. In 2011, the assembly is scheduled to take place from 1:27 PM to 2:25 PM—a total of fifty-eight minutes.

29. Both Desiree and Sarah campaigned to be elected by their peers to be members of the Royalty Court so they could participate in the Pep Fest and Coronation procession together. Their intention was to make a political and public statement about gender roles and the visibility of LGBT students and couples at CPHS.

30. Both Desiree and Sarah were elected by their peers to the Snow Days Royalty Court.

31. When Desiree and Sarah found out that they had both been elected to the Royalty Court, they had every expectation that they would be able to process into the Field House as a couple and this was known among many students, CPHS staff, and administrators. Two male members of the senior Royalty Court have volunteered to process into the Field House together to maintain the couple format of the procession.

32. On Tuesday, January 25, Desiree and Sarah were in a CPHS hallway between classes when a teacher informed them that the CPHS administration decided that they could not process in the Pep Fest and Coronation together. The teacher informed them that they would be called to the office of the CPHS principal, Defendant George, for a further explanation.

33. After being notified of the administration's decision, Plaintiffs immediately sought out Mathew Mattson, CPHS Assistant Principal for Activities and a primary organizer of the Snow Days Week activities. Plaintiffs objected and asked why the decision was made. Mattson told them that they would not be allowed to process into the Field House as a couple because it is a tradition for only a boy and girl to process in together, that it would make the two male students who volunteered to process in together

uncomfortable even if they had already agreed to do so, that Plaintiffs had been elected to the Royalty Court as individuals and not as a couple, and that it would make some students uncomfortable to see two women walking together as a couple. Mattson stated that he had discussed the matter with George, and Monica Nikko, the other staff organizer of Snow Days Week, and that they concurred with the decision. Mattson called George's office so that George could further discuss the matter with Plaintiffs, but George was not available at the time. Plaintiffs scheduled a meeting with George for the next day, Wednesday, January 26.

34. At 11:15 AM on Wednesday, January 26, Plaintiffs met with George along with a number of teachers. George heard from Plaintiffs as they explained why they wanted to process into the Field House together. He was primarily worried about how the rest of the student body would react to two women processing in together. He also told Plaintiffs that it was a tradition at CPHS to have only male-female couples processing together in the Pep Fest and Coronation Ceremony. George stated that a final decision had not yet been made because he wanted to consult with the Superintendent of the Anoka-Hennepin School District, Defendant Carlson, and other principals in the school district. A follow-up meeting was scheduled for after school on Thursday, January 27.

35. Later in the day on January 26, the administration was considering having all members of the Royalty Court process individually instead of as couples in response to Plaintiffs' intention to process into the Field House together.

36. After school on Thursday, January 27, Plaintiffs met with Mattson and George. George stated that after consulting with Carlson and other principals, the

decision was made that the procession would be canceled and that the Pep Fest and Coronation would begin with all members of the Royalty Court seated on stage. George stated that this outcome would make everyone comfortable.

37. In this meeting, George further stated that even if the two male students who volunteered to process in together were comfortable with the arrangement, their parents may not be and he did not want to upset the parents. Mattson suggested that even if the male students stated that they were comfortable with the decision now, they may not be three months from now when a picture of them processing together surfaces and rumors get started that they are gay. Mattson hypothesized that they might then get bullied, commit suicide, and their parents would blame the school district.

38. Mr. George also stated that at a School Board meeting on January 24 a number of parents praised the school board for keeping the gays out of the schools and were otherwise hostile toward gays and lesbians. George suggested that this caused him to have concerns about student safety if he allowed Plaintiffs to process into the Pep Fest together.

39. Plaintiffs desire to participate in the procession together in order to peacefully express that they are lesbians and their political and social viewpoint that it is appropriate for gay and lesbian students to process together in long-standing school event.

40. The communicative content of this act would be understood by other students, as well as teachers and administrators, at the assembly.

41. If Plaintiffs are unable to participate together in the Fun Fest and Coronation procession on January 31, 2011, Plaintiffs will suffer irreparable harm for which there is no adequate remedy at law.

42. Defendants have expressed an intent to cancel the procession for the purpose of suppressing the viewpoint of Plaintiffs' constitutionally protected speech.

43. If Defendants are not enjoined from canceling or otherwise altering the Pep Fest in order to suppress Plaintiffs' speech, Plaintiffs will suffer irreparable harm for which there is no adequate remedy at law.

44. At all times, Defendants have acted under color of state law.

COUNT I: FREEDOM OF EXPRESSION

Violation of First Amendment, as applied to the states under the Fourteenth Amendment
(Against All Defendants, 42 U.S.C. § 1983)

45. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs in this Complaint.

46. Defendants are liable pursuant to 42 U.S.C. § 1983 and the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, for promulgating, implementing, ratifying, and/or enforcing rules and acts that deprive, and continue to deprive, Plaintiffs of their right to freedom of expression.

47. In depriving Plaintiffs of these rights, Defendants acted under color of state law. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. § 1983.

COUNT II: FEDERAL EQUAL PROTECTION

Violation of the Equal Protection Clause of the Fourteenth Amendment
(Against All Defendants, 42 U.S.C. § 1983)

48. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs in this Complaint.

49. Defendants are liable pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution, for promulgating, implementing, ratifying, and/or enforcing rules and acts that deprive, and continue to deprive, Plaintiffs of their right to equal protection of the laws.

50. In depriving Plaintiffs of these rights, Defendants acted under color of state law. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. § 1983.

COUNT III: STATE EQUAL PROTECTION

Violation of Minnesota Constitution, Article I, § 2
(Against All Defendants)

51. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs in this Complaint.

52. Defendants are liable pursuant to Article I, section 2 of the Minnesota Constitution for promulgating, implementing, ratifying, and/or enforcing rules and acts that deprive, and continue to deprive, Plaintiffs of their right to equal protection of the laws.

53. In depriving Plaintiffs of these rights, Defendants acted under color of state law.

COUNT IV: DISCRIMINATION
ON THE BASIS OF SEX AND SEXUAL ORIENTATION

Violation of the Minnesota Human Rights Act
(Against All Defendants, Minn. Stat. §§ 363A.01 et seq.)

54. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs in this Complaint.

55. The Minnesota Human Rights Act ("MHRA") prohibits discrimination in access to education based on sex and sexual orientation. *See* Minn. Stat. § 363A.13.

56. The Defendants' actions discriminate against the Plaintiffs on the basis of their sex and sexual orientation in violation of the MHRA.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully pray for the following relief:

1. An order preliminarily and then permanently enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants, employees and all other persons or entities in active conceit or privity or participation with them, from canceling or otherwise materially altering the Snow Days Fun Fest and Coronation procession in such a manner as to deny Plaintiffs' rights, scheduled for January 31, 2011;

2. An order preliminarily and then permanently enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants, employees and all other persons or entities in active conceit or privity or participation with them, from restraining, prohibiting, or suppressing Plaintiffs from processing with one another as a couple at the beginning of the assembly;

3. An order enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants, employees and all other persons or entities in active conceit or privity or participation with them, from taking retaliatory action against Plaintiffs for bringing this lawsuit;

4. A declaration that Defendants' policies violate Plaintiffs' constitutional rights to freedom of expression and equal protection of the law and statutory right to be free from unfair discriminatory practices;

5. An entry of judgment for Plaintiffs against Defendant Anoka-Hennepin School District for damages;

6. Reasonable attorneys' fees and costs; and

7. Any other relief to which Plaintiffs may be entitled.

Dated: January 28, 2011

FAEGRE & BENSON LLP

s/ Michael A. Ponto

Michael A. Ponto, #203944

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Christopher H. Dolan, #0386484

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RIGHTS

Christopher Stoll*

Ilona M. Turner*

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(415) 365-1335

*Motion for admission *pro hac vice*
forthcoming

ATTORNEYS FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

DESIREE SHELTON, SARAH
LINDSTROM;

Civil No. _____

Plaintiffs,

vs.

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

ANOKA-HENNEPIN SCHOOL
DISTRICT; CHAMPLIN PARK HIGH
SCHOOL; DENNIS CARLSON, in his
official capacity as the Superintendent of
Anoka-Hennepin School District;
MICHAEL GEORGE, in his official
capacity as the Principal of Champlin Park
High School;

Defendants.

TO: Defendants Anoka-Hennepin School District, Champlin Park High School, Dennis Carlson and Michael George.

PLEASE TAKE NOTICE that Plaintiffs Desiree Shelton and Sarah Lindstrom will hereby move the Court for a temporary restraining order existing Defendants from cancelling or otherwise altering this traditional processional portion of the Snow Days assembly scheduled for Monday, January 31, 2011, and further requiring defendants to permit Plaintiffs the opportunity to walk together in the processional as a same sex couple. This motion is brought pursuant to Rule 65 of the Federal Rules of Civil Procedure as based on all files, records, and proceedings herein.

Dated: January 28, 2011

FAEGRE & BENSON LLP

s/Michael A. Ponto

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Mary Bauer

(motion for admission pro hac vice forthcoming)

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Christopher Stoll

(motion for admission pro hac vice forthcoming)

Ilona M. Turner

(motion for admission pro hac vice forthcoming)

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San Francisco, CA 94102

(415) 365-1335

**ATTORNEYS FOR PLAINTIFFS DESIREE
SHELTON AND SARAH LINDSTROM**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

DESIREE SHELTON, SARAH
LINDSTROM;

CIVIL ACTION
File No. _____

Plaintiffs,

vs.

ANOKA-HENNEPIN SCHOOL
DISTRICT; CHAMPLIN PARK HIGH
SCHOOL; DENNIS CARLSON, in his
official capacity as the Superintendent of
Anoka-Hennepin School District;
MICHAEL GEORGE, in his official
capacity as the Principal of Champlin Park
High School;

Defendants.

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS'
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

INTRODUCTION

Plaintiffs Desiree Shelton and Sarah Lindstrom are seniors at Champlin Park High School ("CPHS"). They are both lesbians, and are dating each other. The student body at CPHS elected both Plaintiffs to the "Royalty Court" of the school's annual winter formal dance. Traditionally, CPHS promotes the dance by holding a school-wide assembly the week before the dance, during which the 24 members of the court pair off and walk in a processional. This year's assembly is scheduled for Monday, January 31, 2011 at 1:27 p.m.

On Thursday, January 27, 2011, the Defendants informed the Plaintiffs of their intent to cancel the planned processional portion of the assembly rather than allowing the

Plaintiffs to participate as a same-sex couple.¹ The Defendants' cancellation or alteration of the procession in order to suppress the Plaintiffs' peaceful expression of their identity and their affection for one another—through the simple act of walking together at a school assembly—violates clear, long-standing First Amendment principles, and also constitutes unlawful discrimination against the Plaintiffs based on their sexual orientation. The Defendants' actions also convey the harmful and discriminatory message that school administrators believe the Plaintiffs' relationship and those of other lesbian, gay, bisexual and questioning students are less worthy of respect and recognition than the relationships of their heterosexual peers. The Plaintiffs respectfully ask this Court to grant a temporary restraining order or other appropriate injunctive relief to protect their constitutional and statutory rights under the United States Constitution, the Minnesota Constitution, and the Minnesota Human Rights Act.

FACTS

Plaintiffs Desiree Shelton and Sarah Lindstrom identify as lesbians and are dating each other. They are open about their sexual orientation, and school administrators and many of their fellow students know they are lesbians. They are seniors at CPHS, which is part of the Anoka-Hennepin School District. Both were selected by their peers as “royalty” for CPHS's Snow Days winter formal dance. As is tradition, CPHS has planned a school-wide assembly on Monday, January 31, 2011 to promote the dance. The Snow

¹ Based on a telephone conversation with school-district attorney Paul H. Cady on Friday, January 28, 2011, it appears that the Defendants are still considering other alternatives to the traditional procession—for example, having the Royalty Court enter the assembly in a single-file line. Any alternative to the traditional procession, however, constitutes a violation of the Plaintiffs' constitutional and statutory rights, and the analysis remains the same.

Days assembly is an annual event, and has historically included a “processional” in which the members of the Snow Days court enter the assembly walking in pairs. This year’s assembly is scheduled to take approximately one hour. The procession has always been a highlight of the assembly.

In the past, when a boy and a girl in a relationship were both selected for the court, CPHS allowed those students, upon request, to walk in the processional with their significant other. Here, the Plaintiffs asked to walk together—in order to make a statement about their relationship and their sexual orientation. They informed school officials that two of their male friends on the court also have agreed to walk together, so no student would have to walk alone. The Defendants, however, determined that the Plaintiffs could not walk together, solely because they are of the same sex. Defendant Michael George—the principal of CPHS—and Assistant Principal Matthew Mattson both told the Plaintiffs that school officials did not want them to walk together because traditionally only boy-girl couples had walked in the processional and it would make some other students uncomfortable to see two women walking together as a couple. (*See* Shelton Aff. ¶¶ 16-17.) When the Plaintiffs continued to protest, CPHS responded on Thursday, January 27, 2011 first by announcing a plan to have the members of the Royalty Court enter the assembly in a single-file line, and later by announcing the decision to cancel the traditional processional part of the assembly entirely.

ARGUMENT

Desiree and Sarah are entitled to a temporary restraining order (“TRO”) barring the Defendants from canceling the processional portion of the Snow Days assembly (or

otherwise altering the traditional processional) and from denying the Plaintiffs the opportunity to walk together in the processional as opposite-sex couples have done in the past. This Court should grant the Plaintiffs immediate injunctive relief prohibiting the Defendants from interfering with the Plaintiffs' constitutional and statutory rights. The facts and law weigh heavily in the Plaintiffs' favor on all four of the relevant factors: Desiree and Sarah are likely to succeed on the merits of their claims; they will suffer irreparable harm absent the restraining order; the balance of harms favors Plaintiffs; and the public interest favors Plaintiffs. *See Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981).

I. APPLICABLE LEGAL STANDARD

To obtain a TRO, the moving party must demonstrate four elements: "(1) a likelihood of success on the merits; (2) that the movant will suffer irreparable harm absent the restraining order; (3) that the balance of harms favors the movant; and (4) that the public interest favors the movant." *Vital Images, Inc. v. Martel*, No. 07-4195, 2007 U.S. Dist. LEXIS 77869 at *6 (D. Minn. Oct. 19, 2007) (*citing Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981)). No one factor is determinative. Instead, each factor "must be balanced to determine whether they tilt toward or away from granting injunctive relief." *Id.* (*citing West Publ'g Co. v. Mead Data Cent., Inc.*, 799 F.2d 1219, 1222 (8th Cir. 1986)). The moving party has the burden of proving the listed factors. *Id.* Here, a balancing of the factors weighs heavily in favor of granting the limited injunctive relief sought.

II. ALL FOUR FACTORS WEIGH HEAVILY IN PLAINTIFFS' FAVOR.

A. *Plaintiffs Are Likely to Prevail on the Merits of Their Claims.*

The Plaintiffs have alleged violations of their constitutional and statutory rights under the First and Fourteenth Amendments to the United States Constitution, the Minnesota Constitution, and the Minnesota Human Rights Act. As described below, the Plaintiffs are likely to prevail on the merits of each of these claims.

1. FIRST AMENDMENT TO THE U.S. CONSTITUTION

The First Amendment to the U.S. Constitution provides that “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. Amend. I. The First Amendment protects a broad range of expression, including the “expression of one’s identity and affiliation to unique social groups.” *Canady v. Bossier Parish Sch. Bd.*, 240 F.3d 437, 441 (5th Cir. 2001). “In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, [the U.S. Supreme Court has] asked whether ‘[a]n intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it.’” *Texas v. Johnson*, 491 U.S. 397, 404 (1989) (quoting *Spence v. Washington*, 418 U.S. 405, 410-11 (1974)).

Federal courts in numerous decisions have held that expression relating to a student’s sexual orientation or support for LGBT rights is protected under the First Amendment. *See, e.g., Straights & Gays for Equality (SAGE) v. Osseo Area Schs. – Dist. No. 279*, 471 F.3d 908, 913 (8th Cir. 2006) (right to form student club for LGBT students and allies was “expressive libert[y]”); *McMillen v. Itawamba County Sch. Dist.*, 702 F.

Supp. 2d 699, 705 (N.D. Miss. 2010) (right of lesbian student to take a same-sex date to the prom and wear a tuxedo); *Gillman v. Sch. Bd. for Holmes County, Fla.*, 567 F. Supp. 2d 1359, 1375 (N.D. Fla. 2008) (right to wear buttons supportive of LGBT classmates); *Henkle v. Gregory*, 150 F. Supp. 2d 1067, 1076 (D. Nev. 2001) (right to express gay sexual orientation openly at school).

Desiree and Sarah seek to participate in the processional together as a couple in order to express their identity as lesbians and their commitment to one another. They hope to make a statement about gender roles and serve as positive role models for other LGBT students. This is precisely the type of expression that federal courts have repeatedly held is squarely protected by the First Amendment.

The First Amendment's protections apply with equal force to expressive statements made at school as to those made in any other setting. It has been clearly established for more than forty years that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 511 (1969); *see also Lowry ex rel. Crow v. Watson Chapel Sch. Dist.*, 540 F.3d 752, 759-60 (8th Cir. 2008) (citing *Tinker*). Indeed, the U.S. Supreme Court has recognized that the "vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).

This case bears a striking similarity to a case decided by a federal court in Mississippi just last year, *McMillen v. Itawamba County School District*. In that case, an openly lesbian high-school senior sought permission to bring a same-sex date to the

senior prom and to wear a tuxedo. 702 F. Supp. 2d at 701. The school initially informed her that the two girls could not attend prom together as a couple or slow dance together, because it could “push people’s buttons.” *Id.* The school also told her that all girls must wear dresses. *Id.* Upon receiving a letter from the ACLU informing the district that these policies were unlawful, the district elected to cancel the prom altogether. *Id.* The court held that the student’s effort to “communicate a message by wearing a tuxedo and to express her identity through attending prom with a same-sex date” was “the type of speech that falls squarely within the purview of the First Amendment,” *id.* at 705, and concluded that the district had violated her First Amendment rights under “the clearly established case law.” *Id.* at 704. The court also concluded that she had shown a substantial threat of irreparable injury and the harm to the student would “clearly outweigh” the burden that an injunction might cause the district. *Id.* at 705.²

Defendant George has told Desiree and Sarah that the school objects to their expression because some students and parents might be “uncomfortable” with the appearance of a same-sex couple. That is not a legitimate basis upon which to limit student speech. Schools may not limit student speech based on “a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint” or their “urgent wish to avoid the controversy which might result from the expression.” *Tinker*, 393 U.S. at 509, 510. Rather, schools may only limit student speech under the

² The court declined to order a preliminary injunction in that case only because the district assured the court that a privately sponsored prom would go forward at which all students, including Constance, would be welcome. *Id.* at 705. When in fact the private prom excluded Constance, the ACLU sued again, and district agreed to a settlement. See ACLU Press Release, *Victory for Constance McMillen!* (July 20, 2010), at <http://www.aclu.org/blog/lgbt-rights/victory-constance-mcmillen>.

narrow circumstances when they can show that “engaging in the forbidden conduct would ‘materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.’” *Id.*; *Lowry*, 540 F.3d at 760 (school could not punish students for “non-disruptive protest of a government policy”); *see also, e.g., B.W.A. v. Farmington R-7 Sch. Dist.*, 554 F.3d 734, 739 (school district could ban clothing featuring Confederate flag where officials “could reasonably ‘forecast’ a ‘substantial disruption’ based on a specific and recent history of racially charged violent incidents that were directly connected to the expression at issue”). Defendants here cannot meet this heavy burden, as there is no evidence that permitting Desiree and Sarah simply to walk in the procession—the role for which their peers selected them—would cause a substantial and material disruption in school discipline. The school cannot prohibit their peaceful expressive conduct.

The relevance of the potential for disruption when a student brings a same-sex date to a school dance was analyzed in *Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980). In that case, both the plaintiff and another gay student had in fact been the target of violence from other students because they publicly expressed their sexual orientation. *Id.* at 383-84. While the court noted that the principal had apparently acted out of a sincere belief that prohibiting the plaintiff from attending prom with another boy was necessary to protect the plaintiff’s safety, it nevertheless held that the school could not attempt to protect him by “stifl[ing his] free expression.” *See id.* at 388. To permit such actions even in the name of safety or good order “would completely subvert free speech in the schools by granting other students a ‘heckler’s veto.’” *Id.* at 387. The court ultimately granted the

plaintiff's request for a preliminary injunction against the district. *Id.* at 389. The Defendants here have stated their intention to suppress the Plaintiffs' expression precisely in order to grant other students the "heckler's veto" that has been rejected in *Tinker*, *Fricke*, and numerous other cases. Such concerns simply are not a legitimate basis to restrict peaceful student expression that does not involve profanity or other inappropriate conduct.

In this case, Desiree and Sarah specifically asked to walk together in the processional in order to make a statement about their relationship and their sexual orientation. *See Johnson*, 491 U.S. at 404; *McMillen*, 702 F. Supp. 2d at 705. By suddenly canceling the planned processional four days before the assembly (or otherwise altering the traditional processional to prevent the Plaintiffs from participating as a couple), the Defendants seek to stifle the Plaintiffs' freedom of expression simply to cater to the sensibilities of those students who do not approve of same-sex couples and to avoid controversy. This is not permitted under the First Amendment.

2. EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION

Plaintiffs are also likely to succeed on their claims under the Equal Protection Clause of the United States Constitution. That clause provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The concept of "equal protection" requires, simply, "that 'all persons similarly circumstanced shall be treated alike.'" *Plyler v. Doe*, 457 U.S. 202, 216 (1982); *see also City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (Equal Protection Clause is "essentially a direction that all persons similarly situated should be

treated alike”). At a minimum, that means that government officials may not single out individuals for disfavored treatment based solely on their membership in an unpopular group. *See U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973).

Under the Equal Protection Clause, strict scrutiny applies to government actions that disadvantage a minority group, like gays and lesbians, that has experienced a “history of purposeful unequal treatment” or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities.” *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 313 (1976) (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973)). Government action that discriminates on the basis of sexual orientation therefore bears all the hallmarks of legislative classifications that traditionally have been subjected to strict equal protection scrutiny. *See Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 997 (N.D. Cal. 2010) (concluding that “strict scrutiny is the appropriate standard of review to apply to legislative classifications based on sexual orientation”). Under that strict standard, government action is presumptively unconstitutional unless it is “narrowly tailored” to achieve a ‘compelling’ government interest.” *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007). The school’s arbitrary action in this case cannot meet that demanding standard.

In the circumstances of this case, the Court may readily conclude that plaintiffs are likely to prevail on their equal protection claim ever without determining whether heightened scrutiny applies. Regardless of the level of scrutiny, discrimination against a particular group is unlawful under the Equal Protection Clause unless the government action in question “bear[s] a rational relationship to a legitimate governmental purpose.”

Romer v. Evans, 517 U.S. 620, 635 (1996). The United States Supreme Court has held that mere prejudice against an unpopular group, such as gays and lesbians, cannot itself constitute a legitimate governmental purpose. *See id.*; *Moreno*, 413 U.S. at 534; *Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (O'Connor, J., concurring). Deference to community members' disapproval of a particular class of citizens is equally invalid as a governmental purpose. Laws adopted for the improper purpose of giving effect to private prejudice are so offensive to equal protection that they likewise violate the Equal Protection Clause no matter the standard of review that otherwise might apply to the classification at issue.

For example, in *Palmore v. Sidoti*, 466 U.S. 429 (1984), the Supreme Court struck down a lower court order granting sole custody to a father because his ex-wife, a white woman, was in a new relationship with a black man, which the lower court found would be damaging for the child because of the likely negative reactions of third parties. *Id.* at 434. Because the family court's decision was based on an impermissible consideration—private racial bias—analysis of the governmental interest and its connection to the classification, even under the strict scrutiny usually applied to race classifications, was unnecessary. The government's action was simply invalid. *Id.* at 433-34. This rule applies equally to classifications that would otherwise receive lesser scrutiny. *See Kelo v. City of New London*, 545 U.S. 469, 490-91 (2005) (Kennedy, J., concurring) (“a court applying rational-basis review under the Equal Protection Clause must strike down a government classification that is clearly intended to injure a particular class of private parties, with

only incidental or pretextual public justifications”). *See also Cleburne*, 473 U.S. at 446-47, 448-49; *Moreno*, 413 U.S. at 533-36.

In this case, the school has threatened to prohibit Desiree and Sarah from walking together in the processional solely because the two girls are lesbians and in a same-sex relationship. The principal told them that the school was concerned about the reactions of their fellow students, some of whom disapprove of gays and lesbians. That is not a valid governmental purpose under any formulation of the Equal Protection Clause. Such actions violate the Equal Protection Clause “in the most literal sense” and are presumptively invalid. *Romer*, 527 U.S. at 633.

3. EQUAL PROTECTION PROVISION OF THE MINNESOTA CONSTITUTION

Plaintiffs’ claims are similarly likely to succeed under the equal protection provision of the Minnesota Constitution. *See* Minn. Const. art. I, § 2. That provision is independent of its federal counterpart, and provides even stronger protection against discrimination. *State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991) (“[I]n interpreting our state equal protection clause, ‘we are not bound by federal court interpretation of the federal equal protection clause.’”) (quoting *AFSCME Councils 6, 14, 65 & 96 v. Sundquist*, 338 N.W.2d 560, 580 (Minn. 1983) (Yetka, J., dissenting)). In particular, the Minnesota Supreme Court has adopted a version of the rational basis test that is even more demanding than the ordinary federal standard. Under that standard, termed “the Minnesota rational basis analysis,” courts are “unwilling to hypothesize a rational basis to justify a classification, as the more deferential federal standard requires. Instead, we have required a reasonable connection between the actual, and not just the theoretical, effect of

the challenged classification and the statutory goals.” *Id.* at 889.; *see also Scott v. Minneapolis Police Relief Ass’n*, 615 N.W.2d 66, 74 & n.15 (Minn. 2000). For the reasons discussed in the previous section, the school’s decision to cancel the processional solely because it anticipated that some community members would disapprove of Desiree and Sarah’s sexual orientation cannot satisfy that standard.

4. MINNESOTA HUMAN RIGHTS ACT

The Minnesota Human Rights Act (MHRA) prohibits discrimination in access to any educational institution based on a variety of enumerated characteristics including sex and sexual orientation. Minn. Stat. § 363A.13. *See Montgomery v. Indep. Sch. Dist. No. 709*, 109 F. Supp. 2d 1081, 1093 (D. Minn. 2000). Desiree and Sarah have been elected to the Royalty Court by their peers and seek to participate in the processional on an equal basis with heterosexual couples who have participated in years past. The Defendants proposed actions would deny them the right to participate as a couple, simply because Desiree and Sarah are lesbians in a same-sex couple. The Defendants’ actions blatantly discriminate against the Plaintiffs on the basis of their sex and sexual orientation in violation of the MHRA.

B. The Plaintiffs Will Suffer Irreparable Harm in the Absence of Injunctive Relief

In the absence of injunctive relief, the Plaintiffs will suffer an irreparable violation of their constitutional and statutory rights. When a violation of constitutionally protected rights is at stake, no further showing of irreparable injury is required. *See Brewer v. West Irondequoit Cent. Sch. Dist.*, 212 F.3d 738, 744-45 (2d Cir. 2000); *Associated Gen.*

Contractors of Cal., Inc. v. Coal. for Economic Equity, 950 F.2d 1401, 1410 (9th Cir. 1991). The presumption of irreparable injury is particularly strong in cases involving infringement of First Amendment rights. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury” for purposes of preliminary injunctive relief. *Elrod v. Burns*, 427 US 347, 373 (1976).

As seniors, Desiree and Sarah will never have the opportunity again of being honored by their high school classmates as a same-sex couple in the Snow Days procession. If Defendants succeed in canceling the procession or otherwise prohibiting Plaintiffs from participating as a couple, Plaintiffs and the entire student body will understand that turn of events to mean that same-sex couples are not afforded the same dignity and rights as other students at CPHS, which would be a serious harm to Plaintiffs. Moreover, if the procession is cancelled or altered by requiring the members of the Royalty Court to proceed single file rather than in pairs, some students may blame Desiree and Sarah for this unprecedented and disfavored change from tradition.

C. The Balance of Harms Weighs in Favor of Granting Injunctive Relief to Plaintiffs

In contrast, if the court grants the requested relief, Defendants will not suffer any harm. Desiree and Sarah will simply be permitted to participate in the procession together as prom royalty just as their opposite-sex predecessors have done. The requested injunction would do nothing more than require the procession to transpire as had been the Defendants’ plan, and assure that Desiree and Sarah are given an opportunity to promenade together as a couple.

Desiree and Sarah's classmates elected them to the Royalty Court with knowledge that they are a same-sex couple. There is no evidence that Desiree and Sarah will not be well received by their classmates attending the assembly. If Defendants are concerned about possible disruption, an injunction will not limit their ability to fairly apply rules of conduct to punish any students who display disruptive behavior. Indeed, to the extent needed, it is the school's duty to provide meaningful security measures in protection of Desiree and Sarah's First Amendment right to expressive conduct. *See, e.g., Fricke*, 491 F. Supp. at 388 (where disruption may occur in response to expressive conduct and it may be tempered through meaningful security measures, the school has a duty to provide such measures, and may not instead permit a "heckler's veto" of protected expressive conduct). Therefore, the balance of harms favors providing injunctive relief. *See McIntire v. Bethel Sch. Indep. Sch. Dist. No. 3*, 804 F. Supp. 1415, 1429 (W.D. Okla. 1992) ("[T]he threatened injury to Plaintiffs—impairment and penalization of the exercise of their First Amendment rights—outweighs whatever damage, if any, the proposed injunction may cause Defendants.").

D. The Public Interest Supports Injunctive Relief.

Injunctive relief to stop the Defendants from canceling or otherwise altering the planned royalty procession simply because a same-sex couple plans to participate will serve the public interest. Protecting constitutional rights is "always in the public interest." *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 752 (8th Cir. 2008) (citing *Phelps-Roper v. Nixon*, 509 F.3d 480, 485 (8th Cir. 2007)); *see also Terminiello v. City of Chi.*, 337 U.S.1, 4 (1937) ("The right to speak freely and to promote diversity of

ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.”); *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 970 (8th Cir. 1999) (“[T]he public interest favors protecting core First Amendment freedoms.”). As discussed above, issuing injunctive relief is necessary to protect the Plaintiffs’ constitutional rights to freedom of expression and equal protection; therefore, granting the injunction is in the public interest.

Nowhere is the “vigilant protection of constitutional freedoms” more important than in the public schools. *Tinker*, 393 U.S. at 512 (“The 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.’”). Here, in the absence of an injunction, the Defendants will neutralize the Plaintiffs’ constitutionally protected expression intended to communicate that LGBT individuals and couples are due similar privileges and dignity as heterosexual individuals and couples. The Defendants’ disagreement with that viewpoint does not diminish the public value of protecting Desiree and Sarah’s constitutional right to convey that message. Such a message—core to the speakers’ identity—is due the greatest protection. The public interest weighs heavily in favor of granting the requested injunction.

III. THE COURT SHOULD NOT REQUIRE THE PLAINTIFFS TO POST A BOND.

Here, no costs or damages can be incurred or suffered by the Defendants—even if they are ultimately “wrongfully enjoined or restrained.” The Plaintiffs seek only to enjoin the Defendants from canceling a much-anticipated school tradition and from denying a

same-sex couple the opportunity to walk together in the processional as opposite-sex couples have done in the past. The assembly itself is only scheduled to last one hour, and the processional—which traditionally involves six pairs of students walking across the gymnasium floor—represents just a fraction of that time. Moreover, the Defendants simply cannot be harmed by an injunction that requires them to proceed with the planned processional at an annual assembly. Therefore, no bond should be required.

CONCLUSION

The Defendants have publicly stated their intention to violate the Plaintiffs' constitutional and statutory rights on Monday, January 31, 2011. Because each of the four *Dataphase* factors weighs in the Plaintiffs' favor, the Plaintiffs are entitled to a TRO barring the Defendants from canceling (or otherwise altering) the traditional processional portion of the Snow Days assembly and requiring that the Defendants permit Desiree and Sarah the opportunity to walk together in the processional, just as opposite-sex couples have done in the past.

Dated: January 28, 2011

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IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

DESIREE SHELTON, SARAH LINDSTROM;)

Plaintiffs,)

vs.)

ANOKA-HENNEPIN SCHOOL DISTRICT;)

CHAMPLIN PARK HIGH SCHOOL;)

DENNIS CARLSON, in his official capacity as)

the Superintendent of Anoka-Hennepin School)

District; MICHAEL GEORGE, in his official)

capacity as the Principal of Champlin Park)

High School;)

Defendants.)

File No. _____

**AFFIDAVIT OF
DESIREE SHELTON**

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Desiree Shelton, first being duly sworn, do depose and state the following based upon my personal knowledge.

1. I am a Plaintiff in the above-captioned matter and am a senior at Champlin Park High School ("CPHS"). I live in Champlin, Minnesota.

2. My date of birth is October 12, 1992 and I am 18-years-old.

3. I have attended schools in the Anoka-Hennepin School District since approximately 2004. I attended Jackson Middle School and have been a student at CPHS throughout high school.

4. Upon graduation in May, I plan on attending the Academy of Art University in San Francisco, CA and intend to pursue a career in photography and graphic design.

5. I am a lesbian and am currently in a relationship with Sarah Lindstrom ("Sarah"),

also a Plaintiff in the above-captioned matter. Sarah and I are of the same sex. It is commonly known among many students, staff, and administrators at CPHS that Sarah and I are lesbians and that we are girlfriends.

6. Snow Days Week is an annual celebration at CPHS held during the winter. It consists of a week of events starting with a Pep Fest and Coronation assembly on Monday and ends with a formal dance on Saturday. This year, Snow Days Week takes place from January 31 through February 5.

7. Every year, the student body elects students that comprise the Snow Days Week Royalty Court. Selection as a member of the Royalty Court is considered an honor and a central component of Snow Days Week. My understanding is that a Snow Days Week Royalty Court has existed at CPHS since the school was founded in 1992. Freshman, sophomore, and junior classes each select two males and two females from their class to serve on the Royalty Court. The senior class elects six males and six females to serve as royalty. This year, voting for royalty occurred on Wednesday, January 19. The entire student body also vote for Snow Days Queen and King from the 12 seniors elected as royalty. This year, voting for Queen and King occurred on Wednesday, January 26. The elected Queen and King will be announced at the Snow Days Pep Fest and Coronation to be held on January 31.

8. All CPHS students are encouraged to attend the Snow Days Pep Fest and Coronation assembly. I attended the Snow Days Pep Fest and Coronation my freshman year. The assembly is staged with a decorated arch on one end of the Field House and a stage on the other end.

9. At the beginning of the assembly, the Royalty Court processes into the Field House through the arch. The members of the Royalty Court are coupled as they process into the

Field House.

10. Historically, members of the Royalty Court are allowed to choose their processional partner if they have a particular preference. When the students do not have a preference, a CPHS staff member pairs-up the students randomly as opposite-sex couples. When two students who are boyfriend and girlfriend are selected, it has been common practice to allow them to walk in the processional together.

11. As the coupled royalty process into the Field House, the couple is announced, then the couple usually does something humorous in front of the school body, and finally each couple processes across the Field House and onto the stage. As each couple is processing to the stage, an announcer states facts about the particular students. The entire procession of all 12 Royalty Court couples takes approximately five minutes.

12. The rest of the Pep Fest and Coronation Ceremony consists of the announcement of the Snow Days Queen and King, a fun activity, and various performances by the Dance Team and the winner of the Talent Show. This year the assembly is scheduled to take place from 1:27 PM to 2:25 PM, a total of 58 minutes.

13. A number of months ago, I decided that I wanted to be chosen as a member of the royalty for the Snow Days Pep Fest & Coronation and formal dance. I wanted to be a member of the Royalty Court, in part, to make a statement about gender roles and to serve as a role model for other lesbian, gay, bisexual or transgender ("LGBT") students.

14. I also encouraged other lesbians at CPHS, including my girlfriend Sarah, to actively seek nomination to the Royalty Court. I was aware of a number of recent suicides among LGBT students in the school district and believed having LGBT students process in the Pep Fest and Coronation together would boost morale among LGBT students and the student

body at large. My desire was to be able to process into Field House with a member of the same-sex, ideally my girlfriend Sarah. When I found out that we had both been elected to the Royalty Court late last week, I had every expectation that we would be able to process into the Field House as a couple and it was known among many students, CPHS staff, and administrators that we intended to do so. Two male members of the senior Royalty Court have volunteered to process into the Field House together to maintain the couple format of the procession.

15. On Tuesday, January 25, Sarah and I were in a CPHS hallway between classes when a teacher informed both of us that the CPHS administration decided that we could not process in the Pep Fest and Coronation together. The teacher informed us that we would be called to the office of the CPHS Principal, Mr. Michael George for a further explanation.

16. After being notified off the administration's decision, we immediately sought out Mr. Mathew Mattson, CPHS Assistant Principal for Activities and a primary organizer of the Snow Days Week activities. We objected and asked why the decision was made. Mr. Mattson told us that we would not be allowed to process into the Field House as a couple because it is a tradition for only a boy and girl to process in together, that it would make the two guys volunteering to process uncomfortable even if they had already agreed to do so, that we had been elected to the Royalty Court as individuals and not as a couple, and that it would make some other students uncomfortable to see two women walking together as a couple. Mr. Mattson stated that he had discussed the matter with Mr. George, the Principal, and Ms. Monica Nikko, the other staff organizer of Snow Days Week, and that they concurred with the decision. Mr. Mattson called Mr. George's office so he could further discuss the matter with us, but he was not available at the time. We scheduled a meeting with Mr. George for the next day, Wednesday, January 26.

17. At 11:15 AM on Wednesday, January 26, Sarah and I met with Mr. George along with a number of teachers. Mr. George heard us out as we explained why we wanted to process into the Field House together. He was primarily worried about how the rest of the student body would react to two women processing in together. He also told us that it was a tradition at CPHS to have only male/female couples processing together in the Pep Fest and Coronation Ceremony. Mr. George stated that a final decision had not yet been made because he wanted to consult with the Superintendent of the Anoka-Hennepin School District, Mr. Denny Carlson, and other principals in the school district. A follow-up meeting was scheduled for after school on Thursday, January 27.

18. Later in the day on January 26, I became aware through a number of teachers and students that, in response to our intention to process into the Field House together, the administration was considering having all members of the Royalty Court process individually instead of as couples.

19. After school on Thursday, January 27, Sarah and I met with Mr. Mattson and Mr. George. Mr. George stated that after consulting with Superintendent Carlson and other principals, the decision was made that the procession would be canceled and that the Pep Fest and Coronation would begin with all members of the Royalty Court seated on stage. Mr. George stated that this outcome would make everyone comfortable.

20. In this meeting, Mr. George further stated that even if the two male students who volunteered to process in together were comfortable with it, their parents may not be and he did not want to upset the parents. Mr. Mattson suggested that even if the male students stated that they were comfortable with the decision now, they may not be three months from now when a picture of them processing together surfaces and rumors get started that they are gay. Mr.

Mattson hypothesized that they might then get bullied, commit suicide, and their parents would blame the school district.

21. Mr. George also stated that at a School Board meeting on January 24 a number of parents praised the school board for keeping the gays out of the schools and were otherwise hostile toward gays and lesbians. Mr. George suggested that this caused him to have concerns about student safety if he allowed Sarah and me to process into the Pep Fest together.

22. Earlier today, January 28, Sarah and I were called down to the Activities Office at CPHS. Once we arrived a secretary informed us that the CPHS administration had changed its mind again and decided that, instead of starting the Pep Fest and Coronation Ceremony on stage, members of the Royalty Court would individually process in escorted by the student's choice of a parent or teacher. I would still prefer to process in with Sarah for all of the reasons identified in this affidavit.

23. One of the primary reasons given by Mr. Mattson and Mr. George to deny us the right to process into the assembly as a couple was that the school tradition is to have only male/female students process in together. Yet the decision to cancel the procession altogether seems to me to be a further departure from tradition than allowing us to participate as a same-sex couple.

24. I believe that Sarah and I have the right, regardless of our sex or sexual orientation, to process into the Pep Fest and Coronation Ceremony together as other members of the Royalty Court have had the ability to do for years. I think it would be positive for the school and would allow us to be positive role models for other LGBT students. Most of all, I want the privilege of escorting my girlfriend through the Field House during the 2011 Snow Days Pep Fest and Coronation.

THIS CONCLUDES MY AFFIDAVIT.

Desiree Shelton
Desiree Shelton

Subscribed and sworn to before me
this 28th day of January 2011.

Candace M Brennan
Notary Public

My commission expires: 1/31/15

fb.us.6320404.02



IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

DESIREE SHELTON, SARAH LINDSTROM;)	
)	File No. _____
Plaintiffs,)	
)	
vs.)	
)	
ANOKA-HENNEPIN SCHOOL DISTRICT;)	
CHAMPLIN PARK HIGH SCHOOL;)	
DENNIS CARLSON, in his official capacity as)	
the Superintendent of Anoka-Hennepin School)	
District; MICHAEL GEORGE, in his official)	
capacity as the Principal of Champlin Park)	
High School;)	
)	
Defendants.)	
)	

**AFFIDAVIT OF
SARAH LINDSTROM**

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Sarah Lindstrom, first being duly sworn, do depose and state the following based upon my personal knowledge.

1. I am a Plaintiff in the above-captioned matter and am a senior at Champlin Park High School ("CPHS"). I live in Champlin, Minnesota.
2. My date of birth is November 13, 1992 and I am 18-years-old.
3. I have attended schools in the Anoka-Hennepin School District since approximately 2000. I attended Oxbow Elementary School, Jackson Middle School and have been a student at CPHS throughout high school.
4. Upon graduation in May, I plan to pursue a career in music.
5. I am a lesbian and am currently in a relationship with Desiree Shelton ("Dez"), also a Plaintiff in the above-captioned matter. Dez and I are of the same sex. It is commonly

known among many students, staff, and administrators at CPHS that Dez and I are lesbians and that we are girlfriends.

6. I have carefully reviewed the Affidavit of Desiree Shelton prepared for the above-captioned matter and I fully concur with all of her statements for which I have personal knowledge, including, but not limited to, Paragraphs 6-12, 15-17, and 19-22.

7. I attended the Snow Days Pep Fest and Coronation my sophomore year.

8. I campaigned to be elected to the Royalty Court because I wanted to participate in the Pep Fest and Coronation Ceremony procession with Dez. I also wanted to make a statement about gender roles and the presence of LGBT students at CPHS. I believe a same-sex couple processing in together at the event would be something positive for the school.

9. When I found out that we had both been elected to the Royalty Court, I anticipated that we would be able to enter into the Field House as a couple and we made it known among many students, CPHS staff, and administrators that we intended to do so.

10. I believe it is important that Dez and I be allowed to process as a couple in the Pep Fest and Coronation Ceremony because I don't want the school administrators to stop us from expressing who we are.

THIS CONCLUDES MY AFFIDAVIT.

Sarah E. Lindstrom
Sarah Lindstrom

Subscribed and sworn to before me
this 28th day of January 2011.

Candace M. Brennan
Notary Public

My commission expires: 1/31/15

fb.us.6320409.02



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

SETTLEMENT CONFERENCE

Desiree Shelton, and
Sarah Lindstrom,

Plaintiffs,

v.

Anoka-Hennepin School District,
Champlain Park High School,
Dennis Carlson, and
Michael George,

Defendants.

COURT MINUTES

BEFORE: Susan Richard Nelson
U.S. District Judge

Case No: CV-11-215 SRN/JSM
Date: January 29, 2011
Court Reporter:
Tape Number:
Time Commenced: 9:00 a.m.
Time Concluded: 3:30 p.m.
Time in Court: 6 Hours & 30 Minutes

APPEARANCES:

For Plaintiff: Christopher H. Dolan, Emily E. Chow, Michael A. Ponto, Samuel Wolfe
For Defendant: Clifford M. Greene, Erin Sindberg Porter

Hearing on: **Settlement Conference**

PROCEEDINGS:

- ☒ Settlement reached.
☐ No settlement reached.

s/ Beverly C. Riches
Signature of Judicial Assistant

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

DESIREE SHELTON, SARAH
LINDSTROM;

Civil No. 11-CV-215

Plaintiffs,

vs.

NOTICE OF DISMISSAL

ANOKA-HENNEPIN SCHOOL
DISTRICT; CHAMPLIN PARK HIGH
SCHOOL; DENNIS CARLSON, in his
official capacity as the Superintendent of
Anoka-Hennepin School District;
MICHAEL GEORGE, in his official
capacity as the Principal of Champlin Park
High School;

Defendants.

TO: Defendants Anoka-Hennepin School District, Champlin Park High School, Dennis Carlson and Michael George and their counsel, Clifford M. Greene, Erin Sindberg Porter, 200 South Sixth Street, Suite 1200, Minneapolis, MN 55402.

Pursuant to Rule 41 (a)(1)(i) of the Federal Rules of Civil Procedure, and in light of the settlement reached on January 29, 2011, Plaintiffs Desiree Shelton and Sarah Lindstrom, acting by and through their undersigned counsel, hereby dismiss the above-captioned matter, including all claims set forth therein, with prejudice.

Dated: January 31, 2011

FAEGRE & BENSON LLP

s/Michael A. Ponto

Michael A. Ponto, #203944

mponto@faegre.com

Christopher H. Dolan, #0386484

cdolan@faegre.com

Emily E. Chow, #0388239

echow@faegre.com

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SOUTHERN POVERTY LAW CENTER

Mary Bauer

(motion for admission pro hac vice forthcoming)

Sam Wolfe

(motion for admission pro hac vice forthcoming)

400 Washington Avenue

Montgomery AL 36104

(334) 956-8277

NATIONAL CENTER FOR LESBIAN
RIGHTS

Christopher Stoll

(motion for admission pro hac vice forthcoming)

Ilona M. Turner

(motion for admission pro hac vice forthcoming)

870 Market Street, Suite 370

San Francisco, CA 94102

(415) 365-1335

**ATTORNEYS FOR PLAINTIFFS DESIREE
SHELTON AND SARAH LINDSTROM**

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Desiree Shelton and Sarah Lindstrom,

Civil No. 11-215 SRN/JSM

Plaintiffs,

v.

ORDER OF DISMISSAL

Anoka-Hennepin School District
Champlin park High School,
Dennis Carlson *in his capacity as the
Superintendent of Anoka-Hennepin School
District*, Michael George, *in his capacity
as the Principal of Champlin Park High
School*,

Defendants.

Christopher H. Dolan, Emily E. Chow, and Michael A. Ponto, Faegre & Benson LLP, 90 South Seventh Street, Suite 2200, Minneapolis, MN, and Samuel Wolfe, Southern Poverty Law Center, 400 Washington Avenue, Montgomery, AL, counsel for Plaintiffs.

Clifford M. Greene and Erin Sindberg Porter, Greene Espel PLLP, 200 South Sixth Street, Suite 1200, Minneapolis, MN, counsel for Defendant.

Based upon the Settlement reached by the parties on January 29, 2011 [Doc. 6],

IT IS ORDERED that this action is hereby dismissed with prejudice and without costs or disbursements to any party.

Dated: January 31, 2011

s/ Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge

StarTribune



Champlin Park High is sued to allow lesbian royalty

Article by: , Star Tribune

Updated: January 28, 2011 - 11:51 PM

A federal lawsuit was filed Friday on behalf of two openly lesbian members of Champlin Park High School's Snow Days royalty who want to walk into a pep fest Monday as a couple.

The suit is the most dramatic development in a controversy sparked by the school's decision to change its tradition of having the 24 members of student royalty walk in as couples, boys paired with girls. Instead, the students will walk in individually, accompanied by a parent, teacher or other adult mentor.

The students at the center of the tempest -- seniors Desiree Shelton and Sarah Lindstrom -- did not initiate the lawsuit. It was filed Friday in U.S. District Court in Minneapolis on their behalf by representatives of the Southern Poverty Law Center, the National Center for Lesbian Rights, and the Faegre &

Benson law firm.


The school says it's just trying to make everyone as comfortable as possible and to prevent any possible heckling in the face of a situation it hasn't experienced before. But on Friday, some students charged that it is discriminating against gay and lesbian students.

Students elect the 24 members of the Snow Days royalty. Twelve seniors and four students from each of the Brooklyn Park school's other three grades, equally divided between boys and girls, are chosen.

Junior Justin Christoffer had an opinion as school let out Friday: "To be honest, I think [the school's decision] is kind of stupid. They say we're not supposed to discriminate based on sexual orientation, and when they changed things, they just did that."

Anoka-Hennepin School District officials said the decision was made to stress that students should be honored as individuals, and not by sexual preference. Champlin Park Principal Michael George made the call earlier this week after consulting with district officials, said district spokeswoman Mary Olson. George could not be reached for comment Friday.

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Olson said the feeling behind the decision was "just that this would be more comfortable for everyone.

"The thought was that the old approach was an assumption that everyone in royalty was heterosexual when that might not be the case," she said. "By doing [the procession] the individual way, there is no assumption that they're heterosexual or homosexual; they're simply Champlin Park students being selected as royalty."

She said the change was not the result of any complaints, and had created no big hubbub in the school. "My understanding is that there is a difference of opinion, but that most students are fine with that," she said.

Some students said otherwise on Friday.

"If an African-American and a white person wanted to walk together, there would be no objection at all," said junior Shannon Haver. "In every class we have a ... thing that says you cannot discriminate because of race, religion, ethnicity, sexual orientation, age or ability. They're in every classroom. But the fact that they're not following what they teach is going to create an environment [among students] where, they're thinking, 'If they don't have to, we don't have to.'"

Shelton said she and Lindstrom still plan to be at the pep fest, but weren't sure how they were going to handle the procession.

"Right now, I really don't have an answer for that," she said. "We will be in the whole thing, we just don't know how it's going to work. ... I never thought it was going to be a big deal. But when they turned us down, I was disappointed."

Lindstrom declined to comment.

Not all students were foursquare behind Shelton and Lindstrom.

"I think it should be the traditional way like they've always had it," said junior Nick Stadler. "Personally, I'm against [Shelton and Lindstrom walking together]. But I don't really care. I have a few friends who are gay and lesbian."

English teacher Jann Garofano said that she didn't have a problem with the school doing away with the procession of paired students, but that the timing made her cringe.

"I think it's fine to recognize people as individuals," she said. "But why couldn't they have done that before this?"


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Haver said students who favor letting Shelton and Lindstrom walk together plan to wear red shirts to the pep fest and carry supportive signs. She said there are no plans to try to disrupt the ceremonies.

Mary Bauer, legal director of the Southern Poverty Law Center, one of the groups that brought the lawsuit, said, "It's kind of astonishing that two girls walking together is so shameful and terrible for other people to witness" that the event would be altered. Bauer said a hearing on the suit is scheduled for Monday morning. The Associated Press reported that a mediation session was set for Saturday morning.

The Anoka-Hennepin district, the state's largest, has had other recent controversies involving gay and lesbian student issues. Last fall, after a number of student suicides in the district, gay, lesbian, bisexual and transgender advocates charged that some involved students harassed because of their real or perceived GLBT orientation. In December, the district said investigations into the deaths found no connection with bullying.

Staff writer Abby Simons contributed to this report. Norman Draper • 612-673-4547

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Anoka-Hennepin schools threatened with suit over Snow Days coronation barring lesbian couple

By Andy Birkey | 01.28.11 | 12:18 pm

The Southern Poverty Law Center, the National Center for Lesbian Rights, and Faegre & Benson, LLP, sent a letter to the Anoka-Hennepin School District on Friday threatening to take the district to court if it does not allow a lesbian couple elected by the student body to walk together during the Champlin Park High School Snow Days coronation ceremony on Monday.

The district changed the ceremony after two lesbian students, Desiree Shelton and Sarah Lindstrom, were elected by the student body to be a part of the event. For years, students walked in as couples, and students could choose who they wanted to walk with, but when Shelton and Lindstrom were elected, the district changed the policy.

“We are writing to notify you that the school’s actions violate their rights under the First and Fourteenth Amendments to the United States Constitution, the Minnesota Constitution, and the Minnesota Human Rights Act,” the groups said in a letter to the district. “If the school does not notify Desiree and Sarah before 12:00 noon on Friday, January 28, 2011, that it is rescinding these discriminatory actions, we will file an action for a temporary restraining order with the U.S. District Court for the District of Minnesota.”

The Minnesota Human Rights Act prohibits discrimination based on sexual orientation and gender identity.

“We are simply asking that these two students be granted the same rights as every other student, as they are due under both state and federal law,” said Sam Wolfe, lead attorney for the Southern Poverty Law Center. “It is an absolute shame that the school and school district have tarnished what should be a joyous celebration through these discriminatory actions. Hopefully, they will see the error in their ways, and correct it immediately.”

Shannon Minter, legal director of the National Center for Lesbian Rights, added, “Dez and Sarah were chosen by their peers as ‘royalty’ for the Snow Days Pep Fest and Coronation, and Champlin Park High School’s refusal to accept them as a couple shows that the school administration’s attitudes lag far behind those of the students they serve.”

Here’s the letter:

Lesbian teens shake up Champlin Park pep fest

2:52 PM, Jan 28, 2011

CHAMPLIN PARK, Minn. -- A civil rights group is taking Minnesota's largest school district to court to force it to permit two lesbian teens to walk into pep fest as a couple on Monday afternoon.

A lawyer for the Southern Poverty Law Center says court papers were filed Friday afternoon against the Anoka-Hennepin School District.

At issue are two 18-year-old women who were chosen by the students of Champlin Park High School as royalty for the annual Snow Days Pep Fest.

Anoka-Hennepin schools spokeswoman Mary Olson says traditionally the royal court walks into the assembly as male-female couples, but the lesbian couple said they weren't comfortable with that.

Olson says it was decided Friday that the royal court will walk in individually or accompanied by an adult.

Photo: [Alan Light, Flickr](#)

Lawsuit filed against Anoka-Hennepin School District on behalf of lesbian couple

Suit alleges district violated girls' 1st, 14th Amendment rights and Minnesota Human Rights Act
By **Andy Birkey** | 01.28.11 | 3:49 pm

A lawsuit was filed in federal court Friday afternoon over the Anoka Hennepin School District's refusal to allow a lesbian couple to walk together in the Snow Days coronation ceremony at Champlin Park High School. The lawsuit, filed on behalf of the two students by the Southern Poverty Law Center, alleges that the school district violated the students' First and Fourteenth Amendment rights, as well as the Minnesota Human Rights Act, which prohibits discrimination based on sexual orientation and gender identity.

According to documents filed with the court, Desiree Shelton and Sarah Lindstrom campaigned for and were elected to the Royalty Court of the Snow Days celebration. In past years, the elected royalty walk in procession in male-female pairs, and two male students agreed to walk side-by-side so that Shelton and Lindstrom could walk in as a pair.

According to the complaint, Mathew Mattson, Assistant Principal for Activities, said, "[E]ven if the male couples stated that they were comfortable with the decision [to walk in as a pair] now, they may not be three months from now and when a picture of them processing together surfaces and rumors get started that they are gay."

The school district initially decided to allow the royalty to walk in single file, but, after conversations with the two students, decided to cancel the procession and instead have the royalty simply sit on stage.

The girls said their desire to walk in as a couple was "to make a political and public statement about gender roles and the visibility of LGBT students and couples" at the high school.

The complaint states that the district's actions "constitute impermissible viewpoint discrimination under the First Amendment of the United States Constitution, violate their equal protection rights under the Fourteenth Amendment to the United States Constitution and the Minnesota Constitution, and constitute prohibited discrimination under the Minnesota Human Rights Act."

The district's spokesperson, Mary Olson, told the Minnesota Independent, "We dispute the facts and the legal analysis. We believe we have come up with a better practice that is more tolerant and acceptable of all students."

Here's the court filing:

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SLAP IT.

SPLC sues Anoka-Hennepin for denying lesbians' rights in Snow Days [UPDATE]

By Hart Van Denburg

published: Fri., Jan. 28 2011 @ 6:34PM



The Anoka-Hennepin School District can't seem to come to terms with the idea that Champlin Park High School students have voted for two lesbians to be among the "royalty" at its annual Snow Days Pep Fest and Coronation.

And instead of just allowing openly gay girls Desiree Shelton and Sarah Lindstrom to walk in the event's procession the way Champlin students intended, and as "royalty" did in the past, as long as they were straight -- the event will now begin with "royalty" seated on the stage. No procession.

That's a violation of the students' rights and just plain wrong, according to a letter sent to the district from the Southern Poverty Law Center, the National Center for Lesbian Rights, and law firm Faegre & Benson. The Minnesota Human Rights Act explicitly prohibits schools from discriminating against students based on their sex or sexual orientation.

We are writing to notify you that the school's actions violate their rights under the First and Fourteenth Amendments to the United States Constitution, the Minnesota Constitution, and the Minnesota Human Rights Act.

Unless the district reverts to its original program, and allows the girls to take part as a couple, "we will file an action for a temporary restraining order with the U.S. District Court for the District of Minnesota." ([Download and read the letter here.](#))

UPDATE: SPLC, the National Center for Lesbian Rights, and Faegre & Benson, have filed a federal civil rights lawsuit filed in U.S. District Court in Minneapolis against the district on behalf of Shelton and Lindstrom.

2. Desiree and Sarah would like to participate in the Pep Fest and Coronation procession as a couple, but are prohibited from doing so because CPHS Principal Defendant Michael George has told them that the Royalty Court procession has been canceled and, instead, the assembly will begin with the Royalty Court seated on stage.¹ Such actions were taken for the purpose of suppressing the viewpoint of Plaintiffs' constitutionally protected speech.

From the complaint. [Download and read the full document here](#)

"We are disappointed that the school and school district will not simply grant these two students the same rights as every other student, as they are due under both state and federal law," SPLC lead attorney Sam Wolfe said in a statement. "It is an absolute shame that the school and school district have tarnished what should be a joyous celebration through these discriminatory actions." ([Download and read the complaint here.](#))

The whole snafu adds to the controversy in Anoka-Hennepin, where GLBT advocacy groups say six suicides in the district were related to bullying. The district denied the link. District spokeswoman Mary Olson said principal Michael George was afraid the girls would be teased.

Showing 0 comments

Statement regarding Champlin Park High School Snow Days

Saturday, January 29th, 2011

This is a joint press statement from Sarah Lindstrom, Desiree Shelton, their counsel, and the Anoka-Hennepin School District, Champlin Park High School, Principal Michael George, Superintendent Dennis Carlson, and their counsel.

All parties are pleased to announce that we have worked together, collaboratively, to arrive at an arrangement for introductions of elected royalty that is respectful and inclusive of all students. Each member of Royalty Court will select a meaningful person in their life to escort him or her in the coronation procession following introductions at this year's Pep Fest. This will enable Sarah Lindstrom and Desiree Shelton to walk together in the procession.

The school district and its administrators and staff view this arrangement as an opportunity for ongoing conversation about school events and activities and for consideration of other ideas that will make our school communities inclusive and will enable us to realize the district-wide objective of honoring all students. District administrators and staff will include all students, including LGBT students, in that conversation. Sarah and Des are pleased with this positive outcome and gratified by the school district's commitment to honoring all students.

The lawsuit will be dismissed amicably without admissions of fault or wrongdoing and without further proceedings or expense to either side. The parties wish to acknowledge and appreciate the role played by Minnesota Federal District Court Judge Susan R. Nelson in facilitating the conversation leading to this resolution.

StarTribune



Lesbian couple will walk in Champlin Park procession after lawsuit dismissed

Article by: , Star Tribune

Updated: January 29, 2011 - 11:20 PM

A lesbian couple at the heart of a lawsuit seeking the right to walk as a couple in a pep fest at Champlin Park High School will be allowed to do so, according to an agreement reached Saturday after a six-hour mediation session.

In exchange, the lawsuit filed Friday against the high school and the Anoka-Hennepin School District on behalf of seniors Desiree Shelton and Sarah Lindstrom was dismissed, according to a joint statement released by the district and attorneys for the girls.

"All parties are pleased to announce that we have worked together, collaboratively, to arrive at an arrangement for introductions of elected royalty that is respectful and inclusive of all students," said the statement revealing the new arrangement, which will

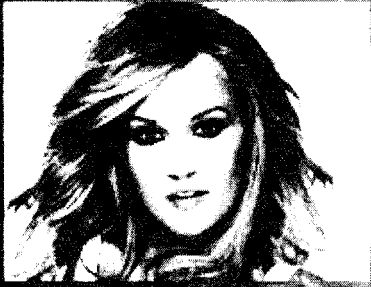
allow each member of the 24-person royalty court to "select a meaningful person in their life" to escort them in the coronation procession at the Snow Days Pep Fest and winter formal dance in the school's gym. The new plan will allow Shelton and Lindstrom to walk together at those events, which are likely to be held Monday, though school officials are considering pushing them back a few days to give students more time to choose escorts.

"I'm feeling great about this whole situation and how well it was resolved," Shelton said after the mediation session, which she and Lindstrom attended. "I'm pretty excited that I'm going to be able to walk with my girlfriend at Pep Fest."

Anoka-Hennepin school board chairman Tom Heidemann called Saturday's agreement, reached before Judge Susan R. Nelson in U.S. District Court in St. Paul, a "win-win response to the situation" that shows respect to everyone involved.

The school's decision to change its tradition of having the students walk in as couples in favor of having them accompanied by an adult sparked the federal lawsuit filed Friday on the teens' behalf by representatives of the Southern Poverty Law Center, the

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National Center for Lesbian Rights and the Faegre & Benson law firm. The lawsuit accused the school district of discriminating against gay and lesbian students and requested a restraining order against the school's rule change as well as damages.

School district officials had maintained that their decision was intended to stress that students should be honored as individuals -- not by sexual preference.

The lawsuit, which was "amicably" dismissed, according to both sides, now will be viewed as an opportunity for the school to consider its policy regarding activities "that will make our school communities inclusive and will enable us to realize the district-wide objective of honoring all students," according to the statement.

Students elect the 24 members of the Snow Days royalty. Twelve seniors and four students from each of the Brooklyn Park school's other three grades are chosen, with an equal number of boys and girls. Shelton and Lindstrom were voted for by their friends, and claimed that two boys were willing to walk together to allow the girls to enter as a couple.

Agreement pleases many

Attorney Sam Wolfe of the Southern Poverty Law Center, who helped represent the girls, said although he couldn't discuss details of the mediation, attorneys from both sides expressed admiration at the girls' leadership and willingness to challenge the district. In the wake of tragedy that included a number of suicides in the district, it was a "beacon for better days ahead."

"Hopefully it's a better place, a safer place, a kinder place for LGBT people," he said. "Courageous individuals like Des and Sarah really make that type of progress possible."


Chris Stoll, senior staff attorney for the National Center for Lesbian Rights, called the agreement "the right thing" on the part of the school.

"Research has shown that there's really nothing that improves the outcome for LGBT teens more than accepting families and schools," he said.

The news was also met with excitement within the district.

"I'm so happy," said English teacher Jann Garofano, who has worked with the school's Gay Straight Alliance in the past. "It's good to see [school officials] come down on the right

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side, and I'm really proud. It helps make this type of coronation more meaningful for all."

Shannon Haver, a member of the school's Gay Straight Alliance, said she was thrilled with the decision and glad the dispute didn't escalate. She's excited not only for her friends Shelton and Lindstrom, she said, but for all LGBT students who won't have to face the same challenge.


"It'll be great to see them together" at the pep fest, she said.

Shelton said she and Lindstrom's intent from the beginning was to make a positive statement on behalf of LGBT students. She added that they couldn't have done so without supportive family and friends.

"We just wanted to put forth a positive outlook and change that affects students in a way that they're not ashamed of themselves and are comfortable being who they are," she said. "It's really all we wanted to do."

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 **TODAY**

Lesbian students enter to cheers at Minn. school

Pair fought for the right to walk together



Jim Mone / AP

Desiree Shelton, right, and Sarah Lindstrom walk as a pair into the royalty court procession as students cheer in the background at the Snow Days Pep Fest at Champlin Park High School on Monday, Jan. 31, 2011 in Champlin, Minn.

msnbc.com staff and news service reports

updated 1/31/2011 6:51:11 PM ET

CHAMPLIN, Minn.— Two lesbian high school students who fought for the right to walk together as part of a royalty court made their entrances Monday to the cheers of hundreds of classmates.

Sarah Lindstrom and Desiree Shelton wore matching black suits with pink ties and held hands as they entered the Snow Days Pep Fest at Champlin Park High School in Minneapolis' northwest suburbs.

Students voted onto the royalty court traditionally enter the assembly in boy-girl pairs. After Lindstrom and Shelton, both 18, were elected, school officials last week announced a change in procedure: court members would walk in individually or accompanied by a parent or favorite teacher.

School officials said they merely wanted to prevent the two from being teased. But on Friday, two groups — the Southern Poverty Law Center and the National Center for Lesbian Rights — sued on their behalf.

On Saturday, in federally mediated talks, school officials relented.

The school district said that allowing the student to enter in pairs was part of a broader discussion on how to make the school more inclusive.

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"Sarah and Des are pleased with this positive outcome and gratified by the school district's commitment to honoring all students," said a statement after the talks reported by the Minnesota Independent

Champlin Park is part of the Anoka-Hennepin school district, Minnesota's largest, which has been in the spotlight in the past year for its handling of issues involving gay and lesbian students. Six students have committed suicide in the district since the beginning of the 2009-10 school year, and advocacy groups have linked some of the deaths to the bullying of gay students.

The district said last month its own investigation did not find evidence that bullying contributed to the students' deaths.

The Associated Press contributed to this report.



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Minneapolis Lesbian Teens Win Fight To Walk Together In Royalty Court

Published February 04, 2011 | Associated Press

Two lesbian high school students who fought for the right to walk together as part of a royalty court made their entrances Monday to the cheers of hundreds of classmates.

Sarah Lindstrom and Desiree Shelton wore matching black suits with pink ties and held hands as they entered the Snow Days Pep Fest at Champlin Park High School in Minneapolis' northwest suburbs.

The reaction came as a relief to the couple and school administrators. The district has been stung by criticism of its policies toward homosexuality and the alleged bullying of a gay student who killed himself.

"It felt amazing," said Shelton, adding that she was too nervous to notice dozens rise to give her a standing ovation as she walked in with Lindstrom. "I think we were too focused on getting to the stage."

If there were any boos, they were drowned about by supporters. "I feel so much better," Lindstrom said while surrounded by friends after the rally.

Sarah's mother, Shannon Lindstrom, camera in hand, joined the other mothers of children in the royalty court after the rally.

"They had a lot of courage," she said Shelton and her daughter. "Look how far we've come."

Students voted onto the royalty court traditionally enter the assembly in boy-girl pairs. After Lindstrom and Shelton, both 18, were elected, school officials last week announced a change in procedure: court members would walk in individually or accompanied by a parent or favorite teacher.

School officials said they merely wanted to prevent the two from being teased. But on Friday, two human rights groups sued on their behalf.

On Saturday, in federally mediated talks, school officials relented. The two sides agreed that members of the royalty court would be escorted by anyone meaningful to them, regardless of gender or age.

"This is a new chapter for the district," said Sam Wolfe, a lawyer with the Southern Poverty Law Center, which filed the lawsuit along with the National Center for Lesbian Rights and local assistance from the Minneapolis law firm of Faegre and Benson.

Young women in evening gowns and young men in dark suits walked through a makeshift arch and to the stage during the Monday afternoon pep rally complete with cheerleaders, dance teams and the school band. So did two young women in suits, and the crowd cheered for each one.

"They did great," said Principal Mike George. "I'm proud of our students."

Several of the students in the crowd didn't understand what all the fuss over the lesbian couple.

"Some people are against it, but they don't care if they walk down a stupid runway," said Maggie Hesaliman, 14.

Melissa Biellefe, 16, said, "We're a pretty respectful school. Our rule is just let people be who they are."

Champlin Park is part of the Anoka-Hennepin school district, Minnesota's largest, which has been in the spotlight in the past year for its handling of issues involving gay and lesbian students. It has been in the crossfire for its policy of "neutrality" in classroom discussions of homosexuality.

It was reached in 2009 as a way to balance the demands of liberal and conservative families, but neither side has been completely happy with it.

The issues flared again last year after a gay student, Justin Aaberg, killed himself. His mother has said she heard too late from

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Justin's friends that he had been harassed.

Aaberg was one of six students who committed suicide in the district since the beginning of the 2009-10 school year, and advocacy groups have linked some of the other deaths to the bullying of gay students.

However, the district said last month its own investigation did not find evidence that bullying contributed to the students' deaths.

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Desiree Shelton: Why I Fought Back Against Discrimination

Desiree Shelton is an out lesbian and a senior at Champlin Park High School, in Minnesota's Anoka-Hennepin School District. She and her girlfriend, Sarah Lindstrom, were elected to the school's Snow Days royalty court for the winter formal dance. They sued their school district—with the help of lawyers from the National Center for Lesbian Rights, the Southern Poverty Law Center, and Faegre & Benson LLP—after school officials said they couldn't walk together in the traditional couples' procession for the royalty court at the school-wide Snow Days Pep Fest assembly. The district settled the case, and on Monday, January 31, 2011, the two girls walked in the procession hand in hand as their classmates cheered.

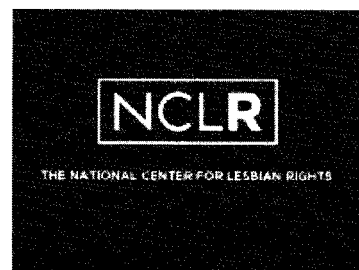
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### By Desiree Shelton

Lately, everyone seems to have a strong opinion of this whole Snow Days controversy, and I feel like it's important for me to explain why we did what we did. This was more than a high school Pep Fest—it was about basic rights and the ongoing fight for equality that seems so hard to win, even in 2011.

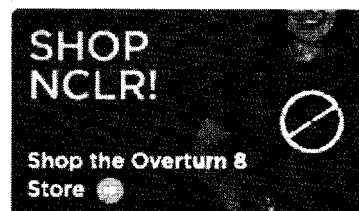
In the beginning, after Sarah and I found out that we were both nominated as royalty, a couple of people suggested that we should walk together during the procession, matching tuxes and all. We thought this was a great idea, and we talked to two straight male friends, who were also on the royalty court, who agreed to walk together so that no one was left out. Sarah and I were really looking forward to being able to share this occasion together and also thought this would be a great opportunity to send a positive message to the lesbian, gay, bisexual, and transgender community and its allies (after all the bad media the school had been getting about the gay-related suicides) by showing other students that LGBT students can express ourselves, defy gender roles, and still be treated as equal to other students, and not feel ashamed or hide "in the closet" for fear of harassment. We felt that even something as small as having two lesbians walk in the procession together could have a big impact on other LGBT students.

But then, last Tuesday, January 25, 2011, the week before the procession, we were told by the administration that we were not going to



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our concerns and giving him a few things to think about that could help him become a better principal for all his students, which I appreciated. He said that he would have to talk to the district superintendent and school board about it, though, so we scheduled another meeting for the next day.

Later, we heard that they were thinking about having everyone walk individually instead being paired up. So much for tradition! We were angry that they were changing the procession only because we wanted to walk together. What kind of message was that going to send to LGBT students and allies, and the rest of the student body—that we didn't deserve to be treated as equally as everyone else? That is blatant discrimination.

On Thursday, we met again with the principal after school. He and the school district had come up with what they thought was a solution that they thought would be comfortable for all the students: to cancel the procession and have the royalty already onstage at the beginning of the Pep Fest. But they were only coming up with these changes because they didn't want us to walk together. That was discrimination. It was also denying us the chance to send out a positive message to the LGBT students and allies, which was the main reason I wanted to participate in the Snow Days royalty court.

I couldn't just sit back and let that happen. I wanted to do my part for the LGBT rights movement, no matter how small. Also, they were getting rid of a part of the Pep Fest that I know a lot of the other people on the royalty court were looking forward to. I didn't want that taken away from them either, because they deserved to have their moment in the spotlight as well.

Later that afternoon, Sarah and I were put in touch with some amazing lawyers at the National Center for Lesbian Rights (NCLR) and the Southern Poverty Law Center (SPLC). When we told them what was going on, they wanted to help us out. That night we met up with a fantastic lawyer from the law firm of Faegre and Benson, who was working with NCLR and SPLC, to talk about the situation and figure out if there was a possible case. Our lawyers worked at amazing speed all night on Thursday to get everything in order. We couldn't have asked for anyone better to help us.

The next morning, they sent a letter to the school and the district, asking that they change the procession back to the way it was traditionally, and allow Sarah and me to walk together. The district had until noon to respond, but they didn't, so the lawyers filed the papers for the lawsuit.

Later that night we were told that a court hearing had been scheduled for Monday morning, but first there would be a mediation session on Saturday. It would be one last chance to see if there was some way to find common ground and create a solution that worked for everyone.

To our surprise, at the mediation, the school district worked with us—with the help of the judge—to come up with the solution that any member of the royalty court would be allowed to bring any significant person in their life to walk with them during the procession. Not only could Sarah and I

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phenomenon and was everything we asked for, and more.

One thing I would really like people to realize is that this was never about getting attention. This was only about Sarah and I wanting to share a special event together, and about showing other LGBT kids that they don't have to be afraid to be who they are because they are not alone. We were denied a privilege that straight couples have always received, which is not only against the law but also was sending a very hurtful message to LGBT students that we are not equal to our heterosexual peers. Sarah and I are human beings who deserve the same respect, rights, and opportunities as everyone else, and when push came to shove, we were ready to shove right back. We stood up for something we believe in, and out of that came an amazing change for the school district that I hope will continue to change a lot of things for LGBT students in the future.

#### Media Contact:

NCLR Communications Director Erik Olvera | Office: 415.392.6257 x324 | [EOlvera@NCLRights.org](mailto:EOlvera@NCLRights.org)

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NATIONAL CENTER FOR LESBIAN RIGHTS

May 24, 2011

Mr. Dennis L. Carlson  
Superintendent  
Anoka-Hennepin School District  
11299 Hanson Boulevard NW  
Coon Rapids, MN 55433

Re: Proposed meeting to resolve claims

Dear Mr. Carlson:

The Southern Poverty Law Center and National Center for Lesbian Rights have been retained by current and former students within the Anoka-Hennepin School District ("the District"), each of whom has asked us to investigate the pervasive harassment they have experienced based on their actual or perceived sexual orientation or gender expression at District schools. While we appreciate that the District has recently taken some superficial steps to address bullying, our investigation confirms that lesbian, gay, bisexual, and transgender ("LGBT") students and those perceived as LGBT within the District remain in jeopardy in a hostile and alienating environment. School authorities' failure to adequately respond to ongoing harassment violates established law and our clients' constitutional rights.

Each of our clients has suffered personally under the severe anti-LGBT climate that persists in the District. Here are several examples out of many that we have learned about:

- One of our clients was verbally and physically harassed at school daily because of the perception that she is a lesbian. She reported the harassment to teachers and administrators numerous times, including the vice principal and the principal, but the only response was an occasional verbal reprimand with no consequences for the harassers. The District took no action, nothing improved, and she eventually dropped out of school and attempted suicide after the constant harassment became too much to bear.
- Another client reported chronic anti-LGBT harassment to authorities for more than two years. But rather than attempt to improve the school environment, administrators advised him to leave the school because they could not protect him.
- A third client endured years of verbal and physical harassment based on his sexual orientation and perceived gender nonconformity before finally dropping out of school. In one incident, he was violently assaulted and called "faggot" in an open hallway while a teacher and other students stood idly by. When he sought aid from a vice principal afterwards, the administrator showed no concern for the student and instead blamed him for allegedly "provoking" the attack.

In every one of these incidents, and many others, District authorities failed to properly respond to repeated reports of verbal and physical harassment, in violation of their legal obligations. These in-



cidents and others like them appear to be part of a pervasive pattern of hostility against LGBT students within District schools, which has had dire consequences. Many LGBT students have been pushed out of the District altogether; many have experienced emotional and psychological scars as a result of constant bullying; and, as you know, since November 2009, at least four LGBT students in the District have died by suicide. *See, e.g., Steven T. Russell et al., Lesbian, Gay, Bisexual, and Transgender Adolescent School Victimization: Implications for Young Adult Health and Adjustment, Journal of School Health, May 2011, at 223* (LGBT young adults who reported high levels of bullying during middle and high school 5.6 times more likely to attempt suicide and 2.6 times more likely to have clinical levels of depression).

Our investigation is ongoing. With the assistance of lawyers at the Minneapolis law firm of Faegre & Benson, LLP, we continue to assess the specific harms suffered by each of our clients, as well as the remedies available to them, including under Title IX, Section 1983, and the Minnesota Human Rights Act.

It has become increasingly apparent in the course of the investigation that the District's so-called "sexual orientation curriculum policy," or "gag policy," contributes significantly to the hostile environment for LGBT students within the District. The gag policy serves no legitimate education-related purpose. Rather, as made abundantly clear in the District's own guidance about the policy, the gag policy singles out a vulnerable and disfavored minority – LGBT students – and prevents teachers and other district employees from supporting, or even protecting, those students within the classroom. The mandatory silence imposed by the policy leaves teachers without tools to handle LGBT bullying and creates an atmosphere in which LGBT students are isolated and feel unprotected.

Further, the gag policy violates the Fourteenth Amendment of the United States Constitution, which provides in relevant part that "[n]o state shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. This fundamental constitutional guarantee prohibits school district officials from singling out any group of students for disfavored treatment based solely on their membership in an unpopular minority. The gag policy singles out LGBT students by denying them and them alone any affirmation of their identity and by categorically precluding any meaningful classroom discussion about history, literature, current events, or any other relevant lessons involving LGBT people. The policy imposes a stigma on LGBT students as pariahs, not fit to be mentioned within the school community, a message that comes across loud and clear both to LGBT students and their peers, and which has grave repercussions for the psychological and emotional development of LGBT students.

The gag policy bears no rational relationship to any legitimate governmental purpose. On the contrary, the history surrounding the policy's enactment clearly shows that the policy was adopted solely in deference to some community members' disapproval of, and animus toward, a particular class of citizens – LGBT people. The law is clear that mere animus toward an unpopular group cannot constitute a legitimate governmental purpose.

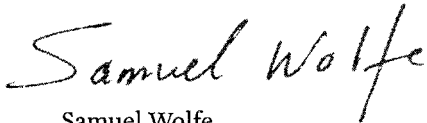
The purpose of this letter is twofold:

First, we advise you that without prompt and meaningful action to remedy the current hostile environment and to compensate our clients for the harm caused by the District, we intend to file a federal lawsuit seeking full redress as well as injunctive relief going forward. Given that the gag policy is a significant contributing factor to the District's ongoing hostile environment for LGBT and gender non-conforming students, and plainly violates the constitutional rights of those students, any such relief must include prompt repeal of that policy. Necessary relief would also include much-needed training for students and staff to prevent bullying based on sexual orientation and gender identity, more effective and more thoughtful enforcement of anti-bullying policies, and reconsideration of the total exclusion of issues related to LGBT people from the curriculum.

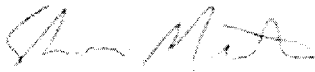
Second, and relatedly, we invite you to meet with us to explore settlement of this matter without the need for litigation. While our calendars are flexible, we would be available during the week of June 6 and suggest a meeting in that timeframe. Please let us know whether District representatives would be willing to engage in discussions as we propose, in which case we are prepared to coordinate details.

Thank you for your careful attention to this important matter.

Sincerely,

A handwritten signature in cursive script that reads "Samuel Wolfe".

Samuel Wolfe  
Staff Attorney, LGBTQ Rights Project  
Southern Poverty Law Center

A handwritten signature in cursive script that reads "Shannon Minter".

Shannon Minter  
Legal Director  
National Center for Lesbian Rights

cc: Michael A. Ponto, Esq., Faegre & Benson LLP  
Paul Cady, School District Attorney, Anoka-Hennepin School District

# ANOKA-HENNEPIN SCHOOL DISTRICT

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May 26, 2011

Sent Electronically and Via U.S. Mail

Sam Wolfe  
Southern Poverty Law Center  
400 Washington Avenue  
Montgomery, Alabama 36104

Shannon Minter  
National Center for Lesbian Rights

Dear Mr. Wolfe and Ms. Minter,

Thank you for your letter of May 24, 2011 bringing to the District's attention the experiences of District students who were victims of anti-LGBT harassment and violence. We accept your invitation to meet and discuss these allegations and your other concerns. Unfortunately the week of June 6 presents conflicts; however, we can be available June 14, 15 or 16. Please let me know your availability on those dates.

Meanwhile, the District would like to address some of the statements made in your letter and hopefully obtain some additional information from you.

### **Student Harassment.**

The District is committed to promoting and protecting students' safety, health, well-being, and ability to learn, and takes the allegations of student harassment in your letter very seriously. Your letter includes allegations that harassment was both reported to, and witnessed by, District personnel with no appropriate response by the District. If the facts are as described, these are clear violations of the District's policies; District personnel who fail to address harassment when they see or hear about it are in violation of clear and unequivocal District policy. We ask that you provide us with additional information regarding the identity of these students—and their experiences—so that we can investigate. This information will certainly facilitate a more productive discussion at our meeting.<sup>1</sup>

The District has worked hard to create and promote an effective anti-harassment program, and feels strongly that these measures are much more than "superficial" as your letter suggests. It has sought out and partnered with individuals and entities identified as able to help it develop effective prevention and response strategies and assemble resource materials.

<sup>1</sup> While this is not the forum to debate the factual issues relating to the tragic suicides of students in the District, the District disagrees with your statement that, since November 2009, at least four LGBT students in the District have died by suicide. The District's inquiry led it to believe that two of the suicide victims were LGBT.

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Indeed, the District was a leader in this State in establishing anti-harassment and anti-bullying policies relating to sexual orientation, developing an anti-bullying policy and enacting it two years before the Minnesota Legislature required it of all school districts.

These policies are communicated to the entire school community, and District personnel are required to hold students accountable for their actions. The District has in place both formal and informal procedures for reporting harassment. It has instituted specific steps to respond to harassment claims immediately in order to stop the harassment and prevent recurrence. The District offers and provides education and training to the entire school community in an effort to create awareness and foster respect and appreciation for diversity. It assesses the effectiveness of its efforts and welcomes input from the school community, parents, and others to prevent harassing and discriminatory behaviors. The District cannot stress enough that the anti-bullying and anti-harassment policies, programs, and training provided to personnel are clear that harassment and bullying on the basis of sexual orientation is *not to be tolerated*.

**The Sexual Orientation Curriculum Policy Does Not Inhibit Teachers from Confronting Harassment of LGBT Students and Supporting LGBT Students, Nor Does It Bar Classroom Discussion of LGBT Issues**

The District strongly disagrees that there is a link between the harassment experienced by LGBT students and the Sexual Orientation Curriculum Policy ("Neutrality Policy" or "Policy"). That Policy is exactly what its title makes explicit – a *curriculum*<sup>2</sup> policy. This Policy is separate and distinct from the district's policies and practices relating to harassment and bullying of *any* student, LGBT or other. The Policy itself is clear on this point:

It is the primary mission of the Anoka-Hennepin School District to effectively educate each of our students for success. District policies shall comply with state and federal law as well as reflect community standards. As set forth in the Equal Education Opportunity Policy, it is the School District's policy to provide equal educational opportunity and to prohibit harassment of all students. The Board is committed to providing a safe and respectful learning environment and to provide an education that respects the beliefs of all students and families.

---

<sup>2</sup> "Curriculum" refers to District or school adopted programs and written plans for providing students with learning experiences that lead to expected knowledge and skills. Minn. Stat. § 120B.11(b).

The School District employs a diverse and talented staff committed to serving students and families from diverse backgrounds. The School District acknowledges that one aspect of that diversity regards sexual orientation. Teaching about sexual orientation is not a part of the District adopted curriculum; rather, such matters are best addressed within individual family homes, churches, or community organizations. Anoka-Hennepin staff, in the course of their professional duties, shall remain neutral on matters regarding sexual orientation including but not limited to student led discussions. If and when staff address sexual orientation, it is important that staff do so in a respectful manner that is age-appropriate, factual, and pertinent to the relevant curriculum.

Your letter grossly mischaracterizes the policy when it states, for instance: "as made abundantly clear in the District's own guidance about the policy, the gag policy . . . prevents teachers and other district employees from supporting, or even protecting, those students within the classroom." Likewise, the District believes that your characterization of the neutrality policy as a "gag policy" is misleading, as is your suggestion that the policy imposes a "mandatory silence" that "leaves teachers without tools to handle LGBT bullying."

In fact, the September 2010 guidance to teachers regarding the Neutrality Policy, i.e., a document entitled "Defining Neutrality in Anoka-Hennepin's Sexual Orientation Curriculum Policy: An Overview for Schools," provides just the opposite. It states:

**IMPORTANT**

**The Sexual Orientation Curriculum Policy relates to curriculum and classroom discussions – it is separate from Anoka-Hennepin's harassment and bullying policies. Staff are not to remain neutral when they see or hear harassment or teasing (including during class) – they are to intervene, stop the harassment, explain that the language/behavior is not tolerated in school and, if necessary, refer the student to the school office.**

This direction has been reinforced by way of staff training and repeated directives from Superintendent Carlson to all District personnel.

What the Overview of the Neutrality Policy underscores is that "class time is not the appropriate venue" to discuss personal beliefs. In this regard, the Neutrality Policy serves an important and legitimate education-related purpose. Under the Policy, a teacher's expression during class time of his or her personal belief that homosexuality is wrong would not be "neutral" and would violate the Policy. Such an expression of a personal belief in the classroom setting would surely intimidate or alienate LGBT students and other students who take a different view. The opposite is true as well: it would violate the Policy for a teacher - in the classroom setting - to express his or her pro LGBT personal views on issues such as gay marriage. Again, expressing such a view would likely intimidate or alienate those students with a different view, whether based on their religious ideology or otherwise.

Yet teachers are not prohibited from, for instance, wearing a rainbow flag or pink triangle button, or otherwise offering their support to our LGBT students and their families. For instance, the District fully supports student groups such as the Gay Straight Alliance ("GSA") in its schools. The Superintendent encourages teachers to offer help and assistance to LGBT students who reach out to them, and to otherwise offer their support to LGBT students.

In short, teachers are responsible for maintaining a positive learning environment for all students and being sensitive to the fact that there are students who have differing viewpoints on controversial issues. Again, the primary concern of every District employee should be the safety of each student and the ability of every child to get an education in a school free from intimidation and harassment.

To be clear, discussions of LGBT issues within the context of the curriculum are *not* prohibited; rather the Policy only dictates that *teachers* remain neutral in such discussions. Students, on the other hand, who engage in fact-based, age-appropriate discussion on a topic relevant to the class curriculum, may advocate for their position in a respectful way. Therefore, contrary to what your letter states, the Policy *does not preclude* "meaningful classroom discussion about history, literature, current events, or any other relevant lessons involving LGBT people." Teachers may guide and facilitate such curriculum-related discussions. This exchange of ideas and views is the essence of education and the District's policies do not attempt to silence or "gag" that expression; however, should a student abuse the freedom and use the discussion as an opportunity to make disrespectful comments or use derogatory language, teachers are required to promptly intervene, stop the harassment, explain that the language/behavior is not tolerated in school and, if necessary, refer the student to appropriate staff for further follow-up and consequences. Staff is not to remain neutral when they see or hear harassment. These corrective steps would be taken *pursuant to the District's harassment and bullying policies*, which are in place to ensure a safe and respectful learning environment for every student. Thus, the neutrality Policy allows student-led classroom discussions pertinent to the curriculum on matters regarding sexual orientation; the harassment and bullying policies ensure those discussions remain respectful.

### **The Sexual Orientation Curriculum Policy Complies With State and Federal Law**

The Neutrality Policy plainly complies with federal law and does not run afoul of the Fourteenth Amendment. First, in order for a government action to violate equal protection, it must be shown that the action resulted in similarly situated individuals receiving disparate treatment. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1984) (violation of equal protection found when city required special use permit for home for developmentally disabled individuals, but not for other residences). The Policy does not result in disparate treatment; it does not impose any special benefits or obligations on any group of students. Further, the Policy is clearly rationally related to a legitimate government interest. *See, e.g., Romer v. Evans*, 517 U.S. 620, 631 (1996) ("[I]f a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end."); *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992); *Cleburne*, 473 U.S. at 440. The Policy is rationally related to the District's legitimate interest in providing a respectful, focused, and effective learning environment for all students.

*Romer v. Evans*, 517 U.S. 620, 631 (1996) (“[I]f a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end.”); *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992); *Cleburne*, 473 U.S. at 440. The Policy is rationally related to the District’s legitimate interest in providing a respectful, focused, and effective learning environment for all students.

The Policy also is consistent with state law, including the Minnesota Human Rights Act. Minn. Stat. § 363A.27 clarifies that the protection afforded to LGBT students shall not be construed to “require the teaching in education institutions of homosexuality or bisexuality as an acceptable lifestyle.”

Neutrality in sexual orientation curriculum is analogous to neutrality on matters of religion. Teachers are expected to remain neutral on matters of religion, and the District has a longstanding neutrality policy with respect to religious activities. When it relates to curriculum, these types of issues invoke First Amendment freedoms including free speech and the Establishment Clause. The importance of protecting the fundamental constitutional freedoms in the First Amendment cannot be overstated. The Establishment Clause is to protect the integrity of both the Church and the State by keeping these hallowed institutions at arms lengths from one another. The Supreme Court has been a vigilant enforcer of this separation, and in particular, has taken great care to monitor and enforce compliance with the Establishment Clause in our elementary and secondary schools. Long ago, Justice Frankfurter eloquently explained the importance of patrolling the edges of the Establishment Clause in the public school setting:

Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously free from entanglement in the strife of sects. The preservation of the community from divisive conflicts, of government from irreconcilable pressures by religious groups, of religion from censorship and coercion, however subtly exercised, requires strict confinement of the State to instruction other than religious, leaving to the individual’s church and home indoctrination in the faith of his choice.

*People of the State of Illinois ex re. McCollum v. Board of Education of School District No. 71*, 333 U.S. 203, 216-17(1948) (Frankfurter, J., concurring)

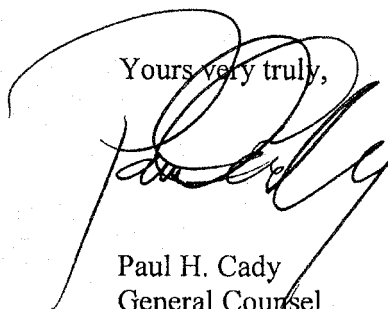
The Establishment Clause of the First Amendment provides “Congress shall make no law respecting an establishment of religion . . .” It was intended to erect a wall of separation between Church and State. The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another. *See Zorach v. Clauson*, 343 U.S. 306, 314(1952)(“The government must be neutral when it comes to competition between sects”); *Epperson v. Arkansas*, 393 U.S. 97, 104(1960)(“The First Amendment mandates government neutrality between religion and religion. . . the State may not adopt a program or practices. . . which aid or oppose any religion. . . This prohibition is absolute.”)

## Conclusion

Again, the District thanks you for bringing these allegations and concerns to its attention, and awaits further details. We look forward to the opportunity to sit down with you and hear your ideas with respect to improving the District's efforts to provide a safe and respectful learning environment for all of our students.

Please let me know your availability June 14, 15 or 16, as well as who will be in attendance, so that the District can address any student privacy concerns in advance of the meeting if necessary.

Yours very truly,

A handwritten signature in black ink, appearing to read "Paul H. Cady", is written over the typed name and title.

Paul H. Cady  
General Counsel

Cc: Dennis Carlson, Superintendent



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## Anoka-Hennepin school district faces lawsuit over harassment of gays

by Tom Weber, Minnesota Public Radio

May 24, 2011

### AUDIO

▶ Anoka-Hennepin school district faces lawsuit over harassment of gays (feature audio)

Anoka, Minn. — Two national civil rights groups say they will sue the Anoka-Hennepin school district if leaders there don't properly address anti-gay harassment.

Lawyers for the Southern Poverty Law Center and National Center for Lesbian Rights say they have proof that Anoka-Hennepin students have been harassed for being gay or perceived as gay and that harassment violates federal law.

The lawsuit threat came in a letter sent Tuesday to Anoka-Hennepin superintendent Dennis Carlson.

The letter explains that the two groups have been investigating the district and have found that students who are or perceived to be gay or lesbian are in jeopardy and in a hostile environment when they're at school.

Sam Wolfe with the Southern Poverty Law Center said Anoka-Hennepin is breaking federal law by allowing such a culture to exist.

"On a daily basis they're going into the schools and into the hallways -- other kids are calling them names, such as 'faggot' and other names about either their actual or perceived sexual orientation or gender identity," Wolfe said. "And it's a continual thing."

Wolfe's letter outlines examples of harassment of at least three unnamed current or former students, but he said it's still open-ended as far as how many clients he'll eventually have if a settlement can't be reached.

Wolfe said his group will sue Anoka-Hennepin unless it does two things: compensates his clients and repeals a district policy that requires staff to be neutral in dealing with sexual orientation.

That so-called "neutrality policy" has been at the center of months of controversy within the district. The district maintains the neutrality policy only applies to curriculum matters but critics say it's vague and confusing.

District teachers have told MPR news privately that there's been little to no training on the policy so they don't know whether, for example, they can even talk to a student who comes out to them or wants to report harassment.

Wolfe said his group confirmed that confusion through its own interviews with staff. He refers to the neutrality policy as a "gag policy."

"My sense is that the gag policy is really borne of fear, of homophobia," he said. "And it's this type of misguided policy that we see in this district has had terrible consequences."

Superintendent Dennis Carlson said his district always responds to harassment and bullying, but he says the district can only do that when officials know something has happened so people should speak up. He also said this afternoon he will meet with the groups.

"If there's something they know that we don't know, we'd like to know what it is," Carlson said. "And as soon as we know it, we'll take appropriate action."

Carlson also maintains his district has not broken anti-discrimination laws.

This isn't the first time Carlson has met with the Southern Poverty Law Center and National Center for Lesbian Rights. In January, the groups sued the district because it wouldn't allow two lesbians to be crowned as royalty at a school dance. The two sides worked out an agreement in less than two days.

There are already signs that any agreement this time would take longer. On the demand that the district revoke that neutrality policy, Carlson said, "The board has given me no indication that they're interested in doing anything with the neutrality policy. They do not see the connection between that and the bullying and harassment of students; they see that as entirely separate."

The groups have asked to meet with the district in two weeks. Wolfe said he'll wait to file any lawsuit until he hears back from the district.

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## Commentary

### Anoka-Hennepin policy aims to respect all families and students

June 8, 2011

**Editor's note: The Anoka-Hennepin school district has been threatened with a lawsuit unless it changes a policy that requires staff to be neutral in dealing with sexual orientation. The Southern Poverty Law Center and the National Center for Lesbian Rights allege that the policy discourages staff from protecting LGBT students who are being harassed. We asked Dennis L. Carlson, superintendent of the district, to address the question.**

By Dennis L. Carlson

Will a change in policy end bullying or harassment? Will it decrease student depression? Will it prevent students from self-destructive behavior or from committing suicide?

If it were that simple, we would make a policy change instantly. Unfortunately, there are no easy answers or quick fixes because human behavior, especially that of adolescents going through tremendous physical and emotional change, is complex, and it is complicated by the stresses many families in our communities are now feeling.

For the past year, the Anoka-Hennepin school district has been repeatedly asked by members of the public and special interest groups to eliminate our sexual orientation curriculum policy, which requires staff in the course of their professional duties to "remain neutral on matters regarding sexual orientation." They believe the policy has prevented staff from intervening when LGBT students are bullied or harassed and prevented staff from helping students who are struggling with their sexual orientation.

Equally as passionate are people with the opposite view. For nearly 20 years, individuals have asked the district to refrain from addressing sexual orientation in the classroom. They believe that discussion of sexual orientation issues is most appropriate within the home or church.

Therein lies the problem. The opinions of our community members vary widely; the opinions of our staff vary as well.

Public schools belong to the community; elected school boards serve at the will of the community. Providing policies and programs that reflect a divided community is difficult. It's easy to agree on teaching reading and writing, but not as easy on subjects that have long been considered sensitive or even taboo - religion, politics and, yes, human sexuality, and especially sexual orientation.

Wishing to respect all families and all students, the school board believes neutrality is the best option. The board adopted a religious activities policy years ago requiring "neutrality in matters of religion." The sexual orientation policy is similar. When speaking with students during class time, teachers do not advocate homosexuality, nor do they condemn it.

The religious activities policy does not mean teachers are prohibited from discussing religious symbolism in literature or the role of religion in history. It does not mean they are to stand idly by if a student is being bullied or harassed because of his or her religion.

Likewise, the sexual orientation curriculum policy does not mean teachers are prevented from discussing how an author's sexual orientation might affect his or her writings, or how the gay rights movement uses strategies developed by the civil rights movement. It does not mean they cannot intervene if a student is being bullied or harassed because of sexual orientation. Teachers must confront bullying and harassment, and are encouraged to offer help to LGBT students or to students who may be struggling with sexual orientation issues.

While not everyone agrees on the sexual orientation curriculum policy, they do agree on the need for schools to do the best job they can of protecting every single student.

We know that students cannot focus their attention on learning unless they feel safe. This is the reason we started an anti-bullying awareness campaign in 2003, prior to state legislation requiring districts to adopt anti-bullying policies. We have provided training for students and staff, emphasizing that students must report incidents of bullying or harassment and that staff must take immediate action when they receive a report or witness bullying or harassment. We have surveyed our students about bullying to learn how we can make our anti-bullying practices more effective. And, when a student committed suicide in the fall of 2009, we immediately redoubled our efforts to provide depression and suicide awareness training for students and staff.

What we are doing is working. More students are reporting bullying, and students are coming to us in record numbers with mental health concerns. We are connecting hundreds of them and their families with life-saving resources.

We are not naive enough to believe that our efforts alone will end bullying and harassment in our communities, or that we can protect every student from self-destructive thoughts or actions. Just as we know we cannot protect our students from the stress caused by unemployment, foreclosure, homelessness, family instability and other stressors many of our families face. But we do know that well-trained, caring professionals can make, and do make, a tremendous difference when young people come to them with concerns.

Students need to speak out when they are bullied or hurting or know someone who is. They need to tell an adult, and the adult needs to take action. That's where we can be most effective. We implore our lawmakers to provide the necessary resources, and ask our community members to partner with us in this most critical effort.

Dennis L. Carlson is superintendent of the Anoka-Hennepin school district.

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## Comments (9)

I am so tired of the play on words on this subject. There is nothing neutral about refusing to even acknowledge an entire group of students because of the religious beliefs of their folks. I would further argue that the "neutrality policy" itself violates the district's own policy on religion. It is no secret that there is long and tightly bound relationship between our school board and the Minnesota Family Council (a religious organization) and I appreciate the superintendent finally admitting that policy is being dictated by a few "parents based on their religious beliefs" and that is wrong and if that's really the position they're going to hold to not only are they going to lose their lawsuit it could begin to affect federal funding and I don't know about others but knowing that my property taxes are

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## Commentary

### School district's 'neutrality' policy on LGBT issues is anything but

by Richard Cohen ,

Kate Kendell

June 27, 2011

Imagine sitting across a kitchen table from a mother as she tearfully recounts the loss of her 13-year-old daughter to suicide. She describes how school district officials denied any link between school bullying and any of the multiple recent suicides in the district. But she learns from her daughter's friends that the teenager endured constant harassment at school. For her daughter, school was a place of torment.

During our investigation of the Anoka-Hennepin School District, the Southern Poverty Law Center and the National Center for Lesbian Rights have heard numerous other heartbreaking stories from parents who've learned that their children have been bullied relentlessly at school.

We've heard students as young as 12 describe a daily ordeal of verbal and physical harassment. And we've seen the frustration on the faces of teachers as they describe a district policy that makes it impossible for them to prevent or respond effectively to bullying.

A toxic environment reigns in many Anoka-Hennepin schools. Lesbian, gay, bisexual and transgender (LGBT) students and those perceived as LGBT are primary targets of rampant harassment.

And it's happening because students who bully others know they can get away with it.

At the heart of the crisis is an ill-conceived gag policy. Even the president of the local teacher's union doesn't get it. "If you ask five different teachers about how this policy works, you get five different answers," Julie Blaha told Minnesota Public Radio. Others have described conversations with several school board members where each one offered a different interpretation.

Blaha also told MPR that, as a middle school teacher, she once hesitated before responding to a student's anti-gay slur in class because she wasn't sure if administrators would support her actions.

In other district classes, students perceived as LGBT have been openly derided with comments describing gay people as "disgusting," for example, while teachers listened without intervening or offering any support.

School administrators told one student who had suffered years of harassment that he should transfer to another school because they could not ensure his safety.

Although the district has an anti-bullying policy, it will never truly address school bullying as long as it maintains a gag policy that basically tells teachers to keep quiet about anything relating to LGBT students.

And the silence does even more damage than that. Students need to be prepared to understand and communicate with all their peers, including those who are different from themselves. They need to understand the real world. But in this district, a teacher abruptly ended a student's classroom presentation when the student used an example involving a same-sex couple.

The district recently instructed that teaching about LGBT persecution in Nazi Germany is not permissible because "this fact is not a part of the District-adopted curriculum." Whole areas of history, politics and current events have been erased from the classroom because the gag policy has kept anything related to LGBT individuals out of the curriculum.

The very existence of the gag policy is an affront to the dignity of LGBT students and teachers. Its existence leaves LGBT students feeling isolated and stigmatized — pariahs not fit to be mentioned in the classroom. Because it applies only to LGBT issues, the policy sends a message to the school community that LGBT students are less than other students, that there is something inherently shameful about their very identity. There is not.

The superintendent claims this gag policy is an appropriate response, similar to the district's neutrality policy for religious activities. It's not.

Truly neutral policy doesn't play favorites. Just as a neutrality policy on religion holds all religions as equally valid and equally entitled to respect, a true neutrality policy on sexual orientation would hold that all sexual orientations are equally legitimate. But this gag policy holds that homosexuality is so illegitimate that it cannot even be mentioned. The policy imposes no similar limits on the discussion of heterosexuality.

As Elie Wiesel said, "Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented."

Our young people deserve safe schools that are conducive to learning. We are prepared to file legal action to protect these students if necessary. But it shouldn't have to come to that. We urge the district to live up to its responsibility to all of its students, and to take the steps needed to remedy its pervasive atmosphere of anti-LGBT harassment. The first critical step is to repeal the gag policy.

Richard Cohen is president of the Southern Poverty Law Center. Kate Kendell is executive director of the National Center for Lesbian Rights.

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## Comments (6)

I just attended another school board meeting tonight where the members of the board sat "emotionless" as the father of one of the students lost to "bullycide" asked them to reconsider and to rescind the "gag policy". They sat there smug as they have done for months, knowing full well they have no intention of doing anything. Then to add insult to injury, this brave father was the first of three speakers in total. Two opposed to the policy and one who praised the policy. President Tom Heidemann had the cards and knew what each speaker wanted to say and yet he chose to have to have this woman speak

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## Some teachers conflicted over Anoka-Hennepin's sexual orientation policy

by Elizabeth Dunbar, Minnesota Public Radio

June 10, 2011

St. Paul, Minn. — On paper, a policy in Minnesota's largest school district says that it's not a teacher's job to explain what it means to be gay. Moreover, it states they must remain neutral if the subject comes up in class. In practice, though, that policy is being interpreted a variety of ways.

Some teachers in the Anoka-Hennepin School District say the policy lacks clarity and makes it easy for discrimination to seep into school hallways. For others, the policy is perfectly clear.

The lack of consensus about the so-called "neutrality policy" comes as school officials defend it against the threat of a lawsuit by two national civil rights organizations. Officials will meet next week with representatives from the Southern Poverty Law Center and National Center for Lesbian Rights, putting the school district in the national spotlight for its handling of issues affecting gay, lesbian, bisexual and transgender students.

The national groups argue that keeping sexual orientation discussions out of the classroom contributes to a hostile atmosphere for gay students because it prevents teachers from validating students' identity and denies teachers the ability to support them. That atmosphere can lead to bullying, they said. School district officials say the policy is intended to give church and families — not teachers — the strongest voice on the topic.

It's been a traumatic past two years in the district serving 13 northern Twin Cities suburbs in a conservative part of the state. At least seven students in the district have committed suicide during that time. Parents and school officials have been at odds over how many of them were gay and whether bullying played a role.

In a letter last month, the groups asked the district to get rid of what they call a "gag policy," which has been in place for two years. During that time, the policy, which appears to be unique in Minnesota, has had an impact on everything from school clubs to history projects to class discussions. Nationally, eight states have laws limiting what teachers can say about homosexuality.

Many of the more than a dozen current and former Anoka-Hennepin teachers interviewed by MPR News had questions about how the policy applies to certain situations. The district's teachers' union president, Julie Blaha, said the union is asking district officials to clarify the policy.

"If you ask five different teachers how this policy works, you get five different answers," Blaha said. "People want to make sure they're treating all kids fairly and creating an environment where they'll be successful — every single one of them. How to do it ... is more challenging."

Blaha, who taught at Jackson Middle School in Champlin before becoming the union president last year, said she once hesitated before responding to one of her students being called a derogatory, anti-gay term in class. She knew that the students involved came from families with opposite views on the issue and worried whether administrators would support her actions.

"If I, at that time the vice president of the teacher's union, is hesitating out of bit of fear over what kind of support I'm going to have, I can only imagine how other teachers are reacting," she said. "That suggests that this policy is getting in the way at some level."

The union is gathering more information about the policy and impact it's having in teachers' classrooms before taking a position on how the district should respond, Blaha said.



Discussing school policy

Superintendent Dennis Carlson defended the policy in an op-ed MPR News published this week, saying the policy aims to foster respect for all students and families, including those who believe homes and churches — not schools — should handle sexual orientation discussions.

"Providing policies and programs that reflect a divided community is difficult," Carlson wrote. "Wishing to respect all families and all students, the school board believes neutrality is the best option." Carlson pointed out that the neutrality policy is separate from the district's bullying and harassment policies.

School board member John Hoffman said those criticizing the policy need to consider how it came about. When the board adopted the policy in February 2009, they were working to change an archaic school board directive from 1995 that said homosexuality would "not be taught/addressed as a normal, valid lifestyle" in the health curriculum taught in Anoka-Hennepin schools.

"It expanded beyond that and became broader, and there was a lot of misinterpretation going on," Hoffman said of the 1995 language. "We wanted to make sure we were being consistent with state and federal law but also wanted to give some clear direction."

The school district is in a conservative area of the state. In 2010, voters in the district chose Republicans over Democrats by at least a 12-point margin in races for governor and the Legislature. In 2008, Republican John McCain beat Democrat Barack Obama in the district; statewide, Obama won by a 10-point margin.

Hoffman said there might come a time when the policy is no longer needed in the Anoka-Hennepin district. For now, it has a purpose, he said.

"If it's factual and important and part of the discussion, then there should not be a problem. That's different than saying, 'I'm going to advocate on one side of the discussion,'" he said. "That pulls you back from your role as a teacher and you become an advocate."

Teachers in the district agreed that forcing personal opinions on their students was inappropriate and could even be considered unethical. But many said the policy allows for too much gray area.

Ann Lindsey, a teacher at Jackson Middle School, said teachers haven't been given the tools needed to fully address bullying and harassment of gay students. Simply scolding a student for saying "faggot" or "that's so gay" isn't enough, she said.

"It's always after the fact," said Lindsey, who advises a Gay-Straight Alliance student group at her school. "We need to start addressing it before the harassment starts."

Not everyone sees a link between the "neutrality policy" and bullying. While the policy limits what a teacher can teach, the district "has made it abundantly clear" that the policy does not limit a teacher's ability to support all students, including those who have been bullied for their sexual orientation, said Brent Munce, a school psychologist at Coon Rapids High School.

"I have met with all kinds of students," Munce said. "My focus is not on political controversies — my focus is on addressing their mental health needs."

Bullying issues aside, teachers said the sexual orientation policy can affect routine duties in classrooms across the district. An elementary school teacher, who requested anonymity,

said for her the policy means being sensitive to the fact that a student might have two moms or two dads when communicating with students and their parents.

A high school teacher leading a class for nursing assistants said it means teaching students that a patient's sexual orientation shouldn't affect the way he or she is treated. "Kids completely understood and had no problem with it," said Mishele Cunningham, a former Anoka-Hennepin nursing teacher.

Though Cunningham left the district to return to a nursing job before the policy was fully implemented, she said she has no doubts her teaching aligned with it.

"Teachers should be teaching a neutral stance," said Cunningham, who has a high school son in the district. "That's how everyone should be treated anyway -- with respect."

For a high school social studies teacher, who asked not to be identified, the policy prompted consultation with administrators before allowing students to study a court case about a gay-rights group as part of a history lesson. In that case, administrators determined it was relevant.

In a case at a middle school, administrators questioned whether a discussion of historical figures' sexual orientation was factual because they didn't disclose their sexual orientation during their lifetime. That frustrated Jefferson Pietek, who teaches theater at Anoka Middle School for the Arts. He said omitting that kind of discussion from history can make gay students feel excluded.

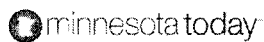
"The thing that is so heartbreaking for me is to hear kids who come and say, 'I'm the only one who feels this way, I'm the only one that's been through this, there's nobody like me.' And you sit there and think, 'Actually, there's lots and lots of people like you but you're not seeing that,'" he said.

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## Anoka-Hennepin sexual orientation policy has roots in 1995 school board action

by Elizabeth Dunbar, Minnesota Public Radio

June 20, 2011

St. Paul, Minn. — Late one night in the summer of 1995, Anoka-Hennepin School Board members Mark Temke and Ron Manning moved to accept the final piece of a health proposal written by a group of socially conservative parents and community members: Homosexuality should not be "taught/addressed as a normal, valid lifestyle" in the schools.

Read a timeline showing the Anoka-Hennepin School District's experience with sexual orientation issues.

The motion passed on a 4-2 vote, as had other items in the health curriculum "minority report," which included an emphasis on monogamous, heterosexual marriage and a statement that sodomy is illegal in Minnesota and creates a high risk for contracting AIDS.

Although the board forwarded the "minority report" and a "majority report" to district administrators, the language in the minority report never became part of formal district policy.

But the sentiment was taken quite seriously. The board's acceptance of the curriculum recommendations filtered into the schools, said teachers in the district, where for many years it was widely understood that sexual orientation issues weren't to be discussed.

"People really misunderstood what happened there," said Manning, who still lives in the school district, the state's largest, but no longer serves on the board. "A lot of people assumed that because we turned in a minority report that we were suggesting that they accept that. We really weren't." He said the board wanted to include everybody's point of view and formally record what the small group thought should be taught.

The remnants of that late night school board meeting are still being felt today, 16 years later, as school district officials defend a revised sexual orientation curriculum policy against a possible lawsuit by two national civil rights organizations. The two sides met last week and agreed to keep talking.

The revised policy, adopted in February 2009, says that matters of sexual orientation are better handled by families and churches. It also says teachers should stay neutral if they come up in their classrooms.

That policy followed a 2008 human rights complaint filed by the mother of a high school student who said two teachers harassed her son because they thought he was gay. Gay rights organizations had been pressuring the district to change its policies on sexual orientation.

By that time, the new school board knew that the language their predecessors accepted in the 1995 minority report was no longer consistent with the law — a judge had struck down Minnesota's sodomy statute in 2001.

The board adopted the new so-called "neutrality policy" after lengthy discussions with parents, community members and advocacy groups. Some people didn't want schools to teach kids anything that would clash with their religious belief that homosexuality is wrong; others wanted to prevent school staff from ostracizing gay students and families.

The beliefs held by the first group matched former board member Temke's feelings. But he said in an interview earlier this month that health was the primary argument he and other supporters of the minority report made for discouraging homosexuality in the schools. The group cited data showing higher rates of alcoholism, suicide and STD infection among gays and lesbians, he said.

Advocating homosexuality "would be steering people to their own self-destruction," said Temke, a businessman who still lives in the school district. "I stand by that 110 percent today like I did when I proposed it," he said of the board directive. "It was done for very valid reasons."

Brian Tommerdahl, an Anoka-Hennepin parent who was on the health curriculum committee in 1995 and supported the minority report, said the school board and many community members acknowledged that the '95 language put the district in a vulnerable position legally. He praised the 2009 policy, saying it addressed that problem while also aiming to keep teachers from becoming advocates.

"What is the primary purpose of the school? To teach math, reading, the sciences — not a particular political agenda," he said. "This is a neutral policy."

### HIGH STAKES

The Southern Poverty Law Center, one of the two groups threatening to sue the district, disagrees. The groups' attorneys argue it contributes to a hostile atmosphere by preventing teachers from fully addressing bullying against gay, lesbian, bisexual and transgender students.

Despite a possible lawsuit, school board members and Superintendent Dennis Carlson have defended the policy, saying it aims to serve a community divided on sexual orientation issues. Officials say the district has separate policies addressing bullying and harassment.

Tommerdahl said he thinks the policy would withstand a court test, but he's concerned the school board will fear the costs of a lawsuit and reverse course. It's happened to others on issues of sexual orientation, he said. "These districts, these communities, these businesses don't have an abundance of money. Lawsuits are expensive," he said.

Like many school districts in the state, Anoka-Hennepin has struggled with budget cuts in recent years. But changing policy could also catch the attention of voters — the same people who will decide this fall whether to renew a \$48 million tax levy for the Anoka-Hennepin district.

"Levies can politicize so much you do in schools," said Julie Blaha, Anoka-Hennepin teachers' union president. "Losing a levy ... would be devastating. It's a very real fear."

While meeting privately with civil rights groups, school district officials are also paying close attention to public opinion on their performance in anticipation of the levy vote. Just last month, board members reviewed results of a district-wide public opinion survey about everything from school quality to feelings about taxes.

Phil Duran, legal director for Minnesota gay rights group OutFront Minnesota, said that while the 2009 policy was definitely an improvement for the district, it's time for it to go.

His group had argued against the one sentence in the two-paragraph policy dealing with neutrality, which Duran said can lead to silence and exclusion and make kids more susceptible to bullying. "The board has made a political choice," he said. "They've painted themselves into a corner and are unwilling to find any way of getting themselves out, and in their intransigence have fostered a culture of uncertainty that is making the situation worse."

#### A POLICY IN ISOLATION

Anoka-Hennepin's sexual orientation curriculum policy is the only one of its kind in the state, so the district won't be able to lean on other Minnesota school systems to defend itself.

Nationally, eight states have laws limiting what teachers can say about homosexuality, and Tennessee could become the ninth under a proposal making its way through the Legislature. But individual school districts have power to create their own policies, and there's no easy way to track how many have written policies on sexual orientation.

Lawsuits against such policies have been rare. One policy, which banned any positive mention of homosexuality at a small school district in Merrimack, N.H., was challenged in court in the mid-'90s. The lawsuit was dropped after the school board changed the policy following an election in which a board member who supported it lost her seat.

Groups that scrutinize school sexual orientation policies haven't found one exactly like Anoka-Hennepin's current policy anywhere in the country.

"They've developed this policy through a process unique to Anoka-Hennepin," said Sam Wolfe, an attorney with the Southern Poverty Law Center. "It's a newer policy, it's something that really has an effect, and the community is focused on it."

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