

ACLU of Virginia

530 East Main Street, Suite 310 Richmond, Virginia 23219 (804) 644-8022

April 11, 2011

Steven L. Walts, Ed. D
Superintendent of Schools
Prince William County Public Schools
P. O. Box 389
Manassas, VA 20108
pwcssupt@pwcs.edu

Dear Dr. Walts:

It has come to our attention that Prince William County Public Schools utilizes internet filtering software that has been configured to improperly censor websites advocating for the fair treatment of lesbian, gay, bisexual, and transgender (“LGBT”) persons. On behalf of the American Civil Liberties Union Foundation (“ACLU”) and the ACLU of Virginia, I am writing to inform you that this practice violates both the First Amendment and the Equal Access Act, 20 U.S.C. § 4071 *et seq.*, and the filter for LGBT-related content must be removed immediately.

The internet filtering software in your school district improperly blocks access to, among other things, the websites for GSA Network (gsanetwork.org), Gay Lesbian and Straight Education Network (“GLSEN”) (www.glsen.org), Day of Silence (www.dayofsilence.org), and It Gets Better (www.itgetsbetter.org). The Prince William County Public Schools do not have a legitimate pedagogical basis for censoring students’ access to these websites, which provide support and resources for LGBT students and gay-straight alliances (“GSAs”). None of these websites contains sexually explicit or harmful material that would violate the school district’s acceptable use policy or the Children’s Online Protection Act (“CIPA”). But when students attempt to the websites for GSA Network, GLSEN, Day of Silence, or It Gets Better, the computer screens display a blue screen and a message stating: “You have reached a web site blocked by Prince William County Public School’s Acceptable Use Policy 295.” *See Exhibits A through D (attached).*

Based on publicly available information, it appears that LGBT-related websites are being improperly censored because of how your school district has configured its web filtering software provided by Blue Coat.¹ The Blue Coat software has an array of filter categories that can be activated to filter out specific types of content. One of those categories -- labeled

¹ According to the website for one of the high schools in your district: “The county uses Blue Coat filter technology to comply with our federal mandate under the Children’s Internet Protection Act, or CIPA. This national requirement compels schools to provide basic filtering against obscenity, pornography, and materials harmful to minors, as well as basic protections against network security issues like hacking. This filter is maintained by the PWCS Department of Information Technology Services at the school division level.” *See* <http://battlefield.groupfusion.net/modules/cms/pages.phtml?pageid=197685>.

“LGBT” -- is specifically designed to block access to LGBT-related websites. According to Blue Coat’s description of each category, the LGBT category is defined as:

Sites that provide information regarding, support, promote, or cater to one’s sexual orientation or gender identity including but not limited to lesbian, gay, bisexual, and transgender sites. *This category does not include sites considered sexually gratuitous in nature that would typically fall under the Pornography category.*

See Blue Coat Categories at www.bluecoat.com/doc/10826 (emphasis added). As the definition itself explains, the “LGBT” filter category is designed to block sites that would not otherwise be blocked as sexually explicit or pornographic. Indeed, Blue Coat lists GSA Network and GLSEN as examples of the very type of websites the LGBT filter is specifically designed to target. See Blue Coat Category Map at <https://bto.bluecoat.com/packetguide/current/reference/catmap.htm>.

Your students have a First Amendment right to access GSA Network, GLSEN, Day of Silence, It Gets Better, and similar materials that are blocked by Blue Coat’s LGBT filter. “[J]ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.” *Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982) (plurality) (internal quotation marks and citations omitted). “[T]he issue of equal rights for citizens who are homosexual is presently a topic of fervent discussion and debate within the courts, Congress, and the legislatures of the States The nation’s high school students, some of whom are of voting age, should not be foreclosed from that national dialogue.” *Gillman v. Sch. Bd. for Holmes County, Fla.*, 567 F. Supp. 2d 1359, 1374 (N.D. Fla. 2008); see also *Fricke v. Lynch*, 491 F. Supp. 381, 385 (D.R.I. 1980) (holding that First Amendment protects non-sexual expression of a student’s gay sexual orientation).

The Blue Coat LGBT filter also engages in unconstitutional viewpoint discrimination by blocking sites that express acceptance and tolerance towards LGBT individuals but not blocking sites that urge LGBT persons to change their sexual orientation or gender identity through so-called “reparative therapy.”² For example, the LGBT filter does not block the website for People Can Change (which is categorized as “Health”), the website for National Association for Research & Therapy of Homosexuality (which is categorized as “Reference” and “Political/Activist Groups”), the website for Exodus International (which is categorized as “Religion”), or the website for Parents and Friends of Ex-Gays (which is categorized as “Political/Activist Groups”). See Blue Coat Web Page Review, at <http://sitereview.bluecoat.com/sitereview.jsp>.

² “Reparative therapy” is a practice denounced as dangerous and harmful to young people by such groups as the American Psychological Association, the American Psychiatric Association, and the American Academy of Pediatrics. See *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel* (2006), available online at <http://apa.org/pi/lgbt/resources/just-the-facts.pdf>.

This viewpoint discrimination violates your students' First Amendment rights. "[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) (internal quotation marks and citation omitted). Whether or not school administrators agree with the content of the censored websites, secondary school students are mature enough to understand that a school does not endorse or support speech to which it merely permits access on a nondiscriminatory basis. See *Bd. of Educ. of Westside Cmty. Schools v. Mergens*, 496 U.S. 226, 250 (1990) ("[T]he proposition that schools do not endorse everything they fail to censor is not complicated.").

In addition to violating students' First Amendment rights, your use of Blue Coat's LGBT filter also violates the Equal Access Act because it denies students who are seeking to form GSAs equal access to school resources that are generally available to other non-curricular clubs. See 20 U.S.C. § 4071 *et seq.*; *Mergens*, 496 U.S. at 247; *SAGE v. Osseo Area Schools Dist.*, 471 F.3d 908 (8th Cir. 2006); *Gonzalez v. Bd. of Educ.*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008). The Equal Access Act mandates that, where a public secondary school receiving federal financial assistance permits even one non-curricular group to use school resources, it must permit all other non-curricular student groups to do so, too, on equal terms. See *Mergens*, 496 U.S. at 237, 247 (requiring equal access to school newspaper, bulletin boards, public address system, and club fair); *Boyd County High Sch. Gay Straight Alliance v. Bd. of Educ.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003) (school violated Equal Access Act by denying GSA clubs equal access to school bulletin board and intercom).

The Equal Access Act requires Prince William County Public Schools to provide GSAs with equal access to all school resources -- including online resources -- that are made available to other non-curricular clubs. See *SAGE*, 471 F.3d at 912 (LGBT-related group must have "equal access to the same avenues of communication as other noncurriculum related groups") (emphasis in original). The websites for GSA Network, GLSEN, and Day of Silence provide students with advice about how to establish a GSA at their school, suggestions for running an effective club, ideas regarding club activities, sample GSA club by-laws, and tips on how to work with teachers and administrators to address bullying and harassment in schools. But because Blue Coat's LGBT filter blocks access to those websites, students who seek to form GSAs in your district cannot access those online resources. By contrast, students seeking to establish or develop activities for other non-curricular clubs such as the Key Club are able to access their clubs' websites through the school's computers without being blocked by the LGBT filter.

Allowing students equal access to LGBT-related websites is not just a legal duty; it also makes sense from a safety perspective, particularly in light of the epidemic of LGBT youth suicides and bullying. Prohibiting access to LGBT websites is especially problematic because many students do not have computers or internet access at home and can access the internet only at school. As one court put it, "as any concerned parent would understand, this case [holding that members of the Gay-Straight Alliance must be permitted access to the school's resources in the same way as other clubs], may involve the protection of life itself." *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000).

Please contact me by April 25, 2011 to indicate whether you intend to disable the “LGBT” filter and provide students equal access to the websites for GSA Network, GLSEN, Day of Silence, It Gets Better, and similar LGBT-related resources in accordance with your school district’s legal obligations under the First Amendment and the Equal Access Act. If you continue to censor these websites, you could be subject to legal liability and the expense of litigation, as the boards of education and superintendents of two Tennessee school districts that also used the Blue Coat LGBT filter recently discovered. Ultimately, after being sued by the ACLU, both Tennessee school districts agreed to enter into a settlement agreement enforceable by the federal district court to remove the LGBT filter and stop blocking access of online information about lesbian, gay, bisexual, and transgender issues. *See Franks v. Metro. Bd. of Pub. Educ.*, No. 3:09- 00446 (M.D. Tenn. 2009).

Sincerely,



Rebecca K. Glenberg
Legal Director
ACLU of Virginia

Joshua Block
Staff Attorney
American Civil Liberties Union Foundation
Lesbian Gay Bisexual Transgender & AIDS Project

EXHIBIT A

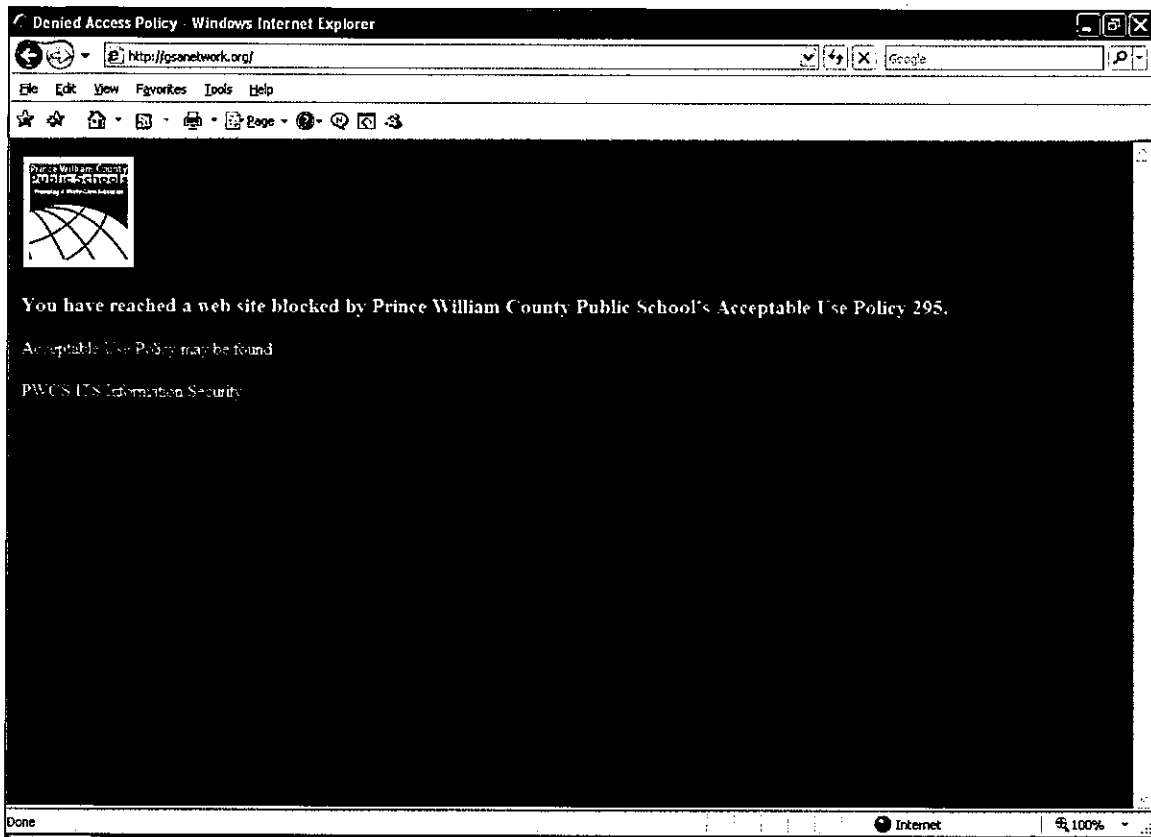


EXHIBIT B

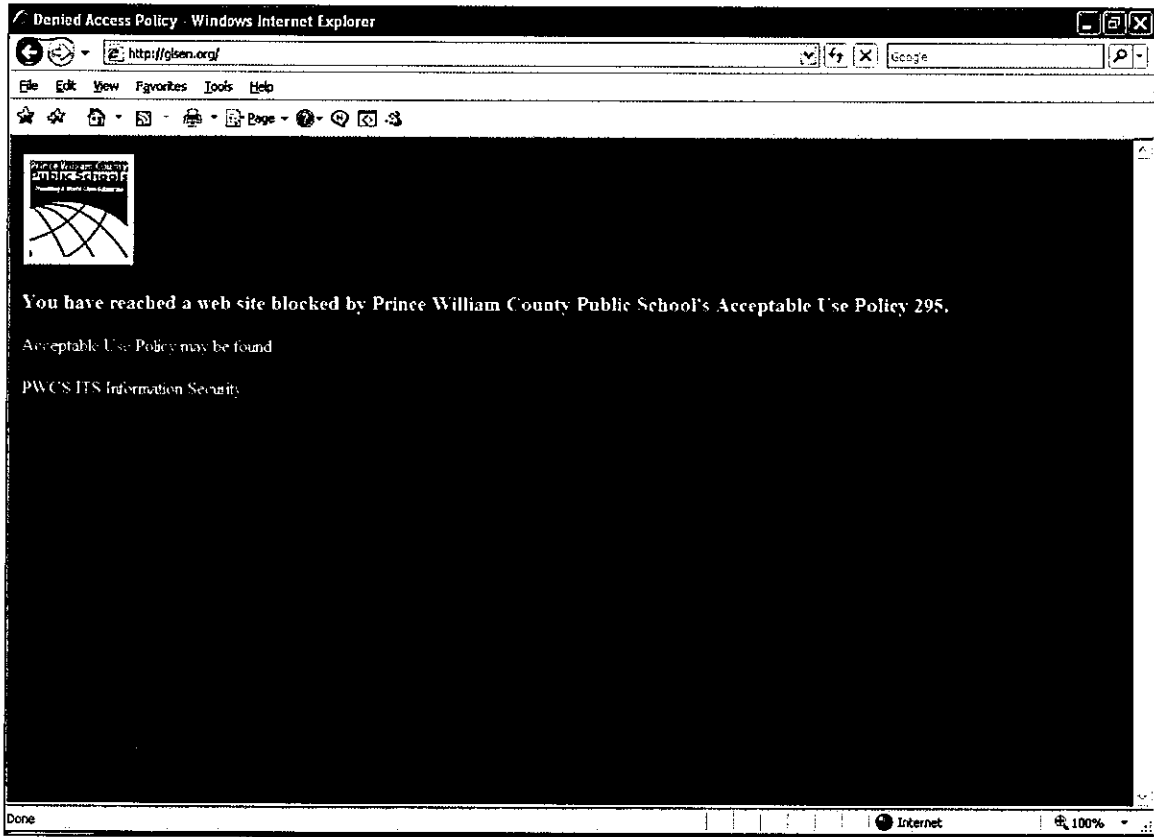


EXHIBIT C

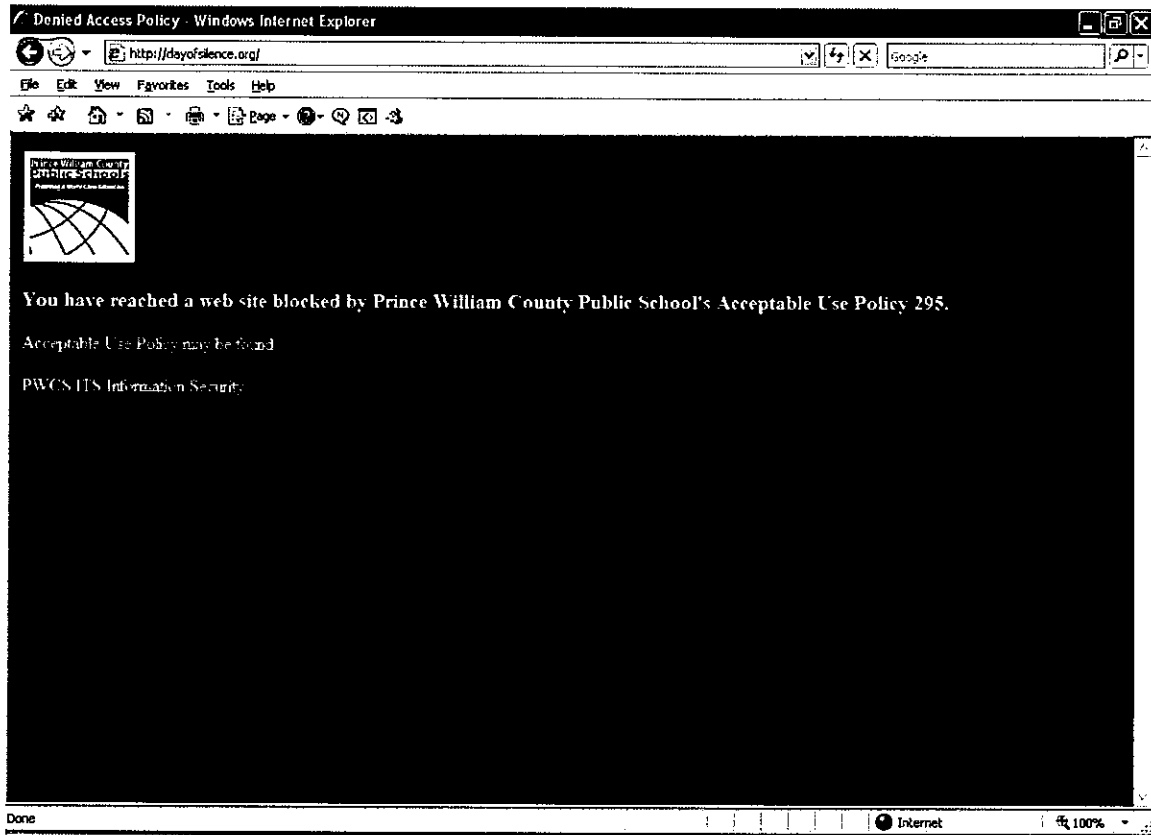


EXHIBIT D

