

# CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Hatcher, Amber by her next friend, Hatcher, Gregory

(b) County of Residence of First Listed Plaintiff DeSoto  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Nancy J. Faggianelli, 4221 West Boy Scout Blvd, Suite 1000, Tampa, FL 33607, (813) 229-4321

**DEFENDANTS**

DeSoto County Board of Education; Adrian Cline, DeSoto County Superintendent of Schools; Shannon Fusco, DeSoto County High School Principal; Ermatine Jones, DeSoto County High School Dean  
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

- (Place an "X" in One Box Only)
- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 42 U.S.C. 1983  
 Brief description of cause:  
 Violation of First and Fourteenth Amendments

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

02/26/2013

SIGNATURE OF ATTORNEY OF RECORD

*Nancy Faggianelli*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

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AMBER HATCHER, by and through	)	
her next friend, GREGORY HATCHER	)	
	)	
Plaintiff,	)	
	)	
	)	Civil Action File
DESOTO COUNTY SCHOOL DISTRICT	)	No.: _____
BOARD OF EDUCATION and ADRIAN CLINE,	)	
as Superintendent of DeSoto County School	)	
District, SHANNON FUSCO, as DeSoto County	)	
High School Principal, and ERMATINE	)	
JONES, as DeSoto County High School Dean	)	
of Students, in their personal and official	)	
capacities, and their successors in office,	)	
	)	
Defendants.	)	

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**VERIFIED COMPLAINT**

This is an action for preliminary and permanent injunctive relief and for money damages to redress the deprivation of rights guaranteed to the Plaintiff by the First and Fourteenth Amendments to the United States Constitution.

This civil rights action seeks to recover damages for, and to enjoin the unconstitutional policies, practices and disciplinary actions of the Defendants who unlawfully punished Plaintiff based on her speech, and her efforts to exercise her First Amendment right to freedom of expression. Despite the unconstitutionality of the actions at issue, the administration employed by the DeSoto County School District Board of Education, and the School District itself, through its lawfully elected Board of Education, acted under color of law to violate the First and Fourteenth Amendment rights of Plaintiff.

## PARTIES

1. Gregory Hatcher is, and at all times relevant hereto was, a natural person, citizen and resident of the State of Florida, residing within this judicial district in DeSoto County, Florida, and the parent, natural guardian and next friend of Plaintiff Amber Hatcher. Plaintiff Gregory Hatcher appears herein on behalf of his minor child Plaintiff Amber Hatcher.

2. Plaintiff Amber Hatcher is, and at all times hereto was, a natural person, a minor, a citizen and resident of the State of Florida, who resides within this judicial district in DeSoto County, Florida. Amber was, at the time of the events giving rise to this action, a fifteen-year-old student in the ninth grade at DeSoto County High School. She is set to graduate from DeSoto County High School in June 2015.

3. The DeSoto County School District (“School District”) is a governmental body and political subdivision of the State of Florida that was created and is maintained pursuant to state law for the purpose of providing public education to school-aged pupils within its geographical borders. *See* FL Stat. §1001.32(1). As such, the School District is a local government body that may be held liable under 42 U.S.C. §1983 where it has officially sanctioned or ordered unconstitutional actions.

4. Defendant DeSoto County School District Board of Education (“School Board”), in accordance with the provisions of section 4(b) of Art. IX of the State Constitution and as set out in Florida law, *see* FL Stat. §1001.32(2), operates, controls, and supervises all free public schools in the DeSoto County School District and is a “person” within the meaning of 42 U.S.C. §1983.

5. Defendant Adrian Cline is, or was at the time of the events giving rise to this action, the Superintendent of DeSoto County School District who has been delegated the authority and responsibility for the administration and management of the schools, including DeSoto County

High School, as the secretary and executive officer of the DeSoto County Board of Education pursuant to state law. *See* FL Stat. §1001.32(3).

6. Defendant Shannon Fusco is, or was at the time of the events giving rise to this action, the Principal of DeSoto County High School, who has been delegated the authority and responsibility for the administration of DeSoto County High School pursuant to state law. *See* FL Stat. §1001.32(4).

7. Pursuant to Fed.Rule Civ.Proc. 25(d)(1), the Defendants sued in their official capacities automatically include their successors in office. *See Hafer v. Melo*, 502 U.S. 21 (1991) (“[W]hen an official sued in this capacity in federal court dies or leaves office, her successor automatically assumes her role in the litigation. Because the real party in interest in an official-capacity suit is the governmental entity and not the named official....”) (citations omitted).

#### JURISDICTION AND VENUE

8. This action seeks to enforce and to vindicate rights conferred by the First and Fourteenth Amendments to the United States Constitution.

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, in that it arises under the Constitution of the United States, under 28 U.S.C. §1343(a)(3), in that it is brought to redress deprivations, under color of state authority, or rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. §1343(a)(4), in that it seeks to secure damages and equitable relief under an Act of Congress, specifically 42 U.S.C. §1983, which provides a cause of action for the protection of civil rights; under 28 U.S.C. §2201(a), in that one purpose of this action is to secure declaratory relief; and under 28 U.S.C. §2202, in that one purpose of this action is to secure preliminary and permanent injunctive relief.

10. Venue is proper in this Court under 28 U.S.C. §1391(b) in that all of the Defendants are situated within, and Plaintiff resides within, this judicial district and because all of the claims asserted by Plaintiff arose within the court's jurisdictional boundaries. Plaintiff demands a trial by jury pursuant to Fed. R. Civ. P. 38(b).

## **FACTS**

### Preamble

11. At the time of the events giving rise to this action, Amber Hatcher was a 15-year-old high school freshman at DeSoto County High School in Arcadia, Florida who sought to participate in a national expressive event called the "Day of Silence," a peer-to-peer education campaign designed to bring attention to the harassment and bullying experienced by many lesbian, gay, bisexual and transgender (LGBT) students and the destructive, silencing effects of anti-gay discrimination on LGBT students in schools.

12. The Day of Silence is an inherently expressive event; it is a day of action in which students across the country vow to take a form of silence in order to communicate the silencing effect of anti-LGBT bullying and harassment in schools.

13. The Day of Silence was founded in 1996 by students at the University of Virginia in response to a class assignment on nonviolent protests. In 1997, organizers expanded their effort nationally, and nearly 100 colleges and universities participated. In 2001, the Gay, Lesbian and Straight Education Network (GLSEN) became the official organizational sponsor for the event. The National Day of Silence has become the largest student-led action supporting safer schools for all, regardless of sexual orientation, gender identity or gender expression. According to the GLSEN website, the event has grown from students at one college in 1996 to over 8,000 middle schools, high schools, colleges and universities across the country took part in the event in 2008.

14. Amber and other students at DeSoto County High School sought to participate in National Day of Silence on April 20, 2012. (See Exhs. A-C)

*Amber's Preemptive Efforts to Participate in Day of Silence*

15. Amber researched Day of Silence online to become knowledgeable about organizing it and ensuring that students' rights to engage in the event were respected. As part of this effort, Amber visited the GLSEN-hosted website about Day of Silence at [www.dayofsilence.org](http://www.dayofsilence.org).

16. Among the documents, suggestions and strategies that GLSEN provides on its resource and information Web pages is organizing information as well as legal information regarding the rights of students to lawfully participate in Day of Silence, provided by the legal organizations American Civil Liberties Union and Lambda Legal Defense and Education Fund ("Lambda Legal"), the oldest and largest national legal organization committed to safeguarding and advancing the civil rights of LGBT people.

17. Amber immersed herself in the information GLSEN and other organizations provided until she felt she had a sufficient understanding of her right to participate in the event and the limitations of her right to free speech, including, for example, that her speech activities could not materially and substantially disrupt the school environment or the rights of others and that she would have to answer her teacher when called on for class participation.

18. Amber decided to follow GLSEN's general suggestions that students inform their school's administration about Day of Silence and, if possible, seek support from them.

19. Based on the information described in paragraph 18 above, approximately four weeks before the event was scheduled to take place nationally on April 20, 2012, Amber provided documents from the GLSEN website to DeSoto County High School Principal, Defendant

Shannon Fusco (“Principal Fusco”), describing Day of Silence. Amber asked for permission to participate in the event in an effort to minimize the chance of encountering problems.

20. In response to Amber’s efforts described in paragraph 19 above, Principal Fusco refused to provide Amber with the assurance she sought; that is, that she and other students would be able to participate in Day of Silence without disciplinary consequences. Indeed, Principal Fusco informed Amber that “peaceful protests are against District Policy” and that Superintendent Cline “denied permission for [student] to participate at DHS.” Exh. A.

21. Amber appealed her principal’s decision and denial on three different occasions by communicating directly with DeSoto County Superintendent of Schools, Defendant Adrian Cline, regarding Day of Silence.

22. On April 10, 2012, April 12, 2012 and again on April 13, 2012, Amber sent emails to Superintendent Cline, explaining the purpose and importance of “National Day of Silence, an anti-bullying campaign and peaceful protest.” Amber sought assurance that she and others could participate in the upcoming event without adverse consequences or disciplinary action and explained the nature of the event and students’ plans:

Mr. Cline, allowing us to participate in the DOS will do no harm. Our goal is to make students aware of bullying and try to stop it.... Allowing students to participate gives members of our community a sense that the administration cares.... Allowing students to participate will give the school a sense of unity.... Allowing students to participate on that day will make classes quieter.... Allowing students to participate gives a chance to spread awareness.... Participants may be a ‘sounding board,’ a non-judgemental (sic) party for students to relate to and speak out against their antagonists.

(Exhs. A-C)

23. In the emails to Defendant Cline described in paragraph 22 above, Amber included a citation to School District policy, noting that “thankfully, I’ve been able to find out District Policy, which specifically gives us the right to peacefully assemble.” (Exhs. A-C)

24. In her correspondence with Superintendent Cline described in paragraph 22 above, Amber quoted extensively from a publicly available document on students’ legal rights to participate in Day of Silence from Lambda Legal, setting out, among other things, that: “Under the Constitution, public schools must respect students’ right to free speech. The right to speak includes the right not to speak, as well as the right to wear buttons or T-shirts expressing support for a cause.”

25. Included in the emails to Defendant Cline described in paragraph 22 above, Amber also provided seven articulate and sound reasons why “allowing us to participate would benefit” the school environment in her correspondence with Defendant Cline, closing the email with the following explanation:

Honestly, we are not asking for much. All that we desire is the cooperation of the administration and to be allowed to put up posters. Many of the students who plan to participate will do so, whether administration approves or not. I just want to save myself and my peers from disciplinary action and help our school.

(Exhs. A-C)

*The School District’s Efforts to Chill and Obstruct Amber’s Participation in Day of Silence*

26. On or before April 2, 2012, Principal Fusco approached Superintendent Cline about Amber’s requests to participate in Day of Silence. On April 2, 2012, Superintendent Cline responded by email to Principal Fusco, communicating to her that “since this is classified as a protest, as evidenced by the submitted documents, I will not approve the activity on our campuses.” (Exh. D)



27. Principal Fusco communicated to Amber the School District's policy, as set out by the School Board's Chief Executive Officer, Superintendent Cline, that 'peaceful protests are against District policy' and told her that the Superintendent "denied permission" for students to participate in Day of Silence. (Exhs. A-C)

28. Principal Fusco verified by email to Superintendent Cline dated April 3, 2012 that she had relayed his message to Amber denying her permission to participate in Day of Silence. (Exh. E)

29. On April 12, 2012, Principal Fusco communicated to Superintendent Cline by email that Amber had twice more approached her with documentation on why "[Day of Silence] should be allowed," and she acknowledged and assured Superintendent Cline that "each time [I] told her no and what the ramifications would be if the protest occurred." (Exh. E)

30. In the email described in paragraph 29 above, Principal Fusco opined that she did not think Amber would "disobey, but she was insistent that she could convince you otherwise and was making an appointment." Principal Fusco promised Superintendent Cline that she would "clarify the matter with her again tomorrow morning." (Exh. E)

31. Notwithstanding that Superintendent Cline was on notice that his subordinate intended to punish students for speech without evidence to forecast a material and substantial disruption to the work of the school, he did not send a responsive email clarifying that students have the right to participate in the free speech activities described in the documents provided to him by Amber and in her emails without "ramifications," or otherwise take *any* effort to ensure that Amber's rights were not infringed.

32. On April 19, 2012, the day before Day of Silence, Principal Fusco interrupted Amber's instruction time by calling her out of class and into her office where she warned Amber

again that if she came to school the following day and ‘was quiet, there would be disciplinary consequences.’

33. Principal Fusco also telephoned Amber’s parents several consecutive days prior to Day of Silence and attempted to persuade them to convince Amber not to participate, communicating to Amber’s parents that if she came to school and took part in Day of Silence activities there would be ‘consequences.’

34. Principal Fusco suggested that Mr. Hatcher keep Amber home from school on Day of Silence “to avoid problems” in one of the conversations described in paragraph 33 above.

35. As a result of the aforementioned obstructive efforts, Amber contacted GLSEN and Lambda Legal to seek assistance and information about her school’s actions in blocking her from participating.

36. On April 19, 2012, Lambda Legal sent Defendants Fusco and Cline a letter setting out the school’s legal obligation to allow Amber and other students to participate in Day of Silence. (*See* Exh. F) Lambda Legal also provided additional information to Amber regarding her right to wear a t-shirt with a message regarding Day of Silence so long as it was not vulgar or otherwise unlawful and to participate in expressive activities that did not materially and substantially interfere with school activities or the rights of other students.

Actual Interference With Amber's Ability to Participate in Day of Silence

37. Based on Defendants' negative communications to, and through, Amber about the school's refusal to allow participation and the threats of adverse consequences for doing so, few students felt comfortable taking part in Day of Silence even though many had earlier expressed interest in taking part.

38. Although Amber had planned to organize the event by encouraging students to purchase red t-shirts with pro-Day of Silence messages on them, based on the school administration's campaign to discourage her from participating, and threatening disciplinary action for those who did participate, Amber was chilled and discouraged from organizing the event in this manner.

39. On the morning of national Day of Silence, April 20, 2012, Principal Fusco sent an email to all teachers advising them that:

If you have students who are wearing placards in protest of an issue or disrupting the hallways or classrooms, please notify the dean or administration and we will handle it. If a student refuses to participate in class by taking part in a silent protest, that is considered a disruption. Again, please notify the administration, and we will handle it.

Exh. G.

40. Amber wore a red t-shirt to school on April 20, 2012 in support of Day of Silence with the message "DOS April 20, 2012: Shhhhh."

41. Amber likewise attempted to participate in Day of Silence 2012 by keeping silent, passing out information about her reason for doing so or having friends communicate the message of Day of Silence on her behalf, and communicating with the aid of a dry-erase board.

42. No negative or disruptive incidents occurred in Amber's first- or second-period classes, or, based on information and belief, on school grounds during that time, and Amber did not refuse to participate in response to any teacher or instruction.

43. Less than ten minutes into her third-period class, Amber was summoned to the Dean of Students' office, whereupon Defendant Jones asked whether Amber 'wanted in-school suspension or out-of-school suspension.' When Amber asked why she was being punished, Dean Jones said, 'Mrs. Fusco told you not to do this.' Amber responded that she knew her First Amendment rights and that the school could not suspend her for exercising them.

44. Dean Jones then demanded Amber's parents' contact information in order to suspend Amber for the day and have them remove her from the school campus.

45. Amber provided the information described in paragraph 44 above to Dean Jones without hesitation.

46. As Amber's parents were not available when the school called, Dean Jones placed Amber into in-school suspension; she was placed in the Intervention Room, isolated from her peers and classroom activities for the rest of the school day.

47. Although Amber was adamant in her conversation with Dean Jones that she felt the school was violating her constitutional rights in pulling her from class and suspending her based on her efforts to exercise her right to free expression, Amber was respectful in her conversation with school administration while remaining resolute in her position that she had done nothing wrong and that the school's actions were unlawful.

48. Amber is aware of at least one other student, R.M., who was similarly punished for his silent participation in Day of Silence. R.M. was asked by his teacher if he was participating in Day of Silence, to which he nodded. Thereafter, during R.M.'s third-period class, he was

summoned to the Dean's Secretary's office and directed to wash off the writing on his hand that said "DOS: Think of the voices you aren't hearing," which was an expression designed to show his participation in Day of Silence and in protest of anti-LGBT harassment and bullying.

49. R.M. was also given the option of in-school or out-of-school suspension; he called his father and was allowed to sign himself out of school in lieu of spending the day in the Intervention Room with Amber.

50. Amber's and R.M.'s efforts to participate in Day of Silence was the motivating reason they were sent to the Dean's office and the principal or sole reason for their being removed from class and for the disciplinary actions taken against them.

*Evidence of Intentional Interference With Students' Attempts to Participate in Day of Silence*

51. Principal Fusco sent an email on April 23 2012 to Melba Barnwell, Executive Assistant to Superintendent Cline verifying that "two students received consequences from protesting for LGBT day of silence" and "[t]wo other students were asked to comply with removing their protest tags." (Exh. H)

52. In the email described in paragraph 51 above, Principal Fusco admitted that Amber was disciplined because she "was dressed in a shirt protesting the occasion." (Exh. H)

53. Based on information and belief, as well as Defendants' actions pursuant to state law in providing documents responsive to a request under Florida law for all documents relating, referring or concerning Day of Silence and Amber Hatcher, Superintendent Cline ratified Principal Fusco's actions and communication regarding School Board policies, where he did not make efforts to clarify or otherwise intervene after Principal Fusco told him that she had threatened Amber with punishment for participating (*see* Exh. E) and admitted that students had

been disciplined for expressive activities described in paragraphs 51-52 above and that two other students had been forced to remove their messages. (*See* Exh. H)

54. In January, 2013, Amber asked Principal Fusco if she could participate in Day of Silence this year. Again, Principal Fusco said that she could not.

*Florida Statutes Delegating Responsibility for Discipline to Defendants Cline and Fusco*

55. At all times relevant to the events giving rise to this action, Defendant Cline, as the DeSoto County Superintendent of Schools, was and continues to be the chief executive officer of the DeSoto County School District Board of Education. *See* FL Stat. §1001.48.

56. At all times relevant to the events giving rise to this action, the School Board delegated, and continues to delegate, to Defendant Cline, as the DeSoto County Superintendent of Schools, the authority to: 1) direct the activities of his subordinates and directing the work of employees; 2) have general oversight of the schools in the DeSoto County School District; 3) ensure that all laws and rules of the State Board and supplementary rules of the Board of Education are followed. *See* FL. Stat. §§ 101.51 (14); DeSoto County School Dist. R. 70.02.

57. At all times relevant to the events giving rise to this action, Defendant Cline, as the DeSoto County Superintendent of Schools, had and continues to have the sole responsibility to report to the School Board any violation of school rules or policies that he is unable to correct. DeSoto County School Dist. R 70.03(o).

58. At all times relevant to the events giving rise to this action, the School Board delegated, and continues to delegate, the responsibility to Defendant Cline for the administration and management of the schools in the DeSoto County School District as the secretary and executive officer of the district Board of Education. *See* FL. Stat. §§ 1001.32 (3)

59. At all times relevant to the events giving rise to this action, the School Board delegated and continues to delegate the responsibility for the administration of DeSoto County High School to the school principal, here Principal Fusco. *See* FL. Stat. §§ 1001.32 (4).

60. Superintendent Cline denied Amber's appeal of the denial to participate in Day of Silence. The Board provided no actual opportunity for meaningful review of the Superintendent's decision regarding the Board's policy and practice prohibiting speech, nor for the discipline Amber received on April 20, 2012.

*Consequences of Defendants' Interference With Amber's Ability to Participate  
in Day of Silence*

61. As a direct and proximate result of the disciplinary and other actions of the Defendants complained of herein, Amber has suffered, and will continue to suffer, harms including but not limited to lost academic opportunity, a permanent disciplinary record, the chill of and punishment for the lawful exercise of her rights under the First Amendment, emotional distress, shame, humiliation, loss of enjoyment of life, and mental distress.

62. Amber seeks to organize and participate in Day of Silence 2013, but fears retaliation and similar adverse disciplinary consequences and is now chilled in her ability to participate in this upcoming expressive event.

COUNT I

FREEDOM OF EXPRESSION

CLAIM FOR DAMAGES AGAINST DEFENDANT DESOTO COUNTY BOARD OF EDUCATION, AND DEFENDANTS ADRIAN CLINE, SHANNON FUSCO AND ERMATINE JONES IN THEIR OFFICIAL CAPACITIES, FOR VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

63. Plaintiff restates, as if rewritten here in their entirety, each and every claim, allegation and averment set forth in Paragraphs 1 through 62 inclusive, of this Complaint above.

64. The First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment to the United States Constitution and enforceable pursuant to 42 U.S.C. § 1983, provides that states may not abridge the freedom of speech. The First Amendment secures the rights of individuals, including students, to express themselves without unjustified interference or constraint by the government, including public schools, which may not prohibit the expression of an idea simply because society finds the idea offensive or disagreeable or without evidence upon which to base a reasonable belief that a material and substantial disruption of the school environment or intrusion upon the rights of others will result.

65. Plaintiff was engaged in the lawful exercise of her First Amendment rights in the preceding paragraphs outlining her efforts to participate in Day of Silence in April 2012.

66. By wearing a t-shirt expressing that she was participating in Day of Silence, using a dry-erase board to communicate, and handing out information about her silence, or otherwise enlisting assistance in explaining her silence, the Plaintiff sent a message likely to be understood by those intended to view it.

67. Plaintiff's speech was not school-sponsored.

68. Plaintiff's speech was political expression, seeking to influence her peers, teachers and administrators to recognize the damaging effects of anti-LGBT harassment in schools.

69. At all times relevant to the events giving rise to this action, no objectively reasonable facts existed upon which Defendants could speculate that Plaintiff's speech would cause a material and substantial disruption of the school environment.

70. Plaintiff's expressive efforts did not create a material or substantial disruption of the school environment or interfere with other students' rights.



71. The prohibition and discipline for Plaintiff's expression of pro-LGBT rights, and/or involvement in a silent, peaceful education campaign calling attention to the damaging effects of anti-LGBT bullying and harassment, whether or not deemed a peaceful "protest," is a content-based restriction on speech unsupported by a reasonable belief that all such expression would create material and substantial disruption of the school environment.

72. A complete ban on student speech in opposition to, or "protest" of, a subject is viewpoint-based and/or content-based discrimination creating a prior restraint on speech lacking a requisite governmental justification.

73. A complete ban on student speech in opposition to, or "protest" of, a subject is not a permissible time, place, and manner restriction.

74. In threatening discipline, chilling speech, and in imposing, upholding and maintaining disciplinary sanctions upon Plaintiff, based—in whole or in part—upon her participating in Day of Silence, Defendants violated Plaintiff's right to free expression as secured by the First and Fourteenth Amendments to the United States Constitution.

75. The School Board is a local governmental body that, through its chief executive officer, officially sanctioned, imposed, and maintained the disciplinary sanctions upon Plaintiff, and in so doing acted wantonly, willfully, maliciously and/or with a reckless disregard for her constitutional rights.

76. In imposing, approving, ratifying and enforcing the disciplinary actions against Plaintiff, Defendants were at all times relevant hereto acting under color and authority of state law.

77. The School Board delegated final decision-making authority for ensuring that its policies are applied in the schools, as well as delegating the responsibility for the administration and management of the schools, to Superintendent Cline.

78. By state law, Principal Fusco had been delegated final decision-making authority for the administration of DeSoto County High School, including disciplinary actions against students.

79. Defendant Fusco's discretionary discipline decisions are not subject to approval by the School Board.

80. Defendant Fusco's discretionary decision to punish Plaintiff, and otherwise interfere with her instructive time and her efforts to participate in expressive activity on April 20, 2012, was not subject to approval by the School Board.

81. Defendant Cline's discretionary decisions in interpreting, communicating to subordinates and applying the School Board's policy, practice and/or custom at issue in this action are not subject to approval by the School Board.

82. Defendant Cline's discretionary decision to interpret school district policy, practice and/or custom, and communicate to Defendant Fusco that notwithstanding the documentation provided him describing Day of Silence as a peaceful, silent expressive event, students could not participate in Day of Silence, and/or any similar such expressive event, was not an action subject to approval by the School Board.

83. Defendant Cline's discretionary actions and inactions with respect to directing the activities of his subordinate Principal Fusco, in denying Plaintiff's request to participate in Day of Silence and in failing and refusing to correct any misinterpretation of the School Board's policies as communicated repeatedly from Principal Fusco to Superintendent Cline were not

actions subject to approval by the School Board in that the School Board delegated responsibilities to Defendant Cline to, among other relevant responsibilities, direct the work of employees and ensure that all laws and rules of the State Board and supplementary rules of the Board of Education are followed.

84. The School Board is responsible for the multiple acts of its subordinates, Superintendent Cline and Principal Fusco, whose actions include communicating to Plaintiff that there would be adverse consequences if she participated in Day of Silence, and otherwise acting in concert to chill and obstruct Plaintiff's expressive activities.

85. The multiple acts of Defendants described herein to chill and obstruct Plaintiff's expressive activities reflect a custom, practice or policy that caused the Plaintiff's injury.

86. As a result of the delegation of authority to Defendants Fusco and Cline, Defendants Fusco and Cline are final decision-makers for the actions described herein that resulted in Plaintiff's injuries described herein. As admitted to by Principal Fusco and Superintendent Cline, the School Board has a policy, custom and/or practice of not allowing student speech that can be characterized "protest" speech that is so settled and permanent that it takes on the force of the law.

87. Upon information and belief, Plaintiff will continue to be subject to the policies, practices and/or actions of the School Board which abridge her right to expressive activities; in particular, her desire to organize and participate in Day of Silence 2013.

88. The past and continued application of the policies, practices and/or actions of the School Board against speech activities that may be characterized as a "protest" and/or participation in expressive and silent educational campaigns such as Day of Silence to Plaintiff

has violated, and continues to violate, her rights under the First Amendment to the United States Constitution.

89. The actions of the Defendant as described herein were taken pursuant to the policies, practices and/or customs of the School Board.

90. The actions of the Defendants were motivated by and taken because of Plaintiff's expressive conduct and speech that is and was protected by the First and Fourteenth Amendments to the United States Constitution and for which redress, in the form of damages, is provided in 42 U.S.C. §1983. The conduct of the Defendants was further calculated to and did in fact suppress, chill and punish conduct and speech that was so protected.

91. As a direct and proximate result of the aforescribed actions of the Defendants, Plaintiff has suffered damages, without limitation, as follows: Plaintiff was compelled to curtail activity and speech that is protected by the First and Fourteenth Amendments to the United States Constitution; Plaintiff was punished for the exercise of her First Amendment rights on school premises without legitimate justification; Plaintiff was suspended for a period of more than four hours, isolated from her classmates, and kept from her classroom and participating in classroom instruction.

92. The record of suspension and discipline on Plaintiff's academic record may and/or will have irreparable negative consequences on her future as she seeks admission to college, the military, or seeks to enter the workforce. Plaintiff has suffered and will continue to suffer pain, consternation and emotional distress over the deprivation of her constitutionally protected rights, over the suspension that she was forced to serve, over the disruption of her high school career, over the negative effect on her high school record, and over the continued threat of retaliation by the school for any subsequent, yet minor, disciplinary violation.

93. As the direct and proximate result of these actions and inactions by the Defendants complained of herein, Plaintiff has suffered and will continue to suffer the aforescribed harms and damages.

94. Pursuant to 42 U.S.C. §1988, Plaintiff is entitled to reasonable attorney fees if she is the prevailing party herein.

## COUNT II

### FREEDOM OF EXPRESSION

CLAIM FOR DAMAGES AGAINST DEFENDANTS ADRIAN CLINE, SHANNON FUSCO AND ERMATINE JONES, IN THEIR PERSONAL CAPACITIES, FOR VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

95. Plaintiff restates, as if rewritten here in their entirety, each and every claim, allegation and averment set forth in Paragraphs 1 through 62 inclusive, of this Complaint above.

96. In imposing, approving, ratifying and enforcing the disciplinary actions against Plaintiff, Defendants were at all times relevant hereto acting under color and authority of state law.

97. The law regarding students' rights to participate in silent expressive activities and/or protests that did not create a threat of material and substantial disruption to the work of the school was clearly established since at least 1969, in the U.S. Supreme Court decision in *Tinker v. Des Moines Ind. Sch. Dist.*, 393 U.S. 503 (1969), such that, at the time that the events giving rise to this action occurred, previous law was developed in a concrete factual context that made it obvious to a reasonable government actor that his or her actions violated federal law.

COUNT III

RETALIATION

CLAIM FOR DAMAGES AGAINST DEFENDANT DESOTO COUNTY BOARD OF EDUCATION AND DEFENDANTS ADRIAN CLINE, SHANNON FUSCO AND ERMATINE JONES, IN THEIR OFFICIAL CAPACITIES, FOR VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

98. Plaintiff restates, as if rewritten here in their entirety, each and every claim, allegation and averment set forth in Paragraphs 1 through 62 inclusive, of this Complaint above.

99. Plaintiff was engaged in a constitutionally protected activity by and through her efforts to participate in Day of Silence; in expressing her support for LGBT students and in protest of anti-LGBT bullying and harassment; and in bringing attention to the silencing effects of anti-LGBT harassment in schools.

100. The School Board delegated final decision-making authority for ensuring that its policies are applied in the schools, as well as delegating the responsibility for the administration and management of the schools, to Superintendent Cline, whose actions and inactions in response to direct information that Plaintiff would be retaliated against for participating in Day of Silence constitutes official custom, practice and/or policy of the School Board.

101. The School Board delegated final decision-making authority for the administration of DeSoto County High School, including disciplinary actions against students, to Principal Fusco such that the disciplinary action taken against Plaintiff in retaliation for her participation in Day of Silence constitutes official policy of the School Board.

102. Defendant Fusco's discretionary discipline decisions are not subject to approval by the School Board.

103. Defendant Fusco's discretionary decision to punish Plaintiff on April 20, 2012 was not subject to approval by the School Board.

104. Defendant Cline's discretionary decisions in interpreting, communicating to subordinates and applying School District policies are not subject to approval by the School Board.

105. The School Board is responsible for the multiple acts of its subordinates, Superintendent Cline and Principal Fusco, whose actions include retaliating against Plaintiff for her participation in Day of Silence, and otherwise acting in concert to chill and obstruct Plaintiff's expressive activities because the multiple acts of Defendants described herein to chill and obstruct Plaintiff's expressive activities reflect a practice, custom or policy that caused the Plaintiff's injury.

106. As a result of the aforescribed delegation of authority, Defendants Fusco and Cline are final decision-makers for the actions described herein that resulted in Plaintiff's injuries.

107. As admitted to by Principal Fusco and Superintendent Cline, the School Board has "an absolute policy against protests," Exh. G, and a "practice" of "disapproving" activities such as Day of Silence. *Id.*

108. Defendant Cline, as a supervisory official with the responsibility to supervise, control, or train Principal Fusco, encouraged and/or directly participated in allowing and encouraging the abridgement of Plaintiff's expressive activities. Defendant Cline implicitly authorized, approved, and/or knowingly acquiesced in the unconstitutional conduct of DeSoto County High School officials in the adverse consequences received for, and chilling effect on, Plaintiff's expressive activities.

109. The Defendants' actions chilled Plaintiff from being able to engage in the protected activities described herein.

110. The Defendants' actions described herein would chill a person of ordinary firmness from engaging in protected expressive activity.

111. Plaintiff's effort to participate in Day of Silence was a substantial or motivating factor in Defendants' conduct resulting in adverse actions against Plaintiff as described herein.

#### COUNT IV

#### RETALIATION

CLAIM FOR DAMAGES AGAINST DEFENDANTS ADRIAN CLINE, SHANNON FUSCO AND ERMATINE JONES, IN THEIR PERSONAL CAPACITIES, FOR VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

112. Plaintiff restates, as if rewritten here in their entirety, each and every claim, allegation and averment set forth in Paragraphs 1 through 62 inclusive, of this Complaint above.

113. In imposing, approving, ratifying and enforcing the disciplinary actions against Plaintiff, Defendants were at all times relevant hereto acting under color and authority of state law.

114. The law regarding students' rights to participate in silent expressive activities and/or protests that did not create a threat of material and substantial disruption to the work of the school was clearly established since the U.S. Supreme Court decision in *Tinker v. Des Moines Ind. Sch. Dist.* 393 U.S. 503 (1969), such that, at the time that the events giving rise to this action occurred, previous law was developed in a concrete factual context that made it obvious to a reasonable government actor that his or her actions violated federal law.

115. The law holding that state officials may not retaliate against private citizens because of the exercise of their First Amendment rights is and has been clearly established at all times



relevant to the events giving rise to this action such that defendants were on notice and had “fair warning” that retaliating against the Plaintiff for her efforts to participate in Day of Silence would violate her constitutional rights.

## COUNT V

### FAILURE TO TRAIN

CLAIM FOR DAMAGES AGAINST DEFENDANT DESOTO COUNTY BOARD OF EDUCATION AND DEFENDANT ADRIAN CLINE IN HIS OFFICIAL CAPACITY FOR VIOLATION OF THE FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

116. Plaintiff restates, as if rewritten here in their entirety, each and every claim, allegation and averment set forth in Paragraphs 1 through 62 inclusive, of this Complaint above.

117. Each of the actions taken by the Defendants and described herein was taken under color of state law in a manner that was malicious, reckless, wanton, willful and manifested a deliberate indifference to the rights of Plaintiff.

118. Each of the actions taken by the Defendants and described herein was undertaken by the defendants in a manner calculated to chill Plaintiff in the exercise of her First Amendment rights.

119. Plaintiff has in fact been chilled in the exercise of her First Amendment rights, and has refrained from organizing Day of Silence 2013 since her punishment, and continues to do so, fearing she will be punished, absent a judicial determination of her rights.

120. In failing to train, supervise, discipline or otherwise restrain DeSoto County High School administration from imposing the discipline complained of in this case upon Plaintiff, the Defendants, through their actions and culpable inaction, adopted, sanctioned, ratified and approved the actions complained of herein.

121. The School Board was deliberately indifferent to the adequate training of Defendant Cline regarding students' First Amendment rights to participate in silent, expressive activities, that do not materially and substantially interfere with school activities or the rights of other students, whether that expressive activity is called a "protest" or not.

122. Defendant Cline was deliberately indifferent to the adequate training of DeSoto County High School administration regarding students' First Amendment rights to participate in silent, expressive activities, that do not materially and substantially interfere with school activities or the rights of other students, whether that expressive activity is called a "protest" or not.

123. As the direct and proximate result of these actions and inactions by Defendants complained of herein, Plaintiff has suffered and will continue to suffer the harms and damages complained of herein.

## COUNT VI

### FAILURE TO SUPERVISE

CLAIM FOR DAMAGES AGAINST DEFENDANT DESOTO COUNTY BOARD OF EDUCATION AND DEFENDANT CLINE, IN HIS OFFICIAL CAPACITY, FOR VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

124. Plaintiff restates, as if rewritten here in their entirety, each and every claim, allegation and averment set forth in Paragraphs 1 through 62, inclusive, of this Complaint above.

125. Defendant Cline knew or should have known there was danger that Principal Fusco and Dean Jones would engage in the unconstitutional conduct complained of herein and, as their supervisor, he had the authority to take steps to prevent the conduct that caused the Plaintiff's injury.

126. Defendant Fusco knew or should have known there was danger that Dean Jones would engage in the unconstitutional conduct complained of herein and, as her supervisor, she had the authority to take steps to prevent the conduct that caused the Plaintiff's injury.

127. There is a causal link or nexus between each of the supervisors' wrongful conduct and the violation of Plaintiff's federally protected right.

## COUNT VII

### FAILURE TO SUPERVISE

#### CLAIM FOR DAMAGES AGAINST DEFENDANT CLINE AND DEFENDANT FUSCO, IN THEIR PERSONAL CAPACITIES, FOR VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

128. Plaintiff restates, as if rewritten here in their entirety, each and every claim, allegation and averment set forth in Paragraphs 1 through 62, inclusive, of this Complaint above.

129. Defendant Cline knew or should have known there was danger that Principal Fusco and Dean Jones would engage in the unconstitutional conduct complained of herein and, as their supervisor, he had the authority to take steps to prevent the conduct that caused the Plaintiff's injury.

130. Defendant Fusco knew or should have known there was danger that Dean Jones would engage in the unconstitutional conduct complained of herein and, as her supervisor, she had the authority to take steps to prevent the conduct that caused the Plaintiff's injury.

131. There is a direct causal link or nexus between each of the supervisors' wrongful conduct and the violation of Plaintiff's federally protected right.

132. The law regarding students' rights to participate in silent expressive activities and/or protests that do not create a threat of material and substantial disruption to the work of the school was clearly established since at least 1969, in the U.S. Supreme Court decision in *Tinker v. Des*

*Moines Ind. Sch. Dist.*, 393 U.S. 503 (1969), such that, at the time that the events giving rise to this action occurred, previous law was developed in a concrete factual context that made it obvious to a reasonable government actor that his or her actions violated federal law.

## COUNT VIII

### EQUAL PROTECTION

CLAIM FOR DAMAGES AGAINST DEFENDANT DESOTO COUNTY BOARD OF EDUCATION AND DEFENDANTS ADRIAN CLINE, SHANNON FUSCO AND ERMATINE JONES, IN THEIR OFFICIAL CAPACITIES, FOR VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

133. Plaintiff restates, as if rewritten here in their entirety, each and every claim, allegation and averment set forth in Paragraphs 1 through 62, inclusive, of this Complaint above.

134. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall deny any person the equal protection of the laws.

135. Under the Equal Protection Clause, Defendants may not grant the use of a forum only to people whose views they find acceptable, and deny its use to those wishing to express less favored or more controversial views. There is an equality of status in the field of ideas, and Defendants must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, Defendants may not prohibit others from assembling or speaking on the basis of what they intend to say.

136. Under the School District's policy and/or practice, messages that are deemed to be "protests" are categorically impermissible, as are messages protesting and otherwise calling attention to LGBT bullying and harassment. Therefore, the School District's policy and/or practice creates a classification of students (those who seek to express these messages) and treats

them differently and worse than other students by denying them freedom of expression and threatening them with discipline.

137. The School District's policies and/or practices described herein define impermissible speech and expression not in terms of time, place and manner, but in terms of subject matter. The policy and/or practice thus concerns content and viewpoint, and diverges from neutrality.

138. The School District's policies and/or practices described herein were based on a classification that infringed on the fundamental right to freedom of expression without a corresponding legally sufficient justification.

139. Because the School District's policy and/or practice employs a classification affecting First Amendment interests, it must be narrowly tailored to legitimate and substantial governmental interests. To the contrary, the School District here has imposed a selective restriction on the expressive conduct of a class of students (those who seek to express messages deemed "protest speech") based on the content of and viewpoints expressed in their expression, which violates the Equal Protection Clause.

140. The School District's policies, practices and/or actions described herein burdened and otherwise infringed Plaintiff's fundamental right to free speech based on the content of Plaintiff's speech, without a compelling governmental interest.

141. There is no compelling governmental interest for justifying the School District's policy, practice and/or Defendants actions that chilled and infringed Plaintiff's speech based on its message where Defendants routinely allow other similarly situated students to engage in efforts to express a message in school.

COUNT IX

EQUAL PROTECTION

CLAIM FOR DAMAGES AGAINST DEFENDANTS ADRIAN CLINE, SHANNON FUSCO AND ERMATINE JONES, IN THEIR PERSONAL CAPACITIES, FOR VIOLATION OF THE FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

142. Plaintiff restates, as if rewritten here in their entirety, each and every claim, allegation and averment set forth in Paragraphs 1 through 62, inclusive, of this Complaint above.

143. The actions of Defendants in punishing Plaintiff for her participation in Day of Silence described herein were based on a classification that infringed on the fundamental right to freedom of expression without a corresponding legally sufficient justification, as more specifically detailed in the previous Count.

144. The law setting out that free speech is a fundamental right that requires a compelling governmental interest to justify burdening and that classifications which burden fundamental rights implicate equal protection was clearly established at the time the events giving rise to this litigation so as to make it obvious to a reasonable government actor that his or her actions violate federal law.

145. The law in this jurisdiction holding that government officials acting under color of law may not punish citizens or otherwise discriminate against a citizen based on a classification that infringes on the fundamental right to freedom of expression without a corresponding legally sufficient justification was clearly established at all times relevant to the events giving rise to this action.

COUNT X

INJUNCTIVE RELIEF

CLAIM FOR INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS FOR VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

146. By this reference, Plaintiffs incorporate each and every allegation and averment set forth in paragraphs 1 through 62 of this Complaint as though fully set forth herein.

147. By the acts described herein, Defendants have violated and continue to violate the rights of Plaintiff (and other students in said Defendants' school district) protected by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983, causing great, immediate and irreparable harm to Plaintiff. Defendants' intentional and willful prohibition, interference, and discipline of Plaintiff for her constitutionally protected speech has damaged Plaintiff and will continue to greatly damage Plaintiff and other students under Defendants' purview in the future if permitted to continue.

148. Unless and until Defendants are restrained, prevented and enjoined from the continuing violation of the Plaintiff's (and other students in said Defendants' school district) First and Fourteenth Amendment rights and continued endorsement on Plaintiff's records of the discipline imposed therefore, the Plaintiff will continue to be immediately, irreparably and exponentially harmed by Defendants' intentional and willful wrongdoing.

149. Plaintiff has no adequate remedy at law for Defendants' violation of her constitutionally protected rights and expungement from her records of the disciplinary actions taken against her by the Defendants.

150. Plaintiff has a substantial likelihood of success in her claims.

151. Plaintiff will suffer irreparable injury if Defendants are not constrained.

152. Neither Defendants nor others will suffer substantial harm if a preliminary injunction is granted.

153. Plaintiff shows that an Order for declaratory and preliminary and permanent injunctive relief is necessary to enjoin Defendants from continuing to enforce its policies, customs and/or practices against the Plaintiff in suppression of the rights guaranteed to Plaintiff by the First and Fourteenth Amendments to the Constitution of the United States of America.

154. Plaintiff shows that an Order should be issued requiring Defendants to strike, expunge and eliminate any and all record of suspension of Plaintiff and expunge her records of any actions taken by the Defendants referenced herein.

155. The Plaintiff further shows that she is entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. §1988; and for other such declaratory, equitable and injunctive relief as the Court deems just and proper.

#### PRAYER

WHEREFORE, having fully stated their claims against the Defendants, Plaintiff demands judgment against each of the Defendants as follows:

- A. A declaration that the disciplinary actions taken by the Defendants against Plaintiff violated her right to free expression under the First Amendment to the United States Constitution as incorporated against the states by the Fourteenth Amendment to the United States Constitution, and their rights under Article I, Section I, Para II, III, V, VII, & IX, of the Constitution of the State of Florida.
- B. A declaration that the policy and/or custom of the DeSoto County Board of Education that restricts students' rights to participate in silent and/or otherwise

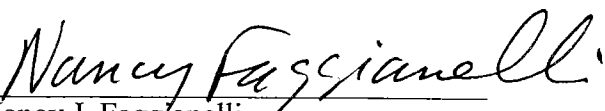


protest, campaigns or expressive events that do not materially and substantially interfere with the school environment or the rights of other students are unconstitutional, and in violation of the First Amendment to the United States Constitution as incorporated against the states by the Fourteenth Amendment to the United States Constitution, and a preliminary and permanent injunction against the further enforcement thereof;

- C. A mandatory injunction requiring Defendants to clear and expunge the disciplinary records of Plaintiff of all offenses and punishments complained of herein; and to remove from her files all references to any discipline complained of herein;
- D. A mandatory injunction requiring Defendants and their agents to allow Plaintiff and other students in DeSoto County School District to be able to participate in protests that are not likely to materially and substantially interfere with the work of the school generally, and Day of Silence in particular, in 2013 and in future years in conformity with the U.S. Constitution;
- E. An award of nominal damages against the Defendants;
- F. An award of punitive damages against individual Defendants in an amount to be proven at trial;
- G. An award of attorneys' fees and costs of suit pursuant to 42 U.S.C. Section 1988 and Fed.R.Civ.P. 54, and;
- H. Such other legal and equitable relief as this Court shall, in the sound exercise of its discretion, deem just.

This the 26<sup>th</sup> day of February, 2013.

Respectfully submitted,



Nancy J. Faggianelli  
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and

Elizabeth Lynn Littrell (GA Bar No. 454949)\*  
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Southern Regional Office  
730 Peachtree Street, N.E., Suite 1070  
Atlanta, GA 30308-1210  
Telephone: (404) 897-1880  
Email: BLittrell@lambdalegal.org  
\*Motion for Admission Pro Hac Vice filed  
February 26, 2013

*Counsel for Plaintiff*

VERIFICATION

STATE OF FLORIDA )  
                          *Charlotte (AH)* )  
COUNTY ~~DESO~~ )

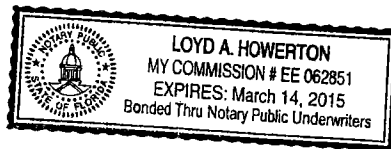
Before me, the undersigned authority, personally appeared this day, Amber Hatcher, who is personally known to me or provided the following identification:

and who was duly sworn and says that she has read the foregoing Complaint and is familiar with its contents which are true to the best of her information and belief.

*Amber Hatcher* (Signature)  
Amber Hatcher (Printed Name)

SWORN AND SUBSCRIBED before me this 22 day of February, 2013.

*Lloyd A. Howerton*  
Notary Public, State of Florida  
at Large



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

AMBER HATCHER, by and through	)	
her next friend, GREGORY HATCHER	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action File
	)	No.: _____
	)	
DESOTO COUNTY SCHOOL DISTRICT	)	
BOARD OF EDUCATION et. al.,	)	
	)	
Defendants.	)	

**INDEX TO COMPLAINT EXHIBITS**

Exhibit A	Email, Hatcher to Cline, April 10
Exhibit B	Email, Hatcher to Cline, April 12
Exhibit C	Email, Hatcher to Cline, April 13
Exhibit D	Email, Cline to Fusco, April 12
Exhibit E	Email, Fusco to Cline, April 12
Exhibit. F	Letter, Lambda Legal to Cline and Fusco (and email F(1))
Exhibit G	Email, Fusco to Staff, April 20
Exhibit H	Email, Fusco to Melba, April 23

*EXHIBIT A*

## Cline, Adrian

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**From:** Amber Hatcher <amberh720@hotmail.com>  
**Sent:** Tuesday, April 10, 2012 7:37 AM  
**To:** Cline, Adrian  
**Subject:** National Day Of Silence

Dear Mr. Cline,

This year, the National Day Of Silence (DOS), an anti-bullying campaign and peaceful protest, falls on April 20th, 2012. I, despite being a student (and a Freshman at that!), have been attempting to organize the DOS with Mrs. Fusco for about a week. Unfortunately, Mrs. Fusco informed me that peaceful protests are against District Policy and that you denied permission for us to participate at DHS. Thankfully, I've been able to find out District Policy, which specifically *gives us* the right to peacefully assemble.

According to Student Rights And Responsibilities ([http://desotoschools.com/Home/school\\_info/Student%20Rights%20and%20Responsibilities.pdf](http://desotoschools.com/Home/school_info/Student%20Rights%20and%20Responsibilities.pdf)); students have the right to "Hear, examine, and express divergent points of view, including freedom of speech, written expression, and symbolic expression," granted that we, "consider and respect the divergent point of view of others," and, "Be sure that personal expressions (speech, written, or symbolic) do not infringe on the rights of others." We also have the right to, "assemble peacefully on school grounds," as long as we, "assemble do as not to disrupt the educational process." Also, According to Lambda Legal (The attorney's office that has dealt with the legal side of DOS); "Under the Constitution, public schools must respect students' right to free speech. The right to speak includes the right not to speak, as well as the right to wear buttons or T-shirts expressing support for a cause.

This does not mean students can say—or not say—anything they want at all times. There are some limits on free speech rights at school. For example, schools have some control over students' speech in the classroom or during other supervised, school-sponsored activities. If a teacher tells a student to answer a question during class, the student generally doesn't have a constitutional right to refuse to answer. Students who want to remain silent during class on the Day of Silence are less likely to encounter problems if they seek permission from their teachers beforehand. However, school officials are NOT allowed to discriminate against you based on your message. In other words, school officials may not censor a student just because they disapprove of the student's ideas because the student's speech makes them uncomfortable or because they want to avoid controversy. Outside of the classroom, in areas like hallways and cafeterias, students have a much broader right to free speech. Schools can't censor students unless they use lewd or foul language, promote illegal drug use, harass other students or substantially disrupt the school environment."

Mr. Cline, allowing us to participate in the DOS will do no harm. Our goal is to make students aware of bullying and try to stop it. Here are seven reasons that allowing us the participate in the DOS would be beneficial to you:

- 1.) Allowing students to participate on April 20th, which coincidentally falls on National Marijuana Appreciation Day, removes the day's theme of drug appreciation and replaces it with a theme of acceptance.
- 2.) Allowing students to participate will make them more aware of bullying, and also gives a message that any type of bullying is unacceptable.
- 3.) Allowing students to participate gives members of our community a sense that the administration cares.
- 4.) Allowing students to participate will give the school a sense of unity.
- 5.) Allowing students to participate on that day will make classes quieter. We may even be able to deter disruption!

6.) Allowing students to participate gives a chance to spread awareness.

7.) Participants may be a "sounding board," a non-judgemental party for students to relate to and speak out against their antagonists.

Honestly, we aren't asking for much. All that we desire is the cooperation of administration and to be allowed to put up posters. Many of the students who plan to participate will do so, whether administration approves or not. I just want to save myself and my peers from disciplinary action and help our school. Thank you for your time.

Sincerely, Amber Hatcher,

A hopeful student.

***EXHIBIT B***



## Cline, Adrian

---

**From:** Amber Hatcher <amberh720@hotmail.com>  
**Sent:** Thursday, April 12, 2012 7:24 AM  
**To:** Cline, Adrian  
**Subject:** [Urgent] National Day Of Silence

**Importance:** High

---

From: amberh720@hotmail.com  
To: adrian.cline@desoto.k12.fl.us  
Subject: National Day Of Silence  
Date: Tue, 10 Apr 2012 11:36:47 +0000

Dear Mr. Cline,

This year, the National Day Of Silence (DOS), an anti-bullying campaign and peaceful protest, falls on April 20th, 2012. I, despite being a student (and a Freshman at that!), have been attempting to organize the DOS with Mrs. Fusco for about a week. Unfortunately, Mrs. Fusco informed me that peaceful protests are against District Policy and that you denied permission for us to participate at DHS. Thankfully, I've been able to find out District Policy, which specifically *gives us* the right to peacefully assemble.

According to Student Rights And Responsibilities

([http://desotoschools.com/Home/school\\_info/Student%20Rights%20and%20Responsibilities.pdf](http://desotoschools.com/Home/school_info/Student%20Rights%20and%20Responsibilities.pdf)); students have the right to "Hear, examine, and express divergent points of view, including freedom of speech, written expression, and symbolic expression," granted that we, "consider and respect the divergent point of view of others," and, "Be sure that personal expressions (speech, written, or symbolic) do not infringe on the rights of others." We also have the right to, "assemble peacefully on school grounds," as long as we, "assemble do as not to disrupt the educational process." Also, According to Lambda Legal (The attorney's office that has dealt with the legal side of DOS); "Under the Constitution, public schools must respect students' right to free speech. The right to speak includes the right not to speak, as well as the right to wear buttons or T-shirts expressing support for a cause.

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Mr. Cline, allowing us to participate in the DOS will do no harm. Our goal is to make students aware of bullying and try to stop it. Here are seven reasons that allowing us the participate in the DOS would be beneficial to you:

- 1.) Allowing students to participate on April 20th, which coincidentally falls on National Marijuana Appreciation Day, removes the day's theme of drug appreciation and replaces it with a theme of acceptance.
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Honestly, we aren't asking for much. All that we desire is the cooperation of administration and to be allowed to put up posters. Many of the students who plan to participate will do so, whether administration approves or not. I just want to save myself and my peers from disciplinary action and help our school. Thank you for your time.

Sincerely, Amber Hatcher,  
A hopeful student.

***EXHIBIT C***

## Cline, Adrian

---

**From:** Amber Hatcher <amberh720@hotmail.com>  
**Sent:** Friday, April 13, 2012 6:34 PM  
**To:** Cline, Adrian  
**Subject:** FW: [Urgent] National Day Of Silence

**Importance:** High

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From: amberh720@hotmail.com  
To: adrian.cline@desoto.k12.fl.us  
Subject: [Urgent] National Day Of Silence  
Date: Thu, 12 Apr 2012 11:23:54 +0000

---

From: amberh720@hotmail.com  
To: adrian.cline@desoto.k12.fl.us  
Subject: National Day Of Silence  
Date: Tue, 10 Apr 2012 11:36:47 +0000

Dear Mr. Cline,

This year, the National Day Of Silence (DOS), an anti-bullying campaign and peaceful protest, falls on April 20th, 2012. I, despite being a student (and a Freshman at that!), have been attempting to organize the DOS with Mrs. Fusco for about a week. Unfortunately, Mrs. Fusco informed me that peaceful protests are against District Policy and that you denied permission for us to participate at DHS. Thankfully, I've been able to find out District Policy, which specifically *gives us* the right to peacefully assemble.

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Sincerely, Amber Hatcher,  
A hopeful student.

**(I apologize for sending this email multiple times, but April 20th is approaching fast. Considering that this will be the third time I've sent this email, the next logical step would be to set up an appointment at your offices. I can only do this as a last resort, but rest assured with the knowledge that I will do all I can to organize this event.)**

***EXHIBIT D***

**Cline, Adrian**

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**From:** Cline, Adrian  
**Sent:** Thursday, April 12, 2012 8:15 PM  
**To:** Fusco, Shannon  
**Subject:** National Day Of Silence  
**Attachments:** Adrian H. Cline.vcf  
**Signed By:** adrian.cline@desoto.k12.fl.us

**Importance:** High

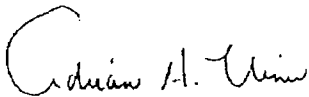


Principal Fusco:

Please clarify my position with Miss Hatcher. I indicated the following in an email to you on April 2, 2012:

- It is inconsistent with the district's past practice to approve student protests on any of our campuses. The attached is disapproved.

I did not refer to a specific policy. Since this is classified as a protest, as evidenced by the submitted documents, I will not approve the activity on our campuses. This *past practice* position needs to be discussed with Miss Hatcher on April 13, 2012.



Adrian H. Cline  
Superintendent  
School District of DeSoto  
13650 494-4020 X110  
adrian.cline@desoto.k12.fl.us  
Post Office Drawer 2000  
Arcade, Florida 32655

**From:** Amber Hatcher [mailto:amberh720@hotmail.com]  
**Sent:** Thursday, April 12, 2012 7:24 AM  
**To:** Cline, Adrian  
**Subject:** [Urgent] National Day Of Silence  
**Importance:** High

From: [amberh720@hotmail.com](mailto:amberh720@hotmail.com)  
To: [adrian.cline@desoto.k12.fl.us](mailto:adrian.cline@desoto.k12.fl.us)  
Subject: National Day Of Silence  
Date: Tue, 10 Apr 2012 11:36:47 +0000

Dear Mr. Cline,

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Sincerely, Amber Hatcher,  
A hopeful student.



***EXHIBIT E***

**Cline, Adrian**

---

**From:** Fusco, Shannon  
**Sent:** Thursday, April 12, 2012 8:38 PM  
**To:** Cline, Adrian; Fusco, Shannon  
**Subject:** RE: National Day Of Silence

Mr. Cline,

I addressed this issue with Miss Hatcher immediately after you responded to my email on the matter. She has come to me twice since with documentation on why it should be allowed, and I have each time told her no and what the ramifications would be if the protest occurred.

I don't think she plans to disobey, but she was insistant that she could convince you otherwise and was making an appointment.

I will clarify the matter with her again tomorrow morning.

Thank you,  
Shannon Fusco

---

**From:** Cline, Adrian  
**Sent:** Thursday, April 12, 2012 8:14 PM  
**To:** Fusco, Shannon  
**Subject:** National Day Of Silence



Principal Fusco:

Please clarify my position with Miss Hatcher. I indicated the following in an email to you on April 2, 2012:

- It is inconsistent with the district's past practice to approve student protests on any of our campuses. The attached is disapproved.

I did not refer to a specific policy. Since this is classified as a protest, as evidenced by the submitted documents, I will not approve the activity on our campuses. This *past practice* position needs to be discussed with Miss Hatcher on April 13, 2012.

*Adrian A. Cline*



Adrian H. Cline  
Superintendent  
School District of DeSoto  
38637 494-4222 x116  
adrian.cline@desoto.k12.fl.us  
Post Office Box 2000  
Arcade, Florida 34265

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**Sent:** Thursday, April 12, 2012 7:24 AM  
**To:** Cline, Adrian  
**Subject:** [Urgent] National Day Of Silence  
**Importance:** High

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Subject: National Day Of Silence  
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Sincerely, Amber Hatcher,  
A hopeful student.

***EXHIBIT F***



**Lambda Legal**  
making the case for equality

April 19, 2012

*Sent by electronic mail and facsimile transmission*

(866) 370-2471

(863) 494-7867

[adrian.cline@desoto.k12.fl.us](mailto:adrian.cline@desoto.k12.fl.us)

Adrian H. Cline, Superintendent  
Desoto County School District  
Post Office Drawer 2000  
Arcadia, FL 34266

**Re: Day of Silence and allegations of unlawful interference with student speech**

Dear Adrian H. Cline:

We have been advised by several students who seek to participate in Day of Silence activities at Desoto County High School tomorrow, April 20, 2012, that they have been severely hampered by your administration in their efforts to do so. In particular, it is our understanding that students have been informed that they may not distribute materials, wear T-shirts or otherwise participate in the national Day of Silence, which is a day designed to show support for lesbian, gay, bisexual and transgender (LGBT) students. As the oldest and largest national legal organization committed to achieving full recognition of the civil rights of LGBT people and their allies, Lambda Legal has extensive experience with issues related to students' rights, including their right to free speech. We write on behalf of students in your school wishing to participate in Day of Silence, to put the school on notice that failure to allow these students to exercise their right to free speech and equal treatment implicates constitutional violations that can create both individual and institution liability.

Protection of Students Rights to Freedom of Expression

The Supreme Court has long recognized that public school students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”<sup>1</sup> Under the First Amendment, schools may not restrict student speech merely to avoid controversy or to avoid the “discomfort and unpleasantness that always accompany an unpopular viewpoint.”<sup>2</sup> Nor may schools suppress or discriminate against student speech simply because they disapprove of or disagree with the speaker's ideas.<sup>3</sup> The Constitution allows schools to control student speech only in very narrow circumstances,

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<sup>1</sup> *Morse v. Frederick*, 127 S. Ct. 2618, 2622 (2007) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)).

<sup>2</sup> *Tinker*, 393 U.S. at 509; see also *Colin ex rel. Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1141 (C.D. Cal. 2000); *Morrison v. Bd. of Educ.*, 419 F. Supp. 2d 937, 941 (E.D. Ky. 2006) (“The private, noncurricular speech of students is entitled to almost blanket constitutional protection.”) affirmed by *Morrison v. Bd. of Educ.*, 521 F.3d 602 (6th Cir. 2008).

<sup>3</sup> See *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995) (“Discrimination against speech because of its message is presumed to be unconstitutional.”); see also *Prince v. Jacoby*, 303 F.3d 1074, 1091 (9th Cir. 2002).

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April 19, 2012  
Dr. Frost, Superintendant

none of which are present here.<sup>4</sup>

With respect to any justifications to censor the pro-gay speech at issue here based on “distraction” or “disruption,” the Supreme Court has allowed restrictions on student speech only where school officials have *reasonably* concluded that the speech will “‘materially and substantially disrupt the work and discipline of the school.’”<sup>5</sup> A school may not simply assume, however, that disruptions will occur; rather, the school must justify restrictions on speech by showing *facts* that reasonably lead it “to forecast substantial disruption of or material interference with school activities.”<sup>6</sup> Accordingly, the school may not censor a student simply because it believes that some students or community members hearing the speech will respond in a disruptive manner.<sup>7</sup> If students who oppose the speaker’s message disrupt the school, the school must direct its disciplinary measures at those students, not at the speaker.<sup>8</sup> In the words of one federal court, the First Amendment “does not tolerate mob rule by unruly school children.”<sup>9</sup>

As the Supreme Court explained, the mere fact that a particular issue may be controversial or politically sensitive does not permit school authorities to censor “silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of [the speakers themselves].”<sup>10</sup> In an educational environment, student expression that does not disrupt school activities should be a subject of discussion and debate, not censorship. Indeed, where school officials in a school for grades six through twelve had prohibited students from wearing messages at school such as “Gay? Fine by Me,” “I Support My Gay Friends,” and “I Support Equal Marriage Rights.”<sup>11</sup> the court held that the restrictions violated the Constitution and the federal judge wrote that it was “extraordinary” that the school would ban

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<sup>4</sup> For example, the Constitution allows schools to censor speech expressed in an obscene, lewd or profane manner, as well as speech encouraging illegal drug use. *Morse*, 127 S. Ct. at 2629 (2007); *Barr v. Lafon*, 538 F.3d 554, 564 (6th Cir. 2008).

<sup>5</sup> *Morse*, 127 S. Ct. at 2626 (quoting *Tinker*, 393 U.S. at 513); *Barr*, 538 F.3d at 564; *Morrison*, 419 F. Supp. 2d at 941 (“Further limiting the restriction of speech is the requirement that there be a specific fear of significant disruption.”).

<sup>6</sup> *Pinard v. Clatskanie School Dist.* 6J, 467 F.3d 755, 768 (9th Cir. 2006) (citation and internal quotation marks omitted).

<sup>7</sup> See *Morrison v. Bd. of Educ.*, 521 F.3d 602, 623 (6th Cir. 2008)

<sup>8</sup> See *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992) (“Speech cannot be . . . punished or banned, simply because it might offend a hostile mob.”); see also *Boyd County High Sch. Gay Straight Alliance v. Bd. of Educ.*, 258 F. Supp. 2d 667, 690 (E.D. Ky. 2003) (“Assuming arguendo that the anti-GSA faction at BCHS was sufficiently disruptive to ‘materially and substantially interfere with the requirements of appropriate discipline,’ Defendants are not permitted to restrict Plaintiffs’ speech and association as a means of preventing disruptive responses to it. The Court further finds that the ‘heckler’s veto’ rule does not limit Defendants’ authority to maintain order and discipline on school premises or to protect the well-being of students and faculty. . . . *Tinker* and *Terminiello* are designed to prevent Defendants from punishing students who express unpopular views instead of punishing the students who react to those views in a disruptive manner.”) (citing *Tinker*, 393 U.S. at 509).

<sup>9</sup> *Fricke v. Lynch*, 491 F. Supp. 381, 387 (D.R.I. 1980).

<sup>10</sup> *Tinker*, at 580; see also *Saxe v. State College Area Sch. Dist.*, 240 F.3d 200, 211 (3rd Cir. 2001) (“[T]inker requires a specific and significant fear of disruption, not just some remote apprehension of disturbance.”)

<sup>11</sup> *Gillman ex rel. Gillman v. School Bd. for Holmes County, Fla.*, 567 F.Supp.2d 1359, 1362 (N.D. Fla. 2008).

Page 3  
April 19, 2012  
Dr. Frost, Superintendent

speech “that is not vulgar, lewd, obscene, plainly offensive, or violent, but which is pure, political, and expresses tolerance, acceptance, fairness and support for . . . a marginalized group [and] for a fellow student.”<sup>12</sup>

Nor does the First Amendment allow the school to dilute or alter the student message. In *Franklin Central Gay/Straight Alliance v. Franklin Tp. Community School*, 2002 WL 32097530, (S.D. Ind. Aug. 30, 2002), an Indiana federal court rejected the school’s argument that it could force a GSA to “dilute its message by accommodating others, such as overweight students.” The court ruled that forcing the GSA to become a “diversity” club was “not content-neutral. The speaker has the right to tailor his or her own message.” *Id.* (citing *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 573 (1995)). With respect to Day of Silence activities, please be advised that while students understand that failure to verbally respond to a school official’s question may have an effect on their class participation grade for the day, any aggressive or disproportionate discipline, or questioning that requires verbal responses from students who have communicated their participation in tomorrow’s silent protest, may be viewed as chilling a student’s speech and/or as unconstitutional retaliation for the exercise of constitutionally protected rights.

**Additionally, please be advised that any retaliation aimed at students** for exercising their rights with respect to expression on campus or contacting organizations to report interference with their rights **will subject the school and school officials to additional liability** because the law is clear that school officials may not interfere with students in their pursuit of constitutional rights hinder – through intimidation or otherwise. To be clear, “government action which chills constitutionally protected speech or expression contravenes the First Amendment,” *Wolford v. Lasater*,<sup>13</sup> and “threats accompanied by a ‘chilling effect’ that deny or hinder the exercise of a constitutional right have been deemed cognizable.” *Sterling v. Borough of Minersville* 232 F.3d 190 (3rd Cir. 2000) (holding officials liable for threatening to reveal citizen’s sexual orientation to family members).<sup>14</sup>

Hopefully, the information contained herein will lead to an immediate resolution of these issues so that no further action will be necessary to ensure that students may participate in Friday’s Day of Silence activities without further discrimination or censorship. However, please be advised that we are closely monitoring the situation to ensure that these students rights are not further violated and will be discussing with them the possibility of remedial efforts which may include a federal lawsuit.

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<sup>12</sup> *Id.* at \*9.

<sup>13</sup> 78 F.3d 484, 488 (10th Cir.1996)

<sup>14</sup> See also *Citizens Action Fund v. City of Morgan City*, 154 F.3d 211, 216 (5th Cir.1998) (“[t]hreats of unconstitutionally enforcing laws against individuals can lead to a chilling effect upon speech, silencing voices and opinions which the First Amendment was meant to protect.”).





**Lambda Legal**  
making the case for equality

Page 4

April 19, 2012

Dr. Frost, Superintendant

Should you wish to discuss this matter, please do not hesitate to contact us directly.

Sincerely,

LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

By: \_\_\_\_\_

Beth Littrell  
Staff Attorney

cc: Shannon Fusco, Principal

*EXHIBIT F(1)*

Beth Littrell/Lambda

04/19/2012 06:27 PM

To adrian.cline@desoto.k12.fl.us

cc shannon.fusco@desoto.k12.fl.us

Subj Day of Silence and allegations of unlawful interference with  
ect student speech

Please see attached and below.



Desoto HS.pdf

April 19, 2012

Sent by electronic mail and facsimile transmission

(866) 370-2471

(863) 494-7867

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Adrian H. Cline, Superintendent

Desoto County School District

Post Office Drawer 2000

Arcadia, FL 34266

Re: Day of Silence and allegations of unlawful interference with student speech

Dear Adrian H. Cline:

We have been advised by several students who seek to participate in Day of Silence activities at Desoto County High School tomorrow, April 20, 2012, that they have been severely hampered by your administration in their efforts to do so. In particular, it is our understanding that students have been informed that they may not distribute materials, wear T-shirts or otherwise participate in the national Day of Silence, which is a day designed to show support for lesbian, gay, bisexual and transgender (LGBT) students. As the oldest and largest national legal organization committed to achieving full recognition of the civil rights of LGBT people and their allies, Lambda Legal has extensive experience with issues related to students' rights, including their right to free speech. We write on behalf of students in your school wishing to participate in Day of Silence, to put the school on notice that failure to allow these students to exercise their right to free speech and equal treatment implicates constitutional violations that can create both individual and institution liability.

Protection of Students Rights to Freedom of Expression

The Supreme Court has long recognized that public school students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Under the First Amendment, schools may not restrict student speech merely to avoid controversy or to

avoid the “discomfort and unpleasantness that always accompany an unpopular viewpoint.” Nor may schools suppress or discriminate against student speech simply because they disapprove of or disagree with the speaker’s ideas. The Constitution allows schools to control student speech only in very narrow circumstances, none of which are present here.

With respect to any justifications to censor the pro-gay speech at issue here based on “distraction” or “disruption,” the Supreme Court has allowed restrictions on student speech only where school officials have reasonably concluded that the speech will “materially and substantially disrupt the work and discipline of the school.” A school may not simply assume, however, that disruptions will occur; rather, the school must justify restrictions on speech by showing facts that reasonably lead it “to forecast substantial disruption of or material interference with school activities.” Accordingly, the school may not censor a student simply because it believes that some students or community members hearing the speech will respond in a disruptive manner. If students who oppose the speaker’s message disrupt the school, the school must direct its disciplinary measures at those students, not at the speaker. In the words of one federal court, the First Amendment “does not tolerate mob rule by unruly school children.”

As the Supreme Court explained, the mere fact that a particular issue may be controversial or politically sensitive does not permit school authorities to censor “silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of [the speakers themselves].” In an educational environment, student expression that does not disrupt school activities should be a subject of discussion and debate, not censorship. Indeed, where school officials in a school for grades six through twelve had prohibited students from wearing messages at school such as “Gay? Fine by Me,” “I Support My Gay Friends,” and “I Support Equal Marriage Rights,” the court held that the restrictions violated the Constitution and the federal judge wrote that it was “extraordinary” that the school would ban speech “that is not vulgar, lewd, obscene, plainly offensive, or violent, but which is pure, political, and expresses tolerance, acceptance, fairness and support for . . . a marginalized group [and] for a fellow student.”

Nor does the First Amendment allow the school to dilute or alter the student message. In *Franklin Central Gay/Straight Alliance v. Franklin Tp. Community School*, 2002 WL 32097530, (S.D. Ind. Aug. 30, 2002), an Indiana federal court rejected the school’s argument that it could force a GSA to “dilute its message by accommodating others, such as overweight students.” The court ruled that forcing the GSA to become a “diversity” club was “not content-neutral. The speaker has the right to tailor his or her own message.” *Id.* (citing *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 573 (1995)). With respect to Day of Silence activities, please be advised that while students understand that failure to verbally respond to a school official’s question may have an effect on their class participation grade for the day, any aggressive or disproportionate discipline, or questioning that requires verbal responses from students who have communicated their participation in tomorrow’s silent protest, may be viewed as chilling a student’s speech and/or as unconstitutional retaliation for the exercise of constitutionally protected rights.

Additionally, please be advised that any retaliation aimed at students for exercising their rights with respect to expression on campus or contacting organizations to report interference with their

rights will subject the school and school officials to additional liability because the law is clear that school officials may not interfere with students in their pursuit of constitutional rights hinder – through intimidation or otherwise. To be clear, “government action which chills constitutionally protected speech or expression contravenes the First Amendment,” *Wolford v. Lasater*, and “threats accompanied by a ‘chilling effect’ that deny or hinder the exercise of a constitutional right have been deemed cognizable.” *Sterling v. Borough of Minersville* 232 F.3d 190 (3rd Cir. 2000) (holding officials liable for threatening to reveal citizen’s sexual orientation to family members).

Hopefully, the information contained herein will lead to an immediate resolution of these issues so that no further action will be necessary to ensure that students may participate in Friday’s Day of Silence activities without further discrimination or censorship. However, please be advised that we are closely monitoring the situation to ensure that these students rights are not further violated and will be discussing with them the possibility of remedial efforts which may include a federal lawsuit.

Should you wish to discuss this matter, please do not hesitate to contact us directly.

Sincerely,

LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

By:

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Lambda Legal: Making the Case for Equality

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Lambda Legal: Making the Case for Equality

***EXHIBIT G***

**Fusco, Shannon**

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**From:** Fusco, Shannon  
**Sent:** Friday, April 20, 2012 8:37 AM  
**To:** DHS Teachers; DHS Staff  
**Subject:** protesting  
  
**Importance:** High

Teachers:

Please note that we have a group of students today who have an intention of protesting. The district has an absolute policy against protesting on school campuses.

If you have students who are wearing placard in protest of an issue or disrupting the hallways or classrooms, please notify the dean or administration, and we will handle it.

If a student refuses to participate in class by taking part in a silent protest, that is considered a disruption. Again, please notify the administration, and we will handle it.

Thank you,  
sdf

**Shannon D. Fusco**  
**Principal, DeSoto High School**

"To empower all students to become life-long learners able to compete in today's society."

***EXHIBIT H***



**Fusco, Shannon**

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**From:** Fusco, Shannon  
**Sent:** Monday, April 23, 2012 9:56 AM  
**To:** Barnwell, Melba  
**Cc:** Fusco, Shannon  
**Subject:** Friday's protest

Melba,

On Friday only two students received any consequences from protesting for LGBT day of silence.

Amber Hatcher was dressed in a shirt protesting the occasion. When her teacher sent her up to the office she was belligerent to the Dean. She initially refused to answer then refused to step into IR. She was talked to and did finally give the phone numbers of her parents. She was placed in IR for the day as they could not be reached. That is the extend of her discipline.

The other student, Richard Maybell, was refusing to talk in class and was sent home for the day on the consent of his grandmother, Linda Howell.

Two other students were asked to comply with removing their protest tags and answer questions. They both did so.

Thank you,  
sdf

**Shannon D. Fusco**  
**Principal, DeSoto High School**

"To empower all students to become life-long learners able to compete in today's society."