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Delivered via eMail and Overnight Mail

Mr. Joe Dyar
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Dear Superintendent Dyar and Principal Holley:

Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) and Gespass & Johnson, write to advise the Calhoun County School District (“District”) that our firms jointly represent Alexandria High School (“AHS”) students, J [REDACTED] R [REDACTED] (“J.R.”) and R [REDACTED] G [REDACTED] (“R.G.”) (jointly, “Students”) related to J.R.’s same-sex prom proposal to R.G. on January 30, 2018 (“Promposal”). The school’s apparent response to the Promposal by Principal Holley (“Principal”) and other District/AHS personnel, as recounted by our clients, their families and other third-party witnesses, is alarming and violates the Students’ rights under the First and Fourteenth Amendments to the U.S. Constitution and Title IX of the Education Amendments of 1972 (“Title IX”). Moreover, given our understanding of statements made by the Principal and the District, it is unclear whether the Students will be permitted to attend the prom on March 10, 2018. **If the District does not provide written assurances that the Students will be able to attend the prom together as a same-sex couple and free from further discrimination before 12:00 noon on Wednesday, February 14, 2018, we will file an action for a temporary restraining order with the U.S. District Court for the Northern District of Alabama.**

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J.R. and R.G., both female students in the eleventh grade at AHS, have been in a dating relationship since September 2017. The Students have identified themselves as lesbians and a couple to school administrators and many of their fellow students. They expect to attend AHS prom together. J.R. wanted to make her proposal special by asking R.G. to be her date to the prom during the school’s annual talent show (“Show”), where R.G. would be performing. When J.R. asked permission from Ms. [REDACTED] in advance, Ms. [REDACTED] suggested the Promposal occur off-stage only to prevent potential ridicule or subsequent harassment from attendees. Ms. [REDACTED], another teacher, aided J.R. by hiding the poster asking the question, “Prom?” on a rainbow background—a symbol of pride for the lesbian, gay, bisexual and transgender (“LGBT”) community. At least two other students, the emcees of the Show, were aware of the intended Promposal.

At the Show, R.G. performed the song, “Honey” by Kehlani—a song about one female’s affection for another female. Several school teachers grimaced after hearing the lyrics and some even stormed out during R.G.’s performance. After R.G. finished the song, one of the emcees instructed her to stay on stage and called out to J.R., something J.R. had not anticipated. J.R. walked out with the poster, R.G. quickly nodded “yes,” students cheered in support of the couple, and the Students quickly exited the stage. The entire Promposal lasted approximately 30 seconds.

The following day, during morning announcements broadcast to both the middle school and the high school, the Principal admonished the Students. He stated that “this is a Christian school” with “Christian values.” The Principal repeatedly apologized to “anyone who was offended” by the Promposal and further asked that the school community “pray for me during these trying times.” He then said he would “deal with the students involved accordingly.” Subsequently, the Principal disciplined J.R. with one day in-school detention (“ISD”) for what he deemed “[c]onsidered rebelliousness of school personnel,” an alleged “intermediate” violation of the District’s 2017-2018 Code of Conduct.¹

In the time since the Promposal, the Principal (and potentially other District and AHS staff) have exacerbated the situation through their press statements and interactions with the Students. By way of example, the Principal pulled J.R. from the ISD classroom on Thursday, February 1, 2018, to interrogate her about whether she had any contact with the media. We understand that the media received a tip about the Promposal from another person who attended the Show—not the Students. Nevertheless, the Principal’s actions exhibit his clear intention to chill student speech, even where it might have taken place

¹ Ironically, just a few years earlier, a male student did not receive any discipline for proposing marriage to a pregnant female student at the Show—even after he specifically disregarded instructions by the Principal not to go through with the proposal.

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off the school premises on a student's own time. Additionally, J.R. and R.G. both report that since the Promposal, the Principal regularly visits the Students' classrooms and follows them between classes, which he has never done before. As we continue to investigate the matter, we are placing the District on notice of these additional discriminatory and harassing actions our clients have experienced over the past week. The monitoring and following of our clients is unwarranted and should cease immediately.

The Principal's religious-based remarks and proselytizing over the school's public address system the day after the Promposal, his subsequent discipline of J.R., and his alleged threat to punish R.G. for her expression of same-sex affection through her performance violate clearly established federal law. His actions to sanction, embarrass, and make an example out of the Students based on their sex and sexual orientation are evidence of animus toward lesbian, gay and bisexual students and violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *See Romer v. Evans*, 517 U.S. 620 (1996). Those actions also raise serious First Amendment concerns, including violating the rights of students to bring same-sex dates to school-sponsored events, *see McMillen v. Itawamba County Sch. Dist.*, 702 F.Supp.2d 699 (N.D. Miss. 2010) and *Fricke v. Lynch*, 491 F.Supp. 381 (D.R.I. 1980); the rights of students to speak out about matters of public concern, *see Tinker v. Des Moines Ind. Comm. Sch. Dist.*, 393 U.S. 503 (1969); and the prohibition against advancing religion in public schools, *see Lee v. Weisman*, 505 U.S. 577, 592 (1992) (explaining, because students are impressionable and their attendance is involuntary, "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools").

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

the district. *Id.* at 705.²

The District is also exposed to liability under federal civil rights law. Title IX prohibits recipients of federal financial assistance from discriminating in education programs and activities based on sex, including subjecting students to sex-based harassment or otherwise excluding them from educational opportunities. 20 U.S.C. § 1681. This prohibition extends to discrimination based on sexual orientation and sex stereotypes. *See Harrington v. City of Attleboro*, 2018 WL 47500, Case No 15-cv-12769-DJC (D. Mass. Jan. 17, 2018), *Videckis v. Pepperdine University*, 150 F. Supp. 3d 1151 (C.D. Cal. 2015), *Montgomery v. Indep. Sch. Dist. No. 709*, 109 F. Supp. 2d 1081 (D. Minn. 2003). In addition to different treatment, the Principal's actions likely create the type of hostile environment that substantially interferes with the Students' educational opportunities and is thus prohibited by Title IX. The Principal's remarks sent a harmful and dangerous message to students and school staff: that harassment, bullying, and targeting of LGB students based on their sexual orientation are not only acceptable, but encouraged. Neither our leaders, nor our neighbors, nor the people charged with the privilege and responsibility to positively impact students' lives have veto power over a person's choice of whom to love, because the Constitution gives each of us that protection. *See Obergefell v. Hodges*, 135 S.Ct. 2584 (2015); *Loving v. Virginia*, 388 U.S. 1 (1967).

These serious allegations require immediate action by the District. In order to adequately address the federal constitutional and statutory violations detailed above, we believe that the District must take the following steps.

1. As noted above, provide assurances, in writing, by noon on February 14, 2018, that the Students will be permitted to attend the prom together as a same-sex couple and that the District will take steps to ensure that the Students are free from discrimination, harassment, bullying, or retaliation by District staff or students.

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

2. Expunge all disciplinary history related to the Promposal from J.R.'s educational records.
3. Issue an apology, in writing, to the Students and their families, acknowledging that the Principal's remarks and actions were inappropriate and not representative of school policy and recognizing that LGBT students are entitled to the same protections as all other students and are welcome at AHS.
4. Clarify, in writing, to all AHS students and staff, that school policy permits them to engage in constitutionally protected conduct without fear of punishment or retaliation, including (a) speech or expression identifying themselves as gay, lesbian, or bisexual; (b) speech or expression acknowledging that two students of the same sex are dating; (c) speech or expression in support of gay-related political or social viewpoints.
5. Clarify, in writing to all AHS students and staff, that (consistent with federal law) the school will not tolerate "verbal, nonverbal, or physical aggression, intimidation or hostility" against students who are, or perceived to be, LGBT.
6. Review and revise the "AHS Prom and Expectations and Dress Code"³ to describe what the District considers appropriate clothing, without referencing gender. No student should be disciplined for wearing clothing that does not conform to perceptions of gender-based stereotypes (e.g., only boys wear tuxedos and suits, while only girls wear gowns and dresses).
7. Cease unconstitutionally promoting and advancing religion, including officially sponsored prayer, as well as proselytizing during classes, assemblies, graduations, award ceremonies, and other school events.

All students, regardless of race, color, national origin, gender, sexual orientation, gender identity, faith, or disability, should feel safe and welcome in Alabama's public schools. We are hopeful that the District agrees with this basic principle and this matter can be resolved amicably.

As with our specific demand regarding attendance at the prom, we expect a written response no later than noon on February 14, 2018, as to what specific steps you plan to take to address these matters. In the meantime, this letter provides you with notice that you have an affirmative obligation to preserve and retain any information and/or physical

³ See "AHS Prom Expectations and Dress Codes," available at <https://pwhaleyah.wixsite.com/valleycubs/prom> (last visited February 7, 2018).

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evidence, including electronically-stored information, that may be relevant to the issues outlined above.

Should you will to discuss this matter further, please do not hesitate to contact Paul D. Castillo at (214) 302-2216 or pcastillo@lambdalegal.org.

Respectfully,



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