

August 29, 2022

Superintendent Jeffrey Edwards
Northwest Public Schools
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Superintendent Edwards,

For over 50 years in Nebraska, the ACLU has worked in our courts, legislature, and communities to protect the constitutional and individual rights of all people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Nebraska

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Since its founding, the ACLU has advocated for student's rights. The ACLU works with teachers, parents, students, community members, and administrators to ensure equality and dignity for all students in Nebraska schools, regardless of their sex, race, religion, immigration status, disability status, sexual orientation, or gender identity.

We write with deep concern about Northwest Public Schools District's ("District") decision to eliminate the student newspaper, the *Viking Saga* ("Saga"), and the high school's long-standing and award-winning journalism program after objecting to content in the June 2022 edition of the student newspaper related to LGBTQ issues. The District's unlawful attempts to quash student journalism and student opinions violate students' rights to freedom of speech and equal protection under the Nebraska and United States Constitutions, Title IX of the Education Amendments of 1972.

As such, we urge the District to immediately remedy these violations and the District's own policies by immediately taking the following actions:

- 1) reinstate both the school paper and the journalism program;
- 2) develop and implement policies to protect LGBTQ students;
- 3) develop and implement reasonable and viewpoint neutral policies to ensure that the journalism program receives proper legal consideration; and
- 4) publicly acknowledge the District's missteps in taking these actions and affirm its commitment to protecting LGBTQ students within its schools.

Background

According to the Grand Island Independent, in April 2022, District officials reprimanded the *Saga* staff after they printed an edition of the newspaper with student journalists' preferred names in bylines and articles and directed students to only use "birth names" going forward pursuant to District Policy No. 6370.¹ To comply with the District's directive, the *Saga* staff were forced to publish students' "birth names" in the April 2022, May 2022, and June 2022 editions of the *Saga*.

On May 9, 2022, the Northwest Public Schools Board of Education convened for their monthly meeting. During this meeting, the Board took time to recognize the achievements of the high school's journalism program,² which produces the *Saga* and recently earned 17 awards from the Class B 2022 State Journalism Championship, including third place overall for their division.³



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On May 16, the *Saga* staff printed the June 2022 edition of the student newspaper.⁴ This 12-page edition contained one editorial article opposing the Florida Parental Rights in Education Act, commonly known as the "Don't Say Gay" law, one opinion article on gender and gender identity, and one news article covering the history of Pride month and homophobia. The remaining 12 articles in the June 2022 edition of the *Saga* did not discuss LGBTQ issues.

On May 19, District administration notified staff and students via email of the elimination of the journalism program, including the elimination of the *Saga*.⁵ According to the Grand Island Independent, this email stated that the school board and superintendent "were unhappy with the last issue's editorial content."⁶ Further comments made by members of the Board of Education to the Independent support the belief that the reason for eliminating the student newspaper and journalism program were due to discomfort with three articles related to LGBTQ issues in the June 2022 edition of the *Saga*.

¹ Jessica Votipka, 'Nurseries of democracy': Northwest student journalism elimination a 'Saga', Grand Island Independent, Aug. 24, 2022, https://theindependent.com/news/local/nurseries-of-democracy-northwest-student-journalism-elimination-a-saga/article_88ceba8a-1758-11ed-a179-c36008eeaed3.html#tracking-source=mp-news.

² Nw. Pub. Sch. Bd. of Educ, *Regular Meeting Agenda*, Superintendent's Report § 10.2, <https://meeting.sparqdata.com/Public/Agenda/81?meeting=512620> (May 9, 2022).

³ NSAA *State Journalism Championship, Class B*, Neb. Sch. Activities Ass'n. (Apr. 26, 2022), <https://nsaa-static.s3.amazonaws.com/textfile/journ/b22.pdf>.

⁴ Jessica Votipka, 'Nurseries of democracy': Northwest student journalism elimination a 'Saga', Grand Island Independent, Aug. 24, 2022, https://theindependent.com/news/local/nurseries-of-democracy-northwest-student-journalism-elimination-a-saga/article_88ceba8a-1758-11ed-a179-c36008eeaed3.html#tracking-source=mp-news.

⁵ *Id.*

⁶ *Id.*

On May 22, an official from the District reached out to the Grand Island Independent Press to cancel the school’s contract regarding printing of the *Saga*.⁷

On Wednesday, August 24, the Grand Island Independent published an article titled, “‘Nurseries of democracy’: Northwest student journalism elimination a ‘Saga.’” In the article Zach Mader and Dan Leiser, the Vice President and President, respectively, of the Northwest Public Schools Board of Education, made clear their dislike with the content of the school newspaper’s June edition.⁸

The District’s Actions Violate Students’ Constitutional Rights

The District acted in a way that blatantly violated students’ rights under the First and Fourteenth Amendments of the U.S. and Nebraska Constitutions and discriminated against LGBTQ students in violation of Title IX of the Education Amendments of 1972.

By terminating the *Saga* and the journalism program, the District engaged in viewpoint discrimination in violation of the First Amendment of the U.S. Constitution. Viewpoint discrimination occurs when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction on speech.⁹ Simply put, the District cannot censor student journalism because district leadership disagrees with LGBTQ rights and wishes to keep students from encountering viewpoints that do not align with that perceived viewpoint.¹⁰ Schools must be a place where students have broad access to a wide variety of ideas—both the popular and unpopular.

Moreover, the First Amendment prevents the District from seeking to suppress the idea that LGBTQ people belong and deserve acceptance and inclusion in American society simply because District leadership does not wish students to encounter it. The comfort of some cannot come at the expense of students’ constitutional rights.

The District’s policy prohibiting students from using their preferred pronouns violates Title IX of the Education Amendments of 1972. Further, the District’s own policies emphasize the importance of multicultural education in all curriculum areas with the mission of preparing students



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⁷ *Id.*

⁸ *Id.*

⁹ *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1995); *see also Gerlich v. Leath*, 861 F.3d 697, 705 (8th Cir. 2017); *Gay & Lesbian Students Ass’n v. Gohn*, 850 F.2d 361, 367 (8th Cir. 1988).

¹⁰ *See generally Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1995); *see also Gerlich v. Leath*, 861 F.3d 697, 705 (8th Cir. 2017); *Gay & Lesbian Students Ass’n v. Gohn*, 850 F.2d 361, 367 (8th Cir. 1988); *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983); *East High Gay/Straight Alliance v. Bd. of Educ. of Salt Lake City School Dist.*, 81 F. Supp. 2d 1166 (D. Utah 1999); *Young v. Giles County Bd. of Educ.*, 181 F. Supp. 3d 459 (M.D. Tenn. 2015).

to eliminate stereotypes and discrimination or harassment of others based on ethnicity, religion, gender, socioeconomic status, age, or disability.¹¹

The District has already harmed students, both by directly suppressing speech and access to ideas and by sending the message to LGBTQ students that Northwest Public Schools rejects their identity and belonging in the community. The District's actions to censor information on LGBTQ issues have also harmed non-LGBTQ students who can no longer participate in or learn from the school paper or the journalism program.

Conclusion

It is incumbent upon Northwest Public Schools District to restore and uphold students' rights by immediately: 1) reinstating the journalism program and school newspaper as soon as possible; 2) developing and implementing policies that protect LGBTQ students; 3) developing and implementing policies that protect the rights of student journalists; and 4) publicly acknowledging these errors and affirming its commitment to LGBTQ inclusivity.

We hope that you will reconsider these educationally unsound decisions. We would be pleased to work with your District to develop a balanced publications policy that avoids discord by clearly providing students with the right to air their views on matters of public concern in student media. We can similarly assist your District with developing appropriate LGBTQ policies that protect students from harassment, discrimination, bullying, and censorship from students, staff, and administration.

Thank you for your attention to this matter. We look forward to your prompt response to this letter by Monday, September 12, 2022, describing the steps the District plans to take to remedy violations of students' constitutional rights. We will continue to explore all available legal remedies to ensure Northwest Public Schools establishes a safe and equitable learning environment for all students.

Evidence Preservation

The District must immediately suspend retention and destruction policies for documents, electronically stored information, and tangible things and must preserve and retain all documents, electronically stored information, and tangible things relating to occurrences or transactions discussed in this letter, including but not limited to official records of the



¹¹ Nw. Pub. Schs. Bd. of Educ., District Policies, Policy No. 6370 (Adopted Aug. 27, 2007), <https://meeting.sparqdata.com/Public/Book/81?docTypeId=310&file=fa66bc9f-3981-4648-96c5-bd62d0785ea8>.

District and any documents or electronic information reflecting communications by any District staff or member of the District Administration and School Board regarding the elimination of the District's journalism program. You must take care not to alter, delete or modify any such electronic information, documents, or videos. The failure to preserve and retain this information may constitute "spoliation of evidence" and subject the District or its officials to legal claims for damages or monetary sanctions. If you have any doubts as to what information may be relevant to the events, please preserve it.

Relevant information may include, but is not limited to, the following: voicemails, emails, text files such as word processing documents and presentations, spreadsheets, databases, calendars, power point presentations, activity logs, internet usage files, and text messages. Relevant electronic data may be present in many locations including on the hard drive of your desktop, laptop, cell phones, smartphones, iPods, voicemail, disks, CDs, DVDs, zip drives, backup tapes, handheld devices, and network servers, amongst others. You are required to preserve and retain all potentially relevant files, wherever they are stored.



Please acknowledge receipt of this litigation hold, and compliance with it, by emailing me at srips@aclunebraska.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sara Rips".

Sara Rips
LGBTQIA+ Legal & Policy Counsel

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