SPLC Southern Poverty Law Center

Fighting Hate
Teaching Tolerance
Seeking Justice

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

January 28, 2011

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

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

Dear Superintendent Carlson and Principal George:

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

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

In this case, it was known to staff organizers and school administrators that Desiree and Sarah intended to walk together in order to make a statement about their relationship and their sexual orientation. They told the school officials that two of their male friends on the court had agreed to walk together, so no student would have to walk alone. Nevertheless, CPHS told Desiree and Sarah they could not walk together, solely because both girls are of the same sex. When Desiree and Sarah persisted in their request, CPHS responded by informing them on Thursday, January 27, 2011, that it would cancel the traditional

processional part of the assembly entirely and the Pep Fest and Coronation would begin with the student royalty already seated.[1]

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

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

The decision in *Fricke v. Lynch* also affirmed the First Amendment right of students to bring a same-sex date to a school dance. In that case, the principal of the school testified that the school's policy against same-sex dates was based on concern about the potential for disruption and violence at the prom by objecting students. While the court noted that the principal had apparently acted out of a sincere belief that prohibiting the plaintiff from attending prom with another boy was necessary to protect the plaintiff's safety, it nonetheless held that the school could not attempt to protect him by "stifl[ing his] free expression." 491 F.Supp at 388. To permit such actions even in the name of safety or good order "would completely subvert free speech in the schools by granting other students a 'heckler's veto'." *Id.* at 387. The court granted the plaintiff's request for a preliminary injunction against the district. *Id.* at 389.

Because CPHS's actions in this matter violate clearly established law, we respectfully demand that

---

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

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

the Anoka-Hennepin School District and CPHS immediately inform Desiree and Sarah that they may walk in the processional together. We further request that the District make clear to Principal George and to all District staff that it is unlawful and a violation of the First Amendment for schools to censor student expression of their sexual orientation, gender identity, or support for lesbian, gay, bisexual, and transgender (LGBT) rights.

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

Sincerely,

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

Shannon Minter
Legal Director
National Center for Lesbian Rights

Michael A. Ponto
Partner
Faegre & Benson LLP

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