May 29, 2024

VIA ELECTRONIC MAIL

Lisa Allen
Superintendent
Sacramento City Unified School District
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Dear Ms. Allen:

We write on behalf of the American Civil Liberties Union of Northern California, First Amendment Coalition, Student Press Law Center, and California Scholastic Journalism Initiative to protest the actions taken against Samantha Archuleta and demand her immediate reinstatement to her teaching duties at C.K. McClatchy High School. Unless there are material facts beyond those reported in the press, it appears that the district has unlawfully retaliated against Ms. Archuleta for defending the freedom of the student press, as well as for exercising her own free speech rights.

Ms. Archuleta, according to press reports, was the faculty advisor to The Prospector, C.K. McClatchy High School's student-run newspaper. On April 25, 2024, the newspaper published a list feature titled *What did you say?*, in which the editors compiled statements that had been purportedly uttered by students and overheard on campus. The introduction to this section read as follows: "Have you ever heard something while walking in the school hallways and thought, 'That is the strangest and weirdest thing I have ever heard in my life?' Well, we asked you to share with us some of the weirdest stuff you've heard. Here are some of our favorites." The ninth and final comment stated: "Hitler's got some good ideas – Government Class." There is no indication that Ms. Archuleta or the student editors ever endorsed or condoned the content of this quote. In fact, both have since expressed that "using the word 'favorite' in the intro was a mistake" and that the newspaper had been trying to draw attention to the fact that such a sentiment was expressed on campus.[1]

And yet, on May 7, soon after Ms. Archuleta spoke to the press and defended the students' rights under California law to have published this statement, the district placed Ms. Archuleta on leave

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[1] Ariane Lange, *Comment Praising Hitler in Sacramento Class Prompts Debate after High School Paper Prints It*, Sacramento Bee (originally posted May 6, 2024, and updated May 8, 2024), https://amp.sacbee.com/news/local/education/article288354385.html.

and told her that she was under investigation.[2] Without condoning the content of this statement, our organizations have strong concerns that the district's actions violated California law and the First Amendment.

The function of education "is to stimulate thought, to explore ideas, [and] to engender intellectual exchanges." *Monteiro v. Tempe Union High Sch. Dist*., 158 F.3d 1022, 1032 (9th Cir. 1998). "Bad ideas should be countered with good ones," not banned or punished. *Id.* But censorship is exactly what the district has resorted to here. Instead of leading an open and thoughtful discussion about the troubling views expressed by a student on campus, the district apparently retaliated against a teacher who—while scrupulously endeavoring to follow California's statutory code governing "Student exercise of freedom of speech and press"—stood up for her students' fundamental press freedoms. *See* Educ. Code § 48907. Not only does the district's conduct appear to violate the law, but it also disrupts the education of the numerous students in Ms. Archuleta's classes and tramples on the legacy of C.K. McClatchy, the longtime editor of the Sacramento Bee, a founder of McClatchy Newspapers, and a stalwart defender of editorial freedom.

1. California law protects the rights of student journalists and further protects faculty like Ms. Archuleta from retaliation for defending those rights.

California led the country in adopting "the nation's first statutory scheme for protecting students' free expression on school campuses." *Lopez v. Tulare Joint Union High Sch. Dist.*, 34 Cal. App. 4th 1302, 1311 (1995). By statute, student editors control "the news, editorial, and feature content of their publications." Educ. Code § 48907(c). A school can act to censor a student publication only when content is deemed "obscene, libelous, or slanderous" or "so incites pupils as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school," *id.* § 48907(a), or perhaps in some circumstances involving "profane language." *Lopez*, 34 Cal. App. 4th at 1329.

Section 48907 of the Education Code also provides: "An employee ***shall not*** be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a pupil engaged in the conduct authorized under this section, or refusing to infringe upon conduct that is protected by this section, the First Amendment to the United States Constitution, or Section 2 of Article I of the California Constitution." *Id.* § 48907(g) (emphasis added).

Accordingly, "section 48907 confers editorial control of official student publications on the student editors alone, with very limited exceptions," *Smith v. Novato Unified Sch. Dist.*, 150 Cal. App. 4th 1439, 1452 (2007), and protects journalism advisors against retaliation for protecting their students' rights.

Here, the statement at issue and its publication are protected by section 48907. They cannot be classified as "obscene, libelous, or slanderous." Obscenity covers only certain "depictions of

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[2] Ariane Lange, *Sacramento School Suspends Journalism Adviser After Student Paper Printed Hitler Quote*, Sacramento Bee (May 9, 2024), https://www.sacbee.com/news/local/article288421761.html.

'sexual conduct.'" *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 793 (2011) (quoting *Miller v. California*, 413 U.S. 15, 24 (1973)). The prohibition of libel or slander requires reasonable belief that speech constitutes "actionable defamation." *Leeb v. DeLong*, 198 Cal. App. 3d 47, 60 (1988). The statement at issue is not actionable defamation because it "cannot be reasonably interpreted as stating actual facts about an individual" rather than "rhetorical hyperbole" or opinion. *Grenier v. Taylor*, 234 Cal. App. 4th 471, 486 (2015). There is no issue of any "profane language." *Lopez*, 34 Cal. App. 4th at 1329.

The statement and its publication are also protected because they did not incite unlawful acts or substantial disruption. Section 48907's "plain language" protects student speech unless it "incites" a prohibited result, with "incite" meaning "[t]o arouse; urge; provoke; encourage; spur on; goad; stir up; instigate; set in motion." *Smith*, 150 Cal. App. 4th at 1455. "The definition focuses on conduct that is directed at achieving a certain result." *Id.* Taken as a whole, "the plain language of section 48907 mandates that a school may not prohibit student speech simply because it presents controversial ideas and opponents of the speech are likely to cause disruption." *Id.* at 1457. Instead, "[s]chools may only prohibit speech that incites disruption, either because it specifically calls for a disturbance or because the manner of expression (as opposed to the content of the ideas) is so inflammatory that the speech itself provokes the disturbance." *Id.*

Although controversial, the statement and its publication were fully protected by section 49807 because they did not incite unlawful conduct or substantial disruption. *Id.* at 1458 (holding controversial editorial on immigration was protected by section 48907). Even if a statement is "disrespectful and unsophisticated," section 48907 does not allow a "heckler's veto" over the "communication of unpopular views." *Id.* Accordingly, Ms. Archuleta could not have sought to censor the statement prior to its publication in The Prospector, and she properly declined to do so. And because the statement and its publication were protected by section 49807, so too was Ms. Archuleta's defense of the rights of student editors to control The Prospector's content.

2. The First Amendment protects teachers against retaliation for speaking to the press on matters of public concern.

Under binding and long-standing precedent, public school teachers like Ms. Archuleta cannot be constitutionally compelled "to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work." *Pickering v. Bd. of Ed.*, 391 U.S. 563, 568 (1968); *see also Los Angeles Teachers Union, Local 1021, v. Los Angeles City Bd. of Ed.*, 71 Cal. 2d 551, 558 n.9 (1969) ("Teachers have a First Amendment right to 'comment on matters of public interest in connection with the operation of the public schools.'") (quoting *Pickering*, 391 U.S. at 568).

It therefore follows that the "First Amendment shields public employees from employment retaliation for their protected speech activities." *Karl v. City of Mountlake Terrace*, 678 F.3d 1062, 1068 (9th Cir. 2012). In commenting to the press about the controversy, Ms. Archuleta "spoke on a matter of public concern" and "as a private citizen." *Id.* Her statements conveyed relevant facts and emphasized her concerns about protecting student press freedom. They are hardly the kind of comments that could justify taking action against a teacher. *See, e.g.*, *Bauer v. Sampson*, 261 F.3d 775, 783–87 (9th Cir. 2001) (concluding that a community college had

violated the First Amendment by disciplining a professor who had published hyperbolic criticism of the school in a campus newspaper and upholding award of attorney's fees to professor).

Indeed, Ms. Archuleta's defense of press freedom is the essence of protected speech, and the mere fact of controversy over her remarks or any disagreement with actions taken by administrators cannot justify taking action against her. *See, e.g., Dodge v. Evergreen Sch. Dist. #114,* 56 F.4th 767, 783 (9th Cir. 2022) ("That some may not like the political message being conveyed is par for the course and cannot itself be a basis for finding disruption of a kind that outweighs the speaker's First Amendment rights."); *Nunez v. Davis*, 169 F.3d 1222, 1228 (9th Cir. 1999) (holding disagreement on "matter of public concern … should not be labeled as insubordination"); *Cal. Teachers Ass'n v. Governing Bd.*, 45 Cal. App. 4th 1383, 1392 (1996) ("'Harmony among public employees is undoubtedly a legitimate governmental objective as a general proposition; however, as we have seen, government has no interest in preventing the sort of disharmony which inevitably results from the mere expression of controversial ideas.'") (quoting *Los Angeles Teachers Union, Local 1021*, 71 Cal. 2d at 561).

3. The allegations against Ms. Archuleta appear to be pretextual.

As reported in the press, the allegations against Ms. Archuleta include "failure to exercise good judgment," "insensitive comments," sharing of "confidential student information," and failure "to maintain a harassment-free classroom environment." We have strong concerns that these allegations are pretexts for retaliating against Ms. Archuleta.

At the outset, contentions such as "failure to exercise good judgment" and "insensitive comments" are inherently vague and highly susceptible to abuse. Moreover, to the extent that the allegations are related to The Prospector's publication of the statement at issue, they must fail because the statement and its publication were fully protected by section 48907, as was Ms. Archuleta's defense of the student editors' rights.

The mere publication or discussion of the statement at issue cannot be considered "harassment," which "generally targets conduct." *Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 710 (9th Cir. 2010). The law "sweeps in speech as harassment ***only*** when consistent with the First Amendment." *Id.* (emphasis added). But free speech protections cover "a wide variety of speech that listeners may consider deeply offensive," and speech cannot be deemed harassment merely because it is "offensive to some listener," without the "showing of severity or pervasiveness" required by anti-harassment law. *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 206, 217 (3d Cir. 2001); *see also Sypniewski v. Warren Hills Reg'l Bd. of Ed.*, 307 F.3d 243, 264–65 (3d Cir. 2002) ("The mere fact that expressive activity causes hurt feelings, offense, or resentment does not render the expression unprotected."). The publication of the statement at issue or discussions about it cannot be considered severe or pervasive. Accordingly, without more, the district lacks any valid basis for allegations of "harassment."

We are unaware of any facts suggesting that Ms. Archuleta improperly disclosed "confidential student information." Nothing published in the press suggests that she disclosed protected information such as "registration forms, class schedules, grade transcripts, discipline reports, and the like." *BRV, Inc. v. Superior Court*, 143 Cal. App. 4th 742, 754 (2006).

In any event, the alleged disclosure of confidential information hardly requires a purported investigation now lasting three weeks from the date Ms. Archuleta was placed on leave. The question whether she improperly disclosed confidential information could easily have been verified and promptly addressed with appropriate action if necessary. The allegation does not justify a prolonged involuntary leave or the significant disruption to Ms. Archuleta, her students, and The Prospector's operations.

For all these reasons, and to minimize its significant exposure to liability for statutory and constitutional violations, the district should reinstate Ms. Archuleta immediately so that she can rejoin her students before the close of the school year.

Sincerely,

s/David Loy

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cc: Sacramento City Unified School District Board of Education