

October 9, 2019

SENT VIA EMAIL

Donna H. Wolfrom
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c/o Melissa Hewey, Esq.
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Dear Superintendent Wolfrom:

We submit this letter as part of the appeal of Aela Mansmann's three-day suspension for speaking out against sexual assault in her school. Aela's conduct does not qualify as bullying under school policy or state statute, but instead represents constitutionally protected speech. We ask the school to set aside the suspension and expunge it from Aela's school record.

This is not a story of bullying, but rather a story of a student who wants to change the status quo. Aela is an award-winning activist who has advocated to end rape culture in the school. In speaking out about sexual assault, Aela has prompted conversation about serious injustices in our society. We know

that one in four girls and one in six boys will be sexually abused before they turn 18 years old.¹ One in five women are sexually assaulted on college campus, and more than 90% of them do not report their assault.² Overall, nearly two thirds of sexual assaults go unreported to police.

RAINN documents that “out of every 1000 sexual assaults, 995 perpetrators will walk free.”³ With statistics like that, it is naive at best and willfully blind at worst for administrators to claim that, in a school with more than 500 students, “there is not a rapist at the school.”⁴ A school cannot solve a problem while denying that it even exists.

After decades of shaming and silencing survivors of sexual assault, norms are finally beginning to change: more and more survivors of all genders have started making their stories public and seeking justice. But by punishing students for speaking out about sexual assault, Cape Elizabeth school administrators force these stories back into the shadows. The school's bullying policy does not support that result, and the Constitution forbids it.

The Bullying Policy Does Not Support The Suspension

On October 4, 2019, school administrators notified Aela that she was suspended “for her actions in the writing and posting of notes that appeared in the second floor bathroom on Monday, September 16.” The notes stated “There's a rapist in our school and you know who it is.” Aela has explained

¹ Sexual Assault in the United States, NATIONAL SEXUAL VIOLENCE RESOURCE CENTER, Get Statistics, <https://www.nsvrc.org/node/4737>.

² *Id.*

³ The Criminal Justice System: Statistics, RAINN, <https://www.rainn.org/statistics/criminal-justice-system>.

⁴ Rachel Ohm, *Cape Elizabeth students fault school system's handling of sexual assault allegations*, Portland Press Herald (Oct. 4, 2019), <https://www.pressherald.com/2019/10/04/cape-students-critique-handling-of-sexual-assault-allegations/>.

that the note was not about one specific person, but rather was designed to provoke change in the general culture of the school. Yet the school determined that the notes qualified as bullying under the school policy, which, according to the school's letter, prohibits:

“[A] pattern of . . . expression . . . directed at a student . . . that [created] an intimidating . . . educational environment . . . or [interfered] with the student's . . . ability to participate in or benefit from the services, activities, or privileges provided by the school.”

As an initial matter, the notes were expressly not “directed at a student”; they referenced nobody by name and were not intended to. Nor did they create the type of pervasive and severe harassment that could constitute a hostile school environment, but rather were an act of protest on a single day. Most importantly, Maine's anti-bullying law is narrowly tailored to ensure that nothing in the statute is “inconsistent with the existing protection” under the First Amendment of the United States Constitution, which protects the expression of political views in the school setting. 20-A M.R.S. § 6554(1). Here, the notes were protected First Amendment speech designed to start a conversation about sexual assault at the school. Even the principal acknowledged that the notes insinuated the school administration was not doing enough to protect students from sexual assault—a message that is clearly protected by the First Amendment, even if it is unwelcome to school officials.

The problem with the school's interpretation is obvious. In light of this suspension, any student who experiences sexual assault will face one more hurdle to speaking out: not only are they likely to be harassed and stigmatized, but they may be disciplined and suspended from school. Such a result contradicts the bullying statute itself, which provides that “sexual

harassment and retaliation for reporting incidents of such behavior are prohibited.” 20-A M.R.S. § 6554(5).

First Amendment Retaliation and Content-Based Discrimination

In issuing the three-day suspension, the school also retaliated against Aela for speaking to the media, in violation of the First Amendment and Title IX. The week before the suspension, the school tried to convince Aela to disclose other involved students by assuring her that nobody would be disciplined for this type of conduct and that it was important to have open conversations. Yet hours after the Portland Press Herald published an article on the topic, featuring comments by Aela, the school imposed a three-day suspension.

Also concerning is that the school disproportionately targeted speech about sexual harassment, compared to similar speech on different topics. For example, a student reported that the school previously issued a one-day suspension after a student allegedly threatened physical violence against a student who he had previously assaulted—a more lenient result for far more severe conduct. The anti-bullying statute itself suggests “a series of graduated consequences,” 20-A M.R.S. § 6554, yet here the school imposed a three-day suspension without starting with any lesser disciplinary option. The school also warned Aela that “any future actions of this sort . . . may result in further and more severe consequences up to and including suspension and possible expulsion.” These facts support an inference that the school intended to silence speech on the basis of its content.

This suspension impermissibly censors protected speech. As a society, we all lose out when we silence the speech of high school students who have revolutionized the conversations about gun violence, police shooting, climate change, and, now, sexual assault.

For these reasons, we respectfully request that you set aside the suspension and expunge it from Aela's school record.

Very truly yours,

A handwritten signature in blue ink, consisting of several fluid, connected strokes.

Alison Beyea, Executive Director
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A handwritten signature in blue ink, featuring a large, stylized 'E' followed by a series of connected loops and a final vertical stroke.

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