



Mr. Bill Payne, Senior Director of Board Services and Supports
Summit County Board of MRDD
89 E. Howe Road
Tallmadge, Ohio 44278-1099
Fax: 330-634-8081

March 9, 2009 – sent via facsimile and U.S. Mail

Re: “Professionalism in the Workplace” Memo, dated 11/17/08

Dear Mr. Payne:

Your memo of November 17, 2008 entitled “Professionalism in the Workplace” prohibits any conversation by, between, and/or among employees regarding a whole variety of subjects, including “politics, the economy, religion...or any other topic not directly related to engaging and supporting the individuals we serve”. This restriction on employee speech is a blatant violation of those employees’ rights secured by the First and Fourteenth Amendments to the United States Constitution.

There is no question that, as an employer, the Summit County Board of MRDD has the ability to promote an efficient and congenial work environment, one that puts service to its constituency on the highest priority. However, it may not do so by means that violate the constitutional rights of its employees. These constitutional rights, including rights of free speech, do not disappear when an employee steps through the office door. Employees have a right to discuss with their fellow employees, whatever they wish, including (“but not limited to”) the latest political and economic news or, indeed, how the Cavs, the Indians, or the Browns, did in their latest games. It is unconstitutional to presume, as your policy does, that all such conversations are sufficiently disruptive of the work environment to justify disciplinary action or even the threat of disciplinary action. This presumption of disruption attaches to any conversation no matter what the subject matter of the “unrelated” conversation is, and no matter how brief or incidental it might be. Moreover, the policy absolves the MRDD of establishing that the prohibited conversation in any way, directly or indirectly, affected the employee’s efficiency or client focus. The policy is, in short, unconstitutionally overbroad. Moreover, the policy might well violate State Civil Service rules.

Was that not enough, the policy, in its ostensible quest for improving client service, focuses specifically and exclusively on speech. The cases are absolutely clear that this is an infringement of an employee’s first amendment rights of free speech. There are many ways that an employer can promote efficiency and client

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO FOUNDATION
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org






attention. And there are any number of reasons for taking disciplinary action against an employee whose job performance is not what it should be. A speech regulation like the one in your November 17, 2008 memo, however, falls far outside of that which is constitutionally permissible.

We therefore strongly urge that you revoke the unconstitutional speech policy in your November 17, 2008, memo. Your failure to promptly do so may result in our taking further steps, up to and including instituting legal action against you, any and all of your supervisors and superiors, and the Summit County Board of MRDD in federal court.

Should you have any questions regarding this matter please do not hesitate to contact me directly at (216) 472-2220 or by e-mail at jmgamso@acluohio.org.

Sincerely,


Jeffrey M. Gamso
Legal Director

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO FOUNDATION
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org

