



September 7, 2016

**By Certified Postal Mail, Return Receipt Requested
and E-Mail, Return Receipt Requested**

Superintendent Scott Nelson
Sylvania Schools, Bradley J. Rieger Building
4747 N. Holland Sylvania Rd.
Sylvania, Ohio 43560
E: snelson@sylvaniaschools.org
F: (419)824-8503

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



RE: Termination of substitute teacher for non-work related political speech

ATTN: Public Records Request included

Dear Superintendent Nelson:

The ACLU of Ohio is contacting you on behalf of our client Derek Ide, a former substitute teacher in the Sylvania schools. We are aware that the School District terminated Mr. Ide after he used his personal Facebook page to express his political views. Terminating him on this basis violates the First Amendment to the U.S. Constitution.

Mr. Ide became a regular substitute teacher at Northview and Southview High Schools during the 2011-12 school year after earning his teaching license from the University of Toledo. After some years off to obtain his Masters degree in History, he returned as a regular substitute for the spring semester of the 2015-16 school year. As a substitute, Mr. Ide taught approximately 3 days a week, was a preferred substitute of certain teachers, and never received negative feedback. Presumably as a result of this good performance, in May of 2016, Keith Limes, the District's Human Resources Director, wrote Mr. Ide giving him "reasonable assurance" that his position as a substitute teacher would continue through 2016-17. But two months later, just one week before the school year would begin, Mr. Limes called and abruptly rescinded. Mr. Limes informed Mr. Ide that he would not be permitted to teach in the District because he had posted a message on Facebook that expressed his political views regarding race relations in America.¹ Mr. Ide had posted his message at home using his own computer, during his own time.

¹ A screenshot of the Facebook posting at issue is attached as Exhibit A to this letter. In the post, dated October of 2015, Mr. Ide objects to viral video depicting police beating a high-school girl in her classroom at school.

It is clearly established law that the First Amendment protects the speech of public employees - including public school teachers.² This constitutional protection is at its most potent when employees express their political views on matters of public concern.³ A public entity that punishes its employee for his political expression only evades constitutional liability when the speech demonstrably interferes with his job duties, *and* when that disruption clearly outweighs the employee's protected interest in expressing himself.⁴ This is an exceptionally high burden to overcome; for example, courts have held public employers liable for punishing a state university faculty member who advocated the violent overthrow of the government;⁵ a public school teacher who taught about the benefits of industrial hemp;⁶ a deputy constable who endorsed the assassination of the U.S. President;⁷ and a community college professor who used racial slurs.⁸ In fact because the law in this area is so clear, courts routinely hold employers personally liable when they discipline employees based on out-of-work speech.⁹

Mr. Ide used his own time and resources to express his view on social media that he objects to state violence and institutional racism. The Sylvania School District may not terminate him simply because its administration is uncomfortable with, or disagrees with, the expression.

To remedy the District's unconstitutional actions, we ask that you promptly issue an apology, replace Mr. Ide in his position as a substitute teacher, provide him with the back pay and benefits for the period he was wrongfully deprived of employment, and clarify the District's policies as to employee speech to ensure these policies conform to constitutional mandates. If you wish to discuss this matter further, feel free to reach me at (216) 472-2220 or by email at flevenson@acluohio.org.

If I do not hear from you before September 15, 2016, my office plans to take further steps to vindicate Mr. Ide's constitutional rights. This letter also serves to notify you that you may anticipate the possibility of litigation. As a result, you are under an obligation to preserve all evidence related to this matter, including but not limited to any electronic communication between and among board members and administrators.

² See *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 594, 602-04 (1967); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 283-84 (1977); *Perry v. Sindermann*, 408 U.S. 593, 597-98 (1972).

³ See, e.g., *Scarborough v. Morgan Cnty. Bd. of Educ.*, 470 F.3d 250, 256-7 (6th Cir. 2006); *Cockrel v. Shelby Cnty. Sch. Dist.*, 270 F.3d 1036, 1050-51 (6th Cir. 2001); *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 678-9 (6th Cir. 2001); *Meyers v. City of Cincinnati*, 934 F.2d 726, 729-30 (6th Cir. 1991).

⁴ *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cnty., Illinois*, 391 U.S. 563, 572-73 (1968).

⁵ *Keyishian*, 385 U.S. at 602-04 (1967).

⁶ *Cockrel v. Shelby Cnty. Sch. Dist.*, 270 F.3d 1036, 1045 (6th Cir. 2001).

⁷ *Rankin v. McPherson*, 483 U.S. 378, 392 (1987).

⁸ *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 675 (6th Cir. 2001).

⁹ *Scarborough*, 470 F.3d at 263; *Hardy*, 260 F.3d at 675; *Chappel v. Montgomery Cnty. Fire Prot. Dist. No. 1*, 131 F.3d 564, 580 (6th Cir. 1997).

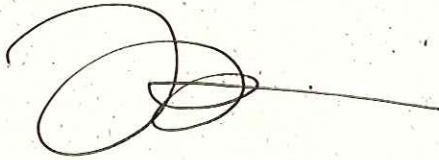
REQUEST FOR PUBLIC RECORDS

In addition, pursuant to Ohio Revised Code §149.43, we request that you produce the following public records.¹⁰ Please provide the following records, which exist individually or collectively:

1. Derek Ide's personnel file;
2. All other records referring or relating to the grounds for Mr. Ide's non-renewal as a substitute and/or to his performance or employment as a substitute teacher; and
3. All records reflecting any social media policies applicable to substitute teachers in the District.

We ask that you produce the requested records within a reasonable period of time,¹¹ and in any event no later than September 15, 2016. We also ask that you produce these on a rolling basis as they become available. Please send these electronically if possible. If there is a cost related to production, please advise me before incurring that cost.

Sincerely,



Freda J. Levenson
Legal Director
ACLU of Ohio

¹⁰ Records are defined to include, without limitation, writings, documents, papers, text files, computer files, emails, audio recordings, photographs, video recordings, annals, archives, journals, logs, or notes, and drafts of those records.

¹¹ Ohio law requires delivery of public records within a reasonable time of the request. *See, e.g., Consumer News Serv., Inc v. Worthington City Bd. of Edn.*, 97 Ohio St. 3d 58, 65, 776 N.E.2d 82 (2002).

Exhibit A



Derek Iommarini

October 28, 2015 · 11

Listen if you're some pig-sympathizer who thinks that little black girl *deserved* the beat down that this cowardly, semi-sentient, pedophiliac piece of shit gave her because she "popped" him in the neck after he laid his hands on her and started yanking and choking her, delete me from your god damn FB page and your life, please. I swear on everything that is holy I'm ready to go to war for that little black girl, and I *beg* one of you coward ass racists to step to me. I'll drop your ass with my one good arm, I promise you.



Like



Comment



Share