

By U.S. Mail and Email

July 14, 2022

Buckeye Valley Board of Education
c/o Amy Dutt, President
679 Coover Road
Delaware, OH 43015

Dear Members of the Buckeye Valley Board of Education,

As you know, on April 7, 2022, Buckeye Valley West Elementary School hosted a guest presentation by local children's book author Jason Tharp. Until the eve of that visit, Mr. Tharp had planned to read his book *It's Okay to Be a Unicorn!* to several classes of students. That book, like many of Mr. Tharp's works, conveys an age-appropriate message of inclusion, empathy, and embracing differences.

Unfortunately, the day before the event, school officials advised Mr. Tharp that he would not be permitted to read *It's Okay to Be a Unicorn!*, because a belief had taken hold in the administration of the Buckeye Valley Local School District (BVLS) that the book espoused a pro-LGBTQ+ viewpoint that BVLS wished to exclude. Since then, Buckeye Valley West appears to have removed and/or banned *It's Okay to Be a Unicorn!* from its library collection. These actions, apparently taken in haste in response to ill-informed complaints by a handful of parents and school board members, violate Mr. Tharp's and Buckeye Valley West students' First Amendment rights.

The ACLU of Ohio represents Mr. Tharp in this matter. We urge BVLS to (1) reverse its ban on Mr. Tharp's book, and replace any copies that were removed from the library at Buckeye Valley West, (2) adopt and enforce a policy preventing discrimination on the basis of viewpoint in library book acquisition and retention, where the book contains no age-inappropriate content, and (3) adopt and enforce a similar policy with regard to guest speakers. Should BVLS fail to adequately remedy this issue, we will take appropriate legal action.

Jason Tharp's *It's Okay to Be a Unicorn!* Expresses an Age-Appropriate Message of Inclusion and Kindness

From his Columbus, Ohio-based Wonderville Studios, Jason Tharp writes and illustrates children's books aimed at helping to provide core competencies for kids "growing up in a social media world." Mr. Tharp's mission is to instill

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values of “kindness, inclusion, empathy, and self-empowerment,” and to “encourage kids to embrace their inner ‘weirdness[.]’”¹ His books and coloring books—featuring titles like *The Inspiration Fairy*, *The Best You!*, and *Kindness is Cool!*—reflect his whimsical style, featuring colorful motifs and fantasy creatures.

Based on documents produced in response to public records requests, BVLS staff and administration lauded Mr. Tharp’s message and found it age-appropriate:

- “I really like the message he has to share and think that he would be great for all grade levels.”²
- “I LOVE HIM!! Let’s book it and let me know what I need to do to help.”³
- “Mr. Tharp’s books may appeal more to our younger grades; however, his positive message of compassion and individuality will be something all grade levels can enjoy and appreciate!”⁴

Not only was Mr. Tharp invited to read at Buckeye Valley West specifically on the basis of the positive message that he would convey, but his planned visit was rescheduled from Friday, April 8 to Thursday, April 7 at the school’s behest, specifically to ensure that preschool students would be able to attend.

It’s Okay to Be a Unicorn!—wherein the eponymous hero, the brightly-illustrated Cornelius J. Sparklesteed, learns to embrace that a unicorn need not hide his horn merely because it sets him apart from the horses around him—was no exception. In advance of Mr. Tharp’s scheduled visit, the school purchased the book and made plans to read it to kindergarten, first grade, and second grade classes. Students created artwork inspired by the book’s unicorn and rainbow illustrations.

As should be obvious, nothing in the book contains any age-inappropriate content pertaining to sex, sexuality, or any other subject matter.⁵

Buckeye Valley West Restricts Mr. Tharp’s Speech Based on Its Perceived Viewpoint

Senior BVLS administrators, including interim superintendent Jeremy Froehlich, were aware of Mr. Tharp’s visit well in advance of April 7. A worksheet based on *It’s Okay to Be a Unicorn!*, for

¹ Wonderville Studios, *Hi, I’m Jason!*, <https://www.wondervillestudios.com/aboutjasontharp> (accessed June 22, 2022).

² December 9, 2021 email from Buckeye Valley West librarian [REDACTED] to BVLS Curriculum, Instruction, and Assessment Specialist [REDACTED]

³ December 10, 2021 email from Buckeye Valley West art educator [REDACTED] to [REDACTED]

⁴ February 16, 2022 email from Buckeye Valley West principal Sean Smith to Buckeye West staff.

⁵ The book does contain rainbows, which are a common illustration in colorful children’s books, as well as scenes of a unicorn uncovering its horn. Sometimes, as Sigmund Freud is said to have quipped, a cigar is just a cigar.

students to draw themselves as a unicorn, was circulated several weeks beforehand.⁶ No one raised concerns.

That changed abruptly on the evening of April 5, when BVLS board member Tom Ailabouni and board vice president Donald Dicke peppered the interim superintendent with complaints:

- “We are telling kids that ‘being gay is ok’? Elementary school? My second grader? And wear clothes to create a rainbow? What the devil? Are we out of our minds?”⁷
- “I think it would be in the best interests of the district to cancel Jason Tharp coming to west. These types of things are exactly what we have been fighting against. Why would we welcome an author who is pushing LGBTQ ideas on our most vulnerable students?”⁸
- “At the very least we can say controversial.”⁹

Mr. Ailabouni also advised Dr. Froehlich to “[g]et ready to talk more lawsuits,” and later added that Ailabouni would be “outside demonstrating” if Mr. Tharp’s visit proceeded.¹⁰

Produced emails indicate that Dr. Froehlich received these complaints early the following morning, on April 6. He did not attempt to push back against these inappropriate demands and threats; instead, he immediately worked to accommodate them, voicing his agreement with the description of *It’s Okay to Be a Unicorn!* as “controversial.”¹¹ Promising the complaining board members he would “keep you posted,” he and other BVLS administrators quickly moved to censor Mr. Tharp’s perceived viewpoint. Dr. Froehlich immediately forwarded the email chain to curriculum coordinator Brian Orrenmaa, seeking his input and assistance.

As board president Amy Dutt would later admit in a public statement, BVLS’s “long standing complaint policy simply was not followed.” That policy creates a process for complaints to be received by a standard form, a review and reevaluation of the questioned materials by a review committee, and a decision by the superintendent upon completed review.¹² None of that occurred here.

⁶ March 15, 2022 email from [REDACTED] fourth grade teacher, to multiple recipients including interim superintendent Jeremy Froehlich.

⁷ April 5, 2022 email from board member Tom Ailabouni to interim superintendent Froehlich and board vice president Donald Dicke.

⁸ April 6, 2022 response from Mr. Dicke to Dr. Froehlich and Mr. Ailabouni.

⁹ April 6, 2022 response from Mr. Ailabouni to Dr. Froehlich and Mr. Dicke.

¹⁰ In what may also have been a veiled threat, by reference to the School District’s then-ongoing search for a permanent superintendent, Mr. Ailabouni also added that “This is why it is important for the superintendent to hire the right people. I think this will be one of the big points of focus in the following month or two.”

¹¹ April 6, 2022 email from Dr. Froehlich to Mr. Ailabouni and Mr. Dicke.

¹² See Public Complaints About the Curriculum or Instructional Materials (policy adopted September 9, 2008).

Instead, by 9:50 AM on April 6, less than two hours after he first acknowledged their complaints, Dr. Froehlich wrote to Mr. Ailabouni and Mr. Dicke that Buckeye Valley West principal Sean Smith was “working with the author, PTO and librarian right now to see if he has another book to read. I’m trying to address your concerns and the PTOs concerns.” School staff were notified by mid-morning—again, within only a few hours of Dr. Froehlich’s receipt of the board members’ complaints—that Mr. Tharp would no longer be permitted to read *It’s Okay to Be a Unicorn!* at the school. As directed, Mr. Smith called Mr. Tharp on April 6 and advised him that, due to the book’s perceived pro-LGBTQ viewpoint, Mr. Tharp would not be permitted to read *It’s Okay to Be a Unicorn!* Mr. Smith also sent an announcement to parents—after clearing its content with Mr. Orrenmaa and Dr. Froehlich—reminding them of Mr. Tharp’s upcoming visit, and clarifying that Mr. Tharp would not be reading any books during that visit. Given no choice, Mr. Tharp complied.

Though Buckeye Valley West had purchased at least one copy of *It’s Okay to Be a Unicorn!*, the book no longer appears in the school’s library collection. Reports from within Buckeye Valley West indicate that BVLS officials followed up with library staff to confirm that the book would no longer appear in the library.

Concerningly, BVLS later mischaracterized some of these events in communications to the public. For example, Dr. Froehlich wrote to CNN that in response to “some parental concerns” regarding Mr. Tharp’s visit, he “asked the school administration to investigate,” but that “before we were able to gather all the facts there was some miscommunication between the central office and the building administration that led to the alteration of the author’s original plan.”¹³ There is no record of any such “investigation,” and Dr. Froehlich’s contemporaneous messages indicate that there was no “miscommunication” involved.¹⁴ Similarly, in response to a parent’s inquiry, Dr. Froehlich wrote “I did not ask Mr. Tharp to not read any of his books, and I did not ask any books to be banned [...] I do not know what communication took place between the author or the West principal and other BV administrators” on the subject of *It’s Okay to Be a Unicorn!*. He added, “I have been told through my investigation this was a miscommunication between a central office administrator and the West principal.”¹⁵

BVLS’s Actions Violate Mr. Tharp’s and Its Students’ Constitutional Rights to Be Free of Viewpoint Discrimination

Suppressing speech based on its perceived opinions—that is, viewpoint discrimination—is “an egregious form of content discrimination.” *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995). As the Supreme Court has observed, “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be

¹³ April 18, 2022 email from Dr. Froehlich.

¹⁴ See April 6, 2022 email from Dr. Froehlich to Mr. Ailabouni and Mr. Dicke, noting that Dr. Froehlich was “working with the author, PTO and librarian right now to see if he has another book to read”

¹⁵ April 20, 2022 email from Dr. Froehlich to parent.

orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).

The First Amendment guarantees students of all ages a right to be free of viewpoint discrimination in the selection of books and other materials for their school libraries. *See, e.g., Bd. Of Educ., Island Trees v. Pico*, 457 U.S. 853, 867, 872 (1982); *Minarcini v. Strongville City Sch. Dist.*, 541 F.2d 577, 583 (6th Cir. 1976); *Parents, Families, and Friends of Lesbians and Gays, Inc. v. Camdenton Sch. Dist.*, 853 F. Supp. 2d 888, 899 (W.D. Mo. 2012). Though schools may moderate subject matter within reasonable boundaries—for example, filtering explicit material inappropriate for an elementary school audience—they cannot abuse that power to restrict or advance a particular viewpoint. As the Supreme Court has held, “local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books[.]” *Pico*, 457 U.S. at 872.¹⁶ In addition, Mr. Tharp himself also has a First Amendment right to challenge the school’s decision to ban his book. *See United States v. Am. Library Ass’n*, 539 U.S. 194, 201–02 (2003); *Parents*, 853 F. Supp. 2d at 896 (rejecting a school’s argument that “the right to challenge decisions regarding school-library materials belongs exclusively to students”).

Even beyond the school library, public schools must refrain from viewpoint discrimination with regard to guest speakers. *E.g., Searcey v. Harris*, 888 F.2d 1314 (11th Cir. 1989) (finding a First Amendment violation where a school restricted the speech of a prospective employer at a job fair); *Wilson v. Chancellor*, 418 F. Supp. 1358, 1361 (D. Or. 1978) (ban on “all political speakers” violated students’ right to hear); *see also Cornelius v. NAACP*, 473 U.S. 788, 806 (1985) (“Although a speaker may be excluded from a nonpublic forum if he wishes to address a topic not encompassed within the purpose of the forum ... the government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject”).

BVLS’s own records make abundantly clear that it engaged in viewpoint discrimination here, both with regard to Mr. Tharp’s visit and the presence of *It’s Okay to Be a Unicorn!* in the Buckeye Valley West library. The complaints that gave rise to the restrictions on Mr. Tharp’s speech were aimed particularly at *It’s Okay to Be a Unicorn!*, and were based on that book’s perceived viewpoint. In messages to Dr. Froehlich, Mr. Ailabouni included links to online reviews of the book suggesting a pro-LGBTQ+ viewpoint. Mr. Dicke suggested “Possibly pick a non controversial book to be read instead?” Removing any doubt as to the nature of his concerns, Mr. Dicke described such a viewpoint as “exactly what we have been fighting against.”

Neither board member suggested that the book contained explicit material or express references to sexuality (nor could they, as it does not). In fact, neither gave any particular indication that they had

¹⁶ It does not matter whether BVLS *removed* the book from the library, or *refused to include it* based on distaste for its perceived viewpoint. Either is a violation. *See Parents*, 853 F. Supp. 2d at 901 (“it is the intention and effect of a library’s decision that controls the analysis, and not the medium of the resource nor whether the decision can be characterized as an addition or removal”).

read the book at all. Rather, their objections focused on its perceived viewpoint: “pushing LGBTQ ideas” and that “being gay is ok.” Attempting to categorize the book as “controversial” provides no excuse. Courts have observed that such a characterization is easily abused to suppress particular viewpoints, and cannot justify a speech restriction. *E.g.*, *United Food and Commercial Workers v. Southwest Ohio Regional Transit Auth.*, 163 F.3d 341, 361–63 (6th Cir. 1998)

It was these concerns, and possibly those of parents, that prompted BVLS’s subsequent actions, culminating in the school censoring Mr. Tharp’s presentation and removing his book. Doing so was not only an abandonment of BVLS’s complaint policy; it was a violation of Mr. Tharp’s First Amendment rights, and those of the students. At minimum, BVLS must lift any ban, written or unwritten, on the presence of Mr. Tharp’s books in its libraries, and replace any books that were removed or excluded.

BVLS Must Revise Its Policies to Prevent Ongoing and Future Violations

BVLS policy disfavors viewpoint discrimination in the district’s library materials selection. Specifically, the Board states that it “believes the responsibility of the school library is to ... [p]lace principle above personal opinion and reason above prejudice in the selection of materials of the highest quality in order to ensure a comprehensive collection appropriate for the users of the library.”¹⁷ Its complaint policy, as noted above, ultimately places discretion in the hands of the superintendent.

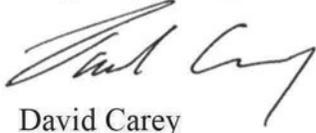
BVLS’s board and administration plainly failed to adhere to this “belief” in this instance,¹⁸ demonstrating that these policies do not suffice to protect the rights of BVLS students, authors, or guest speakers. In order to prevent future violations of this nature, we urge BVLS to adopt and enforce plain, unambiguous, and mandatory policies preventing the censorship, banning, or removal of library or curricular materials on the basis of the viewpoint that those materials espouse. Further, we urge BVLS to adopt and enforce a corresponding policy with regard to guest speakers like Mr. Tharp.

We look forward to your prompt assurances that these steps will be taken. Please feel free to contact me with any questions.

¹⁷ Library Materials Selection and Adoption (policy adopted September 9, 2008).

¹⁸ *See* Public Complaints About the Curriculum or Instructional Materials (“The Board assumes final responsibility for all books and instructional materials which it makes available to students, and it holds its certified staff accountable for their proper selections.”)

Very truly yours,



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cc (by email):

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