



March 30, 2007

Dr. David Behlow
Oswego Community Unit 308 School District
P. O. Box 729
4175 Rte 71
Oswego, IL 60543
VIA FEDERAL EXPRESS

Re: Violation of Melissa Yates' Constitutional Rights

Dear Dr. Behlow:

Robin Yates, on behalf of her daughter Melissa, has requested that the Alliance Defense Fund ("ADF") notify you of a violation of her First Amendment rights by school officials at Thompson Jr. High, Oswego Community Unit 308 School District ("District"). ADF is a not-for-profit public interest law and educational group. Our organization exists to educate the public and the government about important constitutional rights, particularly in the context of the expression of religious sentiments. When necessary, we also institute legal proceedings to protect these rights.

Melissa is a member of the Art Club which asked permission to paint a mural on the wall of a school hallway, using the theme "We All Come Together At Thompson." The mural was divided into "puzzle" pieces and each student in the Art Club painted, and signed their name to, a piece of the puzzle. The only restrictions on messages in the student paintings were that they not depict weapons or profanity. Each student submitted a sketch of their painting to the Principal, Tracy Murphy, to make sure it complied with these minimal constraints.

Melissa painted a picture of a cross and the words "Thompson is being watched over." Melissa's sketch was approved and she painted it on the wall as part of the mural. But when she came to school the next day, her piece had been painted over with blue paint at the direction of Principal Murphy. Melissa's painting was censored because of "separation between church and state," and a concern for "offending" other students.

Other students' paintings reflected dance, Japanese characters, music, llamas, and flowers. They also contained personal messages such as "Music is my life," "Dance your heart out," and "Imagine." One student painted a picture of an old man sitting at a school desk and saying, "That's a dumb question." None of these were censored.

Principal Murphy's censorship violates the First Amendment of the United States Constitution. Two federal court cases decided in 2004 explicitly recognize the constitutional right to display religious messages in the context of similar displays. See *Seidman v. Paradise Valley Unified Sch. Dist.*, 327 F. Supp. 2d 1098 (D. Ariz. 2004); *Demmon v. Loudoun County Public Sch.*, 342 F. Supp. 2d. 474 (E.D. Va. 2004). The Second Circuit has also held that a school cannot refuse to display student work on the school wall because it contains religious views. *Peck v. Baldwinville Central Sch. Dist.*, 426 F.3d 617, 633 (2nd Cir. 2005). Each of these cases bluntly held that when a school permits personal messages to be displayed, that school cannot exclude religious views without violating the Constitution.

In *Demmon*, a Virginia school allowed the display of messages on a brick walkway. School officials removed several bricks with crosses on them because they were concerned with violating the Establishment Clause. The judge held that the "removal of the bricks bearing the Latin cross constituted impermissible viewpoint discrimination" and ordered the school to return the bricks to their former positions in the walkway. *Demmon*, 342 F. Supp. 2d. at 488, 494.

ADF has experience litigating these types of cases. We successfully litigated the *Seidman* case mentioned above, and have litigated numerous other cases dealing with religious expression on public school campuses. ADF also threatened action against a school district in Maine that tried to exclude a religious message in the context of a Buy-a-Brick program. Commendably, the School righted its course and allowed the religious message to be displayed before litigation became necessary. See <http://headlines.agapepress.org/archive/12/152004b.asp>.

Our desire is to settle these situations informally. The District can resolve this matter and avoid possible federal litigation by allowing Melissa to re-paint her picture of a cross and the words "Thompson is being watched over" on her part of the mural. If the District does so and an offended individual complains, ADF would be happy to assist the District in defending itself against that complaint and would strongly consider defending the District if the situation proceeded to litigation.

We appreciate the difficulty schools face in trying to balance the concerns of the Establishment Clause with the protections of the Free Speech and Free Exercise Clauses. Under these circumstances, however, the law is clear. Private religious expressions within the context of a mural display located on public school grounds do not violate the Constitution. Indeed, the Free Speech Clause requires that such speech be included.

This situation can be resolved informally if the school takes the action outlined above. Otherwise, the school faces the prospect of federal litigation and an award of costs and attorneys' fees. Please inform me **by April 15, 2007** of your decision regarding this situation.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Theriot". The signature is stylized with a large initial "K" and a long horizontal stroke extending to the right.

Kevin Theriot
Senior Counsel

cc: Tracy Murphy, Principal
Thompson Jr. High