



September 15, 2021

VIA EMAIL AND OVERNIGHT COURIER

Superintendent Erik Erie  
Ely Memorial High School  
600 East Harvey Street, Ely, MN 55731  
eerie@ely.k12.mn.us

RE: Ely Memorial High School Civil Rights Violation

Dear Superintendent Erie,

I write on behalf of Young America's Foundation (hereafter, YAF). This letter is to inform you that ISD 696 & Ely Memorial High School (hereafter, EMHS) have engaged in unconstitutional viewpoint discrimination. These actions violated the civil rights of not only YAF but the students at your school as well. Unless EMHS takes the corrective actions discussed below, YAF is prepared to commence litigation against the district and any district employee who has deprived YAF and its students of their constitutional rights.<sup>1</sup>

The facts, as YAF understands them, are as follows. After EMHS had already granted approval for students to participate in YAF's "9/11: Never Forget Project," a student informed YAF that EMHS required the removal of all references to YAF from promotional materials associated with the event, even though ads featuring YAF had already been made public. A few days thereafter, EMHS decided to cancel the student-run 9/11 demonstration altogether.

According to your statement on September 8, 2021 in the Timberjay,<sup>2</sup> the rationale for this decision was that YAF is a "very political organization" that the school decided to avoid because of "political ramifications." This statement contradicts the story you gave to YAF that the event was cancelled due to concerns over masking and following CDC guidance regarding COVID-19. Claiming the event was cancelled based on CDC guidelines was clearly pretextual. EMHS hosted an outdoor football game with masks optional and no social distancing on September 10,<sup>3</sup> as well as putting on its own 9/11 remembrance event with YAF excluded.

As a public school, EMHS is required to abide by the guidelines of the First Amendment if and when it regulates student speech-- students' First Amendment rights do not disappear on the grounds of EMHS. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Viewpoint discrimination is "an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger v. Rector & Visitors of the Univ. of VA.*, 515 U.S. 819, 829 (1995). Viewpoint discrimination is not permitted, even in a limited purpose public forum. *Rosenberger*, 515 U.S. at 829. Your own statement in the Timberjay is damning evidence that the district and its officials cancelled the event due to YAF's ideological positions. You clearly stated that "Autumn unwittingly approved the 9/11 event, not knowing or understanding what YAF

<sup>1</sup> 42 USC 1983, see *Monell v. Department of Soc. Servs.* 436 U.S. 658 (1978).

<sup>2</sup> <http://www.timberjay.com/stories/isd-696-avoids-political-controversy-over-911-anniversary-program,18109?fbclid=IwAR0X5tFWDuZbLZqngYM0EFF-qApOReracsIZM5lGll1My7YY9Ic-u6ExKVg>

<sup>3</sup> <https://www.mnfootballhub.com/game/show/31946538?subseason=756407&referrer=6481392>

represents.”<sup>4</sup> Since discrimination based on ideology or opinion is blatantly unconstitutional, EMHS lacked any compelling reason for denying YAF and its students access to campus. Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37, 55 (1983).

No reasonable and viewpoint neutral criteria regulating promotional materials or holding events at EMHS exists that justifies the removal of YAF from the event or the advertisements. To the best of our knowledge, no reasonable and viewpoint neutral guidance exists at EMHS whatsoever. School officials are not free to simply suppress expressions they do not agree with to avoid discomfort or controversy resulting from that expression, particularly when those views are protected political speech like what YAF and the students were planning. See Tinker, 393 U.S. at 509, 510, 511.


EMHS has clearly engaged in viewpoint discrimination, motivated solely by your apparent discomfort that some in the community don’t agree with YAF’s policy positions. YAF has no doubt that it would prevail should a complaint be filed. However, YAF is willing to forego litigation if EMHS agrees to the following terms:

1. EMHS will, within three (3) business days of agreeing to settlement, make a public apology to YAF and the students who intended to participate in the “9/11: Never Forget Project,” to be published in the Timberjay, on the EMHS website, and on all school run social media accounts. That apology must admit to violating the constitutional rights of YAF and its students, as well as apologizing for the pretextual statement given to YAF and the community about CDC guidelines as the justification for why the event was cancelled.
2. EMHS will, within thirty (30) days of agreeing to settlement, create and publish clear guidelines that are consistent with the Constitution for all student advertisements and events to prevent future abuses by school officials.

In anticipation of possible litigation, EMHS and all employees involved in this decision regarding the cancelled event, including Principal Megan Anderson and you, are directed to preserve all information and documents related to this matter as of the date of this letter for production during discovery. This includes all documents (paper and electronic), existing in e-mails, presentations, video meetings such as e.g. Zoom or Skype, hard drives, cloud data storage, and shared network drive files. It also includes text messages, instant messages, voicemails, and social media posts and messages. It also includes any records on electronic devices you use for work, such as an iPhone, thumb drive, or a personal computer on which you store work materials. EMHS also received a Freedom of Information Act request from YAF that we expect full compliance with and reserve the right to bring legal action to enforce, which is separate and distinct from this offer to settle.

YAF’s ultimate goal here is to ensure that the students of EMHS are able to exercise their constitutional rights. It is my hope that this matter will be resolved quickly without forcing us into litigation, and this is YAF’s only offer to settle. Should we need to litigate this matter, YAF will be seeking not only damages but reimbursement of all costs and attorney’s fees from all named parties. You have ten (10) business days to respond to this letter.

Sincerely,



Steven M. Mairella, Esq.  
Deputy General Counsel  
Young America’s Foundation

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<sup>4</sup> <http://www.timberjay.com/stories/isd-696-avoids-political-controversy-over-911-anniversary-program,18109?fbclid=IwAR0X5tFWDuZbLZqngYM0EFf-qApOReracsIZM5IGliIMy7YY9Ic-u6ExKVg>

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