

April 18, 2019

**Via E-Mail Only**

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Evan Daniels, Esq.  
Unit Chief Counsel, Government Accountability Unit  
OFFICE OF THE ARIZONA ATTORNEY GENERAL  
Appeals & Constitutional Litigation Division  
2005 North Central Ave.  
Phoenix, AZ 85004

Re: "The March 1, 2019, Events at Perry High School"

Dear Mr. Daniels:

We represent Ms. Jennifer Farris and her two children, students attending Perry High School ("Perry HS"), who, on March 1, 2019, were directed by school administrators to remove articles of clothing supporting President Trump (collectively "clients" or "Farris").

By way of introduction, Freedom X is a 501(c)(3) charitable non-profit public interest law firm protecting conservative and religious freedom of speech. We adhere to the foundational principles of the First Amendment governing speech in the public sector environment, including the right to express unpopular political ideas threatened by state action taking the form of an unconstitutional heckler's veto.

On March 5, 2019, you wrote to Dr. Camille Casteel, superintendent of the Chandler Unified School District ("District"), requesting a response from the District explaining how "its acts on March 1 and beyond have comported with [its] responsibilities" to protect the constitutional rights of its students. On April 8, 2019, counsel for the District responded to your request.

This letter responds to your April 9, 2019, e-mail inviting our clients to present a response to the District's letter. The factual narrative contained herein is an unexhaustive account based on our clients' current recollections of the events of that date. Due to time constraints, it does not purport to address other evidence of events of March 1 apart from the District's letter and a public statement posted on its website. Ms. Farris and her children reserve the right to amend the factual narrative in any subsequent communication and/or administrative or court proceeding.

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### **Response Summary**

The District's response focuses on certain events occurring on March 1 while eliding discussion of facts detailing its treatment of our clients. Our purpose here is (a) to provide a description of the Farris incident overlooked by the District in its factual summary and (b) to question the reliability of the District's less-than-scrupulous investigation into the facts corresponding to the March 1 events.<sup>1</sup>

There are a few main points we wish to highlight:

1. School officials ordered the Farris children to remove their pro-Trump clothing and banner after the school day had ended and in an environment where no threat of anti-Trump hostility or substantial disruption of the school environment was present.
2. School administrators *specifically* commented adversely about the Trump paraphernalia.
3. The District has falsely published statements to the public claiming Ms. Farris "screamed, yelled and used profanity, including the 'F' word in the presence of students and staff" and has refused to publicly retract those statements even after having been presented with video evidence categorically refuting the District's mischaracterization.
4. The District has an indefinite order in place prohibiting Ms. Farris from visiting the school campus.
5. The District's "investigation" of events is incomplete, misleading and self-serving.

### **Facts**

A flyer distributed by Perry HS identified February 25-March 1 as Spirit Week. Friday, March 1, was identified as "USA Day" with the theme for the day identified as "Party in the USA."<sup>2</sup> (Exh. A, Spirit Week school flyer). The Farris children elected to wear clothing supporting President Trump to celebrate USA Day. Farris' son, [REDACTED], wore a red "Make America Great Again" ("MAGA") hat and her daughter, [REDACTED], wore an American Flag shirt and at times throughout the day a red MAGA sweatshirt. (Exh. B, photo of [REDACTED]).

At 2:14 p.m., school was dismissed and [REDACTED], [REDACTED] and a friend, [REDACTED] went to the northeast corner of the East Building as they do every day after school to wait for their rides home and to take a few pictures of them in their MAGA attire and a flag with the words "TRUMP" prominently featured and "Make America Great Again" on it. (Exh. B). [REDACTED] put on his MAGA

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<sup>1</sup> Because Ms. Farris and her children were not witnesses to and have no personal knowledge of the events described in the District's letter, we do not address them here.

<sup>2</sup> The other days and themes for Spirit Week were Monday: Dress Like Your Mom Day (theme: "All American Mom"); Tuesday: Workout Day (theme: "New Year New Her"); Wednesday: Jersey Day (theme: "Team Player"); and Thursday: "Western Day" (theme: "Wild Wild West").

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hat for the photos. As they were taking photos, Perry HS's School Resource Officer ("SRO") Jesse Allen, approached the students and told them to remove their MAGA clothing and leave the campus immediately. The children asked why they had to leave, and he again told them put away the Trump flag, remove the clothing and leave school immediately. [REDACTED] asked why he was required to remove his hat but did not get an answer. Instead, Officer Allen appeared angered and ordered the students to the principal's office. The students promptly complied with Officer Allen's order and walked to the front office. Officer Allen then took photos of the students.

Walking to the office, [REDACTED] called her mother and told her that she thought she was in trouble for wearing the MAGA sweatshirt. Farris, who was less than five minutes away from the school, instructed [REDACTED] not to speak with anyone until she arrived at the school. The other girl, [REDACTED], also wearing a MAGA sweatshirt, had likewise called her mother, who also instructed her daughter not to speak with anyone until her arrival at the school.

When Farris arrived, she began recording with her mobile phone even before exiting her car and kept the video recording continuously until she was ejected from the administrative office. (See video at [https://youtu.be/\[REDACTED\]](https://youtu.be/[REDACTED])). As the video shows, when Farris walked into the administrative office, the students who had been told to remove their clothing and leave were huddle together. The kids told Farris they were told to take their MAGA clothing off. When she told them to put the clothing back on, [REDACTED] said, "No mom; we will get in trouble. They told us to take it off."

Farris was upset, because, as she understood it, the school was singling her children out for disparate treatment because of their support for the president. Farris first spotted Officer Allen and asked him why her children were in trouble for wearing MAGA clothing and why he took pictures of her children. Allen said they wouldn't leave the campus. She then engaged Principal Serrano, who said they were asked to leave "because of the flag." He said the flag was "disrespectful" and that "students are not allowed to have a flag on campus." Although Farris was upset, Serrano did nothing to try to calm her down or to engage her in conversation. Rather, he simply told her to leave the school, that she was "trespassed" and that if she stepped foot back on the campus she would be arrested.

The school subsequently posted on its website a public statement entitled "Facts related to March 1st events at Perry High School." (See <https://www.cusd80.com/Page/100492>). It states in relevant part, followed by our response to each claim:

- Students were not asked to put away Trump gear. The Administration only asked that the banner be put away when the students engaged in a verbal altercation and the administration was concerned that it would escalate.

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Our response: These statements are false and potentially defamatory. The Farris children contend they were specifically ordered to remove their Trump clothing. They further contend they did not engage in a “verbal altercation.” Video evidence shows the students believed they would be disciplined for wearing the Trump clothing.

- When the parent at issue arrived at the Perry High School office, she screamed, yelled and used profanity, including the “F” word in the presence of students and staff. Her conduct did not meet expectations for public conduct on school property, as set forth in Policy KFA, “Public Conduct on School Property” and otherwise.

Our response: These statements are false and potentially defamatory. Video evidence shows that Farris did not scream, yell or use profanity, including the word “fuck” or its cognates. Her conduct did not violate school policy.

- When the parent would not cease her screaming, yelling and cursing, Mr. Serrano asked her to leave. She refused to do so. At that point, Mr. Serrano told the parent that he was trespassing her, which meant that he was directing her (rather than requesting her) to leave the campus. He did not tell her that she was trespassing when she arrived at the school.

Our response: These statements are false and potentially defamatory. Video evidence shows that Farris did not scream, yell or curse and that Farris did not refuse to leave.

- Governing Board Policy JICA, “Student Dress” pertains to student dress. Governing Board Policy JIC, “Student Conduct” addresses student conduct. Neither Policy directly addresses political attire. The District adheres to constitutional principles and prevailing case law when addressing student attire.

Our response: In this instance, Farris contends the school did not adhere to constitutional principle pertaining to student attire.

- Governing Board Policy JICD, “Student Conduct In School (Student Speech)” and related Administrative Regulation JICD-R address student speech in the schools. While the District does not have a Governing Board Policy or Administrative Regulation that addresses bringing flags or banners to school, it would apply other Policies and Administrative Regulations (such as Policy JICA, JIC, JICD or other Policies such as JICK, Student Harassment/Intimidation/Bullying) or Policy JK, “Student Discipline” to situations that involve students bringing flags or banners to school.

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Our response: These statements are unsupported by the facts.

- As has been previously shared, no student has been disciplined for wearing Trump or Trump related clothing or for expressing their political views. Under federal and state laws, as well as the District’s Governing Board Policies, Administrative Regulations and the rules set forth in the Student Handbook, students may be lawfully expected to:
  - Refrain from conduct that causes or is likely to cause a material and substantial disruption or interference with the orderly operation of the school or school activities.
  - Comply with the lawful directions of District officials or any other law enforcement officers acting in performance of their duties, and to identify themselves to such officials or officers when lawfully requested to do so.

Our Response: The Farris children were not engaged in conduct that causes or is likely to cause a material and substantial disruption or interference with the orderly operation of the school or school activities and did not fail to comply with the lawful directions of District officials or any other law enforcement officers acting in performance of their duties or refuse to identify themselves to such officials or officers when lawfully requested to do so.

### **Comment Regarding The Reliability Of The District’s Statements And Evidence**

1. The District misleadingly states that it suspended ██████████ for three days. In fact, ██████████ was originally suspended for 10 days. She and her mother are represented by Alliance Defending Freedom, whose attorneys negotiated the reduced suspension.<sup>3</sup>
2. The school’s “investigation” into events allegedly occurring earlier in the day are insufficiently documented. It is unclear whether the witnesses whose statements were taken held an anti-Trump bias, exaggerated their claims or were accurate and corroborated. The District appears not to have interviewed anyone accused of the accusations made or any Trump-supporters present at the assembly and lunch period.
3. Serrano states that a mother of a student called asking whether he knew that “50 seniors” had surrounded an African-American student chanting Trump slogans and that a video supported the claim. (District Letter, Decl. Serrano, ¶ 4.) Although this statement may not have been offered to prove the truth of it, it appears that no effort was made to confirm either the truth of it or the existence of a video. The reference to “50 seniors” appears absurd on its face. The statement that Dean of Students Beauer “was aware” of “tensions

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<sup>3</sup> We suggest contacting ADF to obtain a statement from Heidi Jones, ██████████’s mother.

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among students immediately following the assembly” is woefully vague and doesn’t begin to establish a material fact justifying the suppression of political expression at the end of the school day.

4. Beauer and Assistant Principal Heather Patterson state they watched a video in which a single student used a derogatory term for an anti-Trump student but did not believe it rose to the level of an actionable offense. (District Letter, Decl. Beauer, ¶¶ 5-6, Decl Patterson, ¶¶ 7-8).

### **Brief Application Of Relevant First Amendment Law In The Educational Setting**

At issue is whether the school officials violated the Farris children’s First Amendment rights.

Student speech which is not obscene, and which does not bear the imprimatur of the school, is governed by the standard set forth in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). This standard allows officials to suppress speech only on the basis of “facts which might have reasonably have led school authorities to forecast substantial disruption of or material interference with school activities.” *Id.* at 514. *Tinker* “does not demand a certainty that disruption will occur, but rather the existence of facts which might **reasonably** lead school officials to forecast **substantial** disruption.” *Karp v. Becken*, 477 F.2d 171, 175 (9th Cir. 1973) (emphasis added).

Under *Tinker*, students may “express their opinions, even on controversial subjects if they do so without **materially and substantially** interfering with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others.” *Dariano v. Morgan Hill Unified Sch. Dist.*, 767 F.3d 764, 776 (9th Cir. 2014), citing *id.* at 513, (internal edits, punctuation and quotation marks omitted) (emphasis added). To “justify prohibition of a particular expression of opinion, school officials must be able to show that their action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” *Id.*, quoting *Tinker* at 509 (internal edits omitted).

The District’s evidence demonstrates that the only person disciplined was [REDACTED] for refusing to give her name to school officials. No one was disciplined for engaging in substantially disruptive activity, and thus under these circumstances nothing justifies the enforcement of restrictions on the Farris children’s expressive rights.

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### **Conclusion**

Rather than resolve your inquiry, the District has only invited further investigation and potential legal action by the state. We specifically request an inquiry into whether Ms. Farris remains subject to a trespass order or may visit the school to attend to her children's' needs. This order is nothing more than a prior restraint on her right to confront school officials concerning policy matters impacting her children's rights.

Please contact the undersigned should you require additional information.

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Sincerely,



William J. Becker, Jr., Esq.

Link to video: <https://youtu.be/██████████>

Link to District's Public Statement: See <https://www.cusd80.com/Page/100492>

cc: Ms. Jennifer Farris  
Ryan Anderson, Esq.

# EXHIBIT A

**MORP**

2/25-3/1

**MON**

**All American  
Mom**

*dress like your mom day*

**TUES**

**New Year  
New Me**

*workout day*

**WED**

**Team Player**

*Jersey day*

**THURS**

**Wild Wild  
West**

*western day*

**FRI**

**Party In The  
USA**

*USA day*

# EXHIBIT B



MAKE AMERICA  
GREAT AGAIN

★ ★ ★ ★ ★  
**TRUMP**

MAKE AMERICA GREAT AGAIN!

★ ★ ★ ★ ★

MAKE AMERICA  
GREAT AGAIN

4!