

March 22, 2024

Principal Sah Brown
Jackson-Reed High School
3950 Chesapeake Street, NW
Washington, D.C. 20016

Sent via U.S. Mail and Electronic Mail (sah.brown@k12.dc.gov)

Dear Principal Brown:

FIRE and ADC are disappointed not to have received a response to our February 2 letter concerning Jackson-Reed High School's refusal to allow the Arab Student Union to screen a documentary critical of Israel and the school's denial of recognition to other student clubs based on their views. As our enclosed letter explains, the First Amendment and Washington, D.C., law prohibit Jackson-Reed from limiting student speech or association based merely on viewpoint or the speech's potential to offend others.

Jackson-Reed must not delay taking corrective action. The Supreme Court has been clear that the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."¹ FIRE and ADC again urge Jackson-Reed to meet its obligations under the First Amendment and D.C. law by allowing ASU to screen the documentary and to affirm that the school will not discriminate against or punish any students or student groups based on their views.

We respectfully request a substantive response no later than March 29, 2024.

Sincerely,



Aaron Terr
Director of Public Advocacy, FIRE



Abed A. Ayoub
National Executive Director, ADC

¹ *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Cc: Dr. Lewis Ferebee, Chancellor, District of Columbia Public Schools

Encl.

February 2, 2024

Principal Sah Brown
Jackson-Reed High School
3950 Chesapeake Street, NW
Washington, D.C. 20016

Sent via U.S. Mail and Electronic Mail (sah.brown@k12.dc.gov)

Dear Principal Brown:

The Foundation for Individual Rights and Expression (FIRE)¹ and the American-Arab Anti-Discrimination Committee (ADC)² are concerned by Jackson-Reed High School's viewpoint-based refusal to allow the Arab Student Union (ASU) to screen a documentary and the school's denial of recognition to other student clubs based on their views.³ The First Amendment and Washington, D.C., law bar Jackson-Reed from restricting student speech or association based on mere disapproval of the views expressed or their potential to cause others offense or discomfort.

ASU is a recognized student organization that offers a "forum for discussion of issues facing the Middle East and its diaspora."⁴ One of the students came up with the idea of a movie screening to facilitate a discussion about the Israeli-Palestinian conflict. The club chose the documentary "The Occupation of the American Mind" and planned to screen and hold a discussion about the film at its lunchtime meetings on December 14 and 15. The film is critical of what its creators call a "devastatingly effective public relations war that Israel and right-wing pro-Israel advocacy groups have been waging for decades in the US."⁵ On December 7, ASU students posted flyers advertising the event.

¹ FIRE is a nonpartisan nonprofit dedicated to defending freedom of speech. More information about FIRE's mission and activities is available at thefire.org.

² ADC is the country's largest Arab American civil rights organization, committed to defending the civil rights and liberties of the community. More information is available at adc.org.

³ Note that the factual recitation here reflects our understanding of the pertinent facts, but we appreciate you may have more information and, if so, invite you to share it with us.

⁴ *Arab Student Union, JACKSON-REED HIGH SCH.*, <https://jacksonreedhs.org/students/clubs-extracurricular-activities/entry/606>.

⁵ *The Occupation of the American Mind, MEDIA EDUC. FOUND.*, <https://www.occupationmovie.org>.

The following day, an administrator informed ASU’s sponsor, teacher Phillip Bechara, that the flyers had been taken down because the event had not received approval.⁶ On December 10, you informed Bechara you would not allow ASU to show the documentary, claiming that the “content and individuals associated with the film may provoke strong emotional responses or polarizing views within our diverse school community.”⁷ You imposed an apparently new requirement that ASU must also obtain your approval for any other movies it wishes to show, before announcing the event.

Two days later, an ASU student started a change.org petition to urge Jackson-Reed to allow the documentary screening, calling on others to sign it “if you believe in fostering diversity and open dialogue within our schools.”⁸ That same day, you met with ASU to discuss your decision.⁹ You explained that the film contained imagery you were “hesitant to put before our students” and that its “views may be polarizing and cause a further divide among our student body.” You specifically took issue with views of the film’s narrator, former Pink Floyd frontman Roger Waters, stating, “If there’s anyone affiliated with the film that has views and opinions and has communicated some things that are not aligned to what we as an organization and what we believe are going to be productive views or have shared things that are critical to individuals who are part of our school community, I would not feel comfortable associating a school-related program with a film that can cause some significant division.” You noted District of Columbia Public Schools (DCPS) has provided resources to teachers to “use as a starting point to engage students in this dialogue” around the Israel-Hamas conflict, and told the students that “if there are some other resources that you would like to bring in to address this topic, bring it to my attention so we can plan, see, vet, et cetera, around it.” You also noted, “There have been other clubs who have not been recognized and are not affiliated with our school or that I did not approve based on some of their viewpoints.”

In a December 17 newsletter to the school community, you said the school had “taken measures to halt the dissemination” of the petition and other online communications that had emerged concerning the decision to cancel the “unsanctioned event.”¹⁰ You added that the school “will not tolerate messages of hate or division that aim to disrupt our inclusive community.” In a subsequent December 22 email to an ASU student-member’s parent, you said “the proposed film was not part of the DCPS resource list provided to educators.”¹¹

⁶ An ASU student’s parent later spoke with several teachers and a District of Columbia Public Schools administrator who told her they were unaware of any policy requiring administrative approval for such an event.

⁷ Email from Sah Brown, Principal, Jackson-Reed High School, to Phillip Bechara, Science Teacher, Jackson-Reed High School (Dec. 10, 2023, 8:40 AM) (on file with author).

⁸ *Encourage Jackson Reed HS to Allow Palestine Film Screening*, CHANGE.ORG (Dec. 12, 2023), <https://www.change.org/p/encourage-jackson-reed-hs-to-allow-palestine-film-screening> [<https://perma.cc/UK9C-979G>].

⁹ Audio recording: Meeting between ASU and Principal Sah Brown (Dec. 12, 2023) (on file with author).

¹⁰ *Addressing Recent Concerns: A Message from Principal Brown*, JACKSON-REED HIGH SCH. (Dec. 17, 2023) (on file with author).

¹¹ Email from Sah Brown to Crystal Sylvia (Dec. 22, 2023, 2:36 PM) (on file with author).

It is well-established that public school students do not shed their First Amendment rights at the schoolhouse gate.¹² Public school administrators “do not possess absolute authority over their students In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.”¹³ As the Supreme Court recently reaffirmed, “America’s public schools are the nurseries of democracy” that accordingly “have a strong interest in ensuring that future generations understand the workings in practice of the well-known aphorism, ‘I disapprove of what you say, but I will defend to the death your right to say it.’”¹⁴

In the landmark case *Tinker v. Des Moines*, the Supreme Court held the First Amendment protected public school students’ right to wear black armbands to school to protest Vietnam War.¹⁵ The Court made clear public schools have authority to regulate student speech that substantially disrupts school activities, but may not do so out of “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”¹⁶ Speculative, “undifferentiated fear” of disruption is not enough.¹⁷ Rather, *Tinker* requires actual evidence of a threat that would “materially and substantially disrupt the work and discipline of the school.”¹⁸ As the Court wrote:

Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.¹⁹

The Student Bill of Rights codified in Washington, D.C., law likewise states that “[e]ach student shall have the right to exercise his or her constitutional rights of free speech, assembly, and expression without prior restraint, so long as the exercise of these rights does not substantially interfere with the rights of others.”²⁰ Those rights include “[o]rganizing and participating in political and social organizations,” “[p]reparation and distribution of posters, newspapers, or other printed matter, on or off school grounds,” and “[f]ree expression and defense of views

¹² *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

¹³ *Id.* at 511.

¹⁴ *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2046 (2021).

¹⁵ 393 U.S. at 514.

¹⁶ *Id.* at 509.

¹⁷ *Id.*

¹⁸ *Id.* at 513; see also *Cl.G v. Siegfried*, 38 F.4th 1270, 1279 (10th Cir. 2022) (four emails from parents, an in-school discussion, and news reports about a student’s Snapchat post fell short of “*Tinker*’s demanding standard” for substantial disruption).

¹⁹ *Tinker*, 393 U.S. at 508–09.

²⁰ D.C. CODE MUN. REGULS. TITLE 5-E § 2401.17.

and opinions without having that expression affect the student's . . . participation in extra-curricular activities."²¹

Under these principles, Jackson-Reed may not prohibit ASU from screening and discussing a documentary merely because school officials disapprove of the views of the film or those associated with it. Viewpoint discrimination is an "egregious" form of censorship, and 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."²²

There is no evidence ASU's announcement and advertisement of the optional event caused substantial disruption of school activities or that allowing it to proceed would do so. To the extent the issue is polarizing the student body, facilitating dialogue "where all voices are heard and respected," as ASU intended, may actually *reduce* tension by encouraging students to listen to each other and gain a deeper understanding of their classmates' perspectives.²³ Stifling student speech, on the other hand, is likely to inflame tensions.

There also is no basis for concluding ASU's speech is curricular or "school-sponsored" and thus subject to greater regulation. In *Hazelwood School District v. Kuhlmeier*, the Supreme Court held a student newspaper was "school-sponsored" because it was written and edited by students as part of a journalism class, largely funded by the school, and overseen by a teacher who selected the newspaper's editors, scheduled its publication dates, decided the number of pages for each issue, assigned story ideas to students, edited stories, and dealt with the printing company—making many of these decisions without consulting the students.²⁴ Unlike the newspaper in *Hazelwood*, which could "fairly be characterized as part of the school curriculum" and "designed to impart particular knowledge or skills to student participants," ASU's expressive activities, including film showings, are "personal expression that happens to occur on the school premises."²⁵ Absent more, ASU's use of school facilities and Bechara's mere involvement as a "sponsor" are not enough to make the club's activities "part of the school curriculum," and thus "school-sponsored" under *Hazelwood*. To conclude otherwise "would devoid that term of any helpful meaning, as nearly every student group activity happening to occur on school grounds can, in some tenuous sense, be described as using school facilities and as designed to impart some sort of knowledge upon its members. Rather, for expressive activity to be school-sponsored, the school needs to take affirmative steps in promoting the particular speech."²⁶

²¹ D.C. CODE MUN. REGULS. TITLE 5-E § 2401.18(b), (e), (f).

²² *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

²³ *Encourage Jackson Reed HS to Allow Palestine Film Screening*, *supra* note 8.

²⁴ 484 U.S. 260, 268–70 (1988).

²⁵ *Id.* at 270–71.

²⁶ *Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98, 117–18 (D. Mass. 2003) (student club's expression could not be classified as "school-sponsored" simply because school opened its channels of communications and facilities for club's use and provided adult sponsor who acted merely as monitor and did not substantively participate in club's activities).

In any case, mere disagreement with the documentary’s viewpoint or apprehension of negative reactions are not valid reasons to censor it. Your belief that the views of the documentary or individuals associated with it could “provoke strong emotional responses” and “further divide” the student body simply is not enough to meet *Tinker’s* demanding standard of substantial disruption. Nor is the documentary’s absence from a DCPS resource list. Recently, in *E. D. v. Noblesville School District*, a federal court held that a public school could not constitutionally deny a pro-life student club’s request to post a flyer that included the phrase “Defund Planned Parenthood,” even though, according to an administrator, the school community was “already walking on eggshells.”²⁷ While the Israel-Hamas conflict undoubtedly is a sensitive issue that elicits strong feelings, students retain their rights to discuss it and express their views.

The First Amendment and D.C. law likewise prohibit the administration from requiring preapproval for expressive activity to “vet” content for disfavored views. Any such policy not only violates the First Amendment’s bar on viewpoint discrimination, but also amounts to an unlawful prior restraint.²⁸ And imposing an *ad hoc* administrative requirement on a specific group based on its views only compounds the unlawful viewpoint discrimination. For similar reasons, Jackson-Reed must also refrain from taking any action to “halt the dissemination” of petitions or other online messages concerning its decision to cancel ASU’s event merely because the school disapproves of the messages’ viewpoints. The December 12 change.org petition is constitutionally protected criticism of the administration’s unconstitutional actions that students have a First Amendment right to express. Suppression of similar future opinions in like circumstances would likewise be unconstitutional and violate D.C. law.

Any decision Jackson-Reed previously made to deny official recognition and its accompanying benefits to a student organization based on its beliefs also constitutes unlawful viewpoint discrimination and burdens students’ freedom of association under the First Amendment and D.C. law securing students’ right to “organiz[e] and participat[e] in political and social organizations.” The First Amendment right to freedom of speech carries “a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends”—one that is “crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas.”²⁹ The right of expressive association extends to student organizations, fostering students’ ability to

²⁷ No. 1:21-cv-03075-SEB-MPB, 2022 U.S. Dist. LEXIS 179762, at *6–7, *26 (S.D. Ind. Sep. 30, 2022); *see also Bowler v. Town of Hudson*, 514 F. Supp. 2d 168, 178 (D. Mass. 2007) (public school officials violated students’ First Amendment rights when they took down students’ posters advertising conservative club because posters listed website address that in turn linked to another website hosting graphic video footage of hostage beheadings in Iraq and Afghanistan; “risk that student counseling may be required, or the likelihood of unplanned classroom discussions” did not constitute substantial and material disruption); *Clark v. Dall. Indep. Sch. Dist.*, 806 F. Supp. 116, 120 (N.D. Tex. 1992) (“If school officials were permitted to prohibit expression to which other students objected, absent any further justification, the officials would have a license to prohibit virtually every type of expression.”).

²⁸ Prior restraints are “the most serious and the least tolerable infringement” of expressive rights. *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). They bear a “heavy presumption” against their constitutionality. *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992); *see also* D.C. CODE MUN. REGULS. TITLE 5-E § 2401.17.


²⁹ *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000).

organize around causes or views in order to influence their institutions, communities, and country.³⁰

FIRE and ADC urge Jackson-Reed High School to comply with its obligations under the First Amendment and D.C. law by allowing ASU to screen “The Occupation of the American Mind” and to affirm that it will not discriminate against or punish any students or student organizations based on their views. Doing so will reaffirm to students and staff that “vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”³¹

We respectfully request a substantive response no later than February 16, 2024.

Sincerely,



Aaron Terr
Director of Public Advocacy, FIRE



Abed A. Ayoub
National Executive Director, ADC

Cc: Dr. Lewis Ferebee, Chancellor, District of Columbia Public Schools

³⁰ *Noblesville*, No. 1:21-cv-03075-SEB-MPB, at *28 n.6 (holding high school students in pro-life club pled facts sufficient to show school officials violated their First Amendment freedom of association by revoking club’s recognition based on its pro-life viewpoint and quoting *Healy v. James*, 408 U.S. 169, 181 (1972), for the proposition that “denial of official recognition, without justification, to [student] organizations burdens or abridges that associational right [implicit in the freedoms of speech, assembly and petition]”) (alterations in original).

³¹ *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).