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January 3, 2019

Carolyn Sharrette
Executive Director

Clay Hatch
Board Chairman

American Preparatory Academy
3636 W. 3100 S.
West Valley, UT 84120

Via Electronic Mail and US Post

Re: English Only Policy

Dear Ms. Sharrette and Mr. Hatch,

Thank you again for taking the time to meet with us, along with other members of your Board and other administrators. We met primarily about American Preparatory Academy's ("APA's") English-only policy (the "Policy"), as well as discussing other concerns that have been brought to our attention regarding equity among students. After speaking to you and speaking to and reviewing statements from several former and current students and family members, we are convinced that the Policy violates students' rights. **We ask you to stop formally or informally enforcing the Policy.** In addition, we ask you to address other concerning reports we have heard, which we will detail further in this letter.

To form our understanding of the Policy, we took steps including: speaking to you along with other members of your Board, and faculty; speaking to and reading reports from current and former students and their family members; and reviewing newspaper articles about the Policy. We will summarize our understanding of the various perspectives of the Policy.

As you have confirmed, under the Policy, students who are able to speak and understand English are required to speak English only on school grounds. You communicated that from your perspective, this means that if school administrators, faculty, or staff overhear students speaking to each other in a language other than English (and they believe the students are capable of understanding each other in English), they give students "reminders" that they

should not speak to each other in any other language. You stated that these “reminders” are not considered punishment, and that you do not formally punish students for speaking in languages other than English. You said that this policy applies everywhere at the school, and is not limited to classrooms or other curricular settings.

Although you said that it had been quite a while since you had given “reminders” to any student under the Policy, you acknowledged that you do not create written records of such reminders. You said that after seeing news accounts last year about students who felt that the Policy was discriminatory and stigmatizing, you convened a panel to investigate equity issues generally at the school. You said that the panel held meetings and encouraged reports, but did not hear any complaints about the Policy. You reported that administration had also not heard from students or families with negative views of the Policy. You said that you believe those who spoke out publicly in the press about their concerns about the Policy were not representative of broader student and family opinion, had not addressed the Policy with you directly, and may have been influenced by a disgruntled former teacher who had a change of heart about the Policy after leaving. You perceive students and families as being happy with the Policy.

We understood your primary reasoning for the Policy is to promote English proficiency among students because English mastery is important to academic and professional success. We understood that these goals were particularly important to you because you actively seek students from immigrant and refugee communities, and you view rapidly increasing their proficiency as helping them succeed academically and professionally. You pointed out that many of your administrators and faculty speak languages other than English and sometimes speak to prospective and current students and their families in other languages. You further stated that you viewed the Policy as encouraging students to be more inclusive and avoid forming exclusive social groups around a language that was not spoken by all students. If we have misstated or left out any significant aspects of your perspective, please let us know.

The perspective of the Policy we received from students and their families, and from news reports, was markedly different from your account.¹ In a newspaper article of last year, a former teacher reported that students had been suspended from his class for speaking Spanish several years ago. We heard from several students who knew of other students sent to an administrator’s office for speaking Spanish, as they would have been for violating a written rule. We heard from a former student who knew of another student being required to write a letter of apology for speaking Spanish. It was reported to us that many Spanish-speaking students who received “reminders” to speak English were told that the reason they should not speak Spanish was that it made other students uncomfortable. One student reported to us that on at least one occasion, she heard a teacher tell other students who were speaking Spanish in her earshot that they should stop because they were making that student “uncomfortable.” The

¹ While we acknowledge that those we heard from about their negative experiences with the Policy self-selected themselves to speak to us, we do not think that this means their reports are less trustworthy. Among other things, we found consistency among their accounts.

student reported that she had no problem at all with the students speaking Spanish but was actually made uncomfortable by the teacher using her as an excuse to stop the other students from conversing in whatever language they wanted. We heard from an adult family member of one student who a teacher told to stop speaking Spanish in a school restroom when she was having a highly personal conversation with another student. The adult said the student was mortified that the teacher was listening in on such a personal conversation and enforcing the Policy in the bathroom. More generally, we heard that some students felt demoralized and discouraged from being monitored and they felt shamed for speaking the language they identify most with and feel most comfortable in or simply would like to use.

We heard that students and parents have complained about or at least questioned the Policy to administration and staff. More than one person has told us that the school's response to questions or complaints has been if the complainant does not like the Policy, they can leave the school and let someone off the wait list who had no problem with it. Students have said that when an administrator reminds them they should not speak Spanish and the administrator or faculty member also speaks Spanish, they have questioned why they were told to stop when that person knows Spanish and knows they were not saying anything inappropriate.

Clearly, a number of students and their families have a different perception of the Policy and its consequences than you do. Setting aside those differences, everyone agrees on at least one thing: under the Policy, if a student anywhere on campus is overheard by school administrators, faculty, or staff speaking any language but English, he or she is told to stop doing so if the adult thinks the person can also speak English. Accordingly, we are not discussing a policy of English-only classroom instruction, but a system of monitoring and preventing students from speaking a foreign language to any other person at any time on campus. This system violates students' national and state constitutional rights and discriminates against students whose native language is not English, as further discussed herein.

First, students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 502, 506 (1969). While student speech at school is subject to regulation if it would substantially disrupt the operations of the school, "student expression that happens to take place on school premises" is unambiguously protected by the constitution. See *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 261 (1988). Courts have recognized that choice of language itself is inextricable from expression. "[W]ords are often chosen as much for their emotive as for their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech has little or no regard for that emotive function..." *Cohen v. California*, 403 U.S. 15, 26 (1971). The choice to speak a language other than English is a form of expression; restricting it is illegal. In sum, as students at public schools, your students' right to speak languages other than English on their own time is constitutionally protected. The Policy violates that right.

English-only policies also violate federal antidiscrimination laws forbidding discrimination on the basis of race or national origin. Civil Rights Act of 1964, 42 U.S.C. § 2000a(a) states that “All persons shall be entitled to the full and equal enjoyment of the . . . services, . . . privileges, advantages, and accommodations of any place of public accommodation, . . . without discrimination or segregation on the ground of race, color, religion, or national origin.” Language is intimately bound up with nationality. The Supreme Court recognizes that “language permits an individual to express both a personal identity and membership in a community. . . . It may well be . . . that proficiency in a particular language, like skin-color, should be treated as a surrogate for race” *Hernandez v. New York*, 500 U.S. 352, 370-71 (1991). In the employment context, the Tenth Circuit has held plaintiffs had stated a claim for discrimination on the basis of race or national origin by alleging that they were not allowed to speak Spanish at all while working for a city, even when having personal conversations or speaking English was not clearly required for a purpose such as safety. See *Maldonado v. City of Altus*, 433 F.3d 1294, 1304 (10th Cir. 2006).

The hostile educational environment caused by the Policy also violates federal law. Under Tenth Circuit precedent, if a school is indifferent to actions that are “so severe, pervasive, and objectively offensive that [they] can be said to deprive the victims of access to the educational opportunities or benefits provided by the school,” federal funding recipients can be held liable in damages for neglecting to redress the offensive acts. See *Bryant v. Indep. Sch. Dist. No. 1-38 of Garvin Cty., Okla.*, 334 F.3d 928, 934 (10th Cir. 2003). Here, the Policy has led to outcomes that deprive students of educational opportunities. Several students have reported a shared reluctance to speak in class or ask for help, for fear of getting reprimanded. Even worse, families and students have reported that the school environment, including being monitored and chastised for speaking Spanish, is so oppressive that students’ mental and emotional health suffer to an extent that severely impacts their academic performance. Some students even reported needing to repeat a grade or change schools altogether.

The Policy is offensive to the students and parents of APA and harshly impacts immigrant and refugee families that make up a large percentage of your schools’ enrollment. Immigrant students are part of an especially vulnerable community that fear retaliation from the school administration should they make their voices heard. Parents that have already gone to school officials to express their dissatisfaction with the Policy and other discriminatory practices and have felt as though their concerns have been “brushed aside.” Even in the newspaper report, you are quoted as saying that the school has a large wait list, which can be reasonably read to imply that students willing to say they are unhappy with the Policy should make room for students who will not openly object.

While the goals you hope to achieve with the Policy are positive ones, the Policy does not further those goals: it actually undermines them. Moreover, your reasons for adopting the Policy would not stand up to legal scrutiny. First, promoting English fluency or student unity are not enough to violate student’s free speech rights. As explained in *Meyer v. Nebraska*, “[t]he protection of the Constitution extends to all, to those who speak other languages as well as those born with English on the tongue. Perhaps it would be highly advantageous if all had ready

understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution – a desirable end cannot be promoted by prohibited means.” 292 U.S. 390, 401 (1923).

Moreover, a concern about potential bullying related to speaking languages other than English cannot justify the Policy because “schools may not prohibit student speech because of ‘undifferentiated fear or apprehension of disturbance’ or ‘a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular view.” *Morse v. Frederick*, 127 S.Ct. 2618, 2629 (2007) (quoting *Tinker* 393 U.S. at 506). A speculative belief that a disruption *may* occur because a student *may* be making disrespectful comments in a foreign language amounts to exactly the kind of “undifferentiated fear or apprehension of disturbance” that the Supreme Court has found insufficient to support restrictions on student speech. Your school teachers and employees cannot censor speech simply because they assume that disrespectful comments are being made in Spanish.

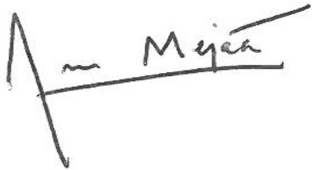
There has also been concern expressed about how discipline is meted out and a sense from students we have spoken to that students of color are more likely to be more harshly disciplined at APA. This kind of selective enforcement is a concerning issue that has been acknowledged as a nationwide problem. The best way to start to tackle this issue is to proactively track and analyze who is disciplined at your schools and particularly how the most extreme punishments, like suspension and expulsion, are used. A bill past this last legislative session requires that this information is tracked and reported to the State Board of Education. Your school can go beyond just reporting and pledge to scrutinize and address evidence that your schools disproportionately punish students of color. Specifically, we have heard that students experience dual standards around dress, for example length of skirts and shorts, with students of color more likely to be asked to change. This and other practices can lead to students living as second-class students within their schools.

In light of all the concerns expressed above, we request that your schools immediately rescind the English-only policy and inform all students and parents in writing (in English and Spanish, or in the language spoken in the home) that the policy has been terminated. To the extent that your disciplinary measures have directly or indirectly affected a minority group disproportionately, we advise your schools to comply with the law and redress the situation. We hope that your schools will make greater efforts to embrace and celebrate the marvelous diversity among your students, rather than impose restrictive policies on them. We are confident that if you do so, your ultimate goals for the success of your students will be achieved in far greater measure.

Specific to these policies, the ACLU of Utah asks that you: **(1) rescind the English-only policy at APA; (2) instruct teachers and students of their right to communicate with each other in any language; and (3) monitor all disciplinary measures pursuant to the Utah Antidiscrimination Act and cease all unlawful practices.**

We are happy to discuss these matters with you further and ask to be informed of the administration's intended actions. We are hopeful that the matter can be resolved amicably, without unnecessary conflict or controversy. We understand that the Board meets monthly, so we hope to hear from you by the end of this month

Sincerely,

A handwritten signature in black ink that reads "John Mejia". The signature is written in a cursive style with a long horizontal line extending to the right.

John Mejia, Utah Bar No. 13965
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Foundation, Inc.
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Salt Lake City, Utah, 84103
Cc: Ross Romero