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February 2, 2012

VIA ELECTRONIC MAIL (steitel@schools.nyc.gov) AND CERTIFIED MAIL
Mr. Stanley Teitel, Principal
Stuyvesant High School
345 Chambers Street
New York, New York 10282

Re: Impermissible Censorship of a Stuyvesant High School Student's Article Submitted to the *In Other Words* Student-Run Publication

Dear Principal Teitel:

On behalf of the New York Civil Liberties Union, we write to express our concerns about the decision to censor an article by a Stuyvesant High School student, Mr. Alfred Tsai, for the student-run newsletter -- *In Other Words*. It is our understanding that this decision rests on concerns that the perceived sensitive political nature of a portion of the article would "create detriment to the Stuyvesant community" and "arouse uneasy feelings among people from Taiwan and Communist China." Unfortunately, it is difficult to understand your concerns without any explanation of current or past incidents of disruption or political divide at the school to support them.

Censoring student spe ech in a student-run extracurricular newsletter because of the content of that speech without any evidence that it would materially and substantially disrupt or interfere with the school's operations implicates important First Amendment rights. At a minimum, your decision undermines the fundamental components of academic freedom -- robust debate and the free exchange of ideas, which are hallmarks of public education. Such freedom demands a respect for diversity of opinion and expression.

Given these serious First Amendment concerns, we strongly recommend that you reconsider your decision. As set forth below, the First Amendment protects student speech in student-run newspapers that are extracurricular voluntary activities to ensure that they reflect the policy and judgment of the student editors -- not those of the school. Federal courts and decisions by the Commissioner of the New York State Education Department ("NYSED") have consistently held that even though an extracurricular publication is in part funded[1] by the school district, school authorities may *not* suppress student speech unless such speech would materially and substantially disrupt or interfere with schoolwork, discipline or order in the school or invade

[1] Parents fund a significant portion of the *In Other Words* publication.

the rights of others.[2] Given the relevant law, we respectfully ask that you allow the publication of Mr. Tsai's original or revised article.[3] Furthermore, we request that Stuyvesant High School create a rigorous policy to protect student speech in extracurricular student newsletters and avoid incidents of this nature in the future.

I. Background Facts

Mr. Tsai's article is an informational narration on Taiwan's geography, history, culture and cuisine, which two of the four student Editors-in-Chief initially approved on December 10, 2011 for *In Other Words*' publication.[4] A few days later, however, one of those editors asked Mr. Tsai to remove two sentences regarding Taiwan's political status[5] because one of the *In Other Words*' faculty advisors, Mr. Jeremy Wang, said they were "unacceptable" and would offend some readers. The two sentences at issue state:

> In 1949, the Chinese Communist took over the Chinese mainland, and a million soldiers and citizens retreated to Taiwan. The two sides of the Taiwan Strait have since been separated for a half a century.

Given Mr. Wang's repeated refusals to discuss this issue further, Mr. Tsai then raised it with you on December 20, 2011. To mollify your concerns and to uphold the educational purpose of *In Other Words*, Mr. Tsai submitted a revised article on January 19, 2012, adding another sentence to follow the controversial ones. It is our understanding that you did not approve that addition, which reads: "The political status of Taiwan is a sensitive and controversial issue."

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[2] See Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503, 511-13 (1969); cf. Matter of Panarella v. Birenbaum, 32 N.Y.2d 108, 118 (1973) (holding that the Board of Education must not suppress student expression "unless it can be show that suppression is necessary to avoid material and substantial interference with the requirements of order and discipline in the operation" of the school); see also Appeal of the Bd. of Ed. Of the Wappingers Central School Dist., Decision No. 13,327 (1994) (citing to the student speech suppression standard articulated in the Matter of Panarella, 32 N.Y.2d at 118); Appeal of Beil and Scariati, 26 Ed. Dept. Rep. 109, 110 (1986); Matter of Brociner, et al., 11 Ed. Dept. Rep. 204, 206 (1972).

[3] Mr. Tsai submitted two versions of his article -- the original on December 10, 2011 and the revised version on January 21, 2012, which added language stating that Taiwan's political status is controversial.

[4] *In Other Words* is an extracurricular Chinese language newsletter independently created and published by Stuyvesant High School students. Its student writers and editors (including Mr. Tsai) voluntarily publish the paper during their free time in addition to carrying a full course load. They receive guidance (but not formal classroom instruction) from two faculty advisors. Feedback comes from their readers -- not from grades. Students who write for this publication do not receive academic credit. The independence of *In Other Words* is underscored by its notation published on the last page of every issue, stating: "The articles published in this newsletter do not represent the views of Stuyvesant High School, Stuyvesant High School Parents Association, or other affiliated committees."

[5] Since 1949, Taiwan's political status has been controversial. Within the island of Taiwan, the ruling Chinese Nationalist Party (Kuomintang ("KMT")) maintains the "One China Policy" under the 1992 Consensus (i.e., Taiwan and Chinese mainland belongs to one China, but that one China is the Republic of China). The opposition Democratic Progressive Party (DPP) believes that Taiwan is a nation-state separate from that of "China" and seeks a formal declaration of Taiwan independence in the future.

II. Stuyvesant High School Authorities Impermissibly Suppressed Student Speech

A. Students Have A Right To Free Expression In School

It is bedrock principle that school officials have an obligation to protect a student's right to freedom of speech and expression.[6] These obligations arise from the First Amendment of the United States Constitution[7] and its New York State Constitution's analogue[8] as well as from Sections II.4[9] and 5[10] of the New York City Department of Education's Bill of Student Rights and Responsibilities. It is similarly well-established that school authorities can only censor speech in a student-run high school extracurricular newspaper if such speech would materially and substantially disrupt or interfere with the schoolwork, discipline or order in the school.[11]

B. The Scope of First Amendment Protections of Student Speech Is Broad With Voluntary Extracurricular Student-Run Publications

When reviewing the parameters of First Amendment protections of student speech in school publications, courts and the NYSED Commissioners distinguish activities that are part of a school's curriculum from those that are voluntary extracurricular endeavors.[12] As held in the Commissioners' decisions, student editors of voluntary extracurricular school newspapers shall determine the content of their newspapers – not school officials.[13] Commissioner Ambach definitively ruled on this very question in Appeal of Beil and Scariati, 26 Ed. Dept. Rep. 109, 110 (1986) when he upheld the right of student editors of an extracurricular school newspaper funded by a school district to editorialize in favor of specific school board candidates as well as

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[6] See Tinker., 393 U.S. at 506.

[7] See U.S. Const., Amend. I.

[8] See N.Y. Const. Art. 1, Section 8 (McKinneys 2006).

[9] Section II.4 of the New York City Department of Education's Bill of Student Rights and Responsibilities dated September 2011 provides: "Students have the right to publish school newspapers and school newsletters reflecting the life of the school and expressing student concerns and points of view consistent with responsible journalistic methods and subject to reasonable regulation based on legitimate pedagogical concerns."

[10] Section II.5 of the New York City Department of Education's Bill of Student Rights and Responsibilities dated September 2011 provides: "Students have the right to circulate newspapers, literature or political leaflets on school property, subject to reasonable guidelines established by the school regarding time, place and manner of distribution, except where such material is libelous, obscene or materially disrupts the school, causes substantial disorder or invades the rights of others."

[11] See footnote 2, supra. Because *In Other Words* is a student-run newsletter (not a curricular school-sponsored one), the relevant standard is that articulated in Section II.5 of the NYC DOE's Student Rights and Responsibilities. See footnote 10, supra. Under this standard and even under that of Section II.4, Stuyvesant's censorship of Mr. Tsai's article is unconstitutional, as discussed in Section II.C of this letter, infra.

[12] See id.; see also Romano v. Harrington, 725 F. Supp. 687, 689-90 (E.D.N.Y. 1989). The U.S. Supreme Court's decision in Board of Education, Island Trees Union Free School District No. 26, v. Pico, 457 U.S. 853 (1982) also noted the importance of such distinction. In upholding a challenge by students to the school board's removal of objectionable books in school libraries, the Court noted that restrictions on First Amendment freedoms are less warranted outside the classroom and the curriculum. In reaching its decision, it found important the special characteristics of the school libraries -- students' library use is completely voluntary in nature and their book selections are entirely a matter of free choice. See id., 457 U.S. at 869-70. A number of parallels can be drawn between Island Trees and the instant matter.

[13] This is true even if school officials fear people would perceive that it endorsed those ideas. See Appeal of the Bd. of Ed. Of the Wappingers Central School Dist., Decision No. 13,327 (1994); Appeal of Beil and Scariati, 26 Ed. Dept. Rep. at 110.

the proposed school district budget provided that the school district did not act to influence the content of the editorials. Students are free to editorialize because "[t]he student press can be a valuable learning device and an important educational resource. Its effectiveness, however, would be substantially impaired if student editors were forced to function under imminent fear of discipline for errors in judgment."[14]

C. Stuyvesant Authorities Have Not Established Constitutionally Permissible Grounds To Censor Mr. Tsai's Speech

While you have made it clear to Mr. Tsai that you will not discipline him, you have not articulated constitutionally permissible grounds that warrant censorship of his speech. That is, your summary conclusions that the article would "create detriment to the Stuyvesant community" and "arouse uneasy feelings among people from Taiwan and Communist China" do not provide facts that remotely suggest that the article would create material and substantial disruption to (or interference with) the school's order, classwork or discipline or invade the rights of others, let alone compromise any pedagogical concern. Contrary to any possible inference that the article would disrupt or interfere with the school's operations or educational concerns or invade the rights of others, neither version of Mr. Tsai's article incites disruption or violence or deprives others of their constitutional rights. Rather, both versions state facts in a neutral and precise manner without the use of antagonistic or provocative language, making it appropriate for high school readers. It is the school that speculatively put the spin on the two sentences, not Mr. Tsai. Censoring these sentences ignores that there are different positions on Taiwan's political status. And, it elevates one perception of political correctness over another.

D. Stuyvesant's Censorship Is Impermissible Because It Is Based on The Article's Viewpoint

A high school newspaper is a limited public forum[15] and, thus, school administrators must not discriminate against speech to avoid the discomfort and unpleasantness that accompanies unpopular viewpoint.[16] Indeed, the United States Supreme Court has categorically rejected the proposition that speech may be censored simply because some in the audience may find the speech distasteful.[17] Accordingly, the school may not censor Mr. Tsai's article merely because it would "arouse uneasy feelings among people from Taiwan and Communist China." The answer to speech that some may find intolerable is more speech, not less. Recognizing this, Mr. Tsai revised his article to acknowledge the controversial nature of Taiwan's political status.

In Other Words' past publication (and its approval for future publication) of articles that address charged political topics -- including a holiday designation by the Communist PRC government, the political history of China in the early 20th century and Occupy Wall Street -- strongly suggest that our concerns that the school's decision is based solely on its discomfort

[14] Matter of Brociner, 11 Ed. Dept. Rep. at 207.
[15] See Ochshorn v. Ithaca City School Dist., 645 F.3d 533, 539 (2011).
[16] See Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 829 and 831 (1995) (discrimination against speech because of the "particular views taken by speakers on a subject" violates the First Amendment); Board of Education, Island Trees Union Free School Dist.No. 26, , 457 U.S. at 871-72; Tinker, 393 U.S. at 508-09.
[17] See id.

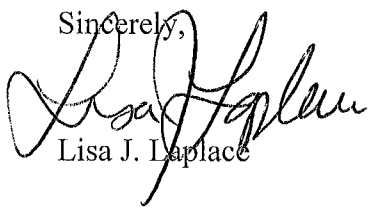
with viewpoint of the speech are well-founded. Discomfort, however, is the price we pay for the protections of the First Amendment. This should be especially true in public high schools given that adolescence is a time to explore many aspects of becoming an adult, including developing an independent voice and the willingness to confront authority and different perspectives with respectful debate. Central to the First Amendment is the recognition that dissent by its nature can be messy and uncomfortable for those in positions of power. More tolerance, not less, is needed under these circumstances.

III. Conclusion

In light of the above discussion, we strongly urge you to take immediate steps to protect Mr. Tsai's First Amendment rights by approving the publication of his original or revised article. Furthermore, no school official, student, faculty member or parent should be left with the illusion that Stuyvesant High School prohibits student speech in these circumstances. Accordingly, we reiterate our request that you create a rigorous policy protecting such student speech. We would be happy to work with the School District toward that end.

We would appreciate a response by Tuesday, February 7, 2012. I can be reached at work at 212-607-3355 or by cell phone at 917-714-1993. Thank you.

Sincerely,



Lisa J. Laplace

Cc: Tamika Matheson, Superintendent
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