



P.O. Box 3952
Charleston WV 25339-3952

(304) 345-9246
www.acluwb.org

September 15, 2017

Via Electronic & Certified U.S. Mail

Clay County Superintendent

P.O. Box 120

242 Church Street

Clay, WV 25043

claycountyschools.org@gmail.com

Re: Bullying & Harassment in Clay County Schools; FOIA Request

Superintendent Tanner:

This week, I became aware of an incident involving Robert Belt, a part-time bus driver for Clay County Schools and sheriff's deputy. It is being reported that Mr. Belt used bigoted, homophobic language to students, including threats of hell, while driving a school bus. These reports are incredibly troubling and must be taken seriously. LGBT students are already disproportionately bullied and harassed in school, without adults in positions of power using homophobic slurs and telling students they will be damned for all eternity. Nine out of ten LGBT students report being bullied or harassed in the last year; over one-third of LGBT students are physically assaulted at school; and two-thirds of LGBT students report being sexually harassed in the last year.¹

School districts and their staff and other agents have obligations under federal law, state law, and district policies to prevent and protect against bullying, intimidation, or harassment. Under all of these laws, a district's indifference to bullying, intimidation, or harassment taking place in its schools or among its students can expose the district and its officials and employees to liability. These laws include:

- **The West Virginia Anti-Bullying Act**, W. Va. Code § 18-2C-1, *et seq.*, which requires each county board to establish a policy prohibiting harassment, intimidation, and bullying. *See* W. Va. Code § 18-2C-3(a). The legislature enacted this law in 2001, finding that "harassment, intimidation or bullying, like other disruptive or violent behavior, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students

¹ *Anti-Gay Bullying*, Stomp Out Bullying, <http://www.stompoutbullying.org/index.php/information-and-resources/about-bullying-and-cyberbullying/anti-gay-bullying/>.

in a safe, nonthreatening environment.” *Id.* at § 18-2C-1. The law further charges “school administrators, faculty, staff and volunteers with demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation or bullying” and requires that schools create a safe and civil learning environment for *all* children. *Id.*

- **Title IV and Title VI of the Civil Rights Act of 1964**, which prohibit discrimination on the basis of religion, sex, race, color, or national origin in public schools and any programs or activities receiving federal financial assistance.
- **Title IX of the Education Amendments Act of 1972**, which prohibits discrimination on the basis of sex, including on the basis of sex stereotypes, in education programs and activities.
- **The Individuals with Disabilities Education Act (IDEA), Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973**, which prohibit discrimination on the basis of a student’s disability or perceived disability.
- **The United States and West Virginia Constitutions**, both of which require students be treated equally regardless of race, religion, ethnicity, sexual orientation, gender identity, age, disability, or other immutable characteristic.

Under these laws, discrimination can include bullying, intimidation, harassment, failing to adequately investigate allegations of discrimination, or failing to protect students from ongoing bullying, intimidation, or harassment when it is obvious or school staff becomes aware of it.

Additional guidance from the United States Department of Education’s Office for Civil Rights elaborates on potential violations of the federal laws listed above when bullying, intimidation, or harassment in school is based on race, color, religion, sex, national origin, or disability or perceived disability. This guidance, which remains in effect as of the drafting of this letter, is available online and includes:

- Dear Colleague Letter: Responding to Bullying (Oct. 21, 2014), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>.

- Dear Colleague Letter: Effective Evidence-Based Practices for Preventing and Addressing Bullying (Aug. 20, 2013), *available at* <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.pdf>.
- Dear Colleague Letter: Harassment and Bullying (Oct. 26, 2010), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

While recognizing that certain records may be exempt to disclosure under the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1 *et seq.* (“WV-FOIA”), I believe the school district is in possession of certain disclosable records related to this troubling report and the district’s policies and practices regarding bullying, diversity, and inclusion. Pursuant to WV-FOIA, the ACLU-WV requests the following materials and any related records²:

1. Any and all documents and communications related to harassment, bullying, and/or discrimination at Clay County Schools.
2. Any and all documents and communications related to training for staff on diversity and inclusion.
3. Any and all documents and communications related to Clay County’s Title IX obligations and implementation.
4. Any and all documents and communications related to *closed* investigations regarding allegations of school staff bullying or harassing students.³
5. Any and all documents and communications related to employment policies applicable to school bus drivers.

² This request includes but is not limited to: all records or communications preserved in electronic or written form, including but not limited to correspondence, data, directives, documents, videotapes, audio tapes, e-mail, text messages, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, or studies.

³ While open investigations into misconduct by public employees are exempt from WV-FOIA, records of closed investigations must be disclosed. *See Charleston Gazette v. Smithers*, 752 S.E.2d 603, 626 (W. Va. 2013).

6. Any and all documents and communications regarding police presence in Clay County schools.

If you are not technically the custodian of the documents described in this request, I ask that you forward the request to the custodian(s) or advise me of the identity of the custodian(s) so that I can make the request directly to that person or those persons.

Please note that W. Va. Code § 29B-1-3 requires agencies to respond to requests for public records within **five business days**. If you anticipate that it will take longer than five business days, or have questions about the scope of this request, please call me at (304)-345-9246.

Additionally, while W. Va. Code § 29B-1-3(5) permits public agencies to assess fees associated with the reproduction of public records, as a not-for-profit advocacy organization we request a waiver of any fees associated with the furnishing of these documents. To limit costs, electronic production of documents would be acceptable. If you do intend to assess fees, however, please contact me for authorization of any fees in excess of \$100.

The WV-FOIA “shall be liberally construed with the view of carrying out” a policy of disclosure, while exemptions are to be narrowly construed. W. Va. Code §29B-1-1. Any party claiming that an exemption applies bears the burden of proving its applicability. *See Daily Gazette v. W. Va. Dev. Office*, 482 S.E.2d 180, 187 (W. Va. 1996). Documents regarding policies of public agencies after the policies have been formulated are not subject to the “internal memoranda or letters” exemption to the WV-FOIA provisions. *See id.* at 192. Finally, for any undisclosed or redacted records, we request a *Vaughn* index.

Thank you in advance for your prompt response. Please furnish all records to:

Jamie Lynn Crofts
ACLU of WV Foundation
P.O. Box 3952
Charleston, WV 25339-3952

If you have any questions or concerns, I can be reached at (304) 345-9246, ext. 102, or jcrofts@acluwv.org.

Regards,

A handwritten signature in blue ink, appearing to read "Jamie Lynn Crofts". The signature is fluid and cursive, with the first name "Jamie" and last name "Crofts" clearly legible.

Jamie Lynn Crofts
Legal Director, ACLU-WV