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To whom it may concern

I represent Eugene Peaceworks (Committee for Countering Military Recruitment) and Community Alliance of Lane County. My clients have asked me to write an open letter to public school administrators in response to a pattern of violations of my clients' First Amendment rights.

As explained in this letter, the First Amendment of the U.S. Constitution requires you to allow my clients to present students with information in response to military recruitment efforts, at least to the same extent and in the same manner you allow military recruiters to present information. Because the end of the school year is imminent and many students will be pressured to enlist upon graduation, the need for your consideration of this information is urgent.

As you may know, my clients have been working to provide students with information in opposition to the onslaught of military recruitment in our public schools. The ways in which they have presented these views in the past and the ways in which they wish to do so in the future include:

1. providing brochures to the schools be placed in close proximity to military recruitment brochures (for example, in the guidance counselors' offices);

2. being present during tabling or other in-person events by military recruiters in the schools;

3. placing flyers and posters in close proximity to recruitment posters in the schools;

4. giving classroom presentations when recruiters are invited to do so;

5. giving assembly presentations when recruiters are invited to do so;

6. being present to provide counter-counseling when military recruiters make themselves available within the schools;

7. having the schools announce the availability of my clients for such counseling when the schools make announcements about military recruiter availability

In pursuing these legal and constitutionally-protected objectives, my clients have run into roadblocks at several schools in the greater Eugene area. For example, they have been told to remove their brochures from school counseling offices, and have been told that they cannot be present during military recruiter tabling events. The rationales provided have been varied, including an argument that tabling and brochures are outside of the classroom and therefore are not protected under equal access rules. None of the rationales presented hold water as legal theories.

Over fifteen years ago the federal court of appeals for our region (the Ninth Circuit) held that the First Amendment of the U.S. Constitution prohibits public schools from discriminating against counter-recruiting groups. The case was called San Diego Committee Against Registration and the Draft v. Governing Board of Grossmont Union High School Dist., 790 F.2d 1471 (9th Cir. 1986), and it remains good law.

The context of the San Diego case was a school-run newspaper. The school had allowed military recruiters to place advertisements in the school newspaper but refused to do so for peace groups. The court of appeals decided that the school newspaper was a "limited public forum." However, the court held that even if the newspaper was a "nonpublic forum" (which has less First Amendment protection), the school could not refuse to allow peace groups from placing advertisements.

A similar outcome was reached by the Eleventh Circuit federal court of appeals, in Searcey v. Crim, 815 F.2d 1389 (11th Cir. 1987). That circuit covers parts of the southern United States. In that case, a school refused to allow peace-related literature on school bulletin boards, in offices of school guidance counselors, and on career days, while allowing military recruiters and other non-school groups to do so. The court of appeals held that, even if these fora are "nonpublic," the First Amendment prohibited the school from discriminating against the peace groups' point of view.

It is clear is that if you allow military recruiters to present their point of view to students – whether that be through brochures, posters, tabling, in-classroom lectures, or any other sort of presentation of information – you must also allow my clients to present their views countering the recruiters' efforts. As the Ninth Circuit explained in the San Diego case:

"[I]t appears that the Board was engaging in viewpoint-based discrimination. By allowing the publication of the military recruitment advertisements, the Board allowed the presentation of one side of a highly controversial issue. The Board provided a forum to those who advocate military service. The Board then refused, without a valid reason, to allow those who oppose military service to use the same forum. The only reasonable inference is that the Board was engaging in

viewpoint discrimination. As the Supreme Court has stated, "to permit one side of a debatable public question to have a monopoly in expressing its views . . . is the antithesis of constitutional guarantees." . . . In other words, "the First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." . . . Viewpoint-based discrimination is not permitted even in a non-public forum.

Parenthetically, I want to make sure it is clear that the Equal Access Act (20 U.S.C. §§ 4071-72) is irrelevant to this inquiry. The Act, which was written by Congress, cannot reduce the protections provided by the First Amendment. The Act applies only to noncurriculum-related student groups. The Act was enacted in 1984, yet neither of the two cases cited above refer to the Act, because it merely adds an additional layer of speech protection to the rights already guaranteed to citizens under the First Amendment.

Another issue which I wish to address is a pattern of school administrators making my clients jump through unnecessary hoops before being allowed to present their opposing viewpoints to students. For example, one school administrator demanded to see proof of 501(c)(3) status. 501(c)(3) status is an IRS tax exemption designation which has no relevance to the two key questions: 1) whether my clients are citizens of the United States with rights under the First Amendment and 2) whether their counter-recruitment efforts constitute political speech. The answer to the first question is, of course, yes, and does not warrant further discussion. The second question has already been answered by the Ninth Circuit in the San Diego case and cannot now be re-examined by each school or district.

If you question my analysis on any of these issues, I urge you to seek independent advice from your own legal counsel and have them respond to this letter. Once again, we request that you give this letter prompt review and allow my clients the access which is guaranteed by the First Amendment, during the remainder of this school year as well as during all future school years.

Very truly yours,

Marianne Dugan