



FOUNDATION
AGAINST
INTOLERANCE
& RACISM

March 27, 2023

Diane Mitchell and Michael St. John, Principals
Felix Festa Achievement Middle School
Clarkstown Central School District

Sent via email

Dear Ms. Mitchell and Mr. St. John:

I am an attorney with the Foundation Against Intolerance & Racism (FAIR), a nonpartisan organization dedicated to advancing civil rights and liberties and promoting a common culture based on fairness, understanding, and humanity. Our website, fairforall.org, can give you a fuller sense of our identity and activities.

We write in response to multiple [incident reports](#) regarding Felix Festa Achievement Middle School's "Day of Silence" submitted to FAIR on March 22nd through our anonymous reporting website, fairtransparency.org. One of the reports states, in pertinent part:

The Day of Silence is set aside each year...in schools across the nation including Felix Festa Middle school. The premise of the day of silence is to show support/being an ally for the LGBTQ community. Children are encouraged to remain silent for the entire school day, where [sic] all black clothing, fill out a google form to indicate your silence at school and to black out their online school profile for google classroom. Google classroom is how children participate from an online perspective in the classroom. Children who are not LGBTQ feel compelled to remain silent because they fear being bullied by their peers. The participants of the SGA (student gay alliance) go around with a sign up board asking their straight peers to sign and agree to being silent on that specific day. Children often sign because of fear or looking bad or being called homophobic. Many children stay home from school that day so they aren't frowned upon for participating in the classroom.

While it is not clear that the school is requiring students to participate in the Day of Silence, it seems that students are perhaps *constructively* being required to participate in order to avoid being harassed or bullied. Felix Festa has an obligation to provide its students with a learning environment that is free from undue bullying and harassment. If the school is in fact failing to protect those students from bullying and harassment such that those students feel compelled to participate in the Day of Silence, we have several concerns.

First, requiring students to remain silent as a form of political activism violates the free speech guarantee of the First Amendment. That guarantee denies states and their agencies (including public schools) the power to require adherence to any particular set of ideological beliefs. See *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (public school students cannot be required to recite the Pledge of Allegiance). Participating in the Day of Silence is not comparable to supplying anodyne, non-ideological facts. Rather, compelling students to

remain silent is necessarily based on the ideological beliefs that assume each student shares the same beliefs and value systems. In the words of Justice Jackson, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Barnette*, 319 U.S. at 642. While Felix Festa Achievement Middle School should permit students to participate in the Day of Silence if they so choose, we urge the school to be extremely careful to make clear that students are not required to do so. In providing students with this clarity, we also urge the school to ensure that students who do not choose to participate in the Day of Silence are not subsequently harassed for their choice.

Requiring participation in such an activity would also potentially violate students' religious rights. Many religions reject the claims and basic tenants ascribed by the LGBT movement. Compelling students to affirm ideas contrary to their sincerely-held religious beliefs, with no ability to opt out, violates their religious rights as guaranteed by the First Amendment. See *Hurley v. Irish-American Gay, Lesbian, & Bisexual Grp.*, 515 U.S. 557, 573 (1995); *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) ("A system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts.").

Even independent of the First Amendment, we believe that pressuring students to ascribe to a particular set of beliefs is antithetical to education. One of the central purposes of education is to enable students to learn about, weigh, and explore competing ideas in order to reach their own conclusions. Put differently, when it comes to social, political, and ideological matters, public schools should teach students how to think, not what to think. Mandating that students affirm a specific set of ideological beliefs contravenes that purpose.

While Felix Festa Achievement Middle School's motivations for the Day of Silence may be well-intentioned, the middle school and the district writ large must comply with federal civil rights protections enshrined in the constitution.

We would like to give Felix Festa Achievement Middle School and Clarkstown Central School District an opportunity to respond. Please let us know within the next five business days if you intend to do so.

Very truly yours,



Leigh Ann O'Neill
Managing Director of Legal Advocacy
Foundation Against Intolerance & Racism

cc: Dr. Marc P. Baiocco, Superintendent of Schools, Clarkstown Central School District