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Mr. Howard Friedman
General Counsel
New York City Department of Education
52 Chambers Street
New York, New York 1007

Re: Park Slope Collegiate School

Dear Howard:

I am writing with regard to a continuing investigation by the Department of Education's Office of Special Investigations ("OSI") which has focused upon the free speech and associational activities of the principal and professional staff at the Park Slope Collegiate School (PSC). I am joined in this letter by New York Civil Liberties Union (NYCLU) Executive Director Donna Lieberman and by Elizabeth Saylor of the Emery Celli Brinckerhoff and Abady law firm. The investigation about which we write was misguided from its inception. And it has since spun wildly out of control.

It should have been obvious, at the outset, that the investigation would intrude upon important First Amendment values. It should have been equally obvious that the investigation would have been seriously disruptive of the educational mission of the PSC. Sensitivity to the First Amendment and sound administrative judgment would have counseled against an intrusive and provocative investigation of the sort conducted by OSI. Instead, this controversy should have been addressed at a meeting between the principal of PSC and her DOE supervisor where the complaint against the principal might have been considered and expeditiously resolved. Such an approach may still be available. But, in any event, the investigation should end immediately.

As you know, when I learned of this investigation, I suggested that you should seek to resolve this matter by meeting with the principal of the school, Jill Bloomberg, and with her counsel to explore the free speech interests of teachers and supervisors as well as any countervailing concerns maintained by the Department of Education. Unfortunately, such a meeting did not take place. Instead, the investigation proceeded. A controversy that might have been resolved on the basis of an amicable meeting has now spawned litigation, questionable protocols relating to the interviewing of students, parent meetings and an expanded investigation into the expressive and associational activities of additional members of the PSC professional staff. An inquiry that should have consumed an hour of thoughtful discussion has continued for months causing considerable distress, distraction and concern within the Park Slope Collegiate community of students, parents, teachers and supervisors.

This investigation was apparently initiated as a result of a confidential complaint erroneously asserting that Ms. Bloomberg had been actively recruiting students to participate in political activities. The complaint further asserted that Ms. Bloomberg's husband filmed a documentary for the Len Ragazin Foundation which according to the complaint was "associated with the political organization called the Progressive Labor Party (PLP)"; that Ms. Bloomberg's husband is the President of the Foundation; that the documentary included footage of students who were filmed without their consent; and that the documentary was screened at the school and a $20 admission fee was charged. The complaint also alleged that the school was failing to teach a mandated course; that a bake sale was held to raise funds for a May Day march; and that students were not permitted to dissent from the ideological views of the principal.[1] These allegations do not support any investigation by OSI much less one of the scope and duration of the inquiry that is currently being pursued. We reach this conclusion for the following reasons.

First, it is well established that pedagogical professionals do not lose their right to speak out as private citizens or to associate in furtherance of such speech simply because they work for a public school system and are, consequently, public employees. That such speech takes place within the schoolhouse does not serve to deprive such speech of its First Amendment protection. The Second Circuit has specifically addressed this issue in a case involving a teacher who was suspended for wearing a black armband to school in protest of the war in Vietnam. In concluding that the teacher's right to free speech had been violated, the Second Circuit announced that "any limitation on the exercise of constitutional rights can be justified only by a conclusion, based upon reasonable inferences flowing from concrete facts and not abstractions, that the interests of discipline or sound education are materially and substantially jeopardized ...." *James v. Bd. of Education*, 461 F.2d 566, 571 (2d Cir. 1972). When speaking out as a private citizen or when otherwise engaging in such First Amendment-protected activities, there is no reason in logic or law why a principal should be treated any differently than a teacher. And as we understand matters, there has been no disruption of the educational mission of the school that has resulted from the First Amendment-protected activities undertaken by Ms. Bloomberg or any of her colleagues. The only real disruption that has taken place within the school is a function of the investigation conducted by DOE officials.

Second, the Supreme Court has clearly held that the right to be a member of the Communist Party is protected by the First Amendment and that the attempt to bar teachers from employment for such membership is constitutionally impermissible. *Keyishian v. Board of Regents,* 385 U.S. 589 (1967). The teaching of the *Keyishian* case would apply, as well, to other organizations such as the PLP and to other forms of sanctions.

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[1] These allegations, lacking as they are in details, are drawn from a memorandum of law submitted by the DOE's counsel in the matter of *Bloomberg v. New York City Dept. of Education*, (S.D.N.Y., 17 Civ 3136), *see* Defendants' Memo of Law in Opposition to Plaintiff's Motion for a T.R.O and Preliminary Injunction at 2-3.

We understand that the DOE rests its authority to investigate Ms. Bloomberg upon Chancellor's regulations D-130 and D-180 which by their terms are limited to electoral advocacy. D-130(1)(C) provides that "all school personnel shall maintain a posture of complete neutrality with respect to all candidates." And D-130 (1)(B)(2) provides that "no rallies, forums, programs, etc., on behalf of, or for the benefit of any elected official, particular candidate, candidates, slate of candidates or political organization/committee may be held in a school building." Regulation D-180(XI)(D) is to the same effect with regard to the use of school buildings after hours.

Any claim that these regulatory prohibitions extend beyond electoral advocacy cannot be sustained. As a textual matter, the essence of these provisions relates to candidates and elections. The summary description of the subject matter of regulation D-130 makes clear that it pertains to activities "with respect to political campaigns and elections." The use of the term "political organization" cannot be taken out of the context of D-130 and cannot reasonably be interpreted to broaden the regulations beyond campaign speech to include issue-oriented advocacy. Reading "political organization" broadly would prevent a student group from conducting a forum on climate change, LGBT issues, school desegregation, or immigration policy. Such a broad interpretation would similarly prevent community groups from discussing these issues at meetings held after school hours. Seen in these terms, a broad interpretation of the term "political organization" strains credulity to the breaking point. In sum, regulations D-130 and D-180 (XI) (D) prohibit campaign speech in the schools. They are limited to electoral advocacy and the allegations regarding Ms. Bloomberg's activities make no claim that she engaged in electoral advocacy.[2]

The allegations regarding the creation and screening of the documentary film, *Profiled*, provide even less support for the OSI investigation. The Len Ragazin Foundation (LRF) is a 501(c)(3) non-profit, non-partisan organization devoted to promoting discourse and debate on progressive issues. As a 501(c)(3) organization, it is entitled under state law and under Chancellor's regulation D-180 to use the school after school hours. The imposition of an admission fee for viewing the film does not violate school regulations so long as they money were "expended for the benefit of a charitable or educational purpose." As a 501(c)(3) organization, the LRF is engaged in a charitable or educational purpose. But, in fact, LRF did not create the film. No entrance fee was imposed upon those viewing the film. The screening was undertaken in full compliance with all applicable regulations. And Jill Bloomberg was not

[2] The allegations regarding Ms. Bloomberg do make an oblique reference to the Leo Ragazin Foundation which is said, by the complainant, to be "associated with the political organization called the Progressive Labor Party." But, despite calling itself "a party," the PLP is not a ballot qualified electoral entity. The only current ballot qualified political parties in New York State are the Democratic, Republican, Conservative, Green Party, Working Families, Independence, Women's Equality and Stop Common Core (now Reform) parties. Going back more than 20 years, the Progressive Labor Party never qualified for a place on the New York ballot. Accordingly, any statements made in support of the PLP cannot be regarded as electoral advocacy.

involved in the creation or screening of the film. All of this information could have been determined at a brief interview of Ms. Bloomberg by her supervisor.

This leaves three claims: First, that a mandated course was not being taught; second, that a bake sale was held to raise funds for a May Day march; and third, that students are not permitted to dissent from the views expressed by the principal. The first claim, regarding compliance with curricular mandates, would seem to be a matter to be addressed by the district superintendent rather than an investigator from SCI; the second claim does not violate any appropriate DOE regulation and should have also been summarily dismissed. And the third claim, if true, raises a serious issue. Ms. Bloomberg asserts that this claim is not true. But, again, this is an issue that would seem appropriately addressed by Ms. Bloomberg's supervisor, not OSI.

The OSI has compounded its errors in judgment with the way that it has conducted the investigation. It has called students out of class and interrogated the students without their parents being present and without even informing the parents that their children were being interrogated. In at least one case, the investigators questioned a student despite the express direction of a parent that the student not be questioned. In conducting these investigations, the OSI cast a wide net asking students about their political associations and activities: Asking whether they and their parents went to political rallies or meetings and where and with whom. And, in a particularly tone-deaf inquiry and one entirely ignorant of Supreme Court precedent holding inquiries into whether teachers were communists to be unconstitutional, (*Keyishian v. Board of Regents*, 385 U.S. 589 (1967)), DOI investigators apparently asked specifically whether school employees were communists. The Supreme Court has repeatedly warned that "[p]recision of regulation must be the touchstone" where freedom of speech is at issue. *NAACP v. Button*, 371 U.S. 415, 438 (1963). Given the sensitive nature of any inquiry into political associations, one would have expected that the OSI would have conducted its inquiry in a narrowly tailored fashioned. But, the OSI investigators seemed entirely oblivious to the need for sensitivity in undertaking this investigation. And now, we learn that OSI has widened the investigation still further as it targets four other pedagogical professionals at the school as part of an inquiry into their associational activities.

This investigation is all the more disturbing coming as it does at this time and directed as it is at professional educators. The Supreme Court has long recognized that "the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). And the reason for this is that schools perform the essential function of exposing students to the "robust exchange of ideas which discovers truth 'out of a multitude of tongues (rather) than through any kind of authoritative selection.'" *Keyishian*, 385 U.S. at 603.

Surely there is someone at the DOE with the common sense to end this investigation. And if no one else commands the wisdom and authority to stop this absurd inquiry, the task must fall to you and/or the Chancellor. We ask that you end this investigation immediately.

Sincerely,

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