

MEMORANDUM

TO: The Board of Education

FROM: Attorney for the Board of Education

DATE: January 24, 2025

SUBJECT: Examination of ABC High School's Policy

I. PURPOSE

In this Memorandum, I will analyze Attachment A, “Flags and Factions: Balancing Student Expression and Order,” and address the legality of ABC High School’s policy prohibiting political signs, clothing, and speech on school grounds as applied to Victoriya and Michael.

II. BACKGROUND

After discussing the Ukrainian-Russian conflict and the Statehood of Puerto Rico as part of Mr. Teta’s current events curriculum, students began expressing their perspectives on the issues by drawing flags on their notebooks and wearing attire inspired by the issues. Students, including Victoriya, a Ukrainian-American student and Michael, a Puerto Rican and openly gay student, also asked Mr. Teta to hang the Ukrainian and Puerto Rican flags in his classroom. However, after Michael asked Mr. Teta to hang a LGBTQ+ flag in his classroom, other students began to protest. To quell rising tensions between students over divergent political viewpoints, ABC High School enacted a prohibition of all forms of political speech on campus premises. Despite this directive, Michael and Victoria continued to wear clothing expressing their political views. The students were reprimanded and subsequently suspended for continuing to violate school policy. Both students have appealed their suspensions.

III. ANALYSIS AND SUMMARY

A. APPLICATION TO STUDENTS

The First Amendment of the United States Constitution protects the right to free speech.¹

Protected speech includes expressive and symbolic conduct, such as displaying political flags.²

Students do not “shed their constitutional right to freedom of speech or expression at the schoolhouse gate.”³ As such, they have the right to free speech on school campuses. However, this right is not absolute. Rather, speech may be restricted based on the content and context.⁴

Regarding content, schools have the right to limit “vulgar” and “lewd” speech that is inconsistent with the “fundamental values of public school education.”⁵ There is no indication that Victoriya and Michael’s peaceful expressions of speech were either vulgar, lewd, or inconsistent with the school’s educational objectives. On the contrary, Mr. Teta used Victoriya and Michael’s expressions of their political opinions to teach other students about various cultures and the importance of understanding different political perspectives. The students’ expression led to meaningful dialogue, thereby aligning with ABC High School’s educational mission of fostering a socially-aware student body. As such, the content of their expression is protected by the First Amendment.

Victoriya and Michael’s political expression must also be analyzed in the context of the school’s setting. Schools bear the unique responsibility of ensuring a safe and productive learning

¹ *First Amendment*. (n.d.). Legal Information Institute. Retrieved February 10, 2025, from https://www.law.cornell.edu/constitution/first_amendment

² *Stromberg v. California*, 283 U.S. 359 (May 18, 1931). <https://supreme.justia.com/cases/federal/us/283/359/>

³ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (Feb. 24, 1969). <https://supreme.justia.com/cases/federal/us/393/503/>

⁴ Stone, G. R., & Volokh, E. (n.d.). *Freedom of Speech and the Press: Common Interpretation*. National Constitution Center. Retrieved February 10, 2025, from <https://constitutioncenter.org/the-constitution/amendments/amendment-i/interpretations/266>

⁵ *Bethel School District v. Fraser*, 478 U.S. 675 (July 7, 1986). <https://supreme.justia.com/cases/federal/us/478/675/>

environment that is conducive to students' needs. As such, administrators may regulate speech they reasonably anticipate will "materially and substantially interfere with the [...] operation of the school."⁶ Administrators, however, cannot rely on an "undifferentiated fear or apprehension of disturbance" when regulating student expression.⁷ Rather, regulations of student speech must be justified by specific evidence of disturbances.⁸ In this case, the administrators' decision to ban political speech on ABC High School's campus was a response to escalating tensions within the student body. The policy was motivated by a desire to safeguard the school's learning environment and prevent further violence. These are legitimate concerns in any school setting. As such, the school's policy is theoretically justifiable.

However, the policy's breadth raises concerns. Public schools must balance concerns regarding student behavior with their duty to protect peaceful expressions of speech. The complete ban of any form of political speech on ABC High School's campus risks suppressing forms of expression that do not contribute to unrest. By failing to adequately distinguish between disruptive speech and peaceful political discourse, the policy infringes upon protected expression, such as Victoriya and Michael's peaceful political speech.

ABC High School's failure to consistently enforce the policy raises further concerns. Victoriya and Michael were suspended for expressing their political beliefs. Yet, students wearing clothing depicting the American flag—a clear political symbol—received no penalties. This is dangerous. Unequal application of the policy risks deepening resentment and tensions within the student body. Moreover, it violates the principle of content neutrality, which dictates that policies

⁶ *Burnside v. Byars*, 363 F.2d 744 (5th Cir. July 21, 1966).
<https://law.justia.com/cases/federal/appellate-courts/F2/363/744/264045/>

⁷ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (Feb. 24, 1969).
<https://supreme.justia.com/cases/federal/us/393/503/>

⁸ *Ibid.*

regulating speech must be applied equally to all viewpoints.⁹ The administrators created a perception of viewpoint discrimination that further infringes upon students' rights.

B. APPLICATION TO TEACHERS

I am cognisant that my advice has been sought on the application of the policy vis-à-vis the students. However, for the sake of completeness, it is prudent for me to also address the policy as it relates to teachers. Public school teachers occupy unique positions as they are both private citizens as well as government employees.¹⁰ As such, they are viewed as representatives of the school and, by extension, the state. While teachers retain their right to free speech outside of the classroom, their professional role in the classroom necessitates a greater degree of restraint regarding speech. Speech made by public employees is only protected by the First Amendment when it addresses a matter of public concern, does not interfere with the operation of their workplace, and is expressed in their capacity as a private citizen.^{11,12}

In this case, Mr. Teta initially hung the Ukrainian and Puerto Rican flags in his classroom as they applied to his current events curriculum and classroom discussions. However, Mr. Teta's decision to display subsequent unrelated flags at the explicit request of specific students created the impression of favoring certain political movements over others. This led to the classroom environment becoming divided. The division in Mr. Teta's classroom interfered with the operation of his classroom's effective learning environment. It also hindered ABC High School's

⁹ *Content-Neutral Laws Burdening Speech*. (n.d.). Legal Information Institute. Retrieved February 12, 2025, from <https://www.law.cornell.edu/constitution-conan/amendment-1/content-neutral-laws-burdening-speech>

¹⁰ Loveless, B. (2022, August 15). *Are teachers federal employees?* Education Corner. Retrieved February 11, 2025, from https://www.educationcorner.com/are-teachers-federal-employees/?utm_source=chatgpt.com

¹¹ *Pickering v. Board of Education*, 391 U.S. 563 (June 3, 1968). <https://supreme.justia.com/cases/federal/us/391/563/>

¹² *Garcetti v. Ceballos*. (n.d.). Oyez. Retrieved February 11, 2025, from <https://www.oyez.org/cases/2005/04-473>

objective of maintaining a non-partisan, inclusive learning environment. As such, Mr. Teta's actions are not protected under the First Amendment.

IV. RECOMMENDATIONS

In lieu of my analysis, I recommend that the Board perform the following:

A. Reverse Victoriya and Michael's suspensions.

There is not enough evidence to satisfy a claim of disruption against Michael and Victoriya. Furthermore, a suspension on the students' records will harm their college admissions prospects and potentially expose the Board to future civil litigation. Reversing the suspensions will also demonstrate ABC High School's commitment to protecting students' constitutional rights.

B. Limit the scope of its policy banning political speech.

The Board should draft new wording that specifically targets disruptive forms of expression rather than banning all political expression. The revised policy should also clearly define the types of speech that "substantially disrupt the learning environment."¹³ This will ensure that ABC High School can protect students' right to free speech while preventing disharmony.

C. Establish procedures to ensure consistent enforcement of the policy.

The Board should create clear, content-neutral guidelines for enforcing the revised policy. This should include mandatory staff training to emphasize the importance of applying policies equally to all viewpoints. Regular reviews and oversight mechanisms should also be implemented to address any future concerns regarding bias or unequal application of the revised policy.

¹³ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (Feb. 24, 1969).
<https://supreme.justia.com/cases/federal/us/393/503/>

D. Limit teachers' displays of political symbols.

To maintain a politically-neutral and inclusive learning environment, the Board should limit political symbols and displays in classrooms to those that are clearly relevant to classroom curriculum. Teachers should also be instructed to not hang up any political symbols in their classroom at the explicit requests of students. Following these instructions will help ABC High School to prevent the perception of bias while still allowing respectful discourse among students.

V. CONCLUSION

While ABC High School has a legitimate interest in preventing disruptions to the school's environment, its policy banning political speech is overly broad and unfairly enforced. As a result, it risks infringing upon students' constitutional rights, thus making the school vulnerable to lawsuits. By adopting my recommendations, the Board can mitigate potential legal risks, maintain ABC High School's safe and effective learning environment, and protect students' constitutional rights.

Respectfully Submitted,

Attorney for the Board of Education

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