

To: Board of Education

From: Board of Education Attorney

Subject: Student Expression vs. School Policy

I. BACKGROUND

Following political discussions in Mr. Teta's social studies class, Victoriya, a Ukrainian-American, and Michael, an openly gay Puerto Rican, asked for their respective flags to be displayed in the classroom. Over time, other students also requested representation for their own causes, leading the principal to advise Mr. Teta to remove all flags and political signs. In response, students began expressing their views through clothing, book decorations, and signs featuring political messages. This escalated tensions, with students forming factions, engaging in shouting matches, and even physical abuse in the hallways. To address the unrest, the school implemented a new policy banning political signs, clothing, and speech of any kind on campus. However, some students wore clothing featuring the American flag without reprimand. Victoriya and Michael were later suspended for repeatedly violating this policy and have since appealed their suspensions.

II. ANALYSIS

In the landmark U.S. Supreme Court case *Tinker v. Des Moines Independent Community School District* (1969), Justice Abe Fortas, writing for the 7-2 majority, stated, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" ("Tinker"). This precedent established that students retain their First Amendment rights in school, provided their expression does not cause a, "material

and substantial disruption to the educational environment" ("Tinker"). However, the decision left ambiguity regarding what constitutes a "substantial disruption," thus causing varying interpretations in subsequent cases.

The Connecticut General Assembly addressed this ambiguity in its Act Concerning Students' Right to Free Speech (2009). This legislation explicitly prohibits schools from punishing student speech unlikely to cause significant disruption. However, schools can "prohibit speech providing lewd or indecent, or targeting others with intent to harass, ridicule, or intimidate in a way that affects their safety or academic performance. It also specifies that mere inconvenience to school officials does not constitute a disruption" ("Act"). By this standard, the actions of Victoriya and Michael - wearing the colors of their flags and each other's flags - does not meet the threshold for punishment, unless the school can demonstrate that their actions directly caused "substantial disruption", or were intended to harass others ("Act"). The selective enforcement of the school's policy further undermines its legitimacy.

Victoriya and Michael's symbolic protest falls under protected expression as outlined in *Tinker*. Their use of clothing to express solidarity and support for Ukraine, Puerto Rico, and LGBTQ+ rights does not, on its face, constitute a material and substantial disruption. The school's claim that the political climate on campus led to unrest would require evidence that their specific actions - and not the broader reactions of other students - caused the disruption. The burden of proof lies with the school to demonstrate a clear causal link between the expression and the alleged disruption within the student body.

Furthermore, inconsistent enforcement of the school's policy raises significant legal concerns. In *Ward v. Rock Against Racism* (1989), the U.S. Supreme Court clarified that

government regulation proves content-neutral if not based on the subject matter, topic, or viewpoint (“Ward”). The school’s policy, while facially neutral, appears to have been enforced in a discriminatory manner. Students wearing clothing with the American flag did not receive reprimand, while those supporting other flags or causes, received discipline. This selective enforcement undermines the content-neutral justification of the policy and suggests it was applied in a viewpoint-discriminatory manner. Such actions violate not only the principles of *Ward*, but also the Equal Protection Clause of the Fourteenth Amendment, which requires that all individuals be treated equally under the law. This Clause prohibits government entities, including schools, from enacting or enforcing policies that discriminate against individuals or groups based on factors like race, religion, or viewpoint without a compelling and legitimate justification.

The Equal Protection Clause largely prohibits government entities, including schools, from treating individuals differently based on viewpoint or content. If the school’s policy disproportionately impacts certain groups or messages while allowing others to persist without consequence, then it amounts to unconstitutional discrimination. In *Rosenberger v. Rector and Visitors of the University of Virginia* (1995), students were denied funding for their Christian magazine, as the University of Virginia’s policy was to not support religious activities. The students argued that the policy violated their right to free speech. Setting the precedent of viewpoint discrimination as, “an egregious form of content discrimination” that violates fundamental First Amendment protections (“Rosenberger”).

Unequal enforcement of the policy raises concerns about balancing order with student expression. Schools can regulate speech for a conducive learning environment, but must do so in a content-neutral, narrowly tailored manner. Blanket bans on political speech—as seen

here—constitute governmental overreach and potential constitutional violations. In *Mahanoy Area School District v. B.L. (2021)*, the Supreme Court ruled that punishing a student for off-campus speech without substantial disruption exceeded school authority. Similarly, Victoriya and Michael’s expression, though on school grounds, did not disrupt learning and remains protected unless proven otherwise. Their case mirrors *Mahanoy*, where restricting speech without clear justification was deemed unconstitutional.

III. RECOMMENDATIONS

- 1) **Review and Amend the Policy**: The Board of Education should revise the current policy making it content-neutral and narrowly tailored to address only those forms of expression that cause material and substantial disruption.
- 2) **Reinstate Victoriya and Michael**: Given the insufficient evidence of their actions causing substantial disruption, the suspensions should be rescinded, and their records cleared.
- 3) **Address Underlying Issues**: Implement measures to foster dialogue and mutual understanding among students to reduce tensions and promote a more inclusive school environment.

IV. CONCLUSION

The school’s actions in disciplining Victoriya and Michael while allowing other students to wear American flag clothing without consequence are inconsistent with the principles established in *Tinker*, *Ward*, and *Rosenberger*. The school has failed to demonstrate that the student’s expression caused a material and substantial disruption, as required by *Tinker*. Additionally, the selective

enforcement of the policy suggests viewpoint discrimination, which violates the First Amendment and the Equal Protection Clause. Justification of the schools' actions require compelling evidence of a direct link between Victoriya and Michael's expression and the alleged disruption, as well as demonstrate that its policy is applied in a content-neutral and viewpoint-neutral manner. The school's blanket prohibition on political expression proves overly broad and fails to account for the nuanced Constitutional protections afforded to student speech.

Works Cited

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