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March 26, 2014

VIA E-MAIL & REGULAR MAIL

Frank Ingargiola, Principal  
Steinert High School  
2900 Klockner Road  
Hamilton, NJ 08690

Dear Principal Ingargiola:

The American Civil Liberties Union of New Jersey has been contacted by Greg Vied, a senior at Steinert High School, about administrators prohibiting him from displaying a Confederate flag on his vehicle in the school parking lot. We write to inform you that, as we understand the facts, this prohibition violates Greg's constitutionally-protected right to free expression. We seek to resolve this situation quickly so that Greg is afforded his right to display his chosen message without fear of discipline.

The facts as we understand them are as follows: Greg has regularly flown the Confederate flag on his vehicle since mid-January of this year, and there have been no known significant disturbances caused by the display. However, Vice Principal Duane Robinson ordered Greg to remove the flag on Friday, March 21, 2014, and again on Monday, March 24, 2014. Greg refused on both occasions to remove the flag. Greg was then suspended on Tuesday, March 25, 2014. Although he will be allowed to return to school on starting Thursday, March 27, 2014, Greg will again be precluded from displaying the Confederate flag on his vehicle, and the vehicle will be towed if that occurs.

Students have a right to speech or expression unless the administration can demonstrate that the prohibited speech would "materially and substantially" disrupt the operation of the school or interfere with another's rights. Tinker v. Des Moines Indep. Comty. Sch. Dist., 393 U.S. 503, 508 (1969). We are unaware of any disruption that the flag caused, let alone one that a court would consider "substantial" enough to justify the school's continued prohibition. As explained below, that others might be offended by the expression is not enough to justify its suppression.

The United States Court of Appeals for the Third Circuit (which covers New Jersey) has upheld the rights of students to convey messages that others deem controversial or offensive. See Sypniewski v. Warren Hills Reg'l Bd. of Educ., 307 F.3d 243 (3d Cir. 2002) (t-shirt contained the word "redneck"); Saxe v. State College Area School District, 240 F.3d 200 (3d Cir. 2001) (challenging school's harassment policy which would have banned insulting and offensive speech that alluded to certain personal characteristics).

In Sypniewski, the Court specifically discussed the limitation on school officials who want to prohibit display of a Confederate flag. The Court explained:

Several cases have addressed public schools' attempts to restrict displays of the Confederate flag under Tinker....Where there have been racial problems involving the Confederate flag, courts have found such bans constitutional....*In the absence of such evidence, courts have concluded that school authorities have failed to establish a sufficient likelihood of disruption to support banning the flag.*

Id. at 254 (emphasis added).

The United States Supreme Court, as well as the Third Circuit, has made clear that causing others to be offended does not meet the "material disruption" standard. School officials must have evidence to believe that there will be a substantial disruption. Tinker, 393 U.S. at 508. Neither an "undifferentiated fear or apprehension of disturbance" nor "a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint" justify the restriction of a student's expression about his beliefs. Id. Instead, school officials must demonstrate a "particularized reason as to why [they] anticipate[] substantial disruption." Saxe, 240 F.3d at 217. That "particularized reason" should be "based on past incidents arising out of similar speech...." Id. at 212.

In short, school administrators may not discipline a student for displaying a Confederate flag solely because the school or a subset of students do not approve of, or are offended by, the message or the display. The student in this instance displayed the flag for months without incident. As such, school officials would be hard pressed to support an argument that they have a "well-founded" belief that the expression at issue will cause a "material disruption" to the operation of the school.

Given the clarity of the law, we ask you to provide immediate assurances that neither Greg nor any other student will be disciplined for displaying a Confederate flag.

Please contact me at (973)854-1717 if you would like to discuss the matter in more detail.

Sincerely,



Ed Barocas  
Legal Director

cc: Dr. James Parla, Superintendent (via e-mail only)  
Joseph Betley, School Board Attorney (via e-mail only)