

April 19, 2004

Dr. Detlef Kern
Pinelands Regional School District
520 Nugentown Road
Little Egg Harbor, New Jersey 08087

Dear Dr. Kern:

The American Civil Liberties Union of New Jersey has received complaints that students at Pinelands Regional High School were suspended or threatened with suspension for wearing t-shirts with anti-racism statements urging fellow students to "End the Hate." I write to inform you that such actions by school officials violated (and continue to violate) the students' constitutionally-protected right to free speech.

Students do not "shed their constitutional rights to freedom of speech and expression at the schoolhouse gates." Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). A school may therefore prohibit or punish a student's chosen form of speech only if such speech is reasonably likely to result in a material and substantial interference with the educational process or violate the rights of others. This proscription contains two important limits on school discipline. First, there must be an actual likelihood of disruption -- an "undifferentiated fear or apprehension of disturbance" is not enough. 393 U.S. at 508. Second, the type of disruption must be serious -- the mere possibility that students will argue with each other about the t-shirt is not enough. Id. at 513. Indeed, in Tinker, the black armbands worn by students to protest the Vietnam War had led to "comments, warnings by other students, the poking of fun at them" and a math teacher's belief that the armband "practically wrecked" his lesson; yet the Court nonetheless concluded that this was not a sufficient material or substantial disruption attributable to the armbands which would warrant their prohibition. Id. at 517.

In applying the Tinker standards, the United States Court of Appeals for the Third Circuit (which covers New Jersey) recently held that a student had the right to wear a t-shirt that contained the word "redneck." Sypniewski v. Warren Hills Regional Board of Ed., 307 F.3d 243 (3d Cir. 2002). The Court stated that "the wearing of the T-shirt was 'akin to pure speech,' 'targeted [by school officials] for its expressive content.'" Id., quoting Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988). While the Court in fact acknowledged prior disruptions at the school involving the Confederate flag, there was nevertheless no evidence that the "redneck" t-shirt was sufficiently similar or had any "similarly disruptive history" to warrant a limitation on the student's freedom of speech. Sypniewski, 307 F.3d at 254.

In the matter at hand, the "End the Hate" t-shirts were worn by students as a means of expression. Pinelands Regional High School officials, who have regularly permitted students to wear t-shirts with pictures or other expressive statements, "targeted [the 'End the Hate' t-shirt] for its expressive content." The ban was apparently based on

the fact that the t-shirts were deemed “controversial” or due to an official’s “undifferentiated fear or apprehension of disturbance” – reasons that have been specifically rejected by the courts. As in Sypniewski, there was no evidence that the “End the Hate” t-shirts were likely to cause a substantial disruption or infringe on the rights of others. Indeed, the speech at issue herein is far less controversial and far less likely to cause a disturbance than the speech that was *protected* by the courts in Sypniewski and Tinker.

If your concern is that some students might respond to the “End the Hate” message with harassment, the proper response is not to silence the “End the Hate” message, but to teach the harassers about the importance of tolerance, through school discipline if the harassment becomes serious. This is no doubt the approach the school would take in the case of harassment on the basis of race, religious, sex, or sexual orientation, where the school would not think of blaming the victim. There is no reason to treat harassment on the basis of political viewpoint any differently.

With these principles in mind and given the clarity of the law, I request that you take the following steps to ensure that no further action is necessary. First, I request that any entries to students’ disciplinary files related to this issue be immediately expunged. Second, I request your written assurance that students will not be disciplined in any way in the future for wearing the “End the Hate” or similar t-shirts.

Please respond by Thursday, April 22, 2004. If you would like to meet to discuss model free speech and harassment policies, I would be more than glad to meet with you.

Thank you for your attention to this matter and please do not hesitate to contact me if you have any questions.

Sincerely,

Ed Barocas
Legal Director

cc: Principal Thomas Procopio