

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

D.A., a minor, by and through his
mother B.A.; and X.A., a minor, by and
through his mother B.A.,

Plaintiffs,

v.

TRI COUNTY AREA SCHOOLS;
ANDREW BUIKEMA, in his individual
capacity; and WENDY BRADFORD, in
her individual capacity.

Defendants.

Case Number: 23-cv-423

Hon. _____

**COMPLAINT FOR
CIVIL RIGHTS VIOLATIONS**

JURY TRIAL DEMANDED

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INTRODUCTION

1. This case is about protecting the role of America’s public schools as “nurseries of democracy.” *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2046 (2021). Our schools train the next generation to live in a country where their neighbors and coworkers might not think, pray, or vote the same way they do.

2. That pluralistic democracy is made possible by the First Amendment, which protects our right to speak our minds without government punishment. And just as the First Amendment bars viewpoint discrimination in townhalls and public squares, so too does it bar viewpoint discrimination against public school students.

3. But Defendant Tri County Area Schools (the “School District”) and its employees are censoring students who try to express support for former President Donald Trump or opposition to President Joe Biden.

4. For instance, during the Tri County Middle School “Field Day” in June 2022, School District employees permitted students to wear LGBTQ+ pride flags but ordered students to remove Trump flags.

5. What is more, the School District prohibits students, including Plaintiffs D.A. and X.A., from wearing apparel containing “Let’s Go Brandon,” a non-profane and well-known anti-Joe Biden political slogan, even though the School District allows students to wear apparel expressing other views.

6. The Supreme Court clearly established more than 50 years ago that the First Amendment protects peaceful, non-disruptive political speech at school. America’s students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*,

393 U.S. 503, 506 (1969). Plaintiffs bring this suit to ensure that America’s students remain free to use their Constitutional rights at school, not just learn about them.

THE PARTIES

Plaintiffs

7. Plaintiff D.A. is a seventh-grade student at Tri County Middle School. At all times relevant to this Complaint, D.A. was a student in Tri County Area Schools. D.A. lives with his mother, B.A., in Newaygo County, Michigan. B.A. brings this action on behalf of her minor son, D.A.

8. D.A. opposes President Joe Biden and wants to wear apparel with the anti-Biden political slogan “Let’s Go Brandon” to school. But the School District prohibits students from wearing apparel expressing the slogan and School District employees instructed D.A. to remove “Let’s Go Brandon” apparel.

9. Plaintiff X.A. is a freshman at Tri County High School. At all times relevant to this Complaint, X.A. was a student in Tri County Area Schools. X.A. lives with his mother, B.A., in Newaygo County, Michigan. B.A. brings this action on behalf of her minor son, X.A.

10. X.A. opposes President Biden and wants to wear apparel with the anti-Biden slogan “Let’s Go Brandon” to school. But the School District prohibits students from wearing apparel expressing the slogan and School District employees instructed D.A. to remove “Let’s Go Brandon” apparel.

11. D.A. and X.A. are suing because Defendants are violating the First Amendment by censoring the students’ peaceful, non-disruptive political expression in school.

Defendants

12. Defendant Tri County Area Schools is a school district headquartered in Howard City, Michigan. The School District includes Tri County High School, a public high school located in Howard City, Michigan (grades 9–12), Tri County Middle School, a public middle school in Howard City, Michigan (grades 6–8), two elementary schools, and a preschool.

13. Defendant Andrew Buikema is employed by the School District as an Assistant Principal at Tri County Middle School, and, in that role, enforces School District policy. Buikema ordered D.A. and X.A. to remove “Let’s Go Brandon” apparel despite allowing students to wear apparel with other political and social messages.

14. At all times relevant to this Complaint, Buikema acted under color of state law as the Assistant Principal of Tri County Middle School.

15. Defendant Wendy Bradford is employed by the School District as a teacher at Tri County Middle School, and, in that role, enforces School District policy. Bradford ordered D.A. to remove “Let’s Go Brandon” apparel despite allowing students to wear apparel with other political and social messages.

16. At all times relevant to this Complaint, Bradford acted under color of state law as a teacher at Tri County Middle School.

JURISDICTION AND VENUE

17. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and jurisdiction for civil rights violations under 28 U.S.C. § 1343 because Plaintiffs’ claims arise under the First and Fourteenth Amendments to the United States Constitution;

the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

18. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(1) because at least one of the Defendants resides in this district and all Defendants reside in Michigan.

19. Venue is also proper in this judicial district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to Plaintiffs' claims occurred within this district.

FACTUAL ALLEGATIONS

I. The Tri County Area Schools Student Handbook

20. Tri County High School and Tri County Middle School distribute a Student Handbook which includes a dress code policy.

21. The dress code in place for both schools during the 2021–2022 and 2022–2023 school years provides that:

Students and parents have the right to determine a student's dress, except when the school administration determines a student's dress is in conflict with state policy, is a danger to the students' health and safety, is obscene, is disruptive to the teaching and/or learning environment by calling undue attention to oneself. The dress code may be enforced by any staff member.

(Ex. A: High School Handbook, at 29; Ex. B: Middle School Handbook, at 24.)

22. The dress code prohibits clothing “with messages or illustrations that are lewd, indecent, vulgar, or profane, or that advertise any product or service not permitted by law to minors.” (Ex. A at 29; Ex. B at 24.)

23. The Handbook guarantees nondiscrimination “on the basis of race, color, sex, religion, creed, [or] political belief.” (Ex. A at 11; Ex. B. at 7.)

24. The Handbook provides that dress code violations result in discipline including notifying parents, required clothing change, and, after multiple infractions, suspension. (Ex. A at 24; Ex. B at 18.)

II. “Let’s Go Brandon” is a Popular, Non-Profane Anti-Biden Political Slogan.

25. “Let’s Go Brandon” is a non-profane, non-vulgar political slogan used to express disapproval of President Joe Biden.

26. D.A. and X.A. oppose President Biden and own sweatshirts with the slogan “Let’s Go Brandon.”

27. A photograph of the sweatshirt is depicted here:



28. D.A. and X.A. wear their “Let’s Go Brandon” sweatshirts to express their opposition to President Biden.

29. The political slogan “Let’s Go Brandon” originated at an October 2021 NASCAR Xfinity Series race in Talladega, Alabama. After the race, won by Brandon Brown, members of the crowd chanted “Fuck Joe Biden” during Brown’s post-race interview. A television commentator remarked that the fans were shouting “Let’s go, Brandon!”

30. The slogan “Let’s Go Brandon” conveys the same opposition to President Biden, sanitized to express the sentiment without using profanity or vulgarity.

31. “Let’s Go Brandon” is not lewd, profane, indecent, vulgar, or obscene.

32. The slogan “Let’s Go Brandon” does not contain sexually explicit language or connotation.

33. Since October 2021, the slogan “Let’s Go Brandon” gained widespread use by members of the public and elected officials as a form of political commentary and criticism of President Biden. The slogan has appeared on broadcast media and as a chant at political rallies, become a massive social media trend, and appears on T-shirts and bumper stickers.

34. On October 21, 2021, Representative William J. Posey, who represents Florida’s Eighth Congressional District, used the slogan “Let’s Go Brandon” during a speech in the United States House of Representatives. 167 Cong. Rec. 5776 (2021).

35. Representative Posey was not censured, ruled out of order, or disciplined for using the slogan.

36. On October 26, 2021, Representative Mary E. Miller, who represents Illinois' Fifteenth Congressional District, used the slogan "Let's Go Brandon" during a speech in the United States House of Representatives. 167 Cong. Rec. 5880 (2021).

37. Representative Miller was not censured, ruled out of order, or disciplined for using the slogan.

38. On June 7, 2022, Representative Douglas L. LaMalfa, who represents California's First Congressional District, used the slogan "Let's Go Brandon" during a speech in the United States House of Representatives. 168 Cong. Rec. 5240 (2021).

39. Representative LaMalfa was not censured, ruled out of order, or disciplined for using the slogan.

40. In October 2021, Representative Jeffrey D. Duncan, who represents South Carolina's Third Congressional District, wore a facemask adorned with the slogan "Let's Go Brandon" on the floor of the United States House of Representatives.

41. Representative Duncan was not censured, ruled out of order, or disciplined for wearing the mask.

42. President Biden's supporters repurposed the "Let's Go Brandon" slogan in mid-2022, as "Dark Brandon"—a pro-Biden internet meme stylizing the President's likeness with heavy contrast or decreased background light to portray him as a superhero protagonist.

III. Buikema and Bradford Ordered D.A. and X.A. to Remove "Let's Go Brandon" Apparel.

43. D.A. and X.A. wish to express their opposition to President Biden by wearing their "Let's Go Brandon" sweatshirts to school.

44. Upon information and belief, before February 2022 and continuing through the present, the School District has not experienced material disruption, substantial disorder, or invasions of the rights of others from Plaintiffs or other students wearing “Let’s Go Brandon” or other political apparel.

45. Upon information and belief, before February 2022 and continuing through the present, Defendants have not received any information which would lead them to reasonably forecast a material disruption, substantial disorder, or invasions of the rights of others if students wore “Let’s Go Brandon” or other political apparel.

46. On or around February 2022, D.A. wore his “Let’s Go Brandon” sweatshirt to Tri County Middle School to express his opposition to President Biden.

47. Buikema stopped D.A. in the hallway between classes and instructed D.A. to remove his “Let’s Go Brandon” sweatshirt.

48. Buikema told D.A. his “Let’s Go Brandon” sweatshirt was equivalent to “the f-word.”

49. D.A., fearing further punishment, complied with Buikema’s directive and removed his “Let’s Go Brandon” sweatshirt.

50. Had Buikema not ordered D.A. to remove his “Let’s Go Brandon” sweatshirt, D.A. would have continued wearing it to express his opposition to President Biden.

51. A few weeks later, D.A. wore his “Let’s Go Brandon” sweatshirt to Tri County Middle School to express his opposition to President Biden.

52. Ms. Bradford stopped D.A. in the school hallway and instructed him to remove his “Let’s Go Brandon” sweatshirt.

53. Bradford threatened punishment if D.A. did not remove the sweatshirt, telling him, “Take that sweatshirt off. I’ve told you before and won’t tell you again.”

54. D.A. asked Bradford why D.A. had to remove his “Let’s Go Brandon” apparel. Bradford told D.A. that the sweatshirt was “not permitted.”

55. D.A., fearing further punishment, complied with Bradford’s directive and removed his “Let’s Go Brandon” sweatshirt.

56. Had Bradford not ordered D.A. to remove his “Let’s Go Brandon” sweatshirt, D.A. would have continued wearing it to express his opposition to President Biden.

57. D.A.’s “Let’s Go Brandon” sweatshirt did not disrupt class, cause disturbance among students, or invade the rights of others.

58. On May 26, 2022, X.A. wore his “Let’s Go Brandon” sweatshirt to Tri County Middle School to express his opposition to President Biden.

59. On May 26, 2022, Buikema pulled X.A. from class without warning and summoned X.A. to his office.

60. Buikema ordered X.A. to remove his “Let’s Go Brandon” sweatshirt.

61. Buikema told X.A. that the school does not allow students to wear clothing with political speech.

62. X.A., fearing further punishment, complied with Buikema’s directive and removed his sweatshirt.

63. Had Buikema not ordered X.A. to remove his “Let’s Go Brandon” sweatshirt, X.A. would have continued wearing it to express his opposition to President Biden.

64. X.A.’s “Let’s Go Brandon” sweatshirt did not disrupt class, cause a disturbance among students, or invade the rights of others.

65. Fearing punishment, and in accordance with Buikema’s and Bradford’s orders, D.A. and X.A. have not worn “Let’s Go Brandon” apparel to the School District schools since May 26, 2022.

66. D.A. and X.A. wish to resume wearing “Let’s Go Brandon” apparel to school to express their opposition to President Biden.

67. Despite prohibiting “Let’s Go Brandon” apparel, the School District permits students to wear apparel expressing other political and social messages, including but not limited to apparel expressing support for LGBTQ+ rights.

IV. Tri County School District’s Continuing Pattern of Discrimination Against Pro-Trump and Anti-Biden Political Expression

68. Tri County Middle School hosts an annual “field day” event for students to mark the end of the academic year and the beginning of summer recess. Field day consists of school-organized and supervised outdoor recreational activities during the school day.

69. Tri County Middle School relaxes its dress code on field day and allows students to wear non-traditional apparel, such as wearing a flag as a cape.

70. Tri County Middle School’s field day for the 2021–2022 school year occurred on June 2, 2022.

71. Upon information and belief, before the June 2022 field day, Tri County Middle School had not experienced material disruption, substantial disorder, or an invasion of the rights of others resulting from students wearing pro-Trump or other political apparel.

72. Upon information and belief, before the June 2022 field day, Defendants had not received any information which would lead them to reasonably forecast a material disruption, substantial disorder, or an invasion of the rights of others if a student wore a Trump flag on field day.

73. On field day, some students wore LGBTQ+ pride flags expressing support for LGBTQ+ rights.

74. Another student, however, wore a Trump flag.

75. A photograph of the Trump flag the student wore on field day is depicted here:



76. The student wore his Trump flag for about two hours, with little to no reaction from other students.

77. The student's flag caused no disruption, disorder, or incident, and did not invade the rights of others.

78. But after Buikema observed the student wearing the Trump flag, Buikema ordered the student to remove it.

79. Buikema and other School District employees did not, however, order students to remove flags containing other viewpoints.

80. For instance, during the June 2022 field day, Buikema and other School District employees witnessed multiple students wearing pride flags expressing support for LGBTQ+ rights.

81. But Buikema and other School District employees did not order students wearing pride flags to remove their flags.

V. The School District's Dress Code Invites Discriminatory Enforcement.

82. The School District's dress code prohibits apparel which is "disruptive to the teaching and/or learning environment by calling undue attention to oneself." (Ex. A at 29; Ex. B at 24.)

83. The School District provides parents and students no guidance regarding what constitutes apparel which "disruptive[ly]" "call[s] undue attention to oneself."

84. Upon information and belief, the School District provides staff no guidance regarding what constitutes apparel which "disruptive[ly]" "call[s] undue attention to" a student.

85. The lack of clarity and guidance invites subjective and discriminatory enforcement of the dress code.

86. D.A. and X.A. wore “Let’s Go Brandon” apparel to school intending to call attention to and express their opposition to President Biden.

87. D.A. and X.A. wish to resume wearing “Let’s Go Brandon” apparel to school in order to call attention to and express their opposition to President Biden.

VI. D.A. and X.A. Demand the School District Follow the First Amendment; the School District Refuses.

88. On May 27, 2022, Plaintiffs D.A. and X.A., through counsel, sent the School District a cease-and-desist letter along with a document preservation demand. (Ex. C.)

89. The letter demanded that the School District permit the students to wear “Let’s Go Brandon” apparel and noted the absence of disruption caused by the apparel. (*Id.*)

90. On June 9, 2022, the School District responded, through counsel, that “The District prohibits clothing or styles of expression that are vulgar or profane. The commonly known meaning of the slogan ‘Let’s Go Brandon’ is intended to ridicule the President with profanity ... ‘Let’s Go Brandon’ is a transparent code for using profanity against the President.” (Ex. D.)

91. The School District did not claim that “Let’s Go Brandon” sweatshirts, or political apparel more generally, create material disruption, substantial disorder, invade the rights of others, or have caused it to forecast the same.

INJURY TO PLAINTIFFS

92. Defendants' prohibition on "Let's Go Brandon" apparel injures D.A. and X.A. because it infringes their First Amendment right to peacefully convey a political message they believe in and wish to advocate for, including at school.

93. D.A.'s and X.A.'s injuries are ongoing because, but for Defendants' prohibition on "Let's Go Brandon" apparel, D.A. and X.A. would wear "Let's Go Brandon" apparel to school to express their opposition to President Biden.

94. D.A., X.A., and other Tri County Middle School and Tri County High School students are in immediate danger of direct injury from the School District's restriction on apparel which "disruptive[ly]" "call[s] undue attention to oneself" because they wish to wear politically expressive clothing to school for the purpose of drawing attention to their political messages. Plaintiffs and other students are at constant risk of discipline for wearing attire expressing a political or social message which "calls undue attention" to themselves, creating a substantial danger of chilling their core protected speech.

CLAIMS

FIRST CLAIM

Violation of First Amendment (Damages)

Freedom of Speech

42 U.S.C. § 1983

(All Plaintiffs against Defendant Buikema and Plaintiff D.A. against Defendant Bradford)

95. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though fully set forth herein.

96. The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I.

97. The First Amendment protects a wide range of speech, including speech that is critical of those who hold public office. *New York Times v. Sullivan*, 376 U.S. 254, 273 (1964).

98. Wearing clothing with a political message for the purpose of expressing that message is protected by the free speech clause of the First Amendment. *Tinker*, 393 U.S. at 514.

99. In *Tinker*, the Court announced a rule that students retain their First Amendment rights in school, but schools may regulate student speech that “materially disrupts classwork or involves substantial disorder or invasion of the rights of others” or that leads school officials to reasonably forecast the same. *Id.* at 513–14.

100. “Viewpoint discrimination is an egregious form of content discrimination and is presumptively unconstitutional.” *Iancu v. Brunetti*, 139 S. Ct. 2294, 2299 (2019) (internal quotation omitted).

101. Therefore, in schools, “The prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.” *Tinker*, 393 U.S. at 511.

102. D.A.'s and X.A.'s "Let's Go Brandon" sweatshirts did not create material disruption, cause substantial disorder, or invade the rights of others.

103. Buikema engaged in impermissible viewpoint discrimination by instructing D.A. and X.A. to remove their "Let's Go Brandon" apparel while allowing students to wear apparel with other political and social messages.

104. Buikema's actions deprive D.A. and X.A. of their First Amendment right to peacefully express their political views at school.

105. Bradford engaged in impermissible viewpoint discrimination by instructing D.A. to remove his "Let's Go Brandon" apparel while allowing students to wear apparel with other political and social messages.

106. Bradford's actions deprive D.A. of his First Amendment right to peacefully express his political views at school.

107. The First Amendment also generally prohibits "content discrimination," which occurs when government officials regulate speech based on its subject-matter.

108. Buikema and Bradford ordering D.A. and X.A. to remove "Let's Go Brandon" apparel while allowing students to wear apparel with other political and social messages constitutes impermissible content discrimination under the First Amendment because the prohibition targets a particular subject—political candidates and figures—for unequal treatment.

109. Prohibiting apparel referencing political candidates and figures is not narrowly tailored because it prohibits all apparel expressing support for or opposition

to political candidates and figures, no matter whether the expression is proscribable under *Tinker* and its progeny.

110. There is no legitimate, let alone compelling state interest in prohibiting peaceful, non-disruptive support for or opposition to political candidates and figures in schools, nor is it the least restrictive means of achieving such an interest.

111. The Supreme Court has “outlined three specific categories of student speech that schools may regulate in certain circumstances” even without a showing of material disruption under *Tinker*: “(1) ‘indecent,’ ‘lewd,’ or ‘vulgar’ speech uttered during a school assembly or on school grounds; (2) speech, uttered during a class trip, that promotes ‘illegal drug use;’ and (3) speech that others may reasonably perceive as ‘bearing the imprimatur of the school,’ such as that appearing in a school-sponsored newspaper.” *Mahanoy*, 141 S. Ct. at 2045 (citing *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685 (1986); *Morse v. Frederick*, 551 U.S. 393, 409 (2007); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988) (cleaned up)).

112. D.A.’s and X.A.’s “Let’s Go Brandon” peaceful expression does not fall within the three categories because it is not indecent, lewd, or vulgar, it does not promote illegal drug use, and the expression does not bear the imprimatur of the school.

113. Upon information and belief, Tri County Middle School has not experienced material disruption, substantial disorder, or an invasion of the rights of others due to political signage, flags, or apparel.

114. Upon information and belief, Tri County High School has not experienced material disruption, substantial disorder, or an invasion of the rights of others due to political signage, flags, or apparel.

115. Using governmental authority to suppress one student's political views but allowing other students to express a different political view is an obvious constitutional violation.

116. At all times relevant to this Complaint, Buikema and Bradford were or should have been aware that their actions were unconstitutional. No reasonable official would have censored Plaintiffs' political expression because of the viewpoint expressed.

117. It is clearly established that criticizing government officials "is at the very center of the constitutionally protected area of free discussion." *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966).

118. It is clearly established that government actors may not discriminate against speech based on the viewpoint expressed. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

119. It is clearly established that the government cannot discriminate against political speech or between topics unless necessary to serve a compelling state interest and the action is narrowly tailored to serve that interest. *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015).

120. It is clearly established the First Amendment protects students' right to engage in political speech and expression at school so long as the expression does not

cause or threaten to cause material disruption, substantial disorder, or an invasion of the rights of others. *Tinker*, 393 U.S. at 513.

121. It is clearly established that peaceful student expression cannot be silenced merely because those who disagree with it “may start an argument or cause a disturbance.” *Id.* at 508.

122. It is clearly established that public schools may not discriminate against students’ expression based on the student’s political views or affiliations. *Id.* at 511.

123. In the alternative, it is clearly established that ambiguously lewd, vulgar, or profane speech is protected by the First Amendment if it comments on a matter of political or social concern. *B.H. ex rel. Hawk v. Easton Area Sch. Dist.*, 725 F.3d 293, 320 (3d Cir. 2013) (en banc).

124. By censoring Plaintiffs’ political speech and expression, and discriminating against Plaintiffs based on political views, affiliations, and message-content, Defendants violated clearly established constitutional rights of which a reasonable official would have known.

125. As a direct and proximate result of the School District’s policy prohibiting “Let’s Go Brandon” apparel, and Buikema’s and Bradford’s actions enforcing that policy, D.A. and X.A. have suffered and continue to suffer irreparable injury, including being deprived of their constitutional right to wear non-disruptive, non-vulgar politically expressive attire to school and to be free from viewpoint and content discrimination.

126. The denial of constitutional rights is an irreparable injury per se. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

127. Buikema's and Bradford's conduct towards Plaintiffs recklessly and callously disregarded and was indifferent to Plaintiffs' rights because they acted with the intent to suppress Plaintiffs' silent, non-disruptive, and non-profane political expression. Accordingly, punitive damages are appropriate and necessary to punish Buikema and Bradford for abridging Plaintiffs' constitutional rights and to deter similar violations in the future.

SECOND CLAIM
***Monell* Claim for Violation of First Amendment**
42 U.S.C. § 1983
(All Plaintiffs against Defendant School District)

128. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though fully set forth herein.

129. Buikema's and Bradford's actions violated D.A.'s and X.A.'s constitutional rights for the reasons stated in Claim I.

130. Buikema and Bradford acted pursuant to an officially promulgated policy, practice, and custom by the School District to prohibit expression with the political slogan "Let's Go Brandon." (Ex. D.)

131. In a June 9, 2022, letter, the School District confirmed that its official policy, practice, and custom is to prohibit expression containing the political slogan "Let's Go Brandon." (*Id.*)

132. In that letter, the School District confirmed that Buikema’s and Bradford’s actions—prohibiting D.A. and X.A. from wearing “Let’s Go Brandon” sweatshirts—followed and correctly enforced the School District’s policy. (*Id.* at 1.)

133. Because Buikema and Bradford acted pursuant to the School District’s official policy, practice, and custom, the School District is liable for depriving and continuing to deprive D.A. and X.A. of their constitutional rights under 42 U.S.C. § 1983, pursuant to *Monell v. Dep’t of Soc. Servs. of New York*, 436 U.S. 658 (1978).

134. The School District’s policy, practice, and custom of prohibiting “Let’s Go Brandon” political expression was the moving force behind Buikema’s and Bradford’s infringement of D.A.’s and X.A.’s constitutional rights because Buikema and Bradford acted pursuant to that official policy, practice, and custom.

135. As a direct and proximate result of the School District’s policy, practice, and custom of prohibiting “Let’s Go Brandon” political expression, D.A. and X.A. were and continue to be deprived of their constitutional rights to freedom of speech. As a legal consequence of the School District’s violation of D.A.’s and X.A.’s First Amendment rights, D.A. and X.A. are entitled to damages from the School District.

THIRD CLAIM
Violation of First Amendment (Injunctive and Declaratory Relief)
Freedom of Speech and Expression
42 U.S.C. § 1983
(All Plaintiffs against Defendant School District)

136. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though fully set forth herein.

137. The School District's policy, practice, and custom of prohibiting "Let's Go Brandon" apparel constitutes an unlawful abridgment of the First Amendment right to freedom of speech as explained in Claim I.

138. The School District's policy, practice, and custom of prohibiting "Let's Go Brandon" apparel constitutes an ongoing abridgement of D.A.'s and X.A.'s First Amendment free speech rights as explained in Claim I.

139. The School District's policy, practice, and custom of prohibiting "Let's Go Brandon" apparel while allowing students to wear apparel with other political and social messages constitutes unlawful viewpoint and content discrimination under the First Amendment for the reasons stated in Claim I.

140. D.A. and X.A. are entitled to a declaration under 28 U.S.C. § 2201 that the School District's policy, practice, and custom of prohibiting "Let's Go Brandon" apparel constitutes unlawful suppression of D.A.'s and X.A.'s First Amendment right to freedom of speech for the reasons stated in Claim I.

141. D.A. and X.A. are entitled to a declaration under 28 U.S.C. § 2201 that the School District's policy, practice, and custom of prohibiting "Let's Go Brandon" apparel while allowing students to wear apparel with other political and social messages constitutes unlawful viewpoint and content discrimination under the First Amendment for the reasons stated in Claim I.

142. As a direct and proximate result of the School District's policies and Buikema's and Bradford's actions, Plaintiffs have suffered and continue to suffer irreparable injury, including being deprived of their constitutional right to free

speech. Plaintiffs are entitled to prospective injunctive relief against the School District.

143. But for the School District's policy prohibiting "Let's Go Brandon" apparel, D.A. and X.A. would wear "Let's Go Brandon" apparel to school.

144. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their First Amendment rights.

145. Without declaratory and injunctive relief, the School District's suppression of Plaintiffs' First Amendment right to express their political views will continue and Plaintiffs will suffer per se irreparable harm indefinitely.

FOURTH CLAIM
Violation of First and Fourteenth Amendments (Injunctive and
Declaratory Relief)
Vagueness
42 U.S.C. §1983
(All Plaintiffs against Defendant School District)

146. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though fully set forth herein.

147. The First and Fourteenth Amendments to the Constitution prohibit restrictions on speech which fail to provide members of the public fair notice of prohibited conduct.

148. A government policy is unconstitutionally vague if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.

149. The School District’s policy prohibiting apparel “disruptive to the teaching and/or learning environment by calling undue attention to oneself” is facially vague because it fails to provide parents and students sufficient information to know what is restricted or what is required of them so that they may act accordingly.

150. The School District’s policy prohibiting apparel “disruptive to the teaching and/or learning environment by calling undue attention to oneself” is facially vague because it fails to provide sufficient precision and guidance so that those enforcing the policy do not act in an arbitrary or discriminatory way.

151. The School District’s policy, which fails to provide parents and students sufficient information to conform conduct to the requirements of the law, chills Plaintiffs and other students from engaging in protected First Amendment speech, because students wear apparel with political and social messages for the purpose of calling attention to those messages.

152. Plaintiffs are entitled to a declaration under 28 U.S.C. § 2201 that the School District’s policy prohibiting apparel “disruptive to the teaching and/or learning environment by calling undue attention to oneself” is unlawfully vague and therefore violates the First and Fourteenth Amendments.

153. Without declaratory and injunctive relief against the School District’s policy prohibiting apparel “disruptive to the teaching and/or learning environment by calling undue attention to oneself,” the School District’s suppression and chill of

Plaintiffs' freedom of speech will continue and Plaintiffs will suffer per se irreparable harm indefinitely.

FIFTH CLAIM
Violation of First Amendment (Injunctive and Declaratory Relief)
Overbreadth
42 U.S.C. § 1983
(All Plaintiffs against Defendant School District)

154. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though fully set forth herein.

155. The First Amendment to the Constitution prohibits regulations that regulate substantially more speech than the Constitution allows to be regulated.

156. The School District's policy prohibiting apparel "disruptive to the teaching and/or learning environment by calling undue attention to oneself" is substantially overbroad because it reaches a significant amount of protected First Amendment speech and expressive conduct, including peacefully wearing politically expressive attire (like a black armband, "Let's Go Brandon" sweatshirt, or "I like Ike" button) in a manner which does not cause material disruption, substantial disorder, or an invasion of the rights of others.

157. The School District's policy prohibiting apparel "disruptive to the teaching and/or learning environment by calling undue attention to oneself" reaches a substantial amount of protected First Amendment expression relative to any legitimate sweep.

158. To the extent the School District's policy prohibiting apparel "disruptive to the teaching and/or learning environment by calling undue attention to oneself" has any constitutionally permissible application in terms of maintaining school

discipline, its reach is so broad that it chills a substantial amount of constitutionally protected speech, including, for example, peacefully wearing politically expressive apparel in a manner which does not cause material disruption, substantial disorder, or an invasion of the rights of others

159. The reach of the School District's policy prohibiting apparel "disruptive to the teaching and/or learning environment by calling undue attention to oneself" serves only to chill Plaintiffs and other students from engaging in the full array of protected First Amendment expression in schools.

160. Plaintiffs are entitled to a declaration under 28 U.S.C. § 2201 that the School District's prohibition on apparel "disruptive to the teaching and/or learning environment by calling undue attention to oneself" is substantially and unlawfully overbroad on its face and therefore violates the First Amendment.

161. Without declaratory and injunctive relief against the School District's policy prohibiting apparel "disruptive to the teaching and/or learning environment by calling undue attention to oneself," the School District's suppression and chill of Plaintiffs' and other students' freedom of speech will continue and Plaintiffs will suffer per se irreparable harm indefinitely.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment against Defendants and issue the following forms of relief:

- A. Enter a permanent injunction enjoining the School District from enforcing a categorical ban on "Let's Go Brandon" apparel;

- B. Enter a permanent injunction against the School District’s policy prohibiting apparel “disruptive to the teaching and/or learning environment by calling undue attention to oneself;”
- C. Declare that the School District’s ban on “Let’s Go Brandon” apparel violates the First Amendment;
- D. Declare that the School District’s policy prohibiting apparel “disruptive to the teaching and/or learning environment by calling undue attention to oneself” violates the First and Fourteenth Amendments;
- E. Award Plaintiffs compensatory, nominal, and punitive damages;
- F. Award Plaintiffs their attorneys’ fees under 42 U.S.C. § 1988;
- G. Award Plaintiffs their costs; and
- H. Award such other relief as the Court deems appropriate.

Dated: April 25, 2023

Respectfully submitted,

By: /s/ Conor T. Fitzpatrick
Conor T. Fitzpatrick (P78981)
Harrison M. Rosenthal (Pa. Bar No. 332452)
FOUNDATION FOR INDIVIDUAL RIGHTS AND
EXPRESSION
510 Walnut St., Ste. 1250
Philadelphia, PA 19106
(215) 717-3473
conor.fitzpatrick@thefire.org
harrison.rosenthal@thefire.org

Counsel for Plaintiffs

DEMAND FOR JURY TRIAL

In compliance with Federal Rule of Civil Procedure 38, Plaintiffs demand a trial by jury on all issues so triable.

Dated: April 25, 2023

Respectfully submitted,

By: /s/ Conor T. Fitzpatrick

Conor T. Fitzpatrick (P78981)

Harrison M. Rosenthal (Pa. Bar No. 332452)

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Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION
A.	2022-2023 Tri County High School Student Handbook (excerpts)
B.	2022-2023 Tri County Middle School Student Handbook (excerpts)
C.	May 27, 2022 Letter from Plaintiffs' Counsel to School District
D.	June 9, 2022 Letter from School District Counsel to Plaintiffs' Counsel

D.A., a minor, et al. v. Tri County Area Schools, et al.

**Exhibit A to
Plaintiffs' Complaint for
Civil Rights Violations**

☰ TRI COUNTY HIGH SCHOOL HANDBOOK 2022-23



Dear Students, Parents and/or Guardians,

We are excited to have you a part of Tri County High School, and we desire to make your experience at the High School positive, as well as prepare you for your next steps in life.

The handbook is designed to help students and parents gain a better understanding of the expectations for students, as well as pertinent information about the school. Parents and students should use this handbook as a guide to help assure a positive, rewarding experience. It is not realistic to think that every situation that could happen at school is covered in this handbook. If there is ever any doubt about a situation, we expect students to use common sense.

It is our goal to provide a school setting in which teachers can teach effectively so students can maximize their potential. We can accomplish this with quality relationships and communication with parents and students. We must work together to ensure the best education for all students. As a parent, please take an active role in the communication process by attending parent/teacher conferences, enrolling in our ParentVue which is a great tool for you to access your child's grades, attendance, disciplinary referrals 24/7, having frequent communication with your child's teacher and setting effective homework habits.

Your success at school has a lot to do with your attitude and effort. We will do everything we can to help you be successful. You need to do your part by being prepared, participating in class, and being respectful to everyone. I am looking forward to a successful school year.

If you have any questions or concerns, please contact me at 231.937.4338.

Sincerely,

A handwritten signature in cursive script that reads "Tim Goheen".

Mr. Goheen, Principal
Tri County High School



TCHS Student Handbook

Principal: Timothy Goheen
Assistant Principal: Hans Daum
Athletic Director: Phil Butler
Counselors: Wendy Kik & Amie Renner

All students will achieve at college and career readiness target goals by grade level.

All students will meet math requirements for college and career readiness.

All students will meet reading requirements for college and career readiness.

All students will meet writing requirements for college and career readiness.

“Educate. Encourage. Empower.”

Revised: April 2022

TRI COUNTY AREA HIGH SCHOOL MISSION STATEMENT
“Educate. Encourage. Empower.”

INTRODUCTION

Described in this handbook are the Tri County Area Schools Board of Education policies, rules and procedures used to implement those policies at Tri County Area High School.

SCHOOL IMPROVEMENT GOALS

All students will achieve at college and career readiness target goals by grade level.

All students will meet math requirements for college and career readiness.

All students will meet reading requirements for college and career readiness.

All students will meet writing requirements for college and career readiness.

ELASTIC CLAUSE

The school and administration reserve the right to establish fair and reasonable rules and regulations for things requiring actions that are not covered in the handbook that may arise. In all cases, rules, regulations, and possible consequences shall be as consistent as possible with previously established rules, regulations, and possible consequences for similar incidents. Matters omitted from the final list should not be interpreted as a limitation to the scope of the school’s authority in dealing with any type of infraction that may not be in the best interest of the safety and welfare of the students of the high school.

The policies and regulations within this handbook apply for all school sponsored activities and transportation, including those held before or after school and those held away from Tri County High School. Safe transportation is provided through the Transportation Department. If this is jeopardized, removal from the bus may be necessary.

STATEMENT OF NON-DISCRIMINATION

Applicants for admission and employment, students, parents, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the Tri County Schools are hereby notified that this institution does not discriminate on the basis of religion, race, color, national origin, sex, age, or disability in admission or access to, or treatment or employment in its programs, activities or policies.

No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any educational program or activity available in any school on the basis of race, color, sex, religion, creed, political belief, age, national origin, linguistic and language differences, sexual orientation, gender, gender identity, gender expression, socioeconomic status, height, weight, marital or familial status, disability or veteran status.

Any person having inquiries concerning the Tri County Schools' compliance with the regulations implementing Title VI, Title IX or Section 504 is directed to contact:

Mr. Allen Cumings
Tri County Area Schools
94 Cherry Street
Sand Lake, Michigan 49343

Discriminatory harassment of any form is unacceptable to this school District and subject to disciplinary action.

McKINNEY – VENTO HOMLESS ASSISTANCE ACT defines homelessness as:

- The term "homeless children and youths"—
means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and
- Includes
 - children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;*
 - children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));
 - children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

*Per Title IX, Part A of the Every Student Succeeds Act, "awaiting foster care placement" was removed from the definition of homeless on December 10, 2016; the only exception to his removal is that "covered states" have until December 10, 2017 to remove "awaiting foster care placement" from their definition of homeless.

If you are aware of any child who may fit this definition or need assistance yourself, please contact the Tri County Homeless Liaison, Andrew Buikema at 231.937.4318.

3. Eight (8) accumulated unexcused absences, the school and MAISD Truancy Officer refers the student/parent truancy case to the Prosecuting Attorney for judicial review/action.
4. The privilege to attend extracurricular activities (i.e., dances, games, graduation, etc.) may be revoked for those students with a total of eight or more unexcused absences as determined by high school administration

Any student who is absent without proper verification will be considered truant (unexcused). An unexcused absence may result in loss of credit for daily assignments. Multiple unexcused absences may result in loss of credit for the semester. The school has the right to refuse credit when a student has accumulated eight or more unexcused absences.

Planned Absences

Planned absences for personal reasons that the principal or his/her designee may consider justifiable when requested in advance. Planned absences for justifiable personal reasons will be based on the student's current academic performance and a pattern of regular school attendance. The student's teachers may be asked to review the request, but the final decision will rest with the principal or his/her designee. If the student does not meet the above-mentioned criteria, the request will be denied. If the student chooses to leave after the request has been denied, all days absent will be unexcused. Passing all classes will be considered an important criterion for favorable approval. If a student leaves school or class before the end of the regular school day for any reason without checking out in the office, they will be unexcused for the time missed unless the principal determines that extenuating circumstances exist that warrant an excused absence. Planned absence request forms may be obtained from the office.

DISCIPLINE POLICY

Introduction

The right to attend our public schools is beyond question. Likewise, beyond question is that this right is tempered by and subject to proper regulations. Violations of these regulations may result in disciplinary action.

Philosophy

- A. The primary objective of student discipline and control is to produce a school environment in which complete attention may be defined as the control of conduct either by the individual himself or by the external authority. It includes the entire program of adapting the individual child to live in this society and involves two major emphases:
 1. To ensure that no student shall interfere with a teacher's right to teach or another student's right to learn; and
 2. To assist the pupil in becoming a responsible, productive and self-disciplined citizen within the school in preparation for assuming adult responsibilities.
- B. The student is expected to assume personal responsibility for his/her behavior, relative to his/her maturity. The school system will assist each student to become more responsible as he/she matures and gains experience. While it is recognized that children and youth can be controlled through fear and actual physical restraint, the purpose of the school is to help students develop self-control and self-discipline.
- C. In the event a student has to be excluded (in-school suspension, out of school suspension or expelled) from the school setting because of a behavior problem, parents will be notified.
- D. Students who assist, encourage, or aid in the violation of the student code of conduct are subject to the same discipline as the students who violate the code.
- E. Students serving an out of school suspension are prohibited at any school related activities including the weekend during the suspension.

Detention

This hour is considered part of the school day. Students who are assigned this form of discipline will be required to attend for the entire hour. No transportation is provided by the school. If a student receives a detention, he/she will bring home a referral slip explaining the reason for the detention. Detention will be served from 2:30.3:30 pm.

Appeals/Due Process

- A. The student or his/her parents/guardians have the opportunity for a hearing, which may be requested within three (3) school days after notification of loss of credit.
- B. The Appeals Hearing Committee shall be composed of the building principal and three faculty members appointed by the building principal. The Appeals Hearing Committee will convene within five (5) days upon receipt of the written request for a hearing. The student or his/her parents/guardians may attend the hearing. The student or his/her parents/guardians will be informed on the dates of the alleged absences, will be given the opportunity to examine any records or documents maintained by school officials concerning these absences, and will be given the opportunity to present the student's side of the story, including any evidence in extenuation or mitigation.
- C. The student or his/her parent/guardians may appeal the decision of the Appeals Hearing Committee within five (5) days to the Board of Education. The Superintendent will notify the student and his/her parent/guardians of this opportunity. The Board of Education shall schedule a hearing. The Board of Education shall give its decision within five (5) days after the hearing. This decision will be final.

Suspension of Extra-Curricular Activities

Since school dances are a privilege, a student may lose the privilege of attending the next dance or dances if the student is not in good standing. This includes but is not limited to students who:

1. Have three or more in-school suspensions,
2. More than 1 day of out-of-school suspensions from school,
3. Violation of alcohol, illegal drugs, dab pens, etc,
4. Weapons violation,
5. Vandalism or destroying property,
6. Attendance that is in violation of the ISD truancy policy.

The administration reserves the right to deny admittance to the dance to any student or guest.

Students who are denied the right to attend a dance will be given written notification when they receive their disciplinary action or upon notice of violation of the attendance policy.

BEHAVIORS AND CONSEQUENCES

Administration has the right to suspend student attendance and participation in any extracurricular activities (i.e., school dances/athletic events/after school events) for any of the following infractions.

Written notice of given extra-curricular suspension at time of discipline.

Academic Dishonesty – Students found to be guilty of “cheating” or plagiarism on assignments and/or tests.

- 1st offense. notify parents, assign a detention, possible zero percent on assignment or redo an assignment.

- 2nd offense: grade reduction of one full grade for the class and a “zero” on the assignment
- 3rd offense: failure of class

Alcohol/Illegal Drugs/Dab Pens – Possession of, use of, under the influence of alcohol, narcotics, prescription drugs, inhalants, e-cigarettes/”vapes “or drugs, including look-a-like drugs or what is represented as a drug, or any other related paraphernalia, (including rolling papers, such as “zig zags”, pipes, etc.) Metal detectors may be used to locate contraband.

- Notify Parents and possible notify Police
- 1st offense – day suspension (Can be reduced with restorative justice.)
- 2nd offense – 10-day suspension and possible referral to Board of Education for hearing with possible expulsion.

Alcohol/Illegal Drugs/ Transfer & Sale of – Transfer or sale of alcohol, narcotics, prescription drugs, inhalants, or drugs, including look-a-like drugs or what is represent as a drug, or any other related paraphernalia, (including rolling papers, such as “zig zags”, pipes, etc.) Metal detectors may be used to locate contraband.

- Notify Parents and possible notify Police
- 1st offense: 5-10 day suspension
- 2nd offense: Possible referral to Board of Education for hearing and up to a 180-day suspension

Arson (or attempt thereof) on school property or a District-related event

- Notify Parents/notify police
- Immediate suspension pending a hearing which may lead to an expulsion pursuant to PA 328 of 1994; MCL 380.1311
- Refer to criminal District of juvenile delinquency system and the appropriate county dept. of social services community mental health agency

Assault-Physical – Intentionally causing or attempting to cause physical harm to another through force or violence

- Notify Parents/notify Police
- Immediate suspension and refer to Board of Education for expulsion hearing

Assault-Verbal – Making a bomb threat or similar threat directed against a school building, school property or a school related event; or making a verbal threat of serious bodily injury directed at a staff member, volunteer, or other

- Notify Parents/notify Police
- Immediate suspension up to 10-days and refer Board of Education for expulsion hearing

Criminal Sexual Conduct – Non-consensual contact, rape and/or other abuses (not restricted to violence)

- Notify Parents/notify Police
- Immediate suspension pending hearing which may lead to an expulsion pursuant to PA 328 of 1994; MCL 380.1311
- Referral to criminal district of juvenile delinquency system and the appropriate county dept. of social services or community mental health agency

Classroom Disruption/Defiance of Authority/Insubordination

- Notify Parents
- 1st offense: Office referral with possible detention
- 2nd offense and more: Possible detention to suspension

Detentions (failure to serve)

- In-School Suspension (ISS) (if available) or Out-of-School Suspension (OSS)

Dress Code Violations – Failure to follow dress code policy

- Notify Parents
- 1st offense: change inappropriate clothing
- 2nd offense: change inappropriate clothing and detention assigned
- 3rd offense: change inappropriate clothing and one day of In-School Suspension (if available) or Out-of-School Suspension (continued violations will result in out of school suspensions)

Extortion

- Notify Parents/possibly notify Police
- 1st offense: 5-10-day suspension
- 2nd offense: Indefinite suspension, refer to Board of Education for hearing with possible expulsion

Fighting/Aggressive Behavior

- 1st offense: 3-day Out-of-School Suspension and possible referral to Board of Education for expulsion hearing with possible police notification
- 2nd offense: 5-day Out-of-School Suspension – possible referral to Board of Education for expulsion hearing with possible police notification
- 3rd offense: 10-day Out-of-School Suspension – refer to Board of Education for hearing with possible expulsion with possible police notification

False Alarms Setting off fire alarm; deliberately breaking glass or triggering an alarm or removal and/or discharge of fire extinguisher. This policy shall also encompass such actions as bomb threats, or intentional calls to falsely report a dangerous condition.

- Notify Parents/notify Police
- Payment of damages
- Up to a 10-day suspension or possible expulsion

Forgery

- Notify Parents
- 1st offense: Detention
- 2nd offense: Up to a 10-day suspension or expulsion

Gambling

- Notify Parents
- 1st offense: Detention
- 2nd offense: Up to a 3-day suspension

Gang Related Activity – There will be zero tolerance for any type of gang related activity, clothing, “flashing signs”, graffiti, or strong-arm tactics etc.

- Notify Parents/notify Police
- Up to a 10-day suspension or possible expulsion

Gross Misbehavior – Deliberate or willful conduct detrimental to normal functioning of any school activity

- Notify Parents/ possible notify Police
- Up to 10-day suspension
- Possible referral to Board of Education for hearing with possible expulsion

Harassment (taunting, bullying, stalking, and or intimidation)* Deliberate or willful conduct that may lead to/involve physical, emotional or verbal abuse includes emails, instant messaging, etc.

- Notify Parents/notify Victim's Parent
- Possible notification of Police
- Grievance Procedure for Harassment see page 25
- Detention or up to 10-days suspension
- Possible referral to Board of Education

Harassment (sexual)*

- Notify Parents/notify Police
- Grievance Procedure for Harassment see page 25
- Up to 10-day suspension or expulsion
- Possible referral to Board of Education

*Tri County Area Schools will not tolerate harassment of any students or staff member. Incidents of this nature will result in serious consequences upon the establishment of responsibility.

Hazing – An intentional act directed against a student(s) without the regard of physical/emotional health or safety for the purpose of initiation

- Notify Parents/possibly notify Police
- Up to 10-day suspension or possible expulsion

Racial or Ethnic Intimidation/Harassment

- Notify Parents/notify Police
- Up to 10-day suspension or possible expulsion

Inappropriate Driving

- 1st offense: 2-week loss of driving privileges
- 2nd offense: Up to permanent loss of driving privileges

Inappropriate Use of Computer Technology

- Notify Parents
- 1st offense: loss of computer privileges up to the remainder of semester
- 2nd offense: loss of computer privileges up to the remainder of school year
- 3rd offense: possible loss of all computer privileges for time remaining in high school

Look-A-Like Weapons/Pyrotechnics

- Notify Parents/possible notification of Police
- Confiscate
- Up to 10-day suspension or possible expulsion

Malicious Destruction (\$100 and over)

- Notify Parents/notify Police
- Up to a 10-day suspension or possible expulsion

Physical Contact (not at a fight level)

- 1st offense: Notify Parents and Detention
- 2nd offense: 1-day In-School Suspension (if available) or 1-day Out-of-School Suspension
- 3rd offense: Up to 10-day suspension

Possession of Nuisance Items Disruptive to the Educational Process: Ex: squirt guns, lighters, matches, radios, chains, etc.

- 1st offense: Notify Parents, item confiscated and held for parent to pick up
- 2nd offense: Notify Parents, item confiscated and held for parent to pick up – up to 3-day suspension

Public Display of Affection Students are expected to conduct themselves as ladies and gentlemen at all school related functions.

- Notify Parents.
- 1st offense: Detention
- 2nd offense: Up to 10-day suspension or expulsion

Profanity/Obscenity

- If directed toward staff member, 3-day suspension
- 1st offense: Notify Parents and detention
- 2nd offense: Up to a 5-day suspension
- 3rd offense: Up to 10-day suspension

Restrooms - Bathroom stalls are for single use only. If more than one student is in a stall:

- 1st offense: Notify Parents and after-school detention
- 2nd Offense: 1-day suspension

Skipping Classes or School

- Notify Parents
- If under 16, refer to Montcalm Co. Truancy Officer
- Detention or In-School Suspension (if available) or Out-of-School Suspension
- Possible loss of driving privileges if applies

Technology Misuse Ex: Phone, iPod, laptop, etc.

- 1st offense: Confiscation of item, student pick up at end of day.
- 2nd offense: Confiscation of item and parent pick up in office.
- 3rd offense: Confiscation of item

Theft/Stealing

- Notify Parents/possible notification of Police
- Return or repayment of stolen item (s)
- Up to a 10-day suspension or possible expulsion

Tobacco/ Disposable Vapes (possession or use) Metal detectors may be used to locate contraband.

- Notify Parents/notify Police
- 1st offense: 3-day suspension (Can be reduced with restorative justice.)
- 2nd offense: 5-day suspension
- 3rd offense: 10 day-suspension and possible referral to the Board of Education with possible expulsion

Transportation Safety: Refer to the Transportation Handbook

Unexcused Tardies (by marking period)

- 2 unexcused tardies equals an hour of detention
- Students over 10 minutes late will be counted as an absence for that hour.
- Failure to serve detention in designated time will result in an In-School Suspension

- Refusal to serve In-School Suspension will result in a 2-day Out-of-School Suspension
- Excessive tardy referrals may result in In-School Suspension

Vandalism Defacing or Destroying School Property

- Notify Parents/possible notification of police
- Payment of Damages / clean-up
- 1st offense: Up to a 10-day suspension or possible expulsion

Weapons

Tri County is a Weapon-Free school. Any item that could be used to cause injury or harm is not allowed on school grounds or at school events. Knives of any length are not allowed on school grounds.

- 1st offense: Notify parent, notify police, up to 180-day suspension or permanent expulsion

Weapons (dangerous) A student will not possess, handle, transmit, or use dangerous instruments or tools. A dangerous weapon means: firearm, dagger, dirk, stiletto, knife with a blade over 3 inches, pocketknife opened by mechanical device, iron bar or brass knuckles.

- 1st offense: Notify parent, notify police, up to 180-day suspension or permanent expulsion.

Weapons (dangerous instruments) A student will not possess, handle, transmit or use a dangerous instrument. Dangerous instruments include but are not limited to: Chemical mace, pepper gas, stun guns, air guns, BB guns, pellet guns, razors or box cutters.

- 1st Offense: Notify parent, notify police, suspension or up to 180-day expulsion.

BULLYING

It is the policy of the District to provide a safe and nurturing educational environment for all of its students.

This policy protects all students from bullying/aggressive behavior regardless of the subject matter or motivation for such impermissible behavior. Bullying or other aggressive behavior toward a student, whether by other students, staff, or third parties, including Board members, coaches, parents, guests, contractors, vendors,

and volunteers is strictly prohibited. This prohibition includes written, physical, verbal, and psychological abuse, including hazing, gestures, comments, threats, or actions to a student, which cause or threaten to cause bodily harm, reasonable fear for personal safety or personal degradation. To view our complete policy regarding bullying, please refer to our Board Policy, 5517 & 5517.01, which are available on our website, www.tricountyschools.com. Demonstration of appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment or bullying is expected of administrators, faculty, staff, and volunteers to provide positive examples for student behavior. This policy applies to all “at school” activities in the District, including activities on school property, in a school vehicle, and those occurring off school property, if the student or employee is at any school-sponsored, school-approved, or school-related activity or function, such as field trips or athletic events where students are under the school’s control, or where an employee is engaged in school business. Misconduct occurring outside of school may also be disciplined if it is determined to interfere with the school environment.

Notification

Notice of this policy will be annually circulated to and posted in conspicuous locations in all school buildings and departments within the District and discussed with students, as well as incorporated into the teacher, student, and parent/guardian handbooks. State and Federal rights posters on discrimination and harassment shall also be posted at each building. All new hires will be required to review and sign off on this policy and the related complaint procedure. Parents/Guardians of the alleged victim(s), as well as of

the alleged aggressor(s), shall be promptly notified of any formal complaint. The results of the investigation to the extent consistent with student confidentiality requirements will be reported. A record of the time and form of notice or attempts at notice shall be kept in the investigation file. To the extent appropriate and/or legally permitted, confidentiality will be maintained during the investigation process. However, a proper investigation will, in some circumstances, require the disclosure of names and allegations. Further, the appropriate authorities may be notified, depending on the nature of the complaint and/or the results of the investigation.

Implementation

The Superintendent is responsible to implement this policy, and may develop further guidelines, not inconsistent with this policy. This policy is not intended to and should not be interpreted to interfere with legitimate free speech rights of any individual. However, the District reserves the right and responsibility to maintain a safe environment for students, conducive to learning and other legitimate objectives of the school program.

Procedure

Any student who believes he/she has been or is the victim of bullying, hazing or other aggressive behavior should immediately report the situation to the Principal or Assistant Principal. The student may also report concerns to a staff member or counselor who will be responsible for notifying the appropriate administrator or Board official. Complaints against the building Principal should be filed with the Superintendent. Complaints against the Superintendent should be filed with the Board President. Every student is encouraged, and every staff member is required, to report any situation that they believe to be aggressive behavior directed toward a student. Reports shall be made to those identified above. Reports may be made anonymously, but formal disciplinary action may not be taken solely on the basis of an anonymous report. The Principal (*or other administrator as designated*) shall promptly investigate and document all complaints about bullying, aggressive or other behavior that may violate this policy. The investigation must be completed as promptly as the circumstances permit after a report or complaint is made. If the investigation finds an instance of bullying or aggressive behavior has occurred, it will result in prompt and appropriate remedial action. This may include up to expulsion for students, up to discharge for employees, exclusion for parents/guardians, guests, volunteers and contractors, and removal from any official position and/or a request to resign for Board members. Individuals may also be referred to law enforcement or other appropriate officials. The individual responsible for conducting the investigation shall document all reported incidents and report all verified incidents of bullying, aggressive or other prohibited behavior, as well as any remedial action taken, including disciplinary actions and referrals, to the Superintendent. The Superintendent shall submit a completed report to the Board on an annual basis.

Non-Retaliation/False Reports

Retaliation or false allegations against any person who reports, is thought to have reported, files a complaint, participates in an investigation or inquiry concerning allegations of bullying or aggressive behavior (as a witness or otherwise), or is the target of the bullying or aggressive behavior being investigated, is prohibited and will not be tolerated. Such retaliation shall be considered a serious violation of Board policy, independent of whether a complaint of bullying is substantiated. Suspected retaliation should be reported in the same manner as bullying/aggressive behavior. Making intentionally false reports about bullying/aggressive behavior for the purpose of getting someone in trouble is similarly prohibited and will not be tolerated. Retaliation and intentionally false reports may result in disciplinary action as indicated above.

**GRIEVANCE PROCEDURES FOR HARASSMENT
(How to File a Harassment Complaint)**

It is a violation of the law and of school rules for any student or staff member to harass or intimidate another student or staff member.

Step 1: If you are the recipient of unwanted behavior, communicate to the offender 1) what you are feeling, and 2) that you expect the behavior to stop. The importance here is your sense of safety. Thus, the following options are available for you to do the above: 1) Tell the person directly to stop the unwanted behavior, 2) communicate to the person in writing to stop the unwanted behavior, or 3) go to a safe contact person, such as your school counselor or a teacher, for support in telling the person to stop the unwanted behavior.

Step 2: If the unwanted behavior is repeated, go to a person in authority such as the principal or assistant principal. Document exactly what happened. Give a copy of your written record to the person in authority and keep one for yourself.

Your document should include the following information. Use exact quotes where appropriate and whenever possible.

1. What happened
2. When it happened
3. Where it happened
4. Who did the harassing
5. Who the witnesses were (if any)
6. What you said and/or did in response to the harassment
7. How your harasser responded to you
8. How you felt about the harassment

Step 3: If the unwanted behavior is repeated, go back to the principal or assistant principal documenting the behaviors stated in **Step 2**. Give a copy of your written record to the person in authority and keep one for yourself.

Step 4: If unwanted behavior does not stop, you may either go back to the principal or assistant principal or go to a person in higher authority, such as the Superintendent or a school board member documenting the behaviors stated in **Step 2**. Give a copy of your written record to the person in authority and keep one for yourself.

DRESS CODE

All students are expected to be well groomed and appropriately dressed while in school. Students and parents have the right to determine a student's dress, except when the school administration determines a student's dress is in conflict with state policy, is a danger to the students' health and safety, is obscene, is disruptive to the teaching and/or learning environment by calling undue attention to oneself. The dress code may be enforced by any staff member.

Prohibited Attire

- A. Hats of any kind, sunglasses, and head covering of any kind are not to be worn while in the school building during the school day. Head dress worn in conjunction with religious affiliation will be allowed.
- B. Attire with messages or illustrations that are lewd, indecent, vulgar or profane, or that advertise any product or service not permitted by law to minors
- C. Clothing which exposes bare midriffs and/or backs or with extremely low necklines that expose cleavage
- D. Tank tops must have a one and one-half inch strap – not exposing under garments
- E. Jackets or coats are not being worn during the school day unless teacher approved
- F. Mutilated clothing. (excessive holes or rips above mid-thigh)
- G. Exposed undergarments

- H. Sagging pants, pajama pants or pajamas
- I. Shorts or skirts shorter than mid-thigh
- J. Sheer Clothing
- K. Any adornment such as chains or spikes that reasonably could be perceived as or used as a weapon

Any questionable clothing is under the discretion of a teacher and/or administrator.

DUE PROCESS

Recommendation for the expulsion of a student from school shall be made to the Board of Education by the Administration. Such action is generally taken upon the recommendation of the principal. The principal's recommendation shall be communicated to the Superintendent in writing, signed by the principal and accompanied by the student's cumulative file. Excepting cases stemming from extreme overt behavior, it is expected that parental conferences would have been held at the building level prior to the expulsion recommendation. The following procedure shall be followed:

- A. Written notice of charges against a student shall be supplied to the student and his/her parents/guardians by certified mail. Included within this notice shall be a statement of time and place for the hearing. The time shall be reasonable for the parties involved.
- B. Parents/guardians may be present at the hearing and may be represented by legal counsel.
- C. The student shall be given an opportunity to give his/her version of the facts and their implications. He/she shall be allowed to observe all evidence offered against him/her
- D. The student, his/her parents/guardians or legal agent shall be allowed to observe all evidence offered against him/her.
- E. The hearing shall be conducted by the Board of Education, which shall make its determination solely upon the evidence presented at the hearing. The hearing is not a court proceeding and court rules of evidence shall not be enforced at such a hearing, whether open or closed.
- F. The Board of Education by majority vote shall state within a reasonable time after the hearing its findings as to whether or not the student charged and its decision to expel. A majority vote of the Board may be obtained by those present at the meeting.
- G. The findings of the hearing authority shall be reduced to writing and sent to the student and his/her parents/guardians.
- H. The student and his/her parents/guardians shall be made aware of the right to appeal the decision of the Board of Education to the appropriate judicial authority.
- I. Efforts shall be made but not guaranteed by the school to provide alternate means by which a student under extended suspension or expulsion may continue his education. Such opportunities may include evening classes, correspondence courses, special programs, or transfer to another school or school system.

D.A., a minor, et al. v. Tri County Area Schools, et al.

**Exhibit B to
Plaintiffs' Complaint for
Civil Rights Violations**

***TRI COUNTY MIDDLE SCHOOL HANDBOOK
2022-2023***



ROWING YOUR FUTURE

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TRI COUNTY BOARD OF EDUCATION

Jennifer Arnold	Madonna Princer
Chad Bice	Janet Powell
Brian Campbell	Brian Stewart
Jill Fennessy	

SCHOOL ADMINISTRATORS

Allen Cumings	Superintendent /Director of Curriculum	(616)636-5454
Steve Seward	Director of Curriculum, Teaching & Learning	(616)636-5454
Melissa Clegg	Director of Special Ed. Services	(231)937-4391
Taylor Merchant	Accounting Department	(616)636-5454
Tim Goheen	High School Principal	(231)937-4338
Hans Daum	High School Assistant Principal	(231)937-4338
Phil Butler	Athletic Director	(231)937-4338
Joe Williams	Middle School Principal	(231)937-4318
Andrew Buikema	Middle School Assistant Principal	(231)937-4318
Julie Scott	Elementary Principal	(616)636-5669 or (231) 937-4380
Jason Rykse	Sand Lake Assistant Principal	(616)636-5669
TBD	MacNaughton Assistant Principal	(231)937-4380
Lisa Newton	Food Service Director	(231)937-4338
Dan Clegg	Director of Technology	(231)937-4338
Thomas Phinney	Director of Facilities	(616)636-5454
Shelley Porter	Director of Transportation	(231)937-4386

TRI COUNTY TRANSPORTATION

(231) 937-4386

DISCLAIMER: This student handbook is composed of most of the rules and regulations that students need to know while attending Tri County Area Schools. However, it does not include every rule, regulation, qualification, or other relevant information of the district or buildings. Tri County Area Schools will not waive students’ responsibilities simply because a state regulation, district, or building policy is not included in this handbook. We will make every reasonable effort possible to see that students are informed either verbally or in writing. However, it is the students’ responsibility to know the rules they must abide by while at Tri County Area Schools. Any changes made in state law, such as restorative justice practices, and/or school board policy after this handbook has gone to press may require information in the handbook to be amended. An addendum reflecting changes in policy or state law will be issued as soon as possible. We apologize for any inconvenience this may cause. This does not exempt students or parents from making themselves aware of and follow rules and policies added to the student code of conduct



GUIDES, POLICIES & STATEMENTS

TRI COUNTY AREA SCHOOLS MISSION STATEMENT

"Educate. Encourage. Empower."

A MESSAGE FROM THE PRINCIPAL

On behalf of all the staff members, I would like to welcome you to Tri County Middle School. It is a privilege to serve as principal of a place filled with enthusiastic students willing to learn, supportive parents/guardians interested in their children's education, and a dedicated professional staff committed to providing the students with a quality education. We are proud to offer our students a wide range of options and support. Students may take accelerated math classes, band, woodshop, art, gym, or receive support in ELA and math classes. Our afterschool activities include football, soccer, cheer, cross country, basketball, wrestling, track, as well as odyssey of the mind.

Each day we see our students improve both academically and socially. Our students are consistently some of the top performers in the county on standardized testing. We focus on teaching our students the skills necessary not only to achieve at the high school level but also to become college and career ready. When parents partner with teachers, every child succeeds.

We look forward to working with you and your family this school year.

Mr. Williams
Principal

SCHOOL IMPROVEMENT GOALS

We believe all students need to be college and career ready. We know that if the students reach the goals below, they will be on pace to leave the High School college and career ready.

ELASTIC CLAUSE

The school and administration reserve the right to establish fair and reasonable rules and regulations for things requiring actions that are not covered in the handbook that may arise. In all cases, rules, regulations, and possible consequences shall be as consistent as possible with previously established rules, regulations, and possible consequences for similar incidents. Matters omitted from the final list should not be interpreted as a limitation to the scope of the school's authority in dealing with any type of infraction that may not be in the best interest of the safety and welfare of the students of the middle school.

The policies and regulations within this handbook apply for all school sponsored activities and transportation, including those held before or after school and those held away from Tri County Middle School. Safe transportation is provided for all students through the Transportation Dept. If this is jeopardized, removal from the bus may be necessary.

official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Upon request, the District discloses educational records without consent to officials of another school district in which a student seeks or intends to enroll. (NOTE: FERPA requires a school district to make a reasonable attempt to notify the student of the records request unless it states in its annual notification that it intends to forward records on request.)

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the District to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office
U.S. Department of Education
600 Independence Avenue, S.W.
Washington, D.C. 20202-4605

STATEMENT OF NON-DISCRIMINATION

Applicants for admission and employment, students, parents, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the Tri County Schools are hereby notified that this institution does not discriminate on the basis of religion, race, color, national origin, sex, age, or disability in admission or access to, or treatment or employment in its programs, activities or policies.

No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any educational program or activity available in any school on the basis of race, color, sex, religion, creed, political belief, age, national origin, linguistic and language differences, sexual orientation, gender, gender identity, gender expression, socioeconomic status, height, weight, marital or familial status, disability or veteran status. Any person having inquiries concerning the Tri County Schools' compliance with the regulations implementing Title VI, Title IX or Section 504 is directed to contact:

Mr. Allen Cumings
Tri County Area Schools
94 Cherry Street
Sand Lake, Michigan 49343

Discriminatory harassment of any form is unacceptable to this school district and subject to disciplinary action.

SEXUAL HARASSMENT

Sexual harassment is a violation of Title VII of the civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972 and the Michigan Elliott-Larsen civil Rights Act. Sexual harassment is a form of sexual discrimination. As sexual harassment is unacceptable to this school district, it is against the policy of this school district for any administrator, employee, independent contractor or volunteer (subsequently "Employee"), male or female, to sexually harass another employee, student or volunteer. The complaint procedure is available in the principal's office, superintendent's office, and/or guidance office.

leave after the request has been denied, all days absent will be unexcused. Passing all classes will be considered an important criterion for favorable approval. If a student leaves school or class before the end of the regular school day for any reason without checking out in the office, they will be unexcused for the time missed unless the principal determines that extenuating circumstances exist that warrant an excused absence. Planned absence request forms may be obtained from the office.

DISCIPLINE POLICY

The high school, middle school and the transportation department use these discipline policies:

INTRODUCTION

The discipline policy of Tri County Middle School is designed to help students make better choices and decisions in the future. If it becomes apparent one mode of discipline is not effective, others will be tried. The first step is teacher contact with the parent(s) involving behaviors of a minor problem. Major discipline problems will be dealt with immediately and contact with parents made after the fact (i.e., smoking, fighting, disrespectful conduct, etc.). *Be aware our discipline philosophy is based on three general goals for our school.* They are:

1. To help students mature and learn acceptable behavior.
2. To provide a safe and effective learning environment for all students at Tri County Middle School.
3. To have students show respect to school property, student's property and all people at Tri County Area Schools.

Discipline procedures will range from parent contact and student/teacher discussions, detention assignments, lunchtime detentions, in-school suspensions, and out-of-school suspensions.

It is important that parents, staff and students work together to maintain a positive, educational atmosphere. Our goal is that each student learns to be responsible for his or her own actions. Every student and staff member has a right to personal safety and freedom to learn. With regard to discipline procedures, consistency for both administration and staff is held as a high priority. With changing trends in fads and items available on the market it would be impossible for the administrators of this school to list every potential problem that could surface at the school. In cases that for some reason are not listed in the discipline code, where behavior is disruptive to the normal school day or endangers the health, safety, and welfare of students or the student body/school staff, please be assured that discipline will be reasonable and just to correct the behavior.

There are five (5) basic disciplinary actions available to teachers and administrators, which are listed below with a brief explanation of each:

DETENTIONS/SUSPENSIONS

Detentions This hour is considered part of the school day. Students who are assigned this form of discipline will be required to attend for the entire hour. No transportation is provided by the school. If a student receives a detention, he/she will bring home a referral slip explaining the reason for the detention. Detention will be served from after school to one hour after school.

- A. **BEHAVIORAL DETENTIONS:** Before or after school behavioral detentions may be given to any student who fails to comply with school rules. A student is expected to act in a respectful manner. Appropriate counseling may take place following the first behavioral detention.
- B. **STUDY SESSIONS:** Study sessions will be given at the discretion of the classroom teacher. These sessions will be served with the issuing teacher. Academic study sessions will not be counted as behavioral detentions. Missing study sessions may result in receiving no credit for missed work or a behavioral detention.
- C. **IN-SCHOOL SUSPENSION:** In-school suspensions will result for serious misconduct, missed detentions by assigned due dates, or truancy concerns. Students will be expected to exhibit

appropriate behavior while assigned to in-school suspension. A student that is unable to complete the in-school suspension due to behavior issues may receive an out-of-school suspension. All students will receive a lunch at their everyday cost, which meets federal guidelines, and restroom breaks.

- D. **LUNCH DETENTIONS:** Lunch detentions are served for minor offenses and tardies. A student is assigned a lunch detention to be served for the entire time of the lunch period including recess. Students can get their lunch but must eat it in a quiet, monitored setting.
- E. **OUT-OF-SCHOOL SUSPENSION:** Out-of-school suspensions will result for serious misconducts and/or as part of the progressive disciplinary action to help students modify unacceptable behavior(s) when it appears other measures are ineffective.

Automatic out-of-school suspensions are the possible consequences for the following situations: possession of fireworks, possession of, use of and/or sale of drugs, alcohol, tobacco, and fighting. These items do not cover every situation but are only the general areas.

Out-of-school suspensions/in-school suspensions will be assigned by the principal and assistant principal only and may be from one to ten days in duration. Regardless of the length of suspension, all homework must be made up within three days after returning to class. In cases where suspensions do not change a student's behavior, a contract may be made between the principal, assistant principal, parents and student or a recommendation for expulsion from school will be filed with the Superintendent of Schools for presentation to the Board of Education.

Students participating in athletics, band, or other after school activities will be prohibited from participation/practice when they are serving a detention or suspension.

If a snow day occurs on an assigned day of out-of-school suspension/in-school suspension, the day will not count as a suspension day. Exclusion from school related activities will occur during the suspension. Homework will be made available.

In order to provide the best educational environment for students at Tri County Middle School, good discipline is essential. Mutual respect between students and school staff is important.

SUSPENSION OF EXTRA-CURRICULAR ACTIVITIES

Since school dances are a privilege, a student may lose the privilege of attending the next dance and future dances if the student is not in good standing. This includes but is not limited to students who:

1. Have three or more in-school suspensions,
2. More than 1 day of out-of-school suspensions from school,
3. Violation of alcohol, illegal drugs, dab pens, etc.,
4. Weapons violation,
5. Vandalism or destroying property,
6. Attendance that is in violation of the ISD truancy policy.

The administration reserves the right to deny admittance to the dance to any student or guest.

Students who are denied the right to attend a dance will be given written notification when they receive their disciplinary action or upon notice of violation of the attendance policy.

STUDENT DISCIPLINE CODE OF CONDUCT

The Tri County Area Schools Board of Education does hereby establish the following categories of misbehavior that may result in a range of disciplinary actions from verbal and written reprimands to out-of-school suspensions or expulsion from school of any student regardless of age, under its jurisdiction. This list is offered as an example of unacceptable behavior (but is not limited to), and it is not intended to be all-inclusive. These policies are applicable to all school-related activities and also apply while the student is on school property, before or after school, enroute to and from school on district provided transportation.

The disciplinary action identified for the various types of unacceptable behavior enumerated in the student's disciplinary code of conduct; state a range of disciplinary actions that may be imposed. Administration may request parent meetings when negative behavior requires such action. These meetings may also include the presence of the superintendent. The school district reserves the right and discretion to impose more severe disciplinary action, up to and including expulsion for unacceptable behavior regardless of whether it is the first offense.

BEHAVIORS AND CONSEQUENCES

Administration has the right to suspend student attendance and participation in any extracurricular activities (i.e., school dances/athletic events/after school activities) for any of the following infractions.

Academic Dishonesty – Students found to be guilty of “cheating” or plagiarism on assignments and/or tests.

- 1st offense: notify parents, assign a detention, possible zero percent on assignment or redo an assignment
- 2nd offense: grade reduction of one full grade for the class and a “zero” on the assignment
- 3rd offense: failure of class

Alcohol/Illegal Drugs / Dab Pens – Possession of, use of, under the influence of alcohol, narcotics, prescription drugs, inhalants, or drugs, including look-alike drugs or what is represented as a drug, or any other related paraphernalia, (including rolling papers, such as “zig zags”, pipes, etc.). Metal detectors may be used to locate contraband.

- Notify Parents/possible notify Police
- 1st offense: 5-day suspension (Can be reduced with restorative justice.)
- 2nd offense: 10-day suspension and refer to Board of Education for hearing with possible expulsion.

Alcohol/Illegal Drugs/ Transfer & Sale of – Transfer or sale of alcohol, narcotics, prescription drugs, inhalants, or drugs, including look-alike drugs or what is represent as a drug, or any other related paraphernalia, (including rolling papers, such as “zig zags”, pipes, etc.). Metal detectors may be used to locate contraband.

- Notify Parents/possible notify Police
- 1st offense: 3-day suspension
- 2nd offense: Possible referral to Board of Education for hearing and up to a 180-day suspension

Arson - (or attempt thereof) on school property or a district-related event

- Notify Parents/Notify police
- Immediate suspension pending a hearing which may lead to an expulsion pursuant to PA 328 of 1994; MCL 380.1311
- Refer to criminal district of juvenile delinquency system and the appropriate county dept. of social services community mental health agency

Assault-Physical – Intentionally causing or attempting to cause physical harm to another through force or violence

- Notify Parents/notify Police
- Immediate suspension and refer to Board of Education for expulsion hearing

Assault -Verbal – Making a bomb threat or similar threat directed against a school building, school property or a school related event; or making a verbal threat of serious bodily injury directed at a staff member, volunteer, or other

- Notify Parents/notify Police
- Immediate suspension up to 10-days and refer Board of Education for expulsion hearing

Criminal Sexual Conduct – Non-consensual contact, rape and/or other abuses (not restricted to violence)

- Notify Parents/notify Police
- Immediate suspension pending hearing which may lead to an expulsion pursuant to PA 328 of 1994; MCL 380.1311
- Referral to criminal district of juvenile delinquency system and the appropriate county dept. of social services or community mental health agency

CLASSROOM DISRUPTION/DEFIANCE OF AUTHORITY/INSUBORDINATION

- Notify Parents
- 1st offense: Office referral with possible detention
- 2nd offense and more: Possible detention and up to 10-day suspension or expulsion

Detentions (failure to serve)

- In-School-Suspension (ISS) (if available) or Out-of-School Suspension (OSS)

Dress Code Violations – failure to follow dress code policy

- Notify Parents
- 1st offense: change inappropriate clothing
- 2nd offense: change inappropriate clothing and detention assigned
- 3rd offense: change inappropriate clothing and one day of In-School Suspension (if available) or Out-of-School Suspension (continued violations will result in out-of-school suspensions)

Extortion

- Notify Parents/possibly notify Police
- 1st offense: 5-10-day suspension
- 2nd offense: Indefinite suspension, refer to Board of Education for hearing w/ possible expulsion

Fighting/Aggressive Behavior

- 1st offense: 3-day Out-of-School Suspension and possible referral to Board of Education for expulsion hearing with possible police notification
- 2nd offense: 5-day Out-of-School Suspension and possible referral to Board of Education for expulsion hearing with possible police notification
- 3rd offense: 10-day Out-of-School Suspension – refer to Board of Education for hearing with possible expulsion with possible police notification

False Alarms – Setting off fire alarm; deliberately breaking glass or triggering an alarm or removal and/or discharge of fire extinguisher. This policy shall also encompass such actions as bomb threats, or intentional calls to falsely report a dangerous condition.

- Notify Parents/notify Police
- Payment of damages
- Up to a 10-day suspension or possible expulsion

Forgery

- Notify Parents
- 1st offense: Detention
- 2nd offense: Up to a 10-day suspension or expulsion

Gambling

- Notify Parents
- 1st offense: Detention
- 2nd offense: Up to a 3-day suspension

Gang Related Activity – there will be zero tolerance for any type of gang related activity, clothing, “flashing signs”, graffiti, or strong-arm tactics etc.

- Notify Parents/notify Police
- Up to a 10-day suspension or possible expulsion

Gross Misbehavior – Deliberate or willful conduct detrimental to normal functioning of any school activity

- Notify Parents/notify Police
- Up to 10-day suspension
- Possible referral to Board of Education for hearing with possible expulsion

Harassment (taunting, bullying, stalking, and or intimidation)*- Deliberate or willful conduct that may lead to/involve physical, emotional or verbal abuse includes emails, instant messaging, etc.

- Notify Parents/notify Victim’s Parent
- Possible notification of Police
- Grievance Procedure for Harassment see page 20
- Detention or up to 10-day suspension
- Possible referral to Board of Education

Harassment (sexual)*

- Notify Parents/notify Police
- Grievance Procedure for Harassment see page 20
- Up to 10-day suspension or expulsion
- Possible referral to Board of Education

*Tri County Area Schools will not tolerate harassment of any students or staff member. Incidents of this nature will result in serious consequences upon the establishment of responsibility.

Hazing – An intentional act directed against a student(s) without the regard of physical/emotional health or safety for the purpose of initiation

- Notify Parents/possibly notify Police
- Up to 10-day suspension or possible expulsion

Racial or Ethnic Intimidation/Harassment

- Notify Parents/notify Police
- Up to 10-day suspension or possible expulsion

Restrooms - Bathroom stalls are for single use only. If more than one student is in a stall:

- 1st offense: Notify Parents and after-school detention
- 2nd Offense: 1-day suspension

Inappropriate Use of Computer Technology

- Notify Parents
- 1st offense: loss of computer privileges for remainder of semester
- 2nd offense: loss of computer privileges for remainder of school year
- 3rd offense: loss of all computer privileges for time remaining in high school

Look-A-Like Weapons/Pyrotechnics

- Notify Parents/possible notification of Police
- Confiscate
- Up to 10-day suspension or possible expulsion

Malicious Destruction (\$100 and over)

- Notify Parents/notify Police
- Up to a 10-day suspension or possible expulsion

Physical Contact (not at a fight level)

- 1st offense: Notify Parents and Detention
- 2nd offense: 1-day In-School-Suspension (if available) or 1-day Out-of-School Suspension
- 3rd offense: Up to 10-day suspension

Possession of Nuisance Items Disruptive to the Educational Process: Ex: squirt guns, lighters, matches, radios, chains, etc. **Knives of any length are not allowed at school!**

- 1st offense: Notify Parents, item confiscated and held for parent to pick up
- 2nd offense: Notify Parents, item confiscated and held for parent to pick up – up to 3-day suspension

Public Display of Affection – Students are expected to conduct themselves as ladies and gentlemen at all school related functions.

- Notify Parents.
- 1st offense: Detention
- 2nd offense: Up to 10-day suspension or expulsion

Profanity/Obscenity

- 1st offense: Notify Parents and detention
- 2nd offense: Up to a 10-day suspension
- 3rd offense: Up to 10-day suspension
- *If directed toward staff member, 3-day suspension*

Technology Misuse: Ex: Cell Phone, iPad, laptop, etc.

- 1st offense: Confiscation of item, student pick up at end of day
- 2nd offense: Confiscation of item and parent pick up in office
- 3rd offense: Confiscation of item

Please see TCMS Cell Phone/PED Appropriate Usage strategy - Addendum

Theft/Stealing

- Notify Parents/possible notification of Police
- Return or repayment of stolen item (s)
- Up to a 10-day suspension or possible expulsion

Tobacco/ Disposable Vapes (possession or use) Metal detectors may be used to locate contraband.

- Notify Parents/notify Police
- 1st offense: 3-day suspension (Can be reduced with restorative justice.)
- 2nd offense: 5-day suspension
- 3rd offense: 10 day-suspension and possible referral to the Board of Education with possible expulsion

Transportation safety Refer to Transportation Handbook

Skipping Classes or School

- Notify Parents
- Detention or In-School Suspension (if available) or Out-of-School Suspension

Unexcused Tardies (by marking period)

- 3 unexcused tardies equals an hour of after school detention
- Students over 10 minutes late will be counted as an absence for that hour.
- Failure to serve detention in designated time will result in an In-School Suspension
- Refusal to serve In-School Suspension will result in a 2 day Out-of-School Suspension
- Excessive tardy referrals may result in In-School Suspension

Vandalism-Defacing or Destroying School Property

- Notify Parents/possible notification of police
- Payment of Damages / clean-up
- 1st offense: Up to a 10-day suspension or possible expulsion

Weapons- Any device or instrument used in a threatening manner that could cause injury or bodily harm. (i.e., pins, needles)

- 1st offense: Notify parent, notify police, up to 180-day suspension or permanent expulsion

Weapons (dangerous) – A student will not possess, handle, transmit, or use dangerous instruments or tools. A dangerous weapon means: firearm, dagger, dirk, stiletto, knife with a blade over 3 inches, pocketknife opened by mechanical device, iron bar or brass knuckles.

- 1st offense: Notify parent, notify police, up to 180-day suspension or permanent expulsion.

Weapons (dangerous instruments) – A student will not possess, handle, transmit or use a dangerous instrument. Dangerous instruments include but are not limited to: Chemical mace, pepper gas, stun guns, air guns, BB guns, pellet guns, razors or box cutters.

- 1st Offense: Notify parent, notify police, suspension or up to 180-day expulsion.

BULLYING

It is the policy of the District to provide a safe and nurturing educational environment for all of its students. This policy protects all students from bullying/aggressive behavior regardless of the subject matter or motivation for such impermissible behavior. Bullying or other aggressive behavior toward a student, whether by other students, staff, or third parties, including Board members, coaches, parents, guests, contractors, vendors, and volunteers, is strictly prohibited. This prohibition includes written, physical, verbal, and psychological abuse, including hazing, gestures, comments, threats, or actions to a student, which cause or threaten to cause bodily harm, reasonable fear for personal safety or personal

degradation. To view our complete policy regarding bullying, please refer to our Board Policy, TC-5517 and TC 5517.01, which is available on our website, www.tricountyschools.com. Demonstration of appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment or bullying is expected of administrators, faculty, staff, and volunteers to provide positive examples for student behavior. This policy applies to all "at school" activities in the District, including activities on school property, in a school vehicle, and those occurring off school property, if the student or employee is at any school-sponsored, school-approved, or school-related activity or function, such as field trips or athletic events where students are under the school's control, or where an employee is engaged in school business. Misconduct occurring outside of school may also be disciplined if it is determined to interfere with the school environment.

NOTIFICATION

Notice of this policy will be annually circulated to and posted in conspicuous locations in all school buildings and departments within the District and discussed with students, as well as incorporated into the teacher, student, and parent/guardian handbooks. State and Federal rights posters on discrimination and harassment shall also be posted at each building. All new hires will be required to review and sign off on this policy and the related complaint procedure. Parents/Guardians of the alleged victim(s), as well as of the alleged aggressor(s), shall be promptly notified of any formal complaint. The results of the investigation to the extent consistent with student confidentiality requirements will be reported. A record of the time and form of notice or attempts at notice shall be kept in the investigation file. To the extent appropriate and/or legally permitted, confidentiality will be maintained during the investigation process. However, a proper investigation will, in some circumstances, require the disclosure of names and allegations. Further, the appropriate authorities may be notified, depending on the nature of the complaint and/or the results of the investigation.

IMPLEMENTATION

The Superintendent is responsible to implement this policy, and may develop further guidelines, not inconsistent with this policy. This policy is not intended to and should not be interpreted to interfere with legitimate free speech rights of any individual. However, the District reserves the right and responsibility to maintain a safe environment for students, conducive to learning and other legitimate objectives of the school program.

PROCEDURE

Any student who believes he/she has been or is the victim of bullying, hazing or other aggressive behavior should immediately report the situation to the Principal or Assistant Principal. The student may also report concerns to a staff member or counselor who will be responsible for notifying the appropriate administrator or Board official. Complaints against the building Principal should be filed with the Superintendent. Complaints against the Superintendent should be filed with the Board President. Every student is encouraged, and every staff member is required, to report any situation that they believe to be aggressive behavior directed toward a student. Reports shall be made to those identified above. Reports may be made anonymously, but formal disciplinary action may not be taken solely on the basis of an anonymous report. The Principal (***or other administrator as designated***) shall promptly investigate and document all complaints about bullying, aggressive or other behavior that may violate this policy. The investigation must be completed as promptly as the circumstances permit after a report or complaint is made. If the investigation finds an instance of bullying or aggressive behavior has occurred, it will result in prompt and appropriate remedial action. This may include up to expulsion for students, up to discharge for employees, exclusion for parents/guardians, guests, volunteers and contractors, and removal from any official position and/or a request to resign for Board members. Individuals may also be referred to law

enforcement or other appropriate officials. The individual responsible for conducting the investigation shall document all reported incidents and report all verified incidents of bullying, aggressive or other prohibited behavior, as well as any remedial action taken, including disciplinary actions and referrals, to the Superintendent. The Superintendent shall submit a completed report to the Board on an annual basis.

NON-RETALIATION/FALSE REPORTS

Retaliation or false allegations against any person who reports, is thought to have reported, files a complaint, participates in an investigation or inquiry concerning allegations of bullying or aggressive behavior (as a witness or otherwise), or is the target of the bullying or aggressive behavior being investigated, is prohibited and will not be tolerated. Such retaliation shall be considered a serious violation of Board policy, independent of whether a complaint of bullying is substantiated. Suspected retaliation should be reported in the same manner as bullying/aggressive behavior. Making intentionally false reports about bullying/aggressive behavior for the purpose of getting someone in trouble is similarly prohibited and will not be tolerated. Retaliation and intentionally false reports may result in disciplinary action as indicated above.

GRIEVANCE PROCEDURES FOR HARASSMENT

(How to File a Harassment Complaint)

It is a violation of the law and of school rules for any student or staff member to harass or intimidate another student or staff member.

Step 1: If you are the recipient of unwanted behavior, communicate to the offender 1) what you are feeling, and 2) that you expect the behavior to stop. The importance here is your sense of safety. Thus, the following options are available for you to do the above: 1) Tell the person directly to stop the unwanted behavior, 2) communicate to the person in writing to stop the unwanted behavior, or 3) go to a safe contact person, such as your school counselor or a teacher, for support in telling the person to stop the unwanted behavior.

Step 2: If the unwanted behavior is repeated, go to a person in authority such as the principal or assistant principal. Document exactly what happened. Give a copy of your written record to the person in authority and keep one for yourself.

Your document should include the following information. Use exact quotes where appropriate and whenever possible.

1. What happened
2. When it happened
3. Where it happened
4. Who did the harassing
5. Who the witnesses were (if any)
6. What you said &/or did in response to harassment
7. How your harasser responded to you
8. How you felt about the harassment

Step 3: If the unwanted behavior is repeated, go back to the principal or assistant principal documenting the behaviors stated in **Step 2**. Give a copy of your written record to the person in authority and keep one for yourself.

Step 4: If unwanted behavior does not stop, you may either go back to the principal or assistant principal or go to a person in higher authority, such as the superintendent or a school board member documenting the behaviors stated in **Step 2**. Give a copy of your written record to the person in authority and keep one for yourself.

DRESS CODE

All students are expected to be well groomed and appropriately dressed while in school. Students and parents have the right to determine a student's dress, except when the school administration determines a student's dress is in conflict with state policy, is a danger to the students' health and safety, is obscene, is disruptive to the teaching and/or learning environment by calling undue attention to oneself. The dress code may be enforced by any staff member.

Prohibited Attire

- A. Hats of any kind, sunglasses, and head covering of any kind are not to be worn while in the school building during the school day. A TC logoed head covering is appropriate for Spirit Days when approved by administration. Head dress worn in conjunction with religious affiliation will be allowed.
- B. Attire with messages or illustrations that are lewd, indecent, vulgar, or profane, or that advertise any product or service not permitted by law to minors
- C. Clothing which exposes bare midriffs and/or backs or with extremely low necklines that expose cleavage
- D. Tank tops must have a one and one-half inch strap – not exposing under garments
- E. Jackets or coats are not being worn during the school day unless teacher approved
- F. Mutilated clothing. (excessive holes or rips above mid-thigh)
- G. Exposed undergarments
- H. Shorts or skirts shorter than mid-thigh
- I. Sheer Clothing
- J. Any adornment such as chains or spikes that reasonably could be perceived as or used as a weapon

Any questionable clothing is under the discretion of a teacher and/or administrator.

Due Process

Recommendation for the expulsion of a student from school shall be made to the Board of Education by the Administration. Such action is generally taken upon the recommendation of the principal. The principal's recommendation shall be communicated to the Superintendent in writing, signed by the principal and accompanied by the student's cumulative file. Excepting cases stemming from extreme overt behavior, it is expected that parental conferences would have been held at the building level prior to the expulsion recommendation. The following procedure shall be followed:

- A. Written notice of charges against a student shall be supplied to the student and his/her parents/guardians by certified mail. Included within this notice shall be a statement of time and place for the hearing. The time shall be reasonable for the parties involved.
- B. Parents/guardians may be present at the hearing and may be represented by legal counsel.
- C. The student shall be given an opportunity to give his/her version of the facts and their implications. He/she shall be allowed to observe all evidence offered against him/her. The student, his/her parents/guardians or legal agent shall be allowed to observe all evidence offered against him/her.
- D. The hearing shall be conducted by the Board of Education, which shall make its determination solely upon the evidence presented at the hearing. The hearing is not a court proceeding and court rules of evidence shall not be enforced at such a hearing, whether open or closed.
- E. The Board of Education by majority vote shall state within a reasonable time after the hearing its findings as to whether or not the student charged and its decision to expel. A majority vote of the Board may be obtained by those present at the meeting.
- F. The findings of the hearing authority shall be reduced to writing and sent to the student and his/her parents/guardians.
- G. The student and his/her parents/guardians shall be made aware of the right to appeal the decision of the Board of Education to the appropriate judicial authority.

D.A., a minor, et al. v. Tri County Area Schools, et al.

**Exhibit C to
Plaintiffs' Complaint for
Civil Rights Violations**

REED & GLOVICK, PLC

ATTORNEYS AND COUNSELORS

May 27, 2022

Tri County Area Schools
Attn: Legal
94 Cherry Street, PO Box 79
Sand Lake, MI 49343

Re: Notice and Demand

Sir or Madam:

This letter is submitted on behalf of our clients, [REDACTED] and her minor children, [REDACTED] and [REDACTED], and [REDACTED] and her minor child, [REDACTED]. All three children are students attending Tri County Middle School, and all three children have fallen victim to the unconstitutional practices of your staff that prohibited clothing that displayed the words, “Let’s Go Brandon.” We hereby demand that you cease any further violation of the children’s First Amendment rights and promptly issue a public statement clarifying—or if necessary, amending—your dress code policy so that teachers and administrators may understand that they cannot prohibit students from wearing such clothing.

In February of 2022, student [REDACTED] was stopped in the hallway by teacher Ms. Wendy Bradford who instructed him to remove his “Let’s Go Brandon” sweatshirt, stating, “Take that sweatshirt off. I’ve told you before I won’t tell you again.” When asked why, Ms. Bradford stated that such clothing was not permitted.

On May 26, 2022, student [REDACTED] was pulled from class without warning and sent to Dean of Students Mr. Andrew Buikema’s office. Mr. Buikema informed [REDACTED] that a teacher had complained about his “Let’s Go Brandon” attire, and so he asked that [REDACTED] remove the same. Mr. Buikema told [REDACTED] that the school does not allow students to wear clothing with political speech on it. Having already endured the punishment of being pulled from his classroom, [REDACTED] complied and returned to class less the prohibited clothing.

On May 27, 2022, Mr. Buikema approached student [REDACTED] at a morning assembly and instructed him to remove his “Let’s Go Brandon” attire. [REDACTED] complied.

The phrase “Let’s Go Brandon” is an intentionally innocuous criticism of President Joe Biden. Certainly, Ms. Bradford—the presumably sole offended teacher—understands the political intent of the phrase, “Let’s Go Brandon” since it contains no lewd, obscene, illegal, or otherwise objectionable words or messages.

The United States Supreme Court's opinion in *Tinker v. Des Moines Independent School District* prohibits your organization's conduct, stating, "[c]learly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible." 393 U.S. 503, 511 (1969).

The burden of showing "material and substantial interference with schoolwork or discipline" is heavy, and Federal Courts have very consistently protected political messaging on student clothing in schools. We are confident that the facts alleged above amount to a rather egregious violation of our clients' First Amendment rights.

THEREFORE, WE HEREBY DEMAND that you issue a public statement clarifying or—if necessary—amending the Tri County Area School dress policy so that teachers and faculty alike may understand and respect the First Amendment rights of the students. A statement that names or otherwise singles out any of our clients; or any action that singles out, draws attention to, embarrasses, or disrupts the education of their children will be observed as an adverse action taken against them in retaliation for exercising their First Amendment rights.

We appreciate your prompt attention to this matter. If you fail to make a statement as demanded above within 14 days of the date of this letter or if any additional adverse action is taken against our clients for their protected political speech, we will file a lawsuit against you seeking both injunctive relief and monetary damages.

PLEASE TAKE NOTICE that [REDACTED] and her minor children, [REDACTED] and [REDACTED] and [REDACTED] and her minor child, [REDACTED] are represented parties. All future communications concerning this matter must be directed to our offices. This letter does not contain any legal advice.

You may contact me by mail, by email at glovickp@reedglovick.com, or by telephone at (616) 754-1860 with any questions or concerns.

Very truly yours,

Philip Paul Glovick
Attorney and Counselor

PPG/zf

Cc Ms. Wendy Bradford
94 Cherry Street, PO Box 79
Sand Lake, MI 49343

Mr. Andrew Buikema
94 Cherry Street, PO Box 79
Sand Lake, MI 49343

PRESERVATION NOTICE

A lawsuit is reasonably foreseeable. Although no lawsuit has yet been filed, we nonetheless demand that you preserve all potentially relevant Electronically Stored Information (“ESI”) within your possession and/or control relating to this dispute in any way.

Please preserve all ESI relating to the contents in the letter above in your possession and/or control or in the possession and/or control of your employees, agents or representatives, including all emails, electronic files, and other ESI.

We demand that you locate and preserve any such potentially relevant ESI that resides anywhere within your or your agents’, employees’, or representatives’ possession or control, including but not limited to ESI that resides on any of the following without regard to whether these items are currently in use:

- all desktop computers
- all laptop computers
- all mobile phones with storage capacity
- all PDAs, handhelds, Blackberrys, or other similar devices
- all storage media, including but not limited to DVDs, CDs, thumb drives, jump drives, diskettes, or removable or portable hard drives
- all SD cards; memory cards for phones, cameras, and other devices; or any storage devices of any sort
- all servers
- all copiers or similar devices with storage capacity
- all backup systems, whether in the form of a tape drive or newer technology
- all archive storage systems used to back up or protect any data used by you

Should you fail to take any reasonable steps to preserve ESI and instead continue to use any computers, storage media, or other possible ESI repositories from this point forward, it is very likely that you will destroy, overwrite, or compromise potentially relevant ESI. If this happens, we will move for an award of sanctions against you based upon the destruction or spoliation of relevant evidence.

D.A., a minor, et al. v. Tri County Area Schools, et al.

**Exhibit D to
Plaintiffs' Complaint for
Civil Rights Violations**



Kara T. Rozin
T (616) 608-1110
F (616) 608-1176
Email:KRozin@ClarkHill.com

Clark Hill
200 Ottawa N.W., Suite 500
Grand Rapids, MI 49503
T (616) 608-1100
F (616) 608-1199

June 9, 2022

BY EMAIL

Philip Paul Glovick
Reed & Glovick, PLC
P.O. Box 87
Greenville, MI 48838
glovickp@reedglovick.com

Re: Tri County Area Schools

Dear Mr. Glovick:

Our firm represents Tri County Area Schools which forwarded your letter dated May 27, 2022 regarding the “Let’s Go Brandon” clothing worn by your clients for review and response.

The District prohibits clothing or styles of expression that are vulgar or profane. The commonly known meaning of the slogan “Let’s Go Brandon” is intended to ridicule the President with profanity. At least one of the students identified in your letter has acknowledged knowing what this slogan means and a simple Google search confirms the slogan means “Fuck Joe Biden.” The slogan, and it’s intended meaning, even comes with its own Wikipedia page which unequivocally confirms the slogan’s vulgar meaning.

The District does not prohibit students from the right to express their political views or from wearing clothing with political slogans; however, the District, pursuant to its Student Code of Conduct and Dress Code, prohibits language or clothing containing language that is offensive, vulgar or profane. “Let’s Go Brandon” is a transparent code for using profanity against the President. The District would similarly prohibit other clothing that has the intent to use profane language against another individual as this would be contrary to the District’s educational mission.

Your citation to the *Tinker* case is acknowledged; however, your letter fails to consider the long-standing history of authority following *Tinker* that expressly allows a school district to prohibit vulgar and/or profane language at school even absent a showing of a substantial disruption to the educational environment, starting with the Supreme Court of the United States decision in *Bethel School District v Fraser*, 478 U.S. 675 (1986), which limited the scope of the Court’s ruling in *Tinker* by allowing a school district to prohibit speech or styles of expression related to, among other things, vulgarity or profanity, without violating a students’ First Amendment rights. While the *Fraser* court acknowledged that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” under *Tinker*, the Court held that “it is a highly



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appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse.”¹

Since the *Fraser* decision, federal courts have further solidified the right of a public school to prohibit vulgar, profane or offensive speech or styles of expression, even absent a showing of substantial disruption under *Tinker*. Below are just a few additional examples:

- ***Boroff v Van Wert City Board of Education*, 220 F3d 465 (CA 6, 2000).**

A high school student was prohibited from wearing Marilyn Manson t-shirts to school based on the band’s promotion of “destructive conduct and demoralizing values that are contrary to the educational mission of the school.” The Sixth Circuit upheld the school’s decision:

“We find that the district court was correct in finding that the School did not act in a manifestly unreasonable manner in prohibiting the Marilyn Manson T-shirts pursuant to its dress code. The Supreme Court has held that the school board has the authority to determine “what manner of speech in the classroom or in school is inappropriate.” *Fraser*, 478 U.S. at 683, 106 S.Ct. 3159. The Court has determined that “[a] school need not tolerate student speech that is inconsistent with its ‘basic educational mission ... even though the government could not censor similar speech outside the school.’ ” *Kuhlmeier*, 484 U.S. at 266, 108 S.Ct. 562 (quoting *Fraser*, 478 U.S. at 685, 106 S.Ct. 3159). In this case, where Boroff’s T-shirts contain symbols and words that promote values that are so patently contrary to the school’s educational mission, the School has the authority, under the circumstances of this case, to prohibit those T-shirts.”

- ***Broussard by Lord v School Bd of City of Norfolk*, 801 F Supp 1526 (ED VA, 1992).**

A middle school student was suspended for one day for wearing a shirt that said “Drugs suck!” The school administrators objected to the sexual connotation of the word “suck.” The student sued, arguing that the school district could only discipline her if the apparel would materially and substantially disrupt the educational environment. The school district argued that it may regulate the speech in an attempt to promote decency and values in students. The district court upheld the suspension, ruling that the administrator’s determination that the word “suck” was lewd, vulgar, or offensive was

¹ The recent Supreme Court of the United States case of *Mahanoy Area School District v BL, a minor*, 141 S.Ct. 2038 (2021), did not alter the *Fraser* ruling, because *Mahanoy* involved a school suspension for use of profanity in a social media post, made off the school campus. Here, the vulgar attire was worn on school campus.



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a permissible decision to regulate the students' language into socially appropriate speech under *Fraser*, even without a showing of substantial disruption under *Tinker*.

- ***Pyle By and Through Pyle v South Hadley School Committee*, 861 F Supp 157 (D MA, 1994).**

Students challenged the school district's prohibition of two t-shirts: one stating "See Dick Drink. See Dick Drive. See Dick Die. Don't be a Dick," and the other: "Coed Naked Band: Do It To the Rhythm." The court held that the school officials could regulate the speech, finding that: "the Supreme Court has ruled that schools are entitled to prohibit speech that is expressed in lewd, vulgar, or offensive terms, regardless of whether the speech causes a substantial disruption" (citing *Fraser*), and that "on the question of when the pungency of sexual foolery becomes unacceptable, the school board of South Hadley is in the best position to weigh the strengths and vulnerabilities of the town's 785 high school students."

- ***Doninger v Niehoff*, 527 F3d 41 (CA 2, 2008).**

A high school student was disqualified from running for student counsel after she posted a vulgar message about the cancelation of an upcoming school event on her personal blog. The blog post called central office administrators "douchebags" and encouraged other students to contact an administrator to "piss her off more." The Second Circuit ultimately held that the school district showed a likelihood of substantial disruption to the school environment under *Tinker* and did not apply the *Fraser* framework due to the fact that the speech occurred off-campus. The court noted, however, that if the posting had been distributed on school grounds, "this case would fall squarely within the Supreme Court's precedents recognizing that the nature of a student's First Amendment rights must be understood in light of the special characteristics of the school environment and that, in particular, offensive forms of expression may be prohibited." (Citing *Fraser*.) The court explained:

"To be clear, *Fraser* does not justify restricting a student's speech merely because it is inconsistent with an educator's sensibilities; its reference to "plainly offensive speech" must be understood in light of the vulgar, lewd, and sexually explicit language that was at issue in that case. We need not conclusively determine *Fraser's* scope, however, to be satisfied that Avery's posting—in which she called school administrators "douchebags" and encouraged others to contact Schwartz "to piss her off more"—contained the sort of language that properly may be prohibited in schools. *See id.* *Fraser* itself approvingly quoted Judge Newman's memorable observation in *Thomas* that "the First Amendment gives a high school student the classroom right to wear *Tinker's* armband, but not *Cohen's* jacket." *Fraser*, 478 U.S. at 682–83, 106



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S.Ct. 3159 (quoting *Thomas*, 607 F.2d at 1057 (Newman, J., concurring in the result)); cf. *Cohen v. California*, 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971) (holding that an adult could not be prosecuted for wearing a jacket displaying expletive “[F ... expletive deleted] the Draft”). Avery's language, had it occurred in the classroom, would have fallen within *Fraser* and its recognition that nothing in the First Amendment prohibits school authorities from discouraging inappropriate language in the school environment.”

The District rejects the demand to issue a public statement and/or amend its Code of Conduct or Dress Code policy. The District acknowledges the Preservation Notice included with your communication and will preserve any potentially relevant ESI, but be advised that the District is prepared to vigorously defend against any such threatened litigation and will diligently pursue with equal vigor all legal recourses against frivolous litigation. If you have any questions or wish to discuss, please contact me.

Sincerely,

CLARK HILL PLC

A handwritten signature in blue ink that reads 'Kara T. Rozin'.

Kara T. Rozin

KTR:mjz

cc: Allen Cumings, Superintendent