

Plaintiffs' Brief in Support of Motion for Summary Judgment – Exhibit List

D.A. v. Tri County Area Schools, et al.
Western District of Michigan

EXHIBIT	DESCRIPTION
1	D.A. Declaration
2	X.A. Declaration
3	D.A. Deposition Transcript Excerpts
4	X.A. Deposition Transcript Excerpts
5	B.A. Deposition Transcript Excerpts
6	ParentVue email to B.A.
7	Buikema Dep. Transcript
8	2022-2023 TCHS Handbook
9	2022-2023 TCMS Handbook
10	30(b)(6) Deposition Transcript Excerpts
11	School District Answers to Plaintiffs' Requests for Admission
12	Williams Deposition Transcript Excerpts
13	Goheen Deposition Transcript Excerpts
14	CBS News Sacramento video clip
15	Noticias Telemundo video clip
16	Fox 5 D.C. video clip
17	ABC 10 News video clip
18	Mark Blazor Show audio clip

19	WABC Brian Kilmeade audio clip
20	CNN Tonight video clip
21	FOX News video clip
22	NBC News video clip
23	Buikema Answers to Plaintiffs' Requests for Admission
24	Bradford Answers to Plaintiffs' Requests for Admission
25	Buikema Answers to Plaintiffs' First Set of Interrogatories
26	Bradford Deposition Transcript Excerpts
27	May 27, 2022 Cease & Desist Letter
28	June 9, 2022 School District Response to Plaintiffs' Cease & Desist Letter
29	Williams' Notes
30	Apr. 26, 2023 Email to All Staff
31	Moshman Expert Report
32	School District Answers to Plaintiffs' First Set of Interrogatories

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

**Exhibit 1 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

THE 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

Judge Paul L. Maloney
Magistrate Judge Sally J. Berens

Under 28 U.S.C. § 1746, Plaintiff D.A., a minor, by and through his mother
B.A., declares as follows:

1. I have personal knowledge of the facts in this declaration.
2. I am a Plaintiff in this action.
3. I currently attend Tri County Middle School, which is part of the Tri
County Area School District. The Tri County Area School District is located in Sand
Lake, Michigan.
4. I am currently an eighth-grade student at Tri County Middle School.
5. I oppose President Joe Biden and his administration and want to wear
apparel with the "Let's Go Brandon" slogan to school.

6. I want to use the “Let’s Go Brandon” slogan to respectfully express opposition to President Biden and his administration without using profanity or vulgarity.

7. During the second semester of the 2021–2022 school year, I wore “Let’s Go Brandon” apparel to school to express my opposition to President Biden and his administration.

8. Mr. Buikema instructed me to remove my “Let’s Go Brandon” apparel (a sweatshirt and a t-shirt). I feared that Mr. Buikema would punish me further if I did not remove my apparel, so I removed my “Let’s Go Brandon” apparel and changed into school-provided clothes for the rest of the school day.

9. A few weeks later, I again wore a “Let’s Go Brandon” sweatshirt to school to express my opposition to President Biden and his administration.

10. Ms. Bradford told me to remove the sweatshirt.

11. I feared that Ms. Bradford would punish me further if I did not remove my sweatshirt, so I removed my “Let’s Go Brandon” sweatshirt.

12. I have not worn “Let’s Go Brandon” apparel to school since 2022.

13. I wish to continue expressing my opposition to President Biden and his administration by wearing “Let’s Go Brandon” apparel to school, but I am afraid I will get in trouble and have to remove the apparel again if I do so.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Dated: 3-19-24

DA

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

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

**Exhibit 2 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

THE 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

Judge Paul L. Maloney
Magistrate Judge Sally J. Berens

Under 28 U.S.C. § 1746, Plaintiff X.A., a minor, by and through his mother B.A., declares as follows:

1. I have personal knowledge of the facts in this declaration.
2. I am a Plaintiff in this action.
3. I currently attend Tri County High School, which is part of the Tri County Area School District. The Tri County Area School District is located in Sand Lake, Michigan.
4. I am currently a tenth-grade student at Tri County High School.
5. I oppose President Joe Biden and his administration and want to wear apparel with the "Let's Go Brandon" slogan to school.

6. I want to use the "Let's Go Brandon" slogan to respectfully express opposition to President Biden and his administration without using profanity or vulgarity.

7. On May 26, 2022, I wore a "Let's Go Brandon" sweatshirt to school to express my opposition to President Biden and his administration.

8. On May 26, 2022, Assistant Principal Buikema called me out of class and to his office.

9. Mr. Buikema instructed me to remove my "Let's Go Brandon" sweatshirt.

10. I feared that Mr. Buikema would punish me further if I did not remove my sweatshirt, so I removed my "Let's Go Brandon" sweatshirt.

11. Prior to May 2022, I had never been asked to remove clothing because of the dress code.

12. I have not worn "Let's Go Brandon" apparel to school since 2022.

13. I wish to continue expressing my opposition to President Biden and his administration by wearing "Let's Go Brandon" apparel to school, but I am afraid I will get in trouble and have to remove the apparel again if I do.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Dated: 3-14-2024

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

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

**Exhibit 3 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

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

8 Plaintiffs,

Case No. 223-cv-423

9 v.

Judge Paul L. Maloney

10 TRI COUNTY AREA SCHOOLS;

Magistrate Judge:

11 ANDREW BUIKEMA, in his

Sally J. Berens

12 individual capacity; and

13 WENDY BRADFORD, in her individual

14 capacity,

15 Defendants.

16
17
18 DEPOSITION OF: D.A.
19

20 DATE: February 29, 2024

21 TIME: 8:59 a.m.

22 LOCATION: Tri County Educational Service Center

23 94 Cherry Street

24 Sand Lake, Michigan

25 REPORTER: Kelly M. Kane, CSR-1470

Page 2

1 APPEARANCES:

2

3 FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION

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11 On behalf of Plaintiffs

12

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19 On behalf of Defendants

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Page 4

1 Sand Lake, Michigan

2 February 29, 2024; 8:59 a.m.

3 * * *

4 D.A.,

5 having been first duly sworn to tell the truth, the whole

6 truth, and nothing but the truth, was examined and

7 testified as follows:

8 MS. SHEA: Hi, D.A. My name is Annabel; I'm an

9 attorney representing the school district and the other

10 Defendants in this case. I'm just going to place something

11 on the record really quick.

12 Counsel has agreed that the minor Plaintiffs are

13 going to be referred to in the transcript by their first and

14 last initials but we are going to use their names in the

15 depositions.

16 E X A M I N A T I O N

17 BY MS. SHEA:

18 Q. Can you state your full name for the record?

19 A. D.A.

20 Q. Do you have a middle name?

21 A. (Middle name given.)

22 Q. Okay. So obviously you haven't had a deposition taken

23 before, so I'm going to go over the ground rules. Is that

24 okay?

25 A. Yep.

Page 3

1 I N D E X

2 WITNESS: PAGE

3 D.A.

4 Examination by Ms. Shea 4

5

6

7 E X H I B I T S

8 PAGE

9 Deposition Exhibit C 17

10 (Exhibit is attached.)

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Page 5

1 Q. Okay. So this is a question-and-answer session. I'm just

2 going to ask you a question and you're going to provide an

3 answer.

4 We have a court reporter that's sitting there

5 typing everything out, so we just want to make sure that

6 we're verbalizing our responses. Does that make sense?

7 A. Yep.

8 Q. Okay. So I'll ask a question and you just provide an

9 answer. And we don't want to say uh-huh or huh-uh or shake

10 our head because it won't show up in the transcript. Does

11 that make sense?

12 A. Yes.

13 Q. Okay. We want to make sure that we take our time. In

14 normal conversations I might be asking what you think is a

15 stupid question, and you might already know the answer to

16 what I'm asking you halfway through. Just let me finish my

17 full question and then you can provide your answer. Does

18 that make sense?

19 A. Yes.

20 Q. Okay. Have you seen any lawyer shows before, or movies

21 about lawyers?

22 A. Yes.

23 Q. Okay. So your lawyer might make an objection from time to

24 time and say objection and say something after that. That's

25 perfectly fine, your lawyer can make objections, but then

<p style="text-align: right;">Page 6</p> <p>1 after that you still have to provide an answer to the 2 question that I ask unless your lawyer tells you not to 3 answer. Does that make sense? 4 A. Yes. 5 Q. Okay. And if you forget the question we can always have the 6 court reporter read the question back. Does that make 7 sense? 8 A. Yes. 9 Q. Okay. Sometimes I ask a bad question, it might be 10 confusing, it might not make sense to you. Feel free to ask 11 me to rephrase my question and tell me if you don't 12 understand. Is that okay? 13 A. Yes. 14 Q. Okay. You can take a break any time throughout -- this is 15 not going to be a long deposition, I just have a few 16 questions for you, but if you need to take a break just let 17 me know. The only thing I would ask is that if I've asked 18 you a question you have to answer that question first and 19 then you can take a break after. Is that okay? 20 A. Yes. 21 Q. Okay. So, D.A., how old are you? 22 A. I'm 13. 23 Q. And what's your current grade? 24 A. Eighth grade. 25 Q. Eighth grade? So you go to high school next year?</p>	<p style="text-align: right;">Page 8</p> <p>1 A. A couple other times but I was a little too young to 2 remember. 3 Q. Okay. Is this your dog or do you have to share it with your 4 brother? 5 A. I have to share it with my brother. 6 Q. Okay. Do you have any other siblings? 7 A. Step-siblings. 8 Q. Step-siblings? How many step-siblings do you have? 9 A. Two. 10 Q. Two? And where do you live? 11 A. White Cloud, Michigan. 12 Q. And who do you live with? 13 A. My mom and my brother. 14 Q. Do your step-siblings live with you? 15 A. At my dad's house. They do not. 16 Q. Okay. And your Chihuahua, right? 17 A. Yeah. 18 Q. Okay. How many -- do you have any other pets? 19 A. I have two cats. 20 Q. Two cats? What are your cats' names? 21 A. Egg Roll and Mike. 22 Q. That's a funny cat name. Are they boys or girls? 23 A. Egg Roll is a boy and Mike is a girl. 24 Q. Okay. I like the name Mike for a girl cat. That's a cute 25 name.</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Yes. 2 Q. Are you excited? 3 A. A little bit. 4 Q. Yeah? Nervous? 5 A. Yeah. 6 Q. Do you play any sports? 7 A. I do wrestling. 8 Q. You do wrestling? How long have you done that? 9 A. I just finished my second year. 10 Q. Okay. Any other sports? 11 A. Track. 12 Q. Track? Do you have any sports that you want to try in high 13 school? 14 A. Not really. 15 Q. Not really? What do you like to do for fun? 16 A. I just got a dog, I like to play with him. 17 Q. What's your dog's name? 18 A. Tommy. 19 Q. Tommy? And what type of dog is he? 20 A. He's a Chihuahua. 21 Q. A Chihuahua? How long have you had him for? 22 A. Two days. 23 Q. Only two days? Is that your first dog? 24 A. No. 25 Q. How many times have you had a dog before?</p>	<p style="text-align: right;">Page 9</p> <p>1 Do you currently attend Tri County Area Schools, 2 the school that we're in? 3 A. Yes. 4 Q. Okay. Were you in seventh grade during the 2021-2022 school 5 year? Does that sound right? 6 A. Yes. 7 Q. So you're in -- well, let's do some math. So you're in 8 eighth grade now? 9 A. Yeah. 10 Q. And this is the 2024 -- 2023-2024 school year. So last year 11 you would have been in seventh grade. Does that make sense? 12 A. Yes. 13 Q. All right. And so then the year before that you would have 14 been in sixth grade? 15 A. Yes. 16 Q. Okay. But you were in middle school in the 2021-2022 school 17 year? 18 A. Yes. 19 Q. Okay. And that's the school year that you were wearing the 20 Let's Go Brandon sweatshirt, right? 21 A. I believe so. 22 Q. Okay. Do you know what a Complaint is? 23 A. Yes. 24 Q. Have you read the Complaint that was filed on your behalf in 25 this lawsuit?</p>

Page 10

1 A. I can't remember.
 2 Q. That's okay.
 3 So there is a portion in your Complaint that talks
 4 about a NASCAR race that happened in October 2021 at
 5 Talladega. And in that NASCAR race there was a driver named
 6 Brandon Brown that won the race and the crowd was chanting
 7 something, and there was a post-race interview that
 8 happened, and the crowd was chanting Fuck Joe Biden but the
 9 interviewer thought they were saying Let's Go Brandon. Is
 10 that your understanding of where the phrase Let's Go Brandon
 11 came from?
12 A. Yes.
 13 Q. Okay. Have you seen that original video before of the
 14 crowd?
15 A. Yes.
 16 Q. When was the first time you saw it?
17 A. I can't remember.
 18 MS. SHEA: Okay. I'm going to play you something
 19 that's marked as Exhibit A.
 20 (Video plays.)
 21 BY MS. SHEA:
 22 Q. Is that the same video that you saw that I just referenced
 23 earlier?
24 A. I believe so, yes.
 25 Q. Okay. Have you watched that video with your friends before?

Page 11

1 A. No.
 2 Q. Have you watched it with your brother before?
3 A. Yes.
 4 Q. Okay. Do you know if you'd seen the video before you
 5 received your Let's Go Brandon sweatshirt for Christmas?
6 A. Yes.
 7 Q. Okay. So I know that you received the Let's Go Brandon
 8 sweatshirt as a gift for Christmas. Who gave it to you?
9 A. My mom.
 10 Q. Your mom? Did she give you a Let's Go Brandon T-shirt as
 11 well, or just a sweatshirt?
12 A. Just a sweatshirt.
 13 Q. What about a hat?
14 A. No.
 15 Q. Just the sweatshirt?
16 A. (Witness nods head up and down.)
 17 Q. Is that correct? Just a sweatshirt?
18 A. Yes.
 19 Q. Okay. When you got the sweatshirt did you think it was
 20 funny?
21 A. Yes.
 22 Q. And why did you think it was funny?
23 A. It was a respectful way of saying that you dislike the
24 current president.
 25 Q. Did you also think it was funny because it means Fuck

Page 12

1 Joe Biden?
2 A. Yes.
 3 Q. All right. So I understand from reading your Complaint that
 4 there was an incident in February 2022 when your assistant
 5 principal, Mr. Buikema, asked you to take your Let's Go
 6 Brandon sweatshirt off; is that correct?
7 A. Yes.
 8 Q. Okay. Can you tell me what happened?
9 A. Wait. Could you rephrase the question please?
 10 Q. Of course. I just want to know what happened with your
 11 interaction with Mr. Buikema, as far as you can remember,
 12 when he asked you to take your Let's Go Brandon sweatshirt
 13 off. What did he say to you?
14 A. I had been asked to go out into the hallway, and he had been
15 standing out there. And he had asked me to take off the
16 sweatshirt, and I complied but I had a Let's Go Brandon
17 shirt underneath it.
 18 Q. Okay.
19 A. And so he asked me, do you know what it means, and I felt
20 pressured so I replied with no. And I was then taken to a
21 room to change my shirt. They had provided other shirts.
 22 Q. But you did comply with his request to take it off?
23 A. Yes.
 24 Q. Yes? Okay. And at the time you said that you didn't know
 25 what it means but you did know what it means, right?

Page 13

1 A. Yes.
 2 Q. Okay. You weren't disciplined after you complied with his
 3 request; is that correct?
 4 MR. FITZPATRICK: Object to form.
 5 BY MS. SHEA:
 6 Q. You can still answer.
7 A. No.
 8 Q. Okay. Did you receive a detention?
9 A. No.
 10 Q. Were you suspended?
11 A. No.
 12 Q. Okay. Did you miss any days of school because of that
 13 interaction?
14 A. No.
 15 Q. Okay. This might sound like a stupid question but I have to
 16 ask it for the record: Did you go see a doctor after the
 17 incident?
18 A. No.
 19 Q. Okay. In your Complaint you indicated that a few weeks
 20 later you wore the Let's Go Brandon sweatshirt again; is
 21 that correct?
22 A. No.
 23 Q. You didn't? Do you recall an interaction with a teacher
 24 named Mrs. Bradford?
25 A. Yes.

<p style="text-align: right;">Page 14</p> <p>1 Q. And what do you remember about that incident? 2 A. Being asked to remove the sweatshirt. 3 Q. Okay. Mrs. Bradford testified the other day that she didn't 4 actually ask you to remove the sweatshirt but just said you 5 might want to remove it. Does that sound accurate? 6 MR. FITZPATRICK: Object to form. 7 BY MS. SHEA: 8 Q. You can go ahead and answer. 9 A. I can't remember. 10 Q. Okay. Do you recall if you were disciplined after your 11 interaction with Mrs. Bradford? 12 A. I was not. 13 Q. Did you miss any school because of the interaction with 14 Mrs. Bradford? 15 A. I did not. 16 Q. Okay. Did Ms. Bradford give you a detention? 17 A. No. 18 Q. Were you suspended after that interaction with 19 Mrs. Bradford? 20 A. I was not. 21 Q. Okay. And again, it sounds like a stupid question but I 22 have to ask: Did you have to go see a doctor after the 23 interaction with Mrs. Bradford? 24 A. I did not. 25 Q. Okay. Did you end up taking the sweatshirt off?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Okay. Do you have any MAGA clothing? 2 A. I believe I have a hat. 3 Q. Have you ever worn it to school? 4 A. No. 5 Q. Do you have any Trump apparel? 6 A. Other than the MAGA hat, I don't believe so. 7 Q. Okay. Other than your interaction with Mr. Buikema and 8 Mrs. Bradford that we just talked about, have there been any 9 other times at school that you were asked to remove Let's Go 10 Brandon apparel? 11 A. No. 12 Q. Have there been any other times while you've been at the 13 middle school that you were asked to change your clothing, 14 other than the times that we just talked about, because of 15 the dress code? 16 A. Can you repeat the question, please? 17 Q. Yes. That was probably a bad question. 18 During your time at the middle school has there 19 been any other incident, besides the ones that we've talked 20 about, where either a teacher or an administrator asked you 21 to change your clothing because of the dress code? 22 A. I do not believe so, no. 23 Q. Okay. Have you been in trouble before? 24 MR. FITZPATRICK: Object to form. 25</p>
<p style="text-align: right;">Page 15</p> <p>1 A. I did. 2 Q. Okay. Did you have Ms. Bradford as a teacher at the time? 3 A. I did not. 4 Q. Okay. Did you end up seeing her during the rest of the 5 school day? 6 A. I did not. 7 Q. Okay. In your Complaint you indicate that the school 8 district does allow students to wear other apparel that 9 expresses their political views, like MAGA clothing; is that 10 correct? 11 MR. FITZPATRICK: Object to form. 12 A. I cannot remember. 13 BY MS. SHEA: 14 Q. Okay. Have you ever seen kids at school wearing Make 15 America Great Again clothing? 16 A. I believe at one point I had, yes. 17 Q. Was that when you were at the middle school? 18 A. I'm still at the middle school, and yes. 19 Q. Okay. Yes, and I'm just asking that for the time frame. It 20 would have been -- you know, you're in eighth grade now, so 21 seventh, eighth, and sixth grade. Does that make sense? 22 A. (Witness nods head up and down.) 23 Q. Have you seen any kids at school wearing Trump 2024 24 T-shirts? 25 A. I do not remember.</p>	<p style="text-align: right;">Page 17</p> <p>1 BY MS. SHEA: 2 Q. Have you been suspended before? 3 A. No. 4 Q. Do you get good grades in school? 5 MR. FITZPATRICK: Object to form. 6 A. More or less. 7 BY MS. SHEA: 8 Q. What are your current grades? 9 A. I believe I have three As and three Cs. 10 Q. Okay. And what are your favorite subjects? 11 A. Language arts, gym class. 12 Q. Those are two good classes. 13 Okay. I just have a few more questions for you. 14 I'm going to hand you what's going to be marked as 15 Exhibit C. 16 (Deposition Exhibit C was marked for 17 identification.) 18 BY MS. SHEA: 19 Q. So this looks like a text message that was produced in 20 discovery in this lawsuit, which is when we exchange 21 information back and forth. Do you recognize this? 22 A. I do. 23 Q. Okay. And we're not going to use your friend's name, but 24 this looks like this is a conversation between you and your 25 friend with the initials D.R.; is that correct?</p>

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

**Exhibit 4 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

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

8 Plaintiffs,

Case No. 223-cv-423

9 v.

Judge Paul L. Maloney

10 TRI COUNTY AREA SCHOOLS;

Magistrate Judge:

11 ANDREW BUIKEMA, in his

Sally J. Berens

12 individual capacity; and

13 WENDY BRADFORD, in her individual

14 capacity,

15 Defendants.

16
17
18 DEPOSITION OF: X.A.
19

20 DATE: February 29, 2024

21 TIME: 9:23 a.m.

22 LOCATION: Tri County Educational Service Center

23 94 Cherry Street

24 Sand Lake, Michigan

25 REPORTER: Kelly M. Kane, CSR-1470

Page 2

1 APPEARANCES:

2

3 FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION

4 BY: Conor T. Fitzpatrick (MI P78981)

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11 On behalf of Plaintiffs

12

13 GIARMARCO, MULLINS & HORTON, P.C.

14 BY: Annabel F. Shea (P83750)

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16 Troy, MI 48084-5280

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18 ashea@gmhlaw.com

19 On behalf of Defendants

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Page 4

1 Sand Lake, Michigan

2 February 29, 2024; 9:23 a.m.

3 * * *

4 X.A.,

5 having been first duly sworn to tell the truth, the whole

6 truth, and nothing but the truth, was examined and

7 testified as follows:

8 E X A M I N A T I O N

9 BY MS. SHEA:

10 Q. X.A., my name is Anabell, one of the attorneys representing

11 the school district and the other individual Defendants.

12 I'm just here to ask you a few questions.

13 I know that you haven't had your deposition taken

14 before, so I'm going to go over a few ground rules, but I am

15 going to place something on the record first, that counsels

16 have agreed that the minor Plaintiffs will be referred to in

17 the transcript by their first and last initials but I am

18 going to use your name in the deposition so that we can have

19 a better conversation. Is that okay?

20 A. Yes.

21 Q. Okay. So just going over a little bit of ground rules, this

22 is just a question-and-answer session. I'm going to ask you

23 a question and then you just provide your answer. The court

24 reporter is typing everything up that we're saying, so we

25 just want to make sure that we're verbalizing our responses,

Page 3

1 I N D E X

2 WITNESS: PAGE

3 X.A.

4 Examination by Ms. Shea 4

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7 E X H I B I T S

8 PAGE

9 (No exhibits were marked.)

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Page 5

1 so you don't want to say uh-huh or huh-uh or shake your head

2 because the transcript won't pick it up because it's all

3 typed out. Does that make sense?

4 A. Yes.

5 Q. Okay. We want to make sure that we're talking one at a

6 time, because the court reporter isn't able to take an

7 accurate record if we're talking over each other. In normal

8 conversation it's very reasonable that we would talk over

9 each other or you might anticipate what I'm going to ask,

10 because a lot of my questions might seem stupid to you, but

11 just wait until I ask the full question even if you already

12 know the answer halfway through. Is that okay?

13 A. Yes.

14 Q. Okay. Your attorney may object from time to time, like you

15 see in the movies. That's perfectly fine. Just let him get

16 his full objection out, and then you still provide your

17 answer unless he instructs you not to answer. Does that

18 make sense?

19 A. Yes.

20 Q. And if it's a long objection and you forget what I asked, we

21 can always have the court reporter repeat the question. Is

22 that okay?

23 A. Yes.

24 Q. I'm not perfect, sometimes I ask a bad question and you

25 might not understand the question. If you don't understand,

<p style="text-align: right;">Page 6</p> <p>1 just ask me to rephrase it or tell me you don't understand. 2 Does that make sense? 3 A. Yep. 4 Q. Okay. You can take a break at any time. I would just ask, 5 if I asked a question, that you finish answering that 6 question first before you take a break, and then you can 7 take a break. 8 A. Okay. 9 Q. I will tell you that this will be very, very quick, so you 10 might not need to take a break, but just let me know at any 11 point if you need to take a break. Okay? 12 A. All right. 13 Q. Okay. How old are you, X.A.? 14 A. I'm 16. 15 Q. 16. Do you have your license? 16 A. Yes. 17 Q. That must feel good. I remember being 16. 18 So do you drive your brother around? 19 A. Yeah. 20 Q. Does your mom make you drive your brother around? 21 A. Yeah. 22 Q. What current grade are you in? 23 A. I'm a sophomore. 24 Q. And you're at Tri County High School? 25 A. Yes.</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Yes. 2 Q. Have you read the Complaint that was filed in this action on 3 your behalf? 4 A. No. 5 Q. So there was a NASCAR race that occurred at Talladega in 6 October 2021 and there was a driver that won named 7 Brandon Brown. Are you familiar with that race? 8 A. Yes. 9 Q. And there was an interview post race that was done by a 10 reporter where the crowd was chanting Fuck Joe Biden and the 11 reporter thought that they were saying Let's Go Brandon. 12 Have you seen that video before? 13 A. Yes. 14 Q. Okay. Do you remember when you first saw it? 15 A. Yes. 16 Q. When did you see that? 17 A. It would have been 2021. 18 Q. Okay. Was it before Christmas? 19 A. Yes. 20 Q. How many times have you seen it? 21 A. I could not say. 22 Q. Have you watched it with your brother? 23 A. Yes. 24 Q. Have you watched it with your mom? 25 A. Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Okay. Do you play any sports? 2 A. Yes. 3 Q. What do you play? 4 A. I wrestle and I do track in the spring. 5 Q. So your brother is following in your footsteps, right? 6 A. Yes. 7 Q. Do you want to play sports in college? 8 A. Potentially. 9 Q. Do you know where you want to go? 10 A. No. 11 Q. So I heard that you just got a Chihuahua; is that true? 12 A. Yeah. 13 Q. What's his name? 14 A. Tommy. 15 Q. Tommy. And where do you live? 16 A. Hardy Dam. 17 Q. Do you live with your mom and your brother? 18 A. Yes. 19 Q. And your Chihuahua and two cats? 20 A. Yes. 21 Q. Okay. What grade were you in in the 2021-2022 school year? 22 A. Eighth grade. 23 Q. So you were in middle school, right? 24 A. Yes. 25 Q. Okay. Do you know what a Complaint is?</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Have you watched it with your friends? 2 A. I couldn't say. 3 MS. SHEA: Okay. I'm going to play you a video 4 that is marked as Exhibit A. 5 (Video plays.) 6 BY MS. SHEA: 7 Q. Is that the same video that you've seen previously about 8 that? 9 A. Yes. 10 Q. Okay. I understand that you received a Let's Go Brandon 11 sweatshirt for Christmas on December 25, 2021; is that 12 accurate? 13 A. Yes. 14 Q. Did you receive it from your mom? 15 A. Yes. 16 Q. Did you think the sweatshirt was funny because it meant Fuck 17 Joe Biden? 18 MR. FITZPATRICK: Object to form. 19 A. Yes. 20 BY MS. SHEA: 21 Q. Okay. So I understand that there was a time that you wore a 22 Let's Go Brandon sweatshirt to school in the spring of 2022; 23 is that accurate? 24 A. Yes. 25 Q. And you had an interaction with the assistant principal,</p>

<p style="text-align: right;">Page 10</p> <p>1 Mr. Buikema; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Can you tell me what happened during that incident?</p> <p>4 A. I was called down to the principal's office that I believe</p> <p>5 was shared with the vice principal, from my first hour, to</p> <p>6 talk about my sweatshirt.</p> <p>7 Q. Okay. And what did he say to you?</p> <p>8 A. He said -- he got over the point that I should not be</p> <p>9 wearing that sweatshirt, and he asked me if I was</p> <p>10 comfortable taking it off after asking me to take it off.</p> <p>11 Q. Okay. And did you comply and take it off?</p> <p>12 A. I did.</p> <p>13 Q. Okay. Did he ask you if you knew what the sweatshirt meant?</p> <p>14 A. No.</p> <p>15 Q. Okay. After you took the sweatshirt off did you receive any</p> <p>16 discipline?</p> <p>17 MR. FITZPATRICK: Object to form.</p> <p>18 BY MS. SHEA:</p> <p>19 Q. You can go ahead.</p> <p>20 A. No.</p> <p>21 Q. Did you receive a detention?</p> <p>22 A. No.</p> <p>23 Q. You weren't suspended, right?</p> <p>24 A. No.</p> <p>25 Q. Did you miss any school after the interaction with</p>	<p style="text-align: right;">Page 12</p> <p>1 A. No.</p> <p>2 Q. Okay. Other than that one interaction with Mr. Buikema that</p> <p>3 we just talked about are there any other instances that</p> <p>4 occurred where you were asked to take off your Let's Go</p> <p>5 Brandon sweatshirt at school?</p> <p>6 A. No.</p> <p>7 Q. Okay. Do you know what interrogatories are?</p> <p>8 A. No.</p> <p>9 Q. Do you recall, in the course of this lawsuit, having to</p> <p>10 assist your attorney with answering some questions, written</p> <p>11 questions?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. I'm going to represent to you that one of those</p> <p>14 questions asked -- it asked, admit that when you wore your</p> <p>15 Let's Go Brandon shirt to school you knew it was synonymous</p> <p>16 with Fuck Joe Biden, and then you answered that you denied</p> <p>17 the admission.</p> <p>18 MR. FITZPATRICK: I'm sorry, go ahead.</p> <p>19 MS. SHEA: Let me finish asking my question before</p> <p>20 you place your objection.</p> <p>21 MR. FITZPATRICK: Sorry.</p> <p>22 BY MS. SHEA:</p> <p>23 Q. You just testified earlier that you knew that it meant Fuck</p> <p>24 Joe Biden. So was that not an accurate answer?</p> <p>25 MR. FITZPATRICK: Objection. This sounds like a</p>
<p style="text-align: right;">Page 11</p> <p>1 Mr. Buikema?</p> <p>2 A. No.</p> <p>3 Q. This might sound like a stupid question but I have to ask:</p> <p>4 Did you have to go to the doctor after that incident with</p> <p>5 Mr. Buikema?</p> <p>6 A. No.</p> <p>7 Q. Okay. In your Complaint there is a factual allegation that</p> <p>8 students at the school district wear other clothing that</p> <p>9 express their political and social views. Do you agree with</p> <p>10 that statement?</p> <p>11 A. Yes.</p> <p>12 Q. Have you seen kids that wear MAGA clothing to school?</p> <p>13 A. Yes.</p> <p>14 Q. Have you seen kids that wear Trump 2024 to school?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. What about kids wearing things with the pride flag on</p> <p>17 it? Have you seen that before?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Do you own any MAGA clothing?</p> <p>20 A. Not with the specific phrase MAGA.</p> <p>21 Q. Okay. What do you own?</p> <p>22 A. I own a Trump 2024 hat, bucket hat.</p> <p>23 Q. Okay. Have you ever worn that to school?</p> <p>24 A. No.</p> <p>25 Q. Do you own any other pro-Trump apparel?</p>	<p style="text-align: right;">Page 13</p> <p>1 request for admission.</p> <p>2 MS. SHEA: You're right, it is a request for</p> <p>3 admission. I'm going to strike that. And can I rephrase</p> <p>4 it?</p> <p>5 MR. FITZPATRICK: Sure.</p> <p>6 BY MS. SHEA:</p> <p>7 Q. Okay. If I understand your testimony earlier, you knew that</p> <p>8 Let's Go Brandon means Fuck Joe Biden; is that right?</p> <p>9 MR. FITZPATRICK: Object to form.</p> <p>10 A. Yes.</p> <p>11 MS. SHEA: Okay. I have no further questions.</p> <p>12 MR. FITZPATRICK: Nothing from me.</p> <p>13 (Deposition concluded at 9:35 a.m.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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

**Exhibit 5 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

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

8 Plaintiffs,

Case No. 223-cv-423

9 v.

Judge Paul L. Maloney

10 TRI COUNTY AREA SCHOOLS;

Magistrate Judge:

11 ANDREW BUIKEMA, in his

Sally J. Berens

12 individual capacity; and

13 WENDY BRADFORD, in her individual

14 capacity,

15 Defendants.

16 B.A.

17 DEPOSITION OF: [REDACTED]

18 DATE: February 29, 2024

19 TIME: 9:37 a.m.

20 LOCATION: Tri County Educational Service Center

21 94 Cherry Street

22 Sand Lake, Michigan

23 REPORTER: Kelly M. Kane, CSR-1470
24
25

Page 2

1 APPEARANCES:

2

3 FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION

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11 On behalf of Plaintiffs

12

13 GIARMARCO, MULLINS & HORTON, P.C.

14 BY: Annabel F. Shea (P83750)

15 101 W. Big Beaver Road, Suite 1000

16 Troy, MI 48084-5280

17 (248)457-7081

18 ashea@gmhlaw.com

19 On behalf of Defendants

20

21

22

23

24

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Page 4

1 Sand Lake, Michigan

2 February 29, 2024; 9:37 a.m.

3 * * * B.A.

4 [REDACTED]

5 having been first duly sworn to tell the truth, the whole

6 truth, and nothing but the truth, was examined and

7 testified as follows:

8 EXAMINATION

9 BY MS. SHEA:

10 Q. Hi.

11 A. Hi.

12 Q. My name is Anabell Shea; I'm one of the attorneys

13 representing the school district and the individual

14 Defendants in this case.

15 Would you state your full name for the record,

16 please? B.A.

17 A. [REDACTED]. B.A.

18 Q. Do you mind if I call you [REDACTED] or would you prefer

19 [REDACTED]? B.A.

20 A. [REDACTED]. B.A.

21 Q. Okay.

22 A. Thank you.

23 Do you want me to speak to her or --

24 Q. You can speak to either one of us.

25 A. Okay.

Page 3

1 INDEX

2 WITNESS: B.A. PAGE

3 [REDACTED]

4 Examination by Ms. Shea 4

5

6

7 EXHIBITS

8 PAGE

9 (No exhibits were marked.)

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Page 5

1 Q. So this is just a question-and-answer session. I'm going to

2 ask you a question, you provide an answer, and the court

3 reporter is typing everything out. So she can hear you if

4 you're looking at me, if you're looking at your attorney, or

5 if you're looking at her.

6 Because this is generating a transcript, I would

7 just ask that we talk one at a time so that the record is

8 clear. So you want to make sure that I get my full question

9 out first and then you can provide your answer.

10 From time to time your attorney might give an

11 objection, that's perfectly fine, just wait until he gives

12 his full objection and then provide your answer unless he

13 instructs you not to answer. Does that make sense?

14 A. Yes.

15 Q. Okay. And because this is a transcript we want to make sure

16 we're verbalizing our responses, so we don't want an uh-huh

17 or huh-uh or shaking your head because it won't show up in

18 the transcript. Does that make sense?

19 A. Yes.

20 Q. Okay. Sometimes I ask a bad question, attorneys aren't

21 perfect, so if you don't understand my question just tell me

22 you don't understand and I will be happy to rephrase it or

23 ask a different question. Does that make sense?

24 A. Yes.

25 Q. You can take a break at any time. I would just ask, if I

Page 6

1 have a question pending, that you answer that question first
 2 before you take a break. Is that okay?
3 A. Yes. B. A.
 4 Q. Okay. So, [REDACTED] you're the mother of D.A. and X.A.; is
 5 that correct?
6 A. Yes.
 7 Q. And I'll just say on the record that counsels have agreed
 8 that the minor Plaintiffs will be referred in the transcript
 9 by their first and last initials but we'll use their names
 10 in speaking so it makes our conversation flow a little bit
 11 better. Is that okay?
12 A. Yes.
 13 MR. FITZPATRICK: And I assume we're doing the
 14 same for her as well, correct?
 15 MS. SHEA: Yes, correct.
 16 BY MS. SHEA:
 17 Q. It's awkward to refer to your own kids as initials, so
 18 that's one of the reasons why we're doing that.
 19 Do you have any other children?
20 A. No.
 21 Q. Are you married?
22 A. No.
 23 Q. Are you employed?
24 A. Yes.
 25 Q. Where do you currently work?

Page 7

1 A. Trinity Health, Muskegon.
 2 Q. And what do you do there?
3 A. Pulmonary function technician.
 4 Q. And what does that comprise of?
5 A. I am a respiratory therapist doing diagnostic testing.
 6 Q. And your kids attend Tri County Area Schools; is that
 7 correct?
8 A. Yes.
 9 Q. What grade is D.A. in?
10 A. Eighth grade.
 11 Q. And what grade is X.A. in?
12 A. Tenth grade.
 13 Q. Both your children just recently testified that they
 14 received a Let's Go Brandon sweatshirt for Christmas on
 15 December 25, 2021, from you; is that correct?
16 A. Yes.
 17 Q. In October 2021 there was a NASCAR race that occurred in
 18 Talladega where a driver named Brandon Brown won that race,
 19 and there was a video that came out after the fact where the
 20 crowd was chanting Fuck Joe Biden and the reporter thought
 21 they were saying Let's Go Brandon. Have you seen that video
 22 before?
23 A. I believe so, yes.
 24 Q. Do you remember when you first saw it?
25 A. No.

Page 8

1 Q. Do you remember if you saw it before Christmas on
 2 December 25, 2021?
3 A. I did.
 4 MS. SHEA: I'm just going to play that video for
 5 you that's marked as Exhibit A.
 6 (Video plays.)
 7 BY MS. SHEA:
 8 Q. Is that the same video that you've seen before?
9 A. I don't remember.
 10 Q. But you do recall seeing a video similar to that from the
 11 Talladega race in October 2021 where the crowd was chanting
 12 Fuck Joe Biden?
13 A. I do recall seeing content similar.
 14 Q. Okay. Have you read the Complaint before that was filed in
 15 this action?
16 A. Yes.
 17 Q. Okay. So in the Complaint it alleges that your son, D.A.,
 18 was asked to remove his Let's Go Brandon sweatshirt around
 19 February 2022 by Assistant Principal Buikema. Do you
 20 remember that allegation?
21 A. I believe so.
 22 Q. Were you present during that interaction between your son
 23 and Mr. Buikema?
24 A. No.
 25 Q. So you don't have any firsthand knowledge of what

Page 9

1 Mr. Buikema said to your son; is that correct?
2 A. Could you repeat that, please?
 3 Q. Sure. It was kind of a bad question.
 4 You just testified earlier that you weren't
 5 present for that interaction, so it would be fair to say
 6 that you don't know what was actually said by Assistant
 7 Principal Buikema to your son on that day; is that correct?
8 A. I was not there.
 9 Q. Okay. Did you -- you didn't receive a call home from
 10 Assistant Principal Buikema following that interaction with
 11 D.A.; is that correct?
12 A. That's correct.
 13 Q. Okay. And you didn't receive a letter from the school
 14 district indicating that D.A. was disciplined following that
 15 interaction; is that correct?
16 A. Could you say that one more time, please?
 17 Q. Sure. So following D.A.'s interaction with Assistant
 18 Principal Buikema when he was wearing his Let's Go Brandon
 19 sweatshirt, you didn't receive a letter that came back from
 20 the school indicating he received discipline; is that
 21 correct?
22 A. I received no letters.
 23 Q. Okay. You didn't receive any notice that he was suspended
 24 from school for wearing a Let's Go Brandon sweatshirt; is
 25 that correct?

Page 14

1 MR. FITZPATRICK: Object to form, but you can
 2 answer.
 3 **A. I need to hear it one more time, please.**
 4 MS. SHEA: Can you read it one more time?
 5 (Previous question read back by court reporter.)
 6 **A. I did not receive any notice of any sort.**
 7 BY MS. SHEA:
 8 Q. And you didn't receive a letter that would indicate that
 9 X.A. received a detention for wearing his Let's Go Brandon
 10 sweatshirt on May 26, 2022; is that correct?
 11 **A. I'm not clear.**
 12 Q. Let me rephrase it. Did you receive any form of written
 13 communication from the school district that would indicate
 14 that X.A. received a detention on May 26, 2022, for wearing
 15 his Let's Go Brandon sweatshirt?
 16 **A. I received no communication from the school.**
 17 Q. And you didn't receive any written communication that would
 18 say that he was suspended for wearing his Let's Go Brandon
 19 sweatshirt to school on May 26, 2022; is that correct?
 20 **A. I received no communication.**
 21 Q. And X.A. didn't have to receive any medical treatment
 22 following his interaction with Mr. Buikema on May 26, 2022,
 23 when he was wearing his Let's Go Brandon sweatshirt; is that
 24 correct?
 25 **A. X.A. has not needed medical treatment --**

Page 15

1 Q. Okay.
 2 **A. -- following his interaction with Mr. Buikema.**
 3 Q. And is it fair to say that X.A. also didn't miss any days of
 4 school following his interaction or because of his
 5 interaction with Mr. Buikema on May 26, 2022; is that
 6 correct?
 7 **A. That's correct.**
 8 Q. Okay. And D.A. is currently in eighth grade at the middle
 9 school; is that right?
 10 **A. That is correct.**
 11 Q. And how is he doing in school currently?
 12 **A. It appears he's doing well.**
 13 Q. Okay. And X.A. is a sophomore at the high school at
 14 Tri County; is that correct?
 15 **A. That is correct.**
 16 Q. And how is X.A. doing in school?
 17 **A. He seems to be doing well.**
 18 MS. SHEA: Okay. I have no further questions.
 19 MR. FITZPATRICK: Nothing from me.
 20 (Deposition concluded at 9:54 a.m.)
 21
 22
 23
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Page 16

CERTIFICATE

1
 2 STATE OF MICHIGAN)
 3) SS
 4 COUNTY OF KENT)
 5 I, Kelly M. Lysne, Notary Public in and for the
 6 County of Kent, State of Michigan, do hereby certify that
 7 the foregoing deposition was taken before me at the time
 8 and place hereinbefore set forth. Said witness was duly
 9 sworn by me to tell the truth, the whole truth, and
 10 nothing but the truth, and thereupon was examined and
 11 testified in the foregoing deposition.
 12 I further certify that this deposition was taken
 13 and transcribed by me and that it is a true and correct
 14 transcript.
 15 IN WITNESS WHEREOF, I have hereunto set my hand
 16 this 1st day of March, 2024.
 17
 18
 19
 20
 21
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 23
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 25

Kelly Lysne

Kelly M. (Kane) Lysne, CSR-1470,
 Notary Public in and for the
 County of Kent, State of Michigan.
 My commission expires: 11-17-2028

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

**Exhibit 6 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

Date : 1/1/0001 12:00:00 AM

From : "Mindy Silverman" msilverman@tricountyschools.com

B.A.

To : [REDACTED]@hotmail.com" [REDACTED]@hotmail.com, [REDACTED]@gmail.com" [REDACTED]@gmail.com

Subject : art update

@@doNotReply@@



Message sent from Tri County Area Schools

Message From: Mindy Silverman D.A.

Context: ART120-2A - ART 2 ([REDACTED])

Subject: art update

A.

Good morning Mr. and Mrs. [REDACTED]

This week I am starting something new with my students. I had them all write their names on a popsicle stick and once a week I will randomly choose 3 names from that class. I do not tell the students who I pick until the end of the hour. Those three get an email or phone call home letting parents/guardians know how their performance and behavior was in my class on that particular day. I love the fact that I get to email not only on any problems but also on good behavior which doesn't get enough credit more often than not!

D.A.

[REDACTED] is one of the most polite students I have. He is always asking how to do a project better or showing me what he has so far. I love his confidence and talking about building houses (which I'm doing right now) So, we get to complain to each other about that process. He is a joy to have in class and I was happy to see I got him again this semester. You have raised a good one! Both your boys are fantastic and I want to thank you for that.

Have a great week,

Mindy Silverman - art teacher

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

**Exhibit 7 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

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

8 Plaintiffs,

Case No. 223-cv-423

9 v.

Judge Paul L. Maloney

10 TRI COUNTY AREA SCHOOLS;

Magistrate Judge:

11 ANDREW BUIKEMA, in his

Sally J. Berens

12 individual capacity; and

13 WENDY BRADFORD, in her individual

14 capacity,

15 Defendants.
16

17
18 DEPOSITION OF: ANDREW BUIKEMA
19

20 DATE: February 27, 2024

21 TIME: 9:10 a.m.

22 LOCATION: Tri County Educational Service Center

23 94 Cherry Street

24 Sand Lake, Michigan

25 REPORTER: Kelly M. Kane, CSR-1470

Page 2

1 APPEARANCES:

2

3 FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION

4 BY: Conor T. Fitzpatrick (MI P78981)

5 Kelley Bregenzer (NY 5987482)

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9 conor.fitzpatrick@thefire.org

10 kelley.bregenzer@thefire.org

11 On behalf of Plaintiffs

12

13 GIARMARCO, MULLINS & HORTON, P.C.

14 BY: Annabel F. Shea (P83750)

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16 Troy, MI 48084-5280

17 (248)457-7081

18 ashea@gmhlaw.com

19 On behalf of Defendants

20

21

22

23

24

25

Page 4

1 Sand Lake, Michigan

2 February 27, 2024; 9:10 a.m.

3 * * *

4 ANDREW BUIKEMA,

5 having been first duly sworn to tell the truth, the whole

6 truth, and nothing but the truth, was examined and

7 testified as follows:

8 MR. FITZPATRICK: Before we get started today,

9 there's been an agreement reached between counsel that the

10 objection we placed on the record at the start of

11 yesterday's 30(b)(6) deposition related to the status of

12 discovery responses, and Defendants' counsel's response to

13 that objection, will run through the remainder of this

14 week's depositions.

15 Do I have that correct?

16 MS. SHEA: Yes, that is correct.

17 MR. FITZPATRICK: Excellent.

18 E X A M I N A T I O N

19 BY MR. FITZPATRICK:

20 Q. Good morning, Mr. Buikema.

21 A. **Good morning.**

22 Q. Mr. Buikema, do you understand that you're here today to

23 provide testimony in connection with an ongoing lawsuit?

24 A. **Yes.**

25 Q. And do you understand that your testimony today is being

Page 3

1 I N D E X

2 WITNESS: PAGE

3 ANDREW BUIKEMA

4 Examination by Mr. Fitzpatrick 4

5 Examination by Ms. Shea 65

6 Reexamination by Mr. Fitzpatrick 70

7

8 E X H I B I T S

9 PAGE

10 Deposition Exhibit 6 13

11 Deposition Exhibit 7 34

12 Deposition Exhibit 8 41

13 Deposition Exhibit 9 (CONFIDENTIAL) 43

14 Deposition Exhibit 10 46

15 Deposition Exhibit 11 57

16 Deposition Exhibit 12 58

17 Deposition Exhibit A 67

18 Deposition Exhibit B 68

19 (Exhibits are attached.)

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Page 5

1 given under oath just as if you were giving testimony in a

2 courtroom in front of a judge and a jury?

3 A. **Yes.**

4 Q. Have you ever given a deposition before?

5 A. **No.**

6 Q. So since you haven't I'm going to go over the ground rules

7 to make sure that today goes smoothly.

8 So we have a court reporter here today who is

9 taking a verbatim transcript of everything that we say, so

10 it's important that you verbalize your answers. That means

11 no shakes of the head or uh-uhs. Does that make sense?

12 A. **Yes.**

13 Q. And another rule is, because she's taking a transcript it's

14 important that we not speak at the same time. So I'll let

15 you finish your answers, and all I ask is that you make sure

16 I'm done with my question before you answer; fair?

17 A. **Yes.**

18 Q. If you don't understand a question, please let me know and

19 I'll rephrase, but if you answer one of my questions I'm

20 going to assume that you understood the question; fair?

21 A. **Yes.**

22 Q. If you need to take a break at any time today, that's fine,

23 just let me know. All I ask is that if I have a pending

24 question that you answer the question; is that fair?

25 A. **Yes.**

Page 34

1 A. When I would have lunch detention for students I would check
2 in with them the previous class hour and let them know
3 verbally.
 4 Q. I see here under third offense that a student, upon a third
 5 offense, could be given one day of in-school suspension or
 6 an out-of-school suspension. Do I have that right?
7 A. If available continued violations will result in
8 out-of-school suspension.
 9 Q. So fair to say that it would be a fourth offense or beyond
 10 where an out-of-school suspension would be considered; is
 11 that fair?
12 A. At the discretion of the administration.
 13 Q. Okay. Do you recall, during your time at Tri County Middle
 14 School, any students being given either an in-school or an
 15 out-of-school suspension for violating the dress code?
16 A. No.
 17 MR. FITZPATRICK: I'm going to hand you a document
 18 that I'd like marked as Exhibit Number 7, please.
 19 MS. SHEA: Do you mind if we go off the record for
 20 a second?
 21 MR. FITZPATRICK: Sure.
 22 (Brief discussion held; Deposition Exhibit 7 was
 23 marked for identification.)
 24 MR. FITZPATRICK: Back on the record.
 25

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1 Q. Did you visit -- how did those visits take place? Was it an
 2 assembly? Was it class to class? Tell me about that.
3 A. I do not recall the specifics of how that schedule worked
4 itself out.
 5 Q. Do you recall it being a school assembly?
6 A. I do not recall if it was a school assembly.
 7 Q. Is it fair to say here that since it said come to the
 8 classrooms that you went to individual classrooms?
 9 MS. SHEA: Objection, asked and answered, but you
 10 can go ahead.
11 A. Again, I don't know or remember how the schedule arranged
12 itself.
 13 BY MR. FITZPATRICK:
 14 Q. Do you remember which groups of students you and
 15 Principal Williams met with that day?
16 A. I do not recall the schedule.
 17 Q. When you and Mr. Williams did presentations like this would
 18 your goal be to try to address every student?
19 A. I cannot recall the motivation behind it.
 20 Q. How often would you and Principal Williams give
 21 presentations of this sort?
22 A. Any time students would come back from a longer break, such
23 as Christmas break, spring break.
 24 Q. One of the items you listed in this email as being discussed
 25 with the students that day was dress code. Do I have that

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1 BY MR. FITZPATRICK:
 2 Q. Mr. Buikema, I've handed you a document that we've marked as
 3 Exhibit 7 here today. This appears to be an email that you
 4 sent. Do I have that right?
5 A. Yes.
 6 Q. And it was to middle school staff. Do I have that right?
7 A. Yes.
 8 Q. Who would be on -- who would receive emails that go to the
 9 middle school staff account?
10 A. Who was ever assigned to middle school staff at
11 TriCountyMiddleSchool.com.
 12 Q. Would teachers receive emails sent to middle school staff?
13 A. Yes.
 14 Q. Would administrators?
15 A. Yes.
 16 Q. In the email you say, thank you for allowing Joe and I to
 17 come to the classrooms to discuss our school expectations as
 18 we navigate to the second semester today. Did I read that
 19 right?
20 A. Yes.
 21 Q. Do you recall what this email was in reference to?
22 A. Yes.
 23 Q. What was it?
24 A. Mr. Williams and I visited all the classrooms to reinforce
25 our school expectations.

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1 right?
2 A. It appears so.
 3 Q. Do you remember what you or Principal Williams discussed
 4 with the students with respect to the dress code?
5 A. I do not recall.
 6 Q. Do you recall addressing the meaning of the word lewd during
 7 that meeting?
8 A. I do not recall.
 9 Q. Indecent?
10 A. I do not recall.
 11 Q. Vulgar?
12 A. I do not recall.
 13 Q. Profane?
14 A. I do not recall.
 15 Q. Do you recall raising the definition of those words in any
 16 of the meetings that you and Principal Williams had with the
 17 students?
18 A. I do not recall.
 19 Q. Let's talk about the phrase Let's Go Brandon. When did you
 20 first learn about the slogan?
21 A. I do not recall.
 22 Q. Do you remember how you learned about it?
23 A. I do not recall.
 24 Q. I believe you said earlier that you believe Let's Go Brandon
 25 meant Fuck Joe Biden. Do I have that right?

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1 A. Yes.
 2 Q. How did you come to believe that it had that connotation?
3 A. I don't understand your question.
 4 Q. What led you to believe that the words Let's Go Brandon
 5 meant Fuck Joe Biden?
6 A. I still don't understand your question.
 7 Q. Why do you think Let's Go Brandon means Fuck Joe Biden?
8 A. I still don't understand your question.
 9 MR. FITZPATRICK: Let's take five here.
 10 MS. SHEA: Okay.
 11 (Recess taken from 10:12 a.m. to 10:20 a.m.)
 12 BY MR. FITZPATRICK:
 13 Q. Mr. Buikema, do you understand that you're still under oath?
14 A. Yes, sir.
 15 Q. Did you talk to anybody about your testimony during the
 16 break?
17 A. No.
 18 Q. So our Complaint alleges that our clients first wore a
 19 Let's Go Brandon shirt to school around February of 2022.
 20 Prior to February 2022 had Tri County Middle School
 21 experienced any disruption due to students wearing political
 22 apparel?
23 A. I do not recall.
 24 Q. During your time at Tri County Middle School do you recall
 25 observing any disruption caused by students wearing

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1 political apparel?
2 A. I do not recall.
 3 Q. Prior to February of 2022 had Tri County Middle School
 4 experienced any disruption due to the Let's Go Brandon
 5 phrase at school?
6 A. No.
 7 Q. From February 2022 until the end of that school year did
 8 Tri County Middle School experience a disruption from
 9 students wearing political apparel at school?
10 A. I do not recall.
 11 Q. Are there any -- would there have been any records kept at
 12 the time that would help you refresh your recollection?
13 A. No.
 14 Q. But sitting here today it's fair to say you don't recall --
 15 you don't remember any disruption due to political apparel
 16 between February 2022 and the end of that school year. Do I
 17 have that right?
18 A. I do not remember any disruptions. I remember interactions
19 with students that had a profane saying, and that was my
20 focus at the time.
 21 Q. And those sweatshirts -- or, pardon me, what you just
 22 referred to, are those Let's Go Brandon sweatshirts?
23 A. Yes.
 24 Q. And did you instruct students to remove the Let's Go Brandon
 25 sweatshirts?

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1 A. Yes.
 2 Q. Did they comply?
3 A. Yes.
 4 Q. Do you recall those sweatshirts causing any other issues on
 5 campus?
6 A. I was focused on the profane nature of the saying.
 7 Q. So just to ask my question again, do you recall any other
 8 effects from the students wearing those sweatshirts, any
 9 other disruption?
10 A. Again, I was focused on the profane saying.
 11 Q. I understand what you were focused on but I need an answer
 12 to my question here. Do you recall -- other than the
 13 students wearing these sweatshirts do you recall any other
 14 kind of disruption or disorder during the school day that
 15 you connected with these boys wearing the Let's Go Brandon
 16 sweatshirts?
17 A. Not that I can recall.
 18 Q. And would that also be true for the Let's Go Brandon slogan
 19 in general? From February 2022 through the end of the
 20 school year do you recall that slogan causing any sort of
 21 disruption or disorder to the school day?
22 A. Not that I can recall.
 23 Q. After May of 2022 did Tri County Middle School experience
 24 any disruption from students wearing political apparel at
 25 school?

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1 A. Not that I can recall.
 2 Q. After May of 2022 did Tri County Middle School experience
 3 any disruption from Let's Go Brandon apparel or the slogan?
4 A. Not that I can recall.
 5 Q. Prior to February 2022 did Tri County Middle School
 6 experience any disruptions from political arguments during
 7 school?
8 A. What kind of political argument?
 9 Q. Students getting involved in arguments about political
 10 topics. Do you recall that causing any disruption at
 11 school?
12 A. I do not recall.
 13 Q. You do not recall any disruption from political arguments;
 14 is that correct?
15 A. Correct.
 16 Q. From February of 2022 through the end of that school year
 17 did Tri County Middle School experience any disruption from
 18 students getting into political arguments at school?
19 A. Not that I can recall.
 20 Q. And after May of 2022 did Tri County Middle School
 21 experience any disruption from political arguments between
 22 students at school?
23 A. Not that I can recall.
 24 MR. FITZPATRICK: I'm going to hand you a document
 25 I would like marked as Exhibit Number 8, please.

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1 (Brief discussion held.)

2 MR. FITZPATRICK: All right. We're back on the

3 record.

4 I'm next going to hand you a document I'd like

5 marked as Exhibit Number 10, please.

6 (Deposition Exhibit 10 was marked for

7 identification.)

8 BY MR. FITZPATRICK:

9 Q. Mr. Buikema, I've handed you a document marked as Exhibit

10 Number 10, and at the top it's an email from you to

11 Mr. Williams, right?

12 A. Yes.

13 Q. And it's CC'ing MS staff. Is that the middle school staff

14 account we talked about a little bit earlier?

15 A. Yes.

16 Q. So this would have gone to all of the teachers and

17 administrators at Tri County Middle School, correct?

18 A. Whoever is assigned to that email Listserv.

19 Q. I'd like to direct your attention to Mr. Williams' email at

20 8:03 a.m. Do you see that?

21 A. Yes, sir.

22 Q. The second full paragraph, starting with we may see, can you

23 read those two sentences, please?

24 A. We may see an increase in students who wear the Let's Go

25 Brandon shirt in school today. In careful consideration

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1 here is how the administration would like staff to respond

2 if you see more students wearing these shirts.

3 Q. When Mr. Williams wrote in careful consideration, were you

4 involved in discussions with Mr. Williams involving how to

5 handle Let's Go Brandon attire after the lawsuit was filed?

6 A. Can you say that again, please?

7 Q. Sure. So in the second sentence Principal Williams writes,

8 in careful consideration here's how the administration would

9 like staff to respond if you see more students wearing these

10 shirts. Were you involved in any discussions with

11 Principal Williams regarding how to handle Let's Go Brandon

12 shirts during this time period?

13 A. I cannot answer for Mr. Williams and his choice of words.

14 Q. So I'm asking about any meetings or discussions that you

15 were involved in. Do you recall being involved in any

16 discussions with Mr. Williams regarding how to handle

17 Let's Go Brandon attire at school during this time period?

18 A. I remember the email conversation from Al Cumings, the

19 current superintendent of Tri County Area Schools, about the

20 situation.

21 Q. And what do you recall that email saying?

22 A. I do not recall.

23 Q. Even if you don't recall the exact words of it, do you

24 recall the general message of it?

25 A. My best recollection is about the Let's Go Brandon shirt.

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1 Q. And do you recall, even if you don't recall the exact words,

2 what Superintendent Cumings had to say about the Let's Go

3 Brandon shirts?

4 A. I don't recall Mr. Cumings' exact words in his

5 communication.

6 Q. I appreciate that you don't remember his exact words, I'm

7 asking if you remember the general message of the email.

8 A. That essentially Mr. Williams would be handling any

9 conversation with the Let's Go Brandon.

10 Q. You said -- pardon me. You said any conversation?

11 A. Any conversation.

12 Q. Conversation with whom?

13 A. With students that chose to wear that clothing.

14 Q. Do you recall speaking with Mr. Williams about the best way

15 to go about doing that?

16 MS. SHEA: Objection, asked and answered.

17 You can go ahead and answer.

18 A. I do not recall the specifics of how that was going to be

19 approached.

20 BY MR. FITZPATRICK:

21 Q. Do you recall there being a discussion with you and

22 Mr. Williams though?

23 A. There was an email from Mr. Cumings to the administration

24 about how to handle it and that there would be conversation

25 with Mr. Williams about it.

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1 Q. Other than the email that's been marked as Exhibit 10, do

2 you recall any other communications to staff, either from

3 the superintendent, Principal Williams, or yourself, about

4 how to handle the Let's Go Brandon attire?

5 A. I do not recall.

6 Q. Earlier I believe you testified that you and

7 Principal Williams would have weekly meetings. Do I

8 remember that right?

9 A. Yes.

10 Q. Do you remember if the topic of Let's Go Brandon came up

11 during your weekly meeting this week?

12 A. I do not recall.

13 Q. For your weekly meetings would there be an agenda?

14 A. No.

15 Q. Does anyone keep a written record of what you discussed at

16 the weekly meetings?

17 A. No.

18 Q. Was it anyone's practice to send a recap email of what you

19 had discussed?

20 A. No.

21 Q. I'd like to briefly go back to Exhibit 9, please. Pardon

22 me, Exhibit 8.

23 A. (Witness complies.)

24 Q. I'm sorry, it is Exhibit 9. I was so focused on getting the

25 name thing right that I got the numbers wrong.

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1 Is this a document that Mr. Williams shared with
2 you back in 2022?
3 **A. I don't recall.**
4 MS. SHEA: Did you say '22?
5 MR. FITZPATRICK: Pardon me, 2023.
6 **A. I don't recall.**
7 BY MR. FITZPATRICK:
8 Q. Do you recall any conversations about why a list was being
9 kept of students wearing Let's Go Brandon apparel?
10 **A. I do not recall why Mr. Williams created the document.**
11 Q. Do you recall him ever showing it to you?
12 **A. He did show it to me, yes, when I was in the room with R.S.**
13 Q. Did he show it to you -- how did he show it to you? For
14 example, was it on a computer or did he have it printed out?
15 **A. It was on his computer on his desk.**
16 Q. Do you recall having seen it before then?
17 **A. I do not recall.**
18 Q. Do you recall the occasion for him showing it to you?
19 **A. After the conversation with R.S. he opened the document and**
20 **typed up the conversation.**
21 Q. Did he ask you to read it?
22 **A. No.**
23 Q. Prior to May 17th were you aware of this document's
24 existence?
25 **A. I do not recall.**

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1 Q. Prior to May 17th were you aware that a list was being kept
2 of interactions involving Let's Go Brandon attire?
3 MS. SHEA: Objection, asked and answered, but go
4 ahead.
5 **A. I do not recall.**
6 BY MR. FITZPATRICK:
7 Q. Let's go back to Exhibit 6, please, the middle school
8 handbook, and let's turn back to the dress code on page 24,
9 please.
10 **A. (Witness complies.)**
11 Q. Now, you had interactions with both D.A. and X.A. about
12 their Let's Go Brandon sweatshirts. Am I correct in that?
13 **A. Yes.**
14 Q. And you asked them to remove their Let's Go Brandon
15 sweatshirts, correct?
16 **A. Yes.**
17 Q. And they complied, correct?
18 **A. Yes.**
19 Q. So looking at the dress code, which provision of the dress
20 code did you believe that Plaintiffs' Let's Go Brandon
21 sweatshirts violated?
22 **A. Profanity.**
23 Q. So under subsection B, you said profanity, correct?
24 **A. Yes.**
25 Q. Are there any other provisions in B that you believe the

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1 Let's Go Brandon apparel violated?
2 **A. No.**
3 Q. Why do you believe it was profane?
4 **A. Because the phrase means Fuck Joe Biden.**
5 Q. Any other reason?
6 **A. It's a profane statement.**
7 Q. Why?
8 **A. Because it said the word fuck.**
9 Q. But the sweatshirt, in fairness, did not have that word on
10 it, did it?
11 **A. The meaning of the phrase is Fuck Joe Biden. It was**
12 **profane.**
13 Q. But just to get an answer to my question, the sweatshirts
14 that you observed the boys wearing did not have the work
15 fuck on them, did they?
16 **A. The phrase means Fuck Joe Biden.**
17 Q. I'd like an answer to my question. The sweatshirt you
18 observed the boys wearing did not have the word fuck on it,
19 did it?
20 **A. Correct.**
21 Q. I'd like to go back to Exhibit Number 8, please. On page 2,
22 in response to interrogatory number 1, you wrote, the phrase
23 Fuck Joe Biden was vulgar, profane, and pornographic, in
24 sentence two. Did I read that right?
25 **A. Yes.**

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1 Q. Why did you consider Let's Go Brandon pornographic?
2 **A. The actual definition of fuck is pornographic and profane.**
3 Q. When you say pornographic, what do you mean by that word?
4 **A. I don't understand your question.**
5 Q. What does the word pornographic mean?
6 **A. In my interpretation or opinion?**
7 Q. Yes. You used the word pornographic here; I'm wondering
8 what you believe that word to mean.
9 **A. In my opinion the phrase fuck has to do -- in a sexual**
10 **inappropriate way.**
11 Q. I just want to make sure I understand your answer. So when
12 you use the phrase pornographic do you mean sexually
13 inappropriate?
14 **A. I believe it has a reference to a pornographic sexual**
15 **nature.**
16 Q. Back in 2022, when you observed the boys wearing the
17 sweatshirt, were you aware that Let's Go Brandon had become
18 something of a political slogan?
19 **A. Yes.**
20 Q. Are you aware of the so-called Dark Brandon name that has
21 cropped up related to Let's Go Brandon?
22 **A. No.**
23 Q. If you could turn to Exhibit 4, please. It should be in the
24 binder.
25 **A. (Witness complies.)**

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1 **they should be doing rather than having the conversations of**
 2 **what falls within the boundaries the dress code.**
 3 Q. The explanation you just provided me, has that been
 4 communicated to teachers?
 5 **A. What -- what specific are you asking?**
 6 Q. Your response related to undue attention as being something
 7 that distracts the teacher. Is that view of what that
 8 phrase means, is that something that's been communicated to
 9 teachers?
 10 **A. The dress code has been communicated to teachers at staff**
 11 **meetings, at onboarding.**
 12 Q. I'm not asking if the dress code has always been
 13 communicated to teachers, I'm asking whether your conception
 14 of the undue attention phrase that we just talked about,
 15 about it distracting teachers, I'm asking whether that's
 16 been conveyed to teachers.
 17 **A. I'm still confused with your question. Our teachers are**
 18 **there to teach our students.**
 19 Q. While you were an assistant principal at Tri County Middle
 20 School, if a teacher came up to you and asked you, what does
 21 calling undue attention to oneself in the dress code, what
 22 does that mean, what would you have told them?
 23 **A. Anything that distracts them from doing their job of**
 24 **educating our students.**
 25 Q. Okay. So that bit you just told me about what you view as

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1 calling undue attention to oneself, was that ever
 2 communicated to teachers?
 3 **A. I still don't understand your question.**
 4 Q. So if I understand correctly, your view of the calling undue
 5 attention to oneself, that phrase, it means something that's
 6 distracting to teachers during lesson time. Do I have that
 7 more or less right?
 8 **A. I think what we're choosing to focus on is one part of the**
 9 **whole.**
 10 Q. Yes. So this one part of the whole that I'm focusing on,
 11 did I correctly re-tell sort of your understanding of what
 12 that phrase means?
 13 **A. If the teacher's discretion, as defined in here, is not**
 14 **allowing them to do their job of educating our students,**
 15 **that would fall under that category.**
 16 Q. Okay. And my question is, that interpretation of that
 17 phrase as it's dealing with teachers being distracted from
 18 their classroom functions, was that interpretation of the
 19 dress code provision to your knowledge ever communicated to
 20 teachers?
 21 **A. I do not recall if that specific was addressed; the dress**
 22 **code as a whole was addressed.**
 23 Q. Do you have any recollection of that particular provision of
 24 the dress code, the calling undue attention to oneself, ever
 25 being addressed with teachers?

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1 MS. SHEA: Objection, asked and answered. Go
 2 ahead.
 3 **A. We have gone through this with all staff, all students,**
 4 **class meetings, staff meetings. It's been communicated and**
 5 **shared.**
 6 BY MR. FITZPATRICK:
 7 Q. And again I'm not asking about the dress code as a whole,
 8 I'm asking about this one part of the dress code, this calls
 9 undue attention to oneself language. Do you recall there
 10 being any communications or discussions with teachers
 11 specifically about that portion of the dress code?
 12 **A. I do not recall that specific.**
 13 Q. Same question with respect to students. Do you recall there
 14 being any communications to students about that specific
 15 phrase in the dress code?
 16 **A. What was communicated to the students was the dress code as**
 17 **a whole, not that specific.**
 18 Q. So the answer to my question is you do not recall any
 19 communications to students about that specific phrase? Do I
 20 have that right?
 21 **A. I cannot recall that.**
 22 Q. You cannot recall any, correct?
 23 **A. Correct.**
 24 Q. Have parents been provided guidance about that specific
 25 phrase in the dress code, the calls undue attention to

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1 oneself?
 2 **A. Not specifically.**
 3 MR. FITZPATRICK: Can we go off the record real
 4 quick?
 5 (Brief discussion held; recess taken from
 6 11:36 a.m. to 11:51 a.m.)
 7 MR. FITZPATRICK: Mr. Buikema, I have no further
 8 questions for you. Thank you for taking the time to speak
 9 with us today.
 10 **THE WITNESS: Thank you.**
 11 MS. SHEA: I just have a few questions for you,
 12 Mr. Buikema.
 13 E X A M I N A T I O N
 14 BY MS. SHEA:
 15 Q. During your time at Tri County Middle School are you aware
 16 of any expressed ban on Let's Go Brandon apparel?
 17 **A. No.**
 18 Q. What did you rely on in the dress code in determining
 19 whether the Let's Go Brandon apparel was not school
 20 appropriate?
 21 **A. I relied on the profanity part.**
 22 Q. Okay. During the times that you spoke with kids that were
 23 wearing Let's Go Brandon apparel did you rely on the portion
 24 of the dress code that said calling undue attention to
 25 oneself?

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1 **A. No. Again, I was referring to the profane part.**
 2 Q. Okay. And during your time at Tri County Middle School how
 3 many students did you ask to remove the Let's Go Brandon
 4 apparel if they were wearing it during school?
 5 **A. Three.**
 6 Q. Two of those being X.A. and D.A. that are Plaintiffs in this
 7 case?
 8 **A. Yes.**
 9 Q. And the third student being a different student?
 10 **A. Correct.**
 11 Q. Can you tell me what happened during your interaction with
 12 X.A. when you asked him to remove his Let's Go Brandon
 13 sweatshirt?
 14 **A. X.A. was --**
 15 Q. The older.
 16 **A. Okay. So that one was in my office. I sat down at my round**
 17 **table, explained to him that we cannot wear the sweatshirt**
 18 **because of the profane double meaning. He was super polite,**
 19 **kind, complied, and took it off, and we moved on with our**
 20 **day and didn't warrant a phone call home.**
 21 Q. Was there any discipline that was issued?
 22 **A. No.**
 23 Q. Did he miss any school after that?
 24 **A. No. It was a very brief conversation.**
 25 Q. Were there any subsequent offenses regarding X.A. and the

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1 violation of the dress code?
 2 **A. No.**
 3 Q. Okay. And can you tell me what happened with your
 4 interaction with D.A.?
 5 **A. That interaction happened in the hallway of my office, and I**
 6 **said, hey, do we know what that phrase means? And he said**
 7 **no, and I said, well, we can't wear it, it means the F-word,**
 8 **do we understand that. And he said, oh, okay. I said, so**
 9 **we have to take the sweatshirt off. And I said, do you have**
 10 **a shirt underneath it? He said, yes, it's the same thing.**
 11 **I said, okay, we can hook you up with a shirt from the care**
 12 **closet, I will ask Ms. Fryling, who is our social worker, to**
 13 **help with that.**
 14 **So again, he was polite, kind, we moved on with**
 15 **our day, not a big deal, didn't warrant a phone call home.**
 16 Q. Was he disciplined following that incident?
 17 **A. No.**
 18 Q. Did he miss any school following that incident?
 19 **A. No.**
 20 Q. Did he have any subsequent violations of the dress code
 21 following that incident?
 22 **A. No.**
 23 MS. SHEA: Okay. I just want to show you a video,
 24 and I'm going to mark this as Exhibit A.
 25 (Video plays.)

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1 BY MS. SHEA:
 2 Q. Have you seen that video before?
 3 **A. I saw it on social media, on Facebook.**
 4 Q. Did you see that video prior to your interactions with X.A.
 5 and D.A.?
 6 **A. Yes.**
 7 Q. Okay. And what do you hear in the video?
 8 **A. Fuck Joe Biden.**
 9 Q. What is your understanding of how that is connected to
 10 Let's Go Brandon?
 11 **A. When they were chanting it was my understanding that the**
 12 **Let's Go Brandon meant Fuck Joe Biden.**
 13 MS. SHEA: Okay. That was A; I'm going to mark
 14 this as Exhibit B.
 15 (Deposition Exhibit B was marked for
 16 identification.)
 17 BY MS. SHEA:
 18 Q. Okay. Have you seen this document before?
 19 **A. Yes.**
 20 Q. It looks like this is an email that was sent by you to all
 21 grades through Synergy; is that correct?
 22 **A. Correct.**
 23 Q. What is Synergy?
 24 **A. Synergy is our district grading, attendance, discipline**
 25 **software that we use.**

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1 Q. And it looks like it's dated April 12, 2023; is that
 2 correct?
 3 **A. Correct.**
 4 Q. Can you just read what it says to me in the body?
 5 **A. As stated in the morning announcements we want to be very**
 6 **clear on the dress code and expectations. The attachments**
 7 **are directly from our student handbook. Should you have any**
 8 **questions after reading through the information please see**
 9 **me or Mr. Williams.**
 10 Q. And then if you go to the second page it looks like you
 11 attached a screenshot of the student handbook; is that
 12 correct?
 13 **A. That's correct.**
 14 Q. What prompted you to send this message to staff?
 15 **A. Discussing with our leadership team we wanted to reinforce**
 16 **our expectations of dress code, especially coming after**
 17 **spring break when there would be typically less clothing,**
 18 **like tank tops, those type of things, short shorts, that**
 19 **students would wear consistently and be asked to change. So**
 20 **by the teacher asking me to help enforce the expectations,**
 21 **that's why I sent it out.**
 22 Q. Okay. And in your experience as a middle school assistant
 23 principal what are the most common dress code violations
 24 that you see?
 25 **A. Unfortunately the short shorts, tank tops that are very**

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1 **revealing. That's the most consistent one.**

2 Q. And how often do you see dress that violates that

3 subsection B of the dress code that involves vulgar,

4 profane, indecent, et cetera?

5 **A. Very little.**

6 MS. SHEA: Okay. I have no other questions.

7 MR. FITZPATRICK: One quick follow-up question.

8 R E E X A M I N A T I O N

9 BY MR. FITZPATRICK:

10 Q. Mr. Buikema, if I understood correctly you said you spoke

11 with three students regarding Let's Go Brandon apparel. Did

12 I hear that right?

13 **A. Correct.**

14 Q. Is the third student someone with the initials of D.R.?

15 **A. I don't recall.**

16 Q. Do you recall anything about your interaction with the third

17 student?

18 **A. Very similar to the others: polite, kind, understood. The**

19 **conversation was the double meaning, he understood, took the**

20 **sweatshirt off, complied, and we moved on with our day. It**

21 **didn't warrant a parent phone call.**

22 MR. FITZPATRICK: No further questions.

23 **THE WITNESS: Thank you.**

24 MS. SHEA: Thank you for your time.

25 (Deposition concluded at 11:59 a.m.)

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1 CERTIFICATE

2 STATE OF MICHIGAN)

3) SS

4 COUNTY OF KENT)

5 I, Kelly M. Lysne, Notary Public in and for the

6 County of Kent, State of Michigan, do hereby certify that

7 the foregoing deposition was taken before me at the time

8 and place hereinbefore set forth. Said witness was duly

9 sworn by me to tell the truth, the whole truth, and

10 nothing but the truth, and thereupon was examined and

11 testified in the foregoing deposition.

12 I further certify that this deposition was taken

13 and transcribed by me and that it is a true and correct

14 transcript.

15 IN WITNESS WHEREOF, I have hereunto set my hand

16 this 28th day of February, 2024.

17

18

19

20 *Kelly Lysne*

21 _____

22 Kelly M. (Kane) Lysne, CSR-1470,

23 Notary Public in and for the

24 County of Kent, State of Michigan.

25 My commission expires: 11-17-2028

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

**Exhibit 8 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

☰ 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, appearing to read "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 9 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

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 10 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

5 D.A., a minor, by and through
6 his mother B.A.; and X.A., a
7 minor, by and through his
8 mother B.A.,

Case No. 223-cv-423

9 Plaintiffs,

Judge Paul L. Maloney

10 v

Magistrate Judge Sally J. Berens

11 TRI COUNTY AREA SCHOOLS; ANDREW
12 BUIKEMA, in his individual
13 capacity; and WENDY BRADFORD, in
14 her individual capacity,
15 Defendants.

17
18 30(b)(6) DEPOSITION OF: TRI COUNTY AREA SCHOOLS REPRESENTATIVE
19 SUPERINTENDENT RYAN J. BILLER

20 DATE: February 26, 2024

21 TIME: 8:56 a.m.

22 LOCATION: Tri County Educational Center
23 94 Cherry Street
24 Sand Lake, Michigan

25 REPORTER: Lori J. Cope, RPR, CSR-4113

D.A. vs TRI COUNTY AREA SCHOOLS
 BILLER, RYAN 02/26/2024

30(b)(6), Job 28727
 2..5

Page 2

1 APPEARANCES:

2

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25 Appearing on behalf of the Defendants

Page 4

1 February 26, 2024

2 8:56 a.m.

3 Sand Lake, Michigan

4 ***

5 THE REPORTER: Would you raise your right hand,

6 please. Do you swear to tell the truth, the whole truth, and

7 nothing but the truth?

8 SUPERINTENDENT BILLER: Yes.

9 THE REPORTER: Thank you.

10 SUPERINTENDENT RYAN BILLER,

11 after having been duly sworn, was examined and

12 testified as follows:

13 MR. FITZPATRICK: Before we get started today, I'm

14 going to place something on the record. In August of 2023, we

15 served a document request for, among other things, all

16 documents and communications regarding students wearing

17 political or social messages, all documents and communications

18 related to Tri County Area Schools' determination that Let's

19 Go Brandon apparel violated the school dress code, and all

20 documents supporting the school district's denial of paragraph

21 45 of the complaint, which reads upon information and belief,

22 before February 2022 and continuing through the present,

23 defendants have not received any information which would lead

24 them to reasonably forecast a material disruption, substantial

25 disorder, or invasions of the rights of others if students

Page 3

1 I N D E X

2 WITNESS: PAGE

3 30(b)(6) Tri County Area Schools Representative

4 Superintendent Ryan J. Biller

5 Examination by Mr. Fitzpatrick 6

6 Examination by Ms. Shea 73

7 Re-Examination by Mr. Fitzpatrick 77

8

9

10

11 E X H I B I T S

12 NO. PG. IDENTIFICATION

13 1 12 Notice of Deposition

14 2 14 Complaint

15 3 27 Tri County High School Handbook 2022-23

16 4 61 Photograph

17 5 62 Photograph

18

19

20

21

22

23

24

25

Page 5

1 wore Let's Go Brandon or other political apparel.

2 Despite repeated requests in writing and over the

3 phone to date defendants have only produced assorted

4 discipline reports for the 2022 through 2023 school year from

5 Tri County Middle School for students with the last names A

6 through G. Defendants produced no disciplinary records for

7 the 2021 through '22 school year when plaintiffs wore the

8 sweatshirts, and no disciplinary records from Tri County High

9 School at all. Therefore, we object to any attempt by

10 defendants to offer or rely on testimony about any supposed

11 prior incidents which they contend played a role in their

12 decision to prohibit Let's Go Brandon apparel. If defendants

13 offer such evidence today or with their summary judgment

14 motion, we reserve the right to strike that material from the

15 record. If defendants make production after today, we reserve

16 the right to continue this deposition and to move the court to

17 sanction the defendants the fees and costs plaintiffs incur in

18 continuing the deposition. Now that that's been placed on the

19 record --

20 MS. SHEA: I would like to also place an objection

21 on the record that we produced 83 examples of disciplinary

22 records, and did object originally to the fact that it would

23 be an undue burden on the school district to produce

24 everything. So to date we did produce and responded to those

25 discovery responses, but due to the fact that it's an undue

Page 18

1 **limited scope with my legal counsel I am not comfortable**
 2 **answering that. I don't know.**
 3 BY MR. FITZPATRICK:
 4 Q. Other than meetings or discussions with legal counsel, are you
 5 aware of any discussions or communications here at the school
 6 district about plaintiff's lawsuit and whether -- actually,
 7 I'll just stop the question there, about plaintiff's lawsuit.
 8 **A. Have people informed me of there being a claim against the**
 9 **district or a complaint?**
 10 Q. Sure.
 11 I will ask that too. Have people informed you?
 12 **A. I mean, are --**
 13 Q. Are you aware of any meetings held at the school district not
 14 involving counsel that relate to this lawsuit?
 15 **A. No. Not that I'm aware of, no.**
 16 Q. Are you aware of any communications that the school district
 17 has had other than with counsel about this lawsuit?
 18 **A. No.**
 19 Q. Have you been a part of any discussions other than with
 20 counsel about the allegations in this lawsuit?
 21 **A. No.**
 22 Q. Earlier you mentioned that one of the documents you reviewed
 23 for this deposition was a student handbook. Do I have that
 24 right?
 25 **A. Uh-huh, yes.**

Page 19

1 Q. And specifically you reviewed the Tri County Area Schools --
 2 pardon me, the Tri County High School handbook and the Tri
 3 County Middle School handbook. Is that correct?
 4 **A. Yes.**
 5 Q. So is it fair to stay that Tri County Area Schools distribute
 6 student handbooks to their students?
 7 **A. In preparation, I just want to make sure I'm clear on this,**
 8 **when I was first hired January 1st I looked at a lot of those**
 9 **things when I was first notified that there was that handbook**
 10 **issue. If there is one, I wanted to see what it was, and as a**
 11 **superintendent you typically do those things, so it is not**
 12 **something that I looked at to prepare necessarily for this,**
 13 **it's something that I have reviewed prior to this deposition.**
 14 **But, to answer your question -- and, again, you had a**
 15 **different question at the end of that, so I think I answered**
 16 **the first part, but --**
 17 Q. So my question is a little bit more general.
 18 **A. Okay.**
 19 Q. And maybe we can take it school by school.
 20 **A. Okay.**
 21 Q. Does Tri County High School distribute a handbook to its
 22 students?
 23 **A. Yes.**
 24 Q. Does Tri County Middle School distribute a handbook to its
 25 students?

Page 20

1 **A. Yes.**
 2 Q. Does the Tri County High School handbook contain a dress
 3 code?
 4 **A. Yes.**
 5 Q. Does the Tri County Middle School handbook contain a dress
 6 code?
 7 **A. Yes.**
 8 Q. When do schools distribute the student handbook to students?
 9 **A. Typically they -- this is -- I am just speaking on -- I am**
 10 **only coming in at the halfway point of the year, so this**
 11 **should have been done at the beginning of the year, usually**
 12 **each school year in my experience.**
 13 Q. What is the purpose of a student handbook?
 14 **A. Set the rules and guidelines of the school, and be able to**
 15 **have a orderly, healthy learning environment for students.**
 16 **The handbook itself includes a lot of things, academics,**
 17 **different pathways for learning, options for students, things**
 18 **of that nature, as well as the how-tos of how to go about**
 19 **school, and mainly answer a lot of the frequently asked**
 20 **questions that a family or kids would have.**
 21 Q. How is the student handbook distributed?
 22 **A. These I was not here, so I am not -- exactly the method in**
 23 **which, but digitally typically it is pushed out. We have all**
 24 **sorts of -- and I don't know how it was here in Tri County at**
 25 **this time -- at that time, at the beginning of the year, but I**

Page 21

1 **know in my past experiences there is emails with it linked**
 2 **just to all of the parents. In this digital age we have all**
 3 **sorts of those means of communications so that we could save**
 4 **on trees to be frank.**
 5 Q. Is it fair to say that if a student or a parent has a question
 6 about what the rules are that the handbook is the place to
 7 look?
 8 **A. Sure, yes.**
 9 Q. Who writes the handbook?
 10 **A. Typically that's reviewed by administration, as well as legal**
 11 **counsel. We have typically, in my experience, and I believe**
 12 **we do here, NEOLA, which is a law -- it's a firm who writes**
 13 **policy, it helps policy for school districts. And that's --**
 14 **that's basically based off from state and federal laws change,**
 15 **and as they do that we have updates, and so the handbook is**
 16 **just one of those things that we would review and then bring**
 17 **to the board, and then the board would ultimately, from**
 18 **administration and their recommendations with the board, with**
 19 **NEOLA, would then vote. When they vote on that then it would**
 20 **become a policy.**
 21 Q. So ultimately student handbooks have to be approved by the
 22 school district?
 23 **A. Yeah, ultimately, yes.**
 24 Q. And what is the voting body that votes on the student
 25 handbook?

Page 22

1 **A. Voting body?**
 2 Q. Who votes?
 3 **A. The school board, the seven school board members, who are**
 4 **electd officials.**
 5 Q. Are administrators at the individual schools consulted about
 6 possible changes to the student handbook?
 7 **A. After or before --**
 8 Q. Before.
 9 **A. -- the board would vote, I guess, is the question.**
 10 Q. Just in general. In deciding whether to make a change to the
 11 student handbook, who does the school district consult with?
 12 **A. Yes. So, as I said earlier, administration would start**
 13 **administrative discussions and then brought to a review, NEOLA**
 14 **policies typically for that. Again, I'm only speaking from my**
 15 **past experience on this, and then we would have those then**
 16 **move up to a superintendent level, who would bring them to the**
 17 **board for review, and then also then have a vote. So there is**
 18 **some discussions at -- you know, if there is going to be**
 19 **changes in anything and the reasoning behind those**
 20 **typically.**
 21 Q. Do the members of the school board have a role in the content
 22 of this student handbook, or do they just vote up or down?
 23 **A. I believe there is a review, and much of what we have, from**
 24 **what I have learned in two months here, we have a policy**
 25 **committee, and so it runs through that, and any questions are**

Page 23

1 **asked at that time typically, and then prior to a vote there**
 2 **could be a discussion piece on the agenda to discuss those**
 3 **pieces before a vote. But I don't know if I answered your**
 4 **question or not there, sir. That's just the process.**
 5 Q. When are student handbooks updated?
 6 **A. Typically, in my experience, it has been usually over the**
 7 **summer when there is a little extra time for the**
 8 **administration and also, you know, myself now as a**
 9 **superintendent to review and discuss. Very rarely is there**
 10 **large, sweeping changes in a student handbook typically**
 11 **because that is -- NEOLA looks at those and we take those into**
 12 **account, those changes that need to, for state and federal**
 13 **laws.**
 14 Q. When was the last time the student handbook was updated?
 15 **A. I'm not sure on this particular one. I just saw the current**
 16 **copy. I know that that's something we will be looking at,**
 17 **that's in the process of being looked at, but, again, it's**
 18 **still kind of early on for that.**
 19 Q. So in terms of the current student handbooks that are in
 20 effect right now, I just want to make sure I understand your
 21 answer --
 22 **A. Yes.**
 23 Q. -- are you aware of any updates to either handbook during the
 24 current school year?
 25 **A. That I'm aware of?**

Page 24

1 Q. Yes.
 2 **A. Not that I'm aware of.**
 3 Q. Are student handbooks ever updated during the school year?
 4 **A. In my past experience, speaking to that?**
 5 Q. Or in your knowledge of Tri County Area Schools.
 6 **A. Yeah.**
 7 Q. Are you aware of Tri County Area Schools ever amending a
 8 student handbook during the school year?
 9 **A. Not to my knowledge.**
 10 Q. Okay. And I want to make sure that sort of the scope of my
 11 questions is clear. I know you have a lot of experience at
 12 other school districts before.
 13 **A. Yeah.**
 14 Q. So when I ask questions today --
 15 **A. Okay.**
 16 Q. -- I am solely -- even though it seems like I am asking
 17 questions to you --
 18 **A. Yeah. Yeah.**
 19 Q. -- I am asking questions solely about Tri County Area Schools.
 20 **A. Okay. So if I don't know --**
 21 Q. So --
 22 THE REPORTER: One at a time, please.
 23 BY MR. FITZPATRICK:
 24 Q. So if you give me an answer about something you are familiar
 25 with, I am going to assume that that is something that

Page 25

1 happened at Tri County Area Schools rather than just your
 2 personal background unless I ask about your personal
 3 background. Okay?
 4 **A. I understand.**
 5 Q. So, just to make sure we have a clean answer to the last
 6 question --
 7 MR. FITZPATRICK: Annabel, forgive me for asking it
 8 again, I just want to make sure it is clean.
 9 BY MR. FITZPATRICK:
 10 Q. Are you aware of any updates to either the Tri County High
 11 School or Tri County Middle School student handbook during the
 12 present school year?
 13 **A. No, I'm not aware.**
 14 Q. When a student handbook is changed, are parents and students
 15 alerted to the change?
 16 **A. Yes. If there are changes that go under advisement, it would**
 17 **be changed and have to be voted on by the board, so it would**
 18 **be in a public forum, and then I would assume at that point**
 19 **the change would be pressed out and shared with students and**
 20 **staff.**
 21 Q. You say you assume that it would be. Do you have any
 22 knowledge of that being done at Tri County Area Schools
 23 before?
 24 **A. I don't. Yeah, I don't. That's how it would happen if -- I'm**
 25 **the superintendent now, so that's --**

Page 26

1 Q. That's how you would hope it would in the future --

2 **A. Exactly.**

3 Q. -- but you don't have any knowledge of it happening that way

4 in the past?

5 **A. Correct. Correct.**

6 Q. So we discussed before Tri County Area Schools has a dress

7 code. Correct?

8 **A. Yes.**

9 Q. And is that dress code different as between high school,

10 middle school, and elementary school?

11 **A. The middle school and high school is the same book that would**

12 **be covered. Elementary would be a little different due to the**

13 **age.**

14 Q. Are students required to follow the dress code?

15 **A. Yes.**

16 Q. Are there penalties for not following the dress code?

17 **A. What do you mean by penalties?**

18 Q. Can students get in trouble if they don't follow the dress

19 code?

20 **A. Consequences, yes.**

21 Q. What are some of those consequences?

22 **A. There is a wide range of consequences. A student can be**

23 **talked to and asked around a topic or an issue, a student can**

24 **receive, I think, the consequences, and I don't have the**

25 **handbook in front of me to refer to the sequencing of them,**

Page 27

1 **but there is a sequence of detentions, you know, different**

2 **leveled pieces with in-school and out-of-school suspension**

3 **included, but it's usually -- when I say a wide range, it is**

4 **because they are leveled, and usually based on frequency, you**

5 **know.**

6 Q. I'm going to hand you a document that I would like marked as

7 Exhibit 3, please.

8 (Exhibit 3 marked.)

9 BY MR. FITZPATRICK:

10 Q. Mr. Biller, do you recognize this document?

11 **A. Yes, I believe it looks like the high school handbook.**

12 Q. And this would have been the student handbook for, I believe,

13 last school year, 2022 through '23?

14 **A. I believe it says updated, yeah, April 2022.**

15 Q. And so if we go to page 24 of Exhibit 3, at the very top is

16 this the list of potential penalties for violating the dress

17 code you were talking about?

18 **A. Yes. Yeah.**

19 Q. And so now that you have that in front of you could you tell

20 me a little bit about the consequences that students can face

21 for violating a dress code?

22 **A. Well, if I am reading here, just to notify the parents would**

23 **be the first step in terms of a consequence. Nothing more may**

24 **happen at that point. That would be the first level of**

25 **consequence.**

Page 28

1 Q. And then what is the second level?

2 **A. Yeah, the first next offense would be to change that clothing,**

3 **and I believe there would be nothing else documented at that**

4 **point in time. And then, next, it looks like the second**

5 **offense, detention assigned if it continues. And this would**

6 **be the frequency of those offenses happening. If that would**

7 **continue, then it would move to a much different consequence**

8 **including, but not limited to, the in-school suspension or**

9 **out-of-school suspension.**

10 Q. I'm sorry, I didn't mean to --

11 **A. That's okay.**

12 Q. And if I'm reading this correctly, please tell me if I am not,

13 starting at a -- starting at a third offense students are at

14 risk of an out-of-school suspension if they continue to

15 violate the dress code. Am I reading that right?

16 **A. Yes.**

17 Q. When a student violates the dress code, is it documented?

18 **A. It should be somewhere. Those are things -- again, I don't**

19 **have specific knowledge of Tri County with based on my limited**

20 **days here, but if -- if anything in the handbook, if there is**

21 **a consequence, that should be documented.**

22 Q. So I suppose my question is: How does the school district

23 know, for example, that a student is committing a second or a

24 third offense of a dress code violation if it's not written

25 down somewhere?

Page 29

1 **A. Yeah, I would agree with you. I don't know. I don't know how**

2 **they would know.**

3 Q. Is the process for changing the dress code the same as the

4 process for changing the student handbook?

5 **A. Yes, if there is anything in that student handbook, as I said**

6 **earlier, it would repeat that process.**

7 Q. Does Tri County Area Schools generally allow students to wear

8 clothing with political messages on it?

9 **A. Yes, I believe they do.**

10 Q. So if a student wanted to come to school wearing a

11 Biden-Harris 2024 T-shirt, would that be in compliance with

12 the dress code?

13 **A. Yes. To my knowledge that's not -- there has not been an**

14 **issue with that since I have been here.**

15 Q. Let's turn to page 29 of the student handbook. To save time,

16 I believe we discussed a little bit earlier that the Tri

17 County High School and the Tri County Middle School dress

18 codes are the same. Fair?

19 **A. Yes.**

20 Q. So, to save time and us not having to go through two student

21 handbooks, is it fair to say when I ask you questions about

22 the high school dress code they are equally applicable to Tri

23 County Middle School?

24 **A. Yes.**

25 Q. Let's go to subsection B of the dress code under prohibited

Page 30

1 attire. Can you read that out loud, please.

2 **A. Beginning at letter A?**

3 Q. Just B.

4 **A. Oh, I'm sorry. Attire with messages or illustrations that are**

5 **lewd, indecent, vulgar or profane, or that advertise any**

6 **product or service not permitted by law to minors.**

7 Q. So if a student violates either B, which you just read, or

8 these other subsections, they are subject to the penalties

9 that we discussed just a little bit ago. Do I have that

10 right?

11 **A. Should be, yes.**

12 Q. So going back to subsection B, let's talk about some of the

13 terms there. Let's start with the term lewd. In terms of the

14 dress code what does lewd mean?

15 **A. To me I guess --**

16 Q. I'm sorry, real quick, I don't mean to interrupt, I am asking

17 not your personal opinion about what lewd means, I am asking

18 for Tri County Area Schools' view of what lewd means.

19 **A. Well, in terms of the district lewd would be inappropriateness**

20 **to the sense of a degree that is publicly indecent.**

21 Q. What does publicly indecent mean?

22 **A. Not something you would wear in public. It is beyond -- I**

23 **would say gross maybe is the term I would use.**

24 Q. When you say something that would not be worn in public, do

25 you mean by everyone, including adults, or just by kids?

Page 31

1 **A. Well, this is a student handbook, so we are speaking of**

2 **probably students here.**

3 Q. And the definition you just provided me, what is that based

4 on?

5 **A. My guess is --**

6 Q. I don't want you to guess.

7 **A. Well, I didn't develop this. Again, I was not an employee at**

8 **that time, so I can either stand with that question or**

9 **continue to answer in the way -- so --**

10 Q. So let me rephrase the question. If you know, what does the

11 school district base its definition of the word lewd upon?

12 **A. I would go back to the word indecent. I believe they are both**

13 **listed here, but it would be very similar to me.**

14 Q. Has Tri County Area Schools sought or received guidance about

15 the term lewd?

16 **A. Not to my knowledge.**

17 Q. Have teachers been provided guidance beyond what's in the

18 dress code about what lewd means?

19 **A. Again, I wasn't involved in any preparation, so I can't speak**

20 **to that.**

21 Q. Sitting here today, are you aware of any guidance provided to

22 teachers about what the word lewd in the dress code means?

23 **A. No.**

24 Q. Have administrators, the principals and assistant principals

25 and deans, been provided any guidance about what the word lewd

Page 32

1 in the dress code means?

2 **A. Not to my knowledge.**

3 Q. Have students been provided any guidance by the school

4 district about what the word lewd in the dress code means?

5 **A. Not to my knowledge.**

6 Q. Have parents been provided any guidance about what the word

7 lewd in the dress code means?

8 **A. Not to my knowledge.**

9 Q. Can you please provide some examples of lewd clothing that the

10 school district has prohibited students from wearing?

11 **A. I am not -- I don't have any -- any record of that currently**

12 **right now being that I was not an employee prior to this, so**

13 **there has been in two months no lewd referral that I have**

14 **seen.**

15 Q. Can you please provide some examples of attire that the school

16 district would consider lewd?

17 **A. I think much of what you are asking for in terms of lewd is**

18 **interpretive by those that were put in charge of following**

19 **through with these. So the administrator on call or who is in**

20 **charge of students, it would probably be the definition of**

21 **what that person would also see.**

22 Q. Is that fair for kind of the dress code at large, it is left

23 up to the discretion of the individuals enforcing it?

24 **A. There is a lot of things in schools that are not necessarily**

25 **black and white, and so when we talk about student behavior,**

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1 **it is ever changing, and so what may seem indecent 20 years**

2 **ago may -- or not indecent, vice versa, it may be different**

3 **today or viewed differently. So based on the student's**

4 **actions, again, I would have to ask those people involved**

5 **directly in the situation more of the interpretiveness of**

6 **that. Because if I'm not involved directly in a situation**

7 **with a student, I can't necessarily speak to how it was lewd,**

8 **if that makes sense.**

9 Q. I understand you answered that a lot -- you expect sort of

10 your administrators and teachers to -- and I don't want to put

11 words in your mouth, so tell me if I am characterizing what

12 you said wrong, I want to make sure I understand it, that the

13 school district expects teachers and administrators to sort of

14 interpret these phrases on a day-to-day basis and sort of use

15 common sense when they enforce them. Is that fair?

16 **A. Yeah. Common sense, yes. I would say they know our students**

17 **best. They are the ones that see them every single day and**

18 **they know what their words mean more so than I would**

19 **necessarily not directly teaching and overseeing them.**

20 Q. Now, presumably there could be a message on clothing that is

21 so over the top that you would expect any administrator or

22 teacher to say that's not allowed. Fair?

23 **A. That I would hope if it's that.**

24 Q. Can you give me an example of something that in the school

25 district's view would rise to the level of so obviously lewd

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1 that advertise a product or service not permitted by law to
 2 minors that are just categorically prohibited from students
 3 wearing?
 4 **A. Not to my knowledge.**
 5 Q. So, for example, if they want to, students can wear sports
 6 jerseys. Fair?
 7 **A. Yes.**
 8 Q. They could wear a Lion's jersey if they want to?
 9 **A. Yes.**
 10 Q. Can they wear band T-shirts?
 11 **A. Yes.**
 12 Q. I know -- we are in Michigan, so I know Eminem is very popular
 13 here.
 14 **A. Yes.**
 15 Q. If they want to wear an Eminem shirt, can they do that?
 16 **A. Sure, yes.**
 17 Q. Any band they want?
 18 **A. If it's appropriate, yes.**
 19 Q. So as long as the imagery is fine, if it's just the name of
 20 the band, they can, and it doesn't have like swear words or
 21 anything, they can wear it?
 22 **A. Yeah, correct.**
 23 Q. Okay.
 24 MR. FITZPATRICK: We have been going about an hour.
 25 I think it's a good spot for a five-minute break.

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1 (Off the record 9:58 to 10:06 a.m.)
 2 BY MR. FITZPATRICK:
 3 Q. We are back on the record.
 4 Mr. Biller, do you understand that you are still
 5 under oath?
 6 **A. Yes.**
 7 Q. During the break did you talk to anybody about your
 8 testimony?
 9 **A. No.**
 10 Q. So real quick, before we get started, during -- when we last
 11 spoke you had mentioned NEOLA a few times. What is NEOLA?
 12 **A. Yeah, so it's a national firm. And, to clarify, it's -- from**
 13 **what I understand it is an actual firm used to help school**
 14 **boards with board policy. So it's recommending board policy**
 15 **and staying up to date with federal and state laws, you know,**
 16 **just going through all of the details to make sure that boards**
 17 **aren't overstepping in the legal realm when it comes to**
 18 **schools. And, yeah, so NEOLA provides the board policies that**
 19 **they can review and then vote on and adopt.**
 20 Q. And, I'm sorry, the air conditioning is going, so I missed a
 21 word there. You said they provide policies, but I didn't hear
 22 the word in the middle.
 23 **A. Oh, boy, to adopt. I don't know what it --**
 24 MS. SHEA: He said board policies.
 25 **A. Board policies to adopt, yeah.**

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1 BY MR. FITZPATRICK:
 2 Q. Okay. So tell me a little bit more about the interaction
 3 between Tri County Area Schools and NEOLA. So, for example,
 4 will they review your student handbook or the school
 5 district's handbook and provide ideas?
 6 **A. I believe that some schools do that. I am not sure if ours is**
 7 **reviewed by NEOLA. We have board guidelines, like guidelines,**
 8 **policy guidelines that are part of the legal that I know for**
 9 **sure that we have. And some of those govern handbook pieces.**
 10 **But other than that I'm not -- I'm not aware if that NEOLA**
 11 **directly created any of our handbooks or anything like that.**
 12 **But there is advisement through board policy typically at the**
 13 **board level.**
 14 Q. Are you aware of any specific guidance NEOLA has provided
 15 regarding the dress code?
 16 **A. To Tri County, I am not.**
 17 Q. Okay. So let's return back to the dress code. And I believe
 18 the next word in the list is vulgar. So what does the school
 19 district view the word vulgar as meaning?
 20 **A. Well, if you look up the definition of vulgar, I would say**
 21 **that anybody could really understand the vulgar would be not**
 22 **appropriate words or phrases that would be used in the school**
 23 **district public setting with school children. Vulgar is --**
 24 **vulgarity by a sense is offensive, and can be offensive to**
 25 **others, and so the reasoning behind it is because we want**

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1 **everybody to be safe and feel healthy in their environment,**
 2 **and they shouldn't have to feel that.**
 3 Q. Tell me a little bit more about that.
 4 **A. Which part?**
 5 Q. About the end of -- you said, you know, students shouldn't
 6 have to feel like that or something. Tell me more about that.
 7 **A. To hear vulgarity. They shouldn't have to experience that.**
 8 Q. Why?
 9 **A. We are charged by the State of Michigan to create a healthy**
 10 **learning environment, and part of that is not being offended**
 11 **by those vulgarity pieces, and felt as a student, through a**
 12 **student lens, that the uncomfortability with vulgarity, and**
 13 **that's what I am speaking to.**
 14 Q. I believe one of the things you mentioned when you were
 15 talking about what vulgarity includes is, and please tell me
 16 if I am misquoting you, you know, things that aren't
 17 appropriate for the school setting. Do I have that right?
 18 **A. Yes.**
 19 Q. Okay. Tell me a little bit about sort of how you draw the
 20 line or how the school district draws the line between what is
 21 appropriate for school and what is not appropriate for school.
 22 **A. Well, again, at the district level this is something that we**
 23 **paint a large picture of, that is followed through. And our**
 24 **administrators, basically those people that we have put in**
 25 **place to enforce this and determine what is these things,**

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1 would be who I would trust in the moment to determine whether
 2 or not something is inappropriate. And so what is difficult
 3 is, again, as I said earlier, because I am not in front of the
 4 student or in front of the situation, I can't speak to exactly
 5 what it is, the situation is, laid out for that person, that
 6 administrator. And so I trust that they handle it
 7 appropriately, being respectful obviously of everyone
 8 involved, but these things specifically are entrusted to our
 9 administrators to follow through with.

10 Q. Are you aware of any guidance that has been provided to
 11 administrators about what the word vulgar means?

12 A. **Not -- not to my knowledge.**

13 Q. Is clothing vulgar -- is a student's clothing vulgar just
 14 because it might upset another student?

15 A. **It depends on the situation I think. And I would -- I would**
 16 **entrust an administrator to know that.**

17 Q. So tell me a little bit more about it depending on the
 18 situation.

19 A. **More about what?**

20 Q. I'm just curious about your answer. So I asked whether
 21 clothing is vulgar just because the clothing might upset
 22 another student, and you said it depends on the situation. I
 23 was wondering if you could tell me a little bit more about
 24 that.

25 A. **Well, a lot of times it typically involves intention. Right.**

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1 **What is the intention of the parties involved, and is there a**
 2 **back story or back history. This is what I am talking about**
 3 **an administrator would know. Again, being removed from the**
 4 **classroom, at this level we just require our administrators to**
 5 **know our kids, know the situation, and be able to make a**
 6 **well-informed decision about what's happening between whether**
 7 **it is two different students or groups of kids, whatever it**
 8 **may be. So you are talking pretty general, so I don't know**
 9 **how to answer exactly what you are talking about.**

10 Q. I will get a little bit more specific. So I can imagine, say,
 11 in the week before Thanksgiving in Ann Arbor wearing an Ohio
 12 State jersey in the Ann Arbor Public Schools might seem a
 13 little bit sort of in your face for some of the students
 14 there. Do you see what I am getting at?

15 A. **Yeah.**

16 Q. In your view of vulgar, would that fall within your view of
 17 vulgar just because it might upset some students?

18 A. **The wearing the Ohio State jersey?**

19 Q. Right.

20 A. **That in itself is not vulgar, no.**

21 Q. And say this November if a student decided to wear a Biden
 22 campaign shirt, that may theoretically upset some people who
 23 may support President Trump. Would that make a Biden shirt
 24 vulgar?

25 A. **I wouldn't think so.**

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1 Q. Can you provide some examples of attire that the school
 2 district considers vulgar?

3 MS. SHEA: I am just going to object, this calls for
 4 speculation, and it has been asked and answered.
 5 But go ahead.

6 A. **Well, I can say in two months I have not been given an example**
 7 **here in Tri County of what would be given that, so I can't**
 8 **speak, I guess, to what is happening out there that I am not**
 9 **aware of, if that makes sense.**

10 BY MR. FITZPATRICK:

11 Q. How about looking at some of your past experience in other
 12 roles, seeing the types of things that kids have worn to
 13 school --

14 A. **Yeah.**

15 Q. -- can you provide me some examples of attire that you have
 16 seen that would fall within your definition of vulgar?

17 A. **I'm trying to think of -- and I can't remember the specific**
 18 **hats, wear patches and things like that, the stitching of**
 19 **patches on hats and clothing items and different things of**
 20 **that nature, I can't remember the exact phrase that was on it**
 21 **or picture, something to do with the picture and the imaging I**
 22 **would say is vulgar, but it -- I'm not sure exactly what the**
 23 **phrase was, but it was -- it had some profanity with it to**
 24 **make it vulgar and --**

25 Q. So there was a swear word in it?

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1 A. **I'm sure there was, yes, I just can't remember the phrasing.**

2 Q. Perhaps one of George Carlin's words you can't say on TV?

3 A. **Sure, yes. Yeah. There was something on there, but that**
 4 **would be an example. I haven't had too many other experiences**
 5 **that way, to be honest with you, because even though kids**
 6 **challenge dress codes all of the time, I'm speaking to my past**
 7 **experience, most kids don't -- don't choose to go down this**
 8 **road. It's well understood what you can wear and what you**
 9 **can't wear typically.**

10 Q. So if it's before the first day of school and a student wants
 11 to know, you know, whether their shirt meets the dress code or
 12 not --

13 A. **Uh-huh.**

14 Q. -- and they think it's sort of on the line of one of these
 15 phrases that we have been talking about --

16 A. **Uh-huh.**

17 Q. -- what should they do, where should they look to find out
 18 whether their shirt is okay to wear to school?

19 A. **Yeah, I would have them talk to their building administrator.**
 20 **That's what I would do. I have had kids before in my past,**
 21 **not speaking of Tri County, but in the past do the same thing**
 22 **with me. But, in turn, I would not know that information if**
 23 **it's happening currently right now. In the last two months my**
 24 **administrators would be the ones I would point people to to**
 25 **make sure that they are in line with what consistencies that**

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1 Q. -- to kind of make dress code decisions based on the facts on
 2 the ground for lack of a better word. Do I have that right?
 3 **A. Yeah. Yeah. Yes.**
 4 Q. Can you walk me through some factors that could play -- that
 5 should play into a teacher or an administrator's decision
 6 about whether a shirt with a message is violating the dress
 7 code?
 8 MS. SHEA: And I'll object because it calls for
 9 speculation, but you can go ahead.
 10 **A. Yeah. Again, I wasn't -- I wasn't there from what you are**
 11 **asking about, so, again, I'm only speaking hypothetically.**
 12 **Like we -- I trust my administrator to make that decision**
 13 **based on the perceived outcome of there being a disruption or**
 14 **any kind of vulgarity, and it is up to them to decide what it**
 15 **is and what is it. How I know, from sitting here right now,**
 16 **about how anybody was impacted with that, I can't say in terms**
 17 **of students or that situation, so I trust my administrator to**
 18 **make that determination.**
 19 BY MR. FITZPATRICK:
 20 Q. So they should be looking at sort of how it is impacting the
 21 student body. Do I have that right?
 22 **A. Potentially, yes. Yes.**
 23 Q. Are you aware -- are you aware of any disruption that Tri
 24 County Area Schools, either the middle school or the high
 25 school, has experienced from kids wearing political

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1 clothing?
 2 **A. Not to my knowledge.**
 3 Q. You are not aware of any?
 4 **A. No.**
 5 Q. Are you aware of any disruption to the learning environment
 6 that either the high school or the middle school has
 7 experienced from students having political discussions or
 8 arguments?
 9 **A. Not to my knowledge.**
 10 Q. So when we talked about teachers and administrators sort of
 11 taking the frontline lead against the dress code, when they
 12 use their own judgment they are doing their jobs. Right?
 13 **A. Yes.**
 14 Q. They are not supposed to call in to TCAS headquarters every
 15 time before issuing someone a dress code violation. Right?
 16 **A. No.**
 17 Q. So is it fair to --
 18 **A. That's correct. Sorry.**
 19 Q. So it's fair to say that if a teacher or an administrator
 20 dings a student for violating a dress code using their
 21 judgment that they are -- they are doing what Tri County Area
 22 Schools wants them to be doing in terms of how it wants the
 23 dress code enforced?
 24 **A. Yes, if you mean the word ding means just addressing it --**
 25 Q. Addressing it --

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1 **A. -- appropriately.**
 2 Q. Addressing it or punishing consistent with the student
 3 handbook?
 4 **A. Having consistently, yes, addressed it.**
 5 Q. Is the school district aware of any disruption either in this
 6 district or anywhere else from students wearing Let's Go
 7 Brandon apparel?
 8 **A. Not to my knowledge.**
 9 Q. Is the school district aware of any disruption either in this
 10 district or other districts from students wearing political
 11 apparel to school generally?
 12 **A. I -- not to my knowledge.**
 13 Q. So my next series of questions relates to the goings-on in the
 14 school district from -- I would say from 2023 and prior.
 15 MR. FITZPATRICK: Annabel, you and I had a brief
 16 discussion off the record that some of the witnesses later in
 17 the week might be able to fill in some gaps. Are those the
 18 type of things that you were envisioning?
 19 MS. SHEA: Especially with the stuff that has to do
 20 with the specific application of the handbook. That's up to
 21 the building administration. But we can go off the record and
 22 talk about some of those other line items if you would like.
 23 MR. FITZPATRICK: I think, just so we can preserve
 24 our 30(b)(6) record, I think I would rather the discussion
 25 happened on the record. So I had some questions here about

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1 what had occurred in the school district prior to February of
 2 2022 both at the high school and the middle school. Will the
 3 remaining witnesses over the next couple of days, will
 4 somebody have knowledge of that?
 5 MS. SHEA: Yes.
 6 MR. FITZPATRICK: Both middle school and high
 7 school?
 8 MS. SHEA: Yes, you are speaking with the middle
 9 school principal and the high school principal.
 10 MR. FITZPATRICK: Okay.
 11 (Off-the-record discussion between Mr. Fitzpatrick
 12 and Ms. Bregenzer.)
 13 BY MR. FITZPATRICK:
 14 Q. Before we depart from the dress code, I just have a couple
 15 more questions to help me kind of understand the contours of
 16 the school dress code, and they relate to other examples of
 17 political apparel. So I will hand you a document I would like
 18 marked as Exhibit 4.
 19 (Exhibit 4 marked.)
 20 BY MR. FITZPATRICK:
 21 Q. Are you aware of the Dark Brandon meme for lack of a better
 22 word?
 23 **A. I have never seen that before in my life.**
 24 Q. Okay.
 25 **A. Sorry.**

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1 Q. From what you know and what we have discussed today, is there
 2 anything in this T-shirt that would make -- that would violate
 3 the dress code?
 4 **A. I'm not sure because I don't know what's implied by that. I**
 5 **don't -- I would not think so, but I don't know what that**
 6 **means.**
 7 Q. I am going to hand you one more document marked as Exhibit 5,
 8 please.
 9 (Exhibit 5 marked.)
 10 BY MR. FITZPATRICK:
 11 Q. I will hand you a screenshot of a hoody that is currently for
 12 sale on the Biden-Harris campaign website. And my question
 13 is: Is there anything on this sweatshirt that the school
 14 would view as violating the dress code?
 15 **A. I do not know.**
 16 Q. There is nothing that you see that would cause you to think it
 17 violates the dress code?
 18 **A. I -- again, I have never seen this before, so I am not -- I am**
 19 **not sure what you are implying.**
 20 Q. I guess --
 21 **A. I don't see anything at this point that would be against our**
 22 **dress code.**
 23 MR. FITZPATRICK: Let's take five here.
 24 (Off the record 10:45 to 10:57 a.m.)
 25 BY MR. FITZPATRICK:

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1 Q. We are back on the record.
 2 Mr. Biller, do you understand that you are still
 3 under oath?
 4 **A. Yes.**
 5 Q. Did you talk to anybody about your testimony when we were
 6 away?
 7 **A. No.**
 8 MR. FITZPATRICK: Before we get started on --
 9 Annabel, this may just be easier for timing purposes, because
 10 I can probably truncate a decent amount of the deposition if I
 11 sort of know what to expect Mr. Biller to have knowledge on
 12 and what others should have knowledge on, if we could go
 13 through the topics in the 30(b)(6) notice and if you could
 14 tell me which ones you envision other TCAS employees being
 15 able to cover, I can probably shorten up today's deposition a
 16 lot.
 17 MS. SHEA: I prefer having a conversation on the
 18 record about it. I am not here to testify under oath. And as
 19 professional courtesy I am happy to go through that with you,
 20 but I don't want to waste Mr. Biller's time, especially if he
 21 doesn't feel good.
 22 MR. FITZPATRICK: I appreciate that, and I am happy
 23 to speak off the record, but we served a 30(b)(6) notice with
 24 specific topics that the witness will need to cover. And if
 25 the school district is not producing witnesses today able to

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1 cover those topics --
 2 MS. SHEA: I have already informed you on the record
 3 that we are producing witnesses that will cover every topic
 4 that was mentioned, there was a lot of crossover, and several
 5 of the building principals and the assistant principal will
 6 cover any topic Mr. Biller is not able to cover.
 7 MR. FITZPATRICK: Okay. That's all I needed.
 8 BY MR. FITZPATRICK:
 9 Q. Mr. Biller, let's go back to the dress code and go to page 29,
 10 please in the student handbook. It is Exhibit 3. And let me
 11 know when you are there.
 12 **A. Uh-huh, yes.**
 13 Q. Can you please read the second sentence of the first paragraph
 14 under dress code. The second sentence that starts with
 15 students and parents, can you read that and let me know when
 16 you are done.
 17 **A. Yep. I see it. Thank you.**
 18 **So students and parents have the right to determine**
 19 **student's dress, except when the school administration**
 20 **determines a student's dress is in conflict with state policy,**
 21 **is a danger to students' health and safety, is obscene, is**
 22 **disruptive to the teaching and/or learning environment by**
 23 **calling undue attention to oneself. The dress code may be**
 24 **enforced by any staff member.**
 25 Q. I would like to focus our attention on the end of that second

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1 sentence where it says is disruptive to the teaching and/or
 2 learning environment by calling undue attention to oneself.
 3 **A. Uh-huh.**
 4 Q. What does calling undue attention to oneself mean?
 5 **A. Well, it could mean a lot of things, to be honest with you.**
 6 **It's very general in terms of the statement. Since it's**
 7 **falling in after being disruptive, I would -- I would say that**
 8 **it has to take away from teaching and learning, whatever**
 9 **actions or issues that it is having.**
 10 Q. So does that mean that whether somebody's clothing calls undue
 11 attention to oneself that that is determined by other people's
 12 reaction to it rather than the clothes itself?
 13 **A. Potentially, yes. Yeah.**
 14 Q. Can you give me some examples of some clothes that if a
 15 student wore it would call undue attention to them?
 16 MS. SHEA: I'm just going to object calls for
 17 speculation, but go ahead and answer.
 18 **A. I mean, again, I am only aware of these -- undue attention to**
 19 **oneself can mean quite a few different things in terms of**
 20 **clothing items. I think it is very interpretive to the**
 21 **administrator who is dealing with an issue on whether or not**
 22 **it is that. And if a student is drawing attention to their**
 23 **clothing and verbally making a scene, if I should -- like a**
 24 **scene where students cannot learn, then that would be an**
 25 **example of taking away or disrupting the learning**

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1 **environment.**

2 BY MR. FITZPATRICK:

3 Q. So the example we talked about earlier of a student in Ann

4 Arbor Public Schools wearing an Ohio State jersey on game

5 week --

6 **A. Uh-huh.**

7 Q. -- could that violate the language against calling undue

8 attention to oneself?

9 MS. SHEA: I'm going to object asked and answered,

10 calls for speculation, but you can go ahead and answer.

11 **A. Yeah, I don't -- I don't know if it would or not, because I am**

12 **not in that building or that place. It depends on your school**

13 **environment and what is acceptable or unacceptable. And, as I**

14 **said earlier, it could be issues with two students or not**

15 **issues, maybe they are friends. I don't know. It all is**

16 **based on the situation and how it is being interpreted.**

17 BY MR. FITZPATRICK:

18 Q. Can clothing be calling undue attention to oneself for a

19 student without them otherwise being disruptive?

20 MS. SHEA: I'm just going to object, asked and

21 answered, but you can go ahead.

22 **A. Just -- I don't know how that question is different than the**

23 **one you just previously asked me, so I don't know how to**

24 **answer it any different. There is always the potential for**

25 **it, but it is based on the situation with that administrator**

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1 **or that teacher or that person who is overseeing the students.**

2 BY MR. FITZPATRICK:

3 Q. Has this provision of the dress code, the calling undue

4 attention to oneself portion, has it been raised as far as you

5 know at any of the -- at any trainings for teachers and

6 administrators?

7 **A. Not to my knowledge.**

8 Q. Have administrators -- pardon me, has the school district

9 provided any administrators any guidance about what that rule

10 means?

11 **A. Not to my knowledge.**

12 Q. Have teachers?

13 **A. Not to my knowledge.**

14 Q. Have students?

15 **A. Not to my knowledge.**

16 Q. Have parents?

17 **A. Not to my knowledge. I will say, though, that with anything**

18 **-- any of these things that cause an issue in the school, if**

19 **there is an issue, I know building principals would draw**

20 **attention to it with kids if need be. You know, that's --**

21 **again, in my position, now, moving forward, we would let**

22 **parents know if there is issues with something or something**

23 **clarified, so --**

24 Q. Are you aware of any instances of this -- actually, strike

25 that.

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1 I would like to briefly ask about the last sentence

2 of that paragraph where it says the dress code may be enforced

3 by any staff member.

4 **A. Uh-huh.**

5 Q. I hope you will forgive sort of the odd question. Does any

6 staff member mean any staff member? For example, could a --

7 does a janitor have power to enforce the dress code?

8 **A. I would say if it -- if it is deemed inappropriate, it should**

9 **be referred to the administrator to address. Does that make**

10 **sense? If they see it, because a staff member is in a**

11 **different part of the building, a school social worker, you**

12 **know, anybody else that's working in the building with**

13 **students, I would hope that they would just refer it to the**

14 **administrator to address, and then make a determination from**

15 **there.**

16 Q. Okay.

17 **A. Does that make sense?**

18 Q. It does. I am just trying to get a little bit better

19 understanding of who has what authority. So, for example, a

20 janitor, and I am just using that because that is the easiest

21 nonacademic example that comes to mind, does a janitor have

22 the authority to instruct a student to remove something that

23 they believe is violating the dress code?

24 **A. Oh, I see what you are asking. Yeah. No, I would say they**

25 **are a reporter, right, so, as I said earlier, they would**

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1 **report it to the administration and the administration would**

2 **be able to make that determination. That's how that typically**

3 **works.**

4 Q. Does Tri County Area Schools have -- I think they are now

5 known as school resource officers/school police?

6 **A. We do not have one here.**

7 Q. Are there any kind of equivalents?

8 **A. Not to my knowledge. We have -- and this is just two months**

9 **on the job, I think I need to talk to the sheriff and the**

10 **county to see what we do have, to be honest with you, but**

11 **there is no stationed school resource officer in our**

12 **buildings.**

13 Q. Are you aware of any instances in which a teacher or

14 administrator here at Tri County Area Schools was either

15 reprimanded or spoken to about getting a dress code decision

16 wrong for lack of a better word?

17 **A. A teacher or administrator?**

18 Q. A teacher or administrator. So, for example, let's say a

19 teacher or administrator instructed a student to remove

20 something and in retrospect their superior or the school

21 district thought it's actually fine. Are you aware of any

22 instances like that?

23 **A. Not -- not to my knowledge, no.**

24 Q. Are you aware of any instances of the reverse, of a teacher

25 sort of letting something or administrator letting something

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1 go and there being follow-up saying hey, this violates the
 2 dress code, you should have done something about that?
 3 **A. Not to my knowledge.**
 4 Q. So enforcement of the dress code, like we talked about
 5 earlier, really is delegated to the individual teacher and
 6 administrator?
 7 **A. The administrator first because they are the head of the**
 8 **building, and then any other assistant principals or teachers**
 9 **thereafter, yes.**
 10 Q. If an administrator wanted to suspend a student for repeated
 11 violation of the dress code, the clause we talked about
 12 earlier in the student handbook --
 13 **A. Yep. Yes.**
 14 Q. -- would they need approval from the school district to do
 15 that?
 16 **A. What do you mean by approval?**
 17 Q. If a principal believes a student has repeatedly violated the
 18 dress code and the student is now on strike three where they
 19 are eligible for a suspension --
 20 **A. Right.**
 21 Q. -- does the principal need to seek approval from the school
 22 district before doing that?
 23 **A. Do you mean ask permission?**
 24 Q. Yes.
 25 **A. No, they can -- they can hand out consequences as they are**

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1 **laid out in our handbook.**
 2 Q. Are you aware of any instances of the school district
 3 intervening in a suspension or in student discipline to alter
 4 what the principal would otherwise do?
 5 **A. Not to my knowledge.**
 6 Q. When the school district hires a new teacher, can you tell me
 7 a bit about the onboarding process they go through,
 8 specifically any training they have?
 9 **A. I am aware that they have a mentor, a mentor teacher**
 10 **typically. I am not aware of the actual steps of the**
 11 **onboarding process as I have been coming in midyear, so I have**
 12 **not experienced that onboarding piece, but I know that there**
 13 **is currently mentor teachers that are -- kind of meet with a**
 14 **new teacher and help them and guide them on decisions to be**
 15 **made, academically, you know, in all facets.**
 16 Q. Does the school district mandate any sort of First Amendment
 17 or free speech training for incoming staff or
 18 administrators?
 19 MS. SHEA: I'm sorry, I'm just going to object it
 20 calls for a legal conclusion, but you can go ahead and
 21 answer.
 22 **A. Yeah. I -- and in my capacity for Tri County, I'm not aware**
 23 **specifically, but I do know, again, since I have come in**
 24 **midyear, that in my past experiences typically there are**
 25 **student rights, there is all -- there's FERPA, there is all**

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1 **sorts of -- Title IX is an example of another one that we are**
 2 **responsible for every year to make sure all staff, so**
 3 **regardless of new teacher or staff member of 20 years, they**
 4 **should be receiving.**
 5 BY MR. FITZPATRICK:
 6 Q. But, sitting here today, at least in terms of Tri County Area
 7 Schools, you are not aware of any?
 8 **A. Correct. We haven't got to that point of the year, but --**
 9 MR. FITZPATRICK: You know, I think I am just about
 10 done, if we can take 10 here and I can see if I have anything
 11 left.
 12 MS. SHEA: Yes.
 13 (Off the record 11:14 to 11:31 a.m.)
 14 BY MR. FITZPATRICK:
 15 Q. All right. We are back on the record.
 16 Mr. Biller, do you understand that you are still
 17 under oath?
 18 **A. Yes.**
 19 Q. Did you talk to anybody about your testimony during the
 20 break?
 21 **A. No.**
 22 MR. FITZPATRICK: Mr. Biller, I hope you feel
 23 better. I don't have any further questions. And thank you
 24 for taking the time to speak with me today.
 25 Before I formally cede my time, I want to put a

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1 quick reservation of rights on the record. Plaintiffs reserve
 2 all rights under Rules 30(b)(6) and Rule 37 regarding the
 3 insufficiency of today's proper witness to address the topics
 4 listed in the deposition notice.
 5 With that, over to you.
 6 EXAMINATION
 7 BY MS. SHEA:
 8 Q. Okay. I just have a few questions for you, Superintendent
 9 Biller.
 10 Can you do me a favor and just explain to me the
 11 building administrator's role in creating the dress code?
 12 **A. So in my knowledge and what I am aware of is administration,**
 13 **they deal directly with the students in a daily oversight, and**
 14 **so together as an administrative group we talk about -- or we**
 15 **would talk about any changes that need to be done because they**
 16 **would have best knowledge of what needs to be tweaked or**
 17 **looked at or recommended to the board. And, again, they would**
 18 **bring potential changes, if there is any need for change to**
 19 **the handbook, to the board, and I am their liaison, so I would**
 20 **then bring that to the board for review, and then it would be**
 21 **voted upon by the board.**
 22 Q. Okay. And what about -- can you also explain how the building
 23 administrator's role plays into -- in providing guidance for
 24 teachers, students, and parents of what is prohibited attire
 25 and what is permitted?

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

**Exhibit 11 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

UNITED STATES DISTRICT COURT
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,

Judge Paul L. Maloney
Magistrate Judge Sally J. Berens
No. 23-423

v

TRI COUNTY AREA SCHOOLS, ANDREW
BUIKEMA and WENDY BRADFORD,

Defendants.

Conor T. Fitzpatrick (P78981)
Kelley Bregenzer
Foundation for Individual Rights and
Expression
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Kenneth B. Chapie (P66148)
John L. Miller (P71913)
Annabel F. Shea (P83750)
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**DEFENDANT TRI-COUNTY AREA SCHOOLS' RESPONSE TO
PLAINTIFFS' REQUESTS FOR ADMISSIONS**

Defendant, Tri-County Area Schools, by and through its attorneys, GIARMARCO,
MULLINS & HORTON, responds to Plaintiffs' Requests for Admissions as follows:

Request for Admission No. 1:

Admit that, prior to May 27, 2022, the School District did not receive complaints from students
regarding students wearing "Let's Go Brandon" apparel to school.

Answer: Admit.

Request for Admission No. 2:

Admit that, prior to May 27, 2022, no parents or guardians complained to the School District about students wearing “Let’s Go Brandon” apparel to school.

Answer: Admit.

Request for Admission No. 3:

Admit that, prior to May 27, 2022, the School District was not aware of instances of “Let’s Go Brandon” apparel causing teachers to halt or alter their lesson plans.

Answer: Admit.

Request for Admission No. 4:

Admit that, prior to May 27, 2022, the School District was not aware of instances of “Let’s Go Brandon” apparel causing physical altercations.

Answer: Admit.

Request for Admission No. 5:

Admit that, prior to May 27, 2022, the School District permitted students to wear apparel with non-“Let’s Go Brandon” political messages to school.

Answer: Admit.

Request for Admission No. 6:

Admit that, after May 27, 2022, the School District has permitted students to wear apparel with non-“Let’s Go Brandon” political messages to school.

Answer: Admit.

/s/TIMOTHY J. MULLINS
GIARMARCO, MULLINS & HORTON, PC
Attorney for Defendants

DATED: January 5, 2024

CERTIFICATE OF ELECTRONIC SERVICE

TIMOTHY J. MULLINS states that on January 5, 2024, he did serve a copy of **Defendant Tri-County Area Schools' Response to Plaintiff's Request to Admit** via email to Conor Fitzpatrick @ conor.fitzpatrick@thefire.org.

/s/TIMOTHY J. MULLINS
GIARMARCO, MULLINS & HORTON, PC
Attorney for Defendants
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P28021

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

**Exhibit 12 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

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

8 Plaintiffs,

Case No. 223-cv-423

9 v.

Judge Paul L. Maloney

10 TRI COUNTY AREA SCHOOLS;

Magistrate Judge:

11 ANDREW BUIKEMA, in his

Sally J. Berens

12 individual capacity; and

13 WENDY BRADFORD, in her individual

14 capacity,

15 Defendants.
16

17
18 DEPOSITION OF: JOSEPH WILLIAMS
19

20 DATE: February 28, 2024

21 TIME: 9:05 a.m.

22 LOCATION: Tri County Educational Service Center

23 94 Cherry Street

24 Sand Lake, Michigan

25 REPORTER: Kelly M. Kane, CSR-1470

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1 APPEARANCES:

2

3 FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION

4 BY: Conor T. Fitzpatrick (MI P78981)

5 Kelley Bregenzer (NY 5987482)

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8 (215)717-3473

9 conor.fitzpatrick@thefire.org

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11 On behalf of Plaintiffs

12

13 GIARMARCO, MULLINS & HORTON, P.C.

14 BY: Annabel F. Shea (P83750)

15 101 W. Big Beaver Road, Suite 1000

16 Troy, MI 48084-5280

17 (248)457-7081

18 ashea@gmhlaw.com

19 On behalf of Defendants

20

21

22

23

24

25

Page 4

1 Sand Lake, Michigan

2 February 28, 2024; 9:05 a.m.

3 * * *

4 JOSEPH WILLIAMS,

5 having been first duly sworn to tell the truth, the whole

6 truth, and nothing but the truth, was examined and

7 testified as follows:

8 MR. FITZPATRICK: Before we start, I'd just place

9 on the record, as we did yesterday, that counsel for both

10 sides have agreed that the deposition [sic] that Plaintiffs'

11 placed on the record at the beginning of the 30(b)(6)

12 deposition, as well as Defendants' response to that

13 statement, continue through the remaining depositions.

14 MS. SHEA: You mean objection and -- yes.

15 MR. FITZPATRICK: Excellent.

16 E X A M I N A T I O N

17 BY MR. FITZPATRICK:

18 Q. Good morning, Mr. Williams. Do you understand that you're

19 here today to provide testimony in connection with an

20 ongoing lawsuit?

21 A. Yes, I do.

22 Q. And you understand that your testimony today is being given

23 under oath, just like if you were in a courtroom in front of

24 a judge and a jury?

25 A. Yes.

Page 3

1 I N D E X

2 WITNESS: PAGE

3 JOSEPH WILLIAMS

4 Examination by Mr. Fitzpatrick 4

5 Examination by Ms. Shea 66

6 Reexamination by Mr. Fitzpatrick 71

7

8

9 E X H I B I T S

10 PAGE

11 Deposition Exhibit 13 15

12 (Exhibit is attached.)

13

14

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Page 5

1 Q. Have you ever given a deposition before?

2 A. No.

3 Q. So since you haven't I'm going to go over a few ground rules

4 just to make sure today goes smoothly.

5 Our court reporter is taking a verbatim transcript

6 of everything we say, so it's important that you verbalize

7 your answers. That means no shakes of the head or uh-huhs,

8 it's important that you say yes or no. Make sense?

9 A. Yes.

10 Q. Another rule is that to make our court reporter's life a

11 little bit easier it's important that we not speak at the

12 same time. So I will do my best to make sure you have

13 finished your answer before I start another question, and

14 all I ask is that you wait until I've finished my question

15 before you start your answer. Fair?

16 A. Yes.

17 Q. If you don't understand a question, please let me know and

18 I'll be happy to rephrase, but if you answer a question I'm

19 going to assume that you understood the question. Fair?

20 A. Yes.

21 Q. If you need to take a break at any point, that's completely

22 fine, all I ask is that if I have a question pending you

23 answer the pending question and then we can take a break.

24 Okay?

25 A. Yes.

<p style="text-align: right;">Page 10</p> <p>1 A. I don't know.</p> <p>2 Q. Do you have any other professional licenses or</p> <p>3 certifications other than the administrative certificate and</p> <p>4 your teaching certificate?</p> <p>5 A. No.</p> <p>6 Q. How long have you had a teaching certificate?</p> <p>7 A. Since the fall, I believe, of 1999.</p> <p>8 Q. Have you been a teacher?</p> <p>9 A. Yes.</p> <p>10 Q. What did you teach?</p> <p>11 A. I taught high school biology and earth science.</p> <p>12 Q. How long did you teach?</p> <p>13 A. Two years.</p> <p>14 Q. And did you become an administrator after those two years of</p> <p>15 teaching?</p> <p>16 A. Yes.</p> <p>17 Q. What was your first administrator role?</p> <p>18 A. Assistant principal at Tri County Middle School.</p> <p>19 Q. Have you been at Tri County Middle School since?</p> <p>20 A. No.</p> <p>21 Q. Where did you go after being assistant principal?</p> <p>22 A. After being assistant principal at Tri County Middle School</p> <p>23 I was then the assistant principal at Tri County</p> <p>24 High School, I believe I held that for quite some time,</p> <p>25 17 or 19 years, I don't recall specifically, and after that</p>	<p style="text-align: right;">Page 12</p> <p>1 there's a specific reason why we do it; that's the time that</p> <p>2 we do it.</p> <p>3 Q. Who is usually involved in those meetings?</p> <p>4 A. The high school principal, middle school principal, high</p> <p>5 school assistant principal, middle school assistant</p> <p>6 principal.</p> <p>7 Q. And are those meetings usually scheduled in advance?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall how far in advance they're usually scheduled?</p> <p>10 A. Not specifically.</p> <p>11 Q. Is there any sort of preparation that you do for those</p> <p>12 meetings?</p> <p>13 A. Throughout the year if we see something in the handbook that</p> <p>14 we might want to change we make a note and discuss that at</p> <p>15 that time with the other administrators to see if it fits</p> <p>16 with the high school building and the middle school</p> <p>17 building.</p> <p>18 Q. How long, in your experience, do those meetings usually</p> <p>19 last?</p> <p>20 A. Just as a general time frame I would say a couple of hours.</p> <p>21 It could be longer, it could be shorter.</p> <p>22 Q. And is it fair to say that at those meetings there's an</p> <p>23 exchange of ideas about possible changes to the student</p> <p>24 handbook?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 11</p> <p>1 then I became the principal at Tri County Middle School.</p> <p>2 Q. When did you become the principal at Tri County Middle</p> <p>3 School?</p> <p>4 A. This is my third year, so --</p> <p>5 Q. Your third school year?</p> <p>6 A. This is my third school year as being the principal of</p> <p>7 Tri County Middle School.</p> <p>8 Q. And is that where you still work today?</p> <p>9 A. Yes.</p> <p>10 Q. And is that your job today?</p> <p>11 A. It is.</p> <p>12 Q. Earlier you mentioned that one of the things you reviewed</p> <p>13 today is a student handbook. Did I hear that right?</p> <p>14 A. Yes.</p> <p>15 Q. Do you have a role in the substance of the student handbook?</p> <p>16 A. Yes.</p> <p>17 Q. Tell me about that.</p> <p>18 A. Each year the high school and middle school principals and</p> <p>19 assistant principals meet and make changes, adjustments,</p> <p>20 review it, and give that to the school board for approval.</p> <p>21 Q. When are those meetings usually held?</p> <p>22 A. In the spring, after spring break generally. So it would be</p> <p>23 April-May time frame.</p> <p>24 Q. Why so? Why in terms of that time frame?</p> <p>25 A. That is when we have always done it. I don't know that</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Did Mr. Buikema, during his time as assistant principal at</p> <p>2 Tri County Middle School, did he attend those meetings with</p> <p>3 you?</p> <p>4 A. Yes.</p> <p>5 Q. Did he participate in them?</p> <p>6 A. Yes.</p> <p>7 Q. Did he offer some ideas?</p> <p>8 A. I don't recall a specific idea that he offered, but he was</p> <p>9 involved in the discussion of creating -- making adjustments</p> <p>10 to the handbook.</p> <p>11 Q. And you recall him being an active participant at those</p> <p>12 meetings rather than sort of sitting there silently?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall any suggestions you have made about possible</p> <p>15 changes to the student handbook?</p> <p>16 A. Can you repeat that, please?</p> <p>17 Q. Sure. Do you recall any suggestions you have made, either</p> <p>18 at those meetings or some other time, about potential</p> <p>19 changes to the student handbook that you thought would be a</p> <p>20 good idea?</p> <p>21 A. Yes.</p> <p>22 Q. Tell me about that.</p> <p>23 A. I know I've had lots of discussion revolving around length</p> <p>24 of suspensions, different types of discipline, whether it</p> <p>25 revolves around does it need to be a detention, should it be</p>

Page 30

1 BY MR. FITZPATRICK:
 2 Q. Have you considered it.
 3 **A. No.**
 4 Q. Let's go to the final item in prohibited attire, section B
 5 of the dress code, which is profane. What does profane
 6 mean?
 7 **A. I see profane as meaning a swear -- like a normal swear**
 8 **word. If I need to elaborate I can elaborate, but I would**
 9 **consider profane being a normal swear word.**
 10 Q. What is a normal swear word?
 11 **A. Damn, hell, shit, fuck, et cetera.**
 12 Q. And what do you base your definition of profane on?
 13 **A. Common sense.**
 14 Q. Have you ever sought or received guidance on the meaning of
 15 the term profane as it relates to the dress code?
 16 **A. No.**
 17 Q. To the best of your knowledge have Tri County Middle School
 18 teachers been provided any guidance beyond what's in the
 19 dress code about what profane means?
 20 **A. No.**
 21 Q. Have students?
 22 **A. No.**
 23 Q. Parents?
 24 **A. Not that I know of.**
 25 Q. Can you provide me some example of some profane clothing

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1 that you've seen at Tri County Middle School?
 2 **A. I do think profane also incorporates all of those other**
 3 **three words. I think they are so similar that all the**
 4 **examples that I've provided earlier I would say fall under**
 5 **profane as well.**
 6 Q. So you would consider the Up Yours as profane?
 7 **A. Yes.**
 8 Q. Even though it doesn't involve a swear word?
 9 **A. Yes.**
 10 Q. Why so?
 11 **A. Because of the innuendo of it.**
 12 Q. So something can be profane in your view without using a
 13 swear word?
 14 **A. Yes.**
 15 Q. Are there any -- strike that. Just to make sure I
 16 understand your answer, the shirts that we've talked about
 17 so far -- which I believe are the Big Johnson shirt, the
 18 Up Yours shirt, and I believe you also mentioned the
 19 Let's Go Brandon sweatshirt, which we'll get to in a bit --
 20 do I understand that you consider all three of those lewd,
 21 indecent, vulgar, and profane?
 22 **A. Yes.**
 23 Q. Are there any other pieces of apparel you recall seeing
 24 students wear that you would consider profane that we
 25 haven't talked about?

Page 32

1 **A. I do remember another shirt at the high school.**
 2 Q. Tell me about it.
 3 **A. It said I Have the Biggest Dick in the Band.**
 4 Q. Something tells me you might have considered that profane.
 5 **A. I did.**
 6 Q. Why is that?
 7 **A. Because of the nature of the word dick.**
 8 Q. Is it fair to say the sexual nature of the shirt was --
 9 **A. Yes.**
 10 Q. Let me finish my question real quick. Is it fair to say
 11 that the sexual nature of the shirt was the reason you
 12 considered it profane?
 13 **A. Yes, and the word dick, meaning a profane word.**
 14 Q. And was that at Tri County Middle School or high school?
 15 **A. That was at the high school.**
 16 Q. Did you ask the student to remove the shirt?
 17 **A. I did.**
 18 Q. Did they?
 19 **A. They did.**
 20 Q. Now let's talk about Let's Go Brandon specifically. When
 21 did you first learn about the slogan?
 22 **A. Are you asking outside of the middle school?**
 23 Q. Yes, you generally. When did you first come across the
 24 phrase Let's Go Brandon?
 25 **A. It was a news clip revolving around a NASCAR race that I**

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1 **watched. I don't remember where I watched it but I do**
 2 **remember watching the specific interview with the race car**
 3 **driver who won the race and fans chanting in the background.**
 4 Q. So did you watch the NASCAR race itself?
 5 **A. I did not.**
 6 Q. So you saw a news clip of it?
 7 **A. Yes.**
 8 Q. And what -- go ahead.
 9 **A. It was either a news clip or a YouTube clip or it was a --**
 10 **it was a video clip.**
 11 Q. Sure. Do you recall when you saw it?
 12 **A. No.**
 13 Q. Do you recall what source you saw it on? Was it
 14 SportsCenter?
 15 **A. I don't recall.**
 16 Q. Was it a news show?
 17 **A. I don't recall.**
 18 Q. Do you recall when you saw it?
 19 **A. No.**
 20 Q. Do you recall whether you saw it before or after
 21 February 2022?
 22 **A. I can say that I do recall watching it near the time of the**
 23 **race and when it was done. So I don't know when that race**
 24 **was, but it was closer to the time of the -- it was close to**
 25 **the time of the race.**

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1 Q. And what was your understanding of sort of the Let's Go
2 Brandon phrase after you saw that on a news story?
3 **A. The fans were chanting Fuck Joe Biden, the reporter**
4 **misinterpreted that to -- thinking that they were saying**
5 **Let's Go Brandon, because I believe the winner of the race**
6 **was named Brandon and she was interviewing Brandon. So she**
7 **interpreted that as saying they were saying Let's Go Brandon**
8 **as a tribute to him.**
9 Q. And do you understand that after that occurred at the NASCAR
10 race that Let's Go Brandon sort of entered the popular
11 culture?
12 **A. Yes.**
13 Q. As sort of an anti-Biden political slogan; is that fair?
14 MS. SHEA: I'm just going to object, assumes facts
15 not in evidence, but you can go ahead and answer the
16 question.
17 **A. Can you repeat that question, please?**
18 BY MR. FITZPATRICK:
19 Q. Sure. Is your understanding of the phrase Let's Go Brandon
20 that it sort of became -- it kind of entered the cultural
21 lexicon after that?
22 **A. I -- yes.**
23 Q. Prior to February of 2022 to the best of your knowledge had
24 Tri County Middle School experienced any disruption due to
25 students wearing political apparel?

Page 35

1 **A. Not that I'm aware of.**
2 Q. Prior to February of 2022 had Tri County Middle School
3 experienced any disruption due to Let's Go Brandon apparel
4 or the slogan?
5 **A. Not that I'm aware of.**
6 Q. From February of 2022 through the end of that school year --
7 which would have been June?
8 **A. Yes.**
9 Q. -- did Tri County Middle School experience any disruption
10 from students wearing political apparel?
11 **A. Students talked about it.**
12 Q. Tell me about that.
13 **A. Students talk, they talk to each other, they talked to each**
14 **other about it.**
15 Q. Do you have any information to suggest that those
16 discussions disrupted any classes?
17 **A. No.**
18 Q. Do you have any information to suggest that those
19 discussions resulted in any school rules being broken?
20 **A. No.**
21 Q. Were the kids breaking any rules by talking about it?
22 **A. No.**
23 Q. What were the kids talking about?
24 MS. SHEA: Objection, calls for speculation. You
25 can go ahead and answer.

Page 36

1 **A. I don't specifically know what they were talking about.**
2 BY MR. FITZPATRICK:
3 Q. Okay. So just to make sure my question is clear, I was
4 asking about if there had been any disruption from
5 February 2022 through the end of that school year about
6 students wearing political apparel at school, and I was just
7 wondering, do you have a recollection of what apparel the
8 students were talking about?
9 **A. After the student was told to remove the sweatshirt or**
10 **T-shirt, whatever it was, kids talk. Not that it caused a**
11 **disruption, it just -- kids talked.**
12 Q. Did you overhear any of those discussions or did you just
13 hear of the discussions?
14 **A. I would say I heard of the discussions.**
15 Q. And who did you hear of them from?
16 **A. I don't recall.**
17 Q. From February 2022 through the end of that school year did
18 Tri County Middle School experience any disruption from
19 students wearing Let's Go Brandon apparel or from the slogan
20 itself?
21 **A. Not that I'm aware of.**
22 Q. How about after that school year? After the
23 2021-through-2022 school year through the present has
24 Tri County Middle School experienced any disruption from
25 students wearing political clothing at school?

Page 37

1 **A. No.**
2 Q. And after the 2021-through-2022 school year has Tri County
3 Middle School experienced any disruption from Let's Go
4 Brandon apparel or the slogan?
5 **A. From what time frame?**
6 Q. After the 2021-through-2022 school year.
7 **A. No.**
8 Q. Prior to February of 2022 had Tri County Middle School
9 experienced any disruption from students having political
10 arguments at school?
11 **A. Not that I'm aware of.**
12 Q. How about, from February 2022 through the end of that school
13 year did Tri County Middle School experience any disruption
14 from students having political arguments at school?
15 **A. Not that I'm aware of.**
16 Q. And then since the end of that school year, since the end of
17 the 2021-through-2022 school year, has Tri County Middle
18 School experienced any disruption from students having
19 political arguments at school?
20 **A. Not that I'm aware of.**
21 Q. I'd like you to turn to Exhibit 7, please.
22 **A. (Witness complies.)**
23 Q. Let me know when you're there.
24 **A. Exhibit 7, I am there.**
25 Q. Excellent. So this appears to be an email from Andrew

Page 42

1 **A. No, not -- repeat that question again?**
 2 BY MR. FITZPATRICK:
 3 Q. Yes, I was going to say I'm not sure that one was a yes or
 4 no question, so I'll ask it again.
 5 **A. Yeah.**
 6 Q. When you wrote in careful consideration, was that
 7 consideration your own consideration or had you been
 8 involved in conversations or meetings with others, other
 9 than counsel, in deciding how to proceed forward?
 10 **A. I don't specifically recall meetings, but it would make**
 11 **sense that I had conversations with our superintendent.**
 12 Q. And that would have been Al Cumings?
 13 **A. Yes.**
 14 Q. Do you recall when those meetings or discussions would have
 15 taken place?
 16 **A. Not specifically when it would have taken -- no, not**
 17 **specifically.**
 18 Q. And even if you don't remember the exact words, do you
 19 recall what either of you said to each other?
 20 MS. SHEA: I'm just going to object, asked and
 21 answered, but you can go ahead.
 22 **A. I don't recall specifically what we may have said.**
 23 MR. FITZPATRICK: Actually I see it's 10. This is
 24 probably a good time to take five?
 25 MS. SHEA: Yes, that would be great.

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1 (Recess taken from 9:59 a.m. to 10:08 a.m.)
 2 MR. FITZPATRICK: We're back on the record.
 3 BY MR. FITZPATRICK:
 4 Q. Mr. Williams, do you understand that you're still under
 5 oath?
 6 **A. Yes.**
 7 Q. Did you speak with anyone about your testimony during the
 8 break?
 9 **A. No.**
 10 Q. All right. Let's go back to Exhibit 10, and I'd like to ask
 11 you about the first bullet point.
 12 In the first bullet point you wrote, quote, if you
 13 notice the shirt please do not ask the student to remove it
 14 but let the office know the name of the student. Did I read
 15 that right?
 16 **A. Yes.**
 17 Q. Why did you make that request?
 18 **A. So that I could know who was wearing that shirt.**
 19 Q. Why did you want to know?
 20 **A. To be able to speak to them.**
 21 Q. Why would you want to speak to them?
 22 **A. To find out their reason for wearing it.**
 23 Q. Why did you care?
 24 **A. There was a -- students were asked to remove -- previously**
 25 **were asked to remove it, so this is in reference to the**

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1 **lawsuit that was filed.**
 2 Q. Had there been a communication to students more broadly that
 3 Let's Go Brandon apparel was not permitted?
 4 **A. No.**
 5 Q. Why were you curious about their reason for wearing the
 6 shirt?
 7 **A. To see if they understood what the meaning of Let's Go**
 8 **Brandon -- the innuendo meaning of what Let's Go Brandon**
 9 **meant.**
 10 Q. Why was that a concern of yours?
 11 **A. Because it was deemed vulgar, profane, lewd.**
 12 Q. Did it make a difference to you whether a student said they
 13 were or they weren't aware of the meaning?
 14 **A. No.**
 15 Q. Did you receive any reports of students wearing Let's Go
 16 Brandon shirts?
 17 **A. Yes.**
 18 Q. Let's look at number 2 in Exhibit Number 10. You wrote,
 19 quote, if wearing of the shirt in class becomes a
 20 distraction or a disruption, please contact the
 21 administrator and they will come to your classroom to
 22 support the situation, end quote. Did I read that right?
 23 **A. Yes.**
 24 Q. Did you receive any reports of distractions or disruptions?
 25 **A. I do not recall.**

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1 Q. Do you recall going to any classrooms to support the
 2 situation?
 3 **A. I do not recall that.**
 4 Q. Do you recall any other administrators or staff members
 5 being sent to a classroom to support a situation regarding a
 6 Let's Go Brandon shirt?
 7 **A. I do not.**
 8 Q. Prior to the date of this email, so prior to April 26, 2023,
 9 had you received any reports of Let's Go Brandon shirts
 10 being a distraction or a disruption in class?
 11 MS. SHEA: Objection, asked and answered. Go
 12 ahead.
 13 **A. I do not recall.**
 14 BY MR. FITZPATRICK:
 15 Q. Let's go to number 4 in the email. You say -- pardon me,
 16 you wrote, we ask that you stay focused on educating the
 17 students today, and be careful of students taking the class
 18 off-task with conversations or comments. If a student
 19 attempts to do this, please remind them what the focus of
 20 today's lesson is and ask them to stay on task. Did I read
 21 that right?
 22 **A. Yes.**
 23 Q. Did you receive any reports of students taking a class
 24 off-task with conversations or comments?
 25 **A. Not that I recall.**

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1 Q. Do you recall any other administrators receiving such
2 reports?
3 **A. No.**
4 Q. Do you recall any other staff member receiving reports of
5 classes being taken off-task by conversations or comments?
6 **A. No.**
7 Q. Let's go to Exhibit Number 9, please.
8 **A. (Witness complies.)**
9 MR. FITZPATRICK: And for the record Exhibit
10 Number 9 has been designated as confidential.
11 MS. SHEA: Can we go off the record for a second?
12 MR. FITZPATRICK: Yes.
13 (Brief discussion held.)
14 MR. FITZPATRICK: We can go back on the record.
15 BY MR. FITZPATRICK:
16 Q. Mr. Williams, do you have Exhibit 9 in front of you?
17 **A. I have Exhibit 9 in front of me.**
18 Q. Are these your notes?
19 **A. They are.**
20 Q. When did you make them?
21 **A. Based on the dates of -- based on the dates listed it would**
22 **be those dates that are listed on the document.**
23 Q. So is this a document that you updated?
24 **A. Each time that I had -- each time a student was reported to**
25 **me I updated it each date.**

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1 Q. So for example, on May 2nd you added the May 2nd entries and
2 on May 3rd you added the May 3rd entry?
3 **A. Correct.**
4 Q. I understand. Why did you make these notes?
5 **A. My superintendent asked me to.**
6 Q. What did he ask you to do?
7 **A. If students were wearing Let's Go Brandon shirts, or**
8 **something to that effect, to make a document of it and**
9 **hold --**
10 Q. Did he -- go ahead.
11 **A. And hold a conversation with those students regarding why**
12 **they were wearing that shirt or if they knew what it meant.**
13 Q. Did he tell you why he wanted you to make the notes?
14 **A. I don't specifically remember him telling me why; I would --**
15 Q. What do you remember him telling you?
16 **A. If anybody is wearing a Let's Go Brandon shirt, or something**
17 **to that effect, document why they're wearing it, ask them**
18 **questions why they're wearing it, do they know what Let's Go**
19 **Brandon means, and have that conversation with those**
20 **students.**
21 Q. How did he communicate that to you?
22 **A. I don't recall specifically, but -- I don't recall, but I do**
23 **remember him telling me that, whether it would be -- a**
24 **face-to-face talk.**
25 Q. You recall speaking with him rather than it being an email?

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1 **A. I don't recall it being an email. I will say that, I don't**
2 **recall it being an email.**
3 Q. During that conversation did you ask him any questions?
4 **A. I don't recall specifically what I would have asked him.**
5 Q. Do you recall anything else about that conversation you
6 haven't told me so far?
7 **A. No.**
8 Q. Let's start with the first entry on April 26th. You wrote,
9 I spoke to W.D. Why did you speak to W.D.?
10 **A. Based on what I wrote, he had a T-shirt on earlier in the**
11 **day that said Let's Go Brandon.**
12 Q. Do you recall where you spoke with him?
13 **A. In my office.**
14 Q. Why was he in your office?
15 **A. It was reported to me that earlier in the day he had worn a**
16 **Let's Go Brandon T-shirt.**
17 Q. What is the process for -- strike that. Let me rephrase it.
18 How did W.D. get to your office? Did you request
19 for him to come or was he sent there by a teacher?
20 **A. I don't specifically recall. Generally I would have went**
21 **and got that student after the teachers would have notified**
22 **me that he had that on.**
23 Q. In the entry for W.D. you wrote, quote, I asked him what the
24 shirt meant to him and he said F.J.B., end quote. Why did
25 you ask him what the shirt meant to him?

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1 **A. Because he was wearing it and I wanted to know what he**
2 **thought that meant.**
3 Q. And did he know what it meant?
4 **A. He originally said F.B.J., and I said to him, do you mean**
5 **F.J.B.? And he said, yeah, that's what I meant. So it**
6 **means -- so to -- and I said, so to you it means Fuck**
7 **Joe Biden? And he said yes.**
8 Q. So when you spoke with W.D. he was aware that the slogan
9 related to President Biden?
10 MS. SHEA: Objection, that mischaracterizes his
11 previous testimony, but go ahead.
12 MR. FITZPATRICK: Well, I'm asking if that's his
13 testimony.
14 BY MR. FITZPATRICK:
15 Q. Is it your understanding that when you spoke with W.D., and
16 you were discussing the meaning of this shirt, that he knew
17 the phrase was in reference to the president?
18 MS. SHEA: Same objection, but go ahead.
19 **A. He knew that it was in reference to Fuck Joe Biden,**
20 **that those letters stood for that. That was his**
21 **interpretation of F.J.B.**
22 BY MR. FITZPATRICK:
23 Q. Let's look at the next entry for E.N. Why did you speak to
24 E.N.?
25 **A. It was reported to me that he had, on his background of his**

<p style="text-align: right;">Page 50</p> <p>1 computer, L.G.B.</p> <p>2 Q. Do you recall who reported it to you?</p> <p>3 A. I do not.</p> <p>4 Q. Are students at Tri County Middle School -- this was back in</p> <p>5 May of 2023 -- are they assigned laptops?</p> <p>6 A. At that time they were.</p> <p>7 Q. So would this have been the background of his</p> <p>8 school-assigned laptop, if you know?</p> <p>9 A. I can only assume that that would have been his</p> <p>10 school-assigned -- but I cannot tell you that for sure.</p> <p>11 Q. When you wrote that he had L.G.B. on the background of his</p> <p>12 computer did you mean just the initials L.G.B. or did he</p> <p>13 have Let's Go Brandon spelled out?</p> <p>14 A. To my knowledge it was only the initials, L.G.B.</p> <p>15 Q. And why did you speak with him about having L.G.B. on his</p> <p>16 laptop?</p> <p>17 A. I wanted to know if he thought those letters stood for</p> <p>18 Let's Go Brandon.</p> <p>19 Q. In your view are the initials L.G.B. lewd?</p> <p>20 A. Depending on what they stand for.</p> <p>21 Q. In this context of when you were speaking with E.N. did you</p> <p>22 consider L.G.B., the initials, lewd?</p> <p>23 A. Based on the situation that we were dealing with and the</p> <p>24 lawsuit at hand, that was the first thing that came to my</p> <p>25 mind, that those initials stood for that. And that's why I</p>	<p style="text-align: right;">Page 52</p> <p>1 each individual student, how they got to the office.</p> <p>2 Q. When you spoke with E.N. was he respectful?</p> <p>3 A. Yes.</p> <p>4 Q. Same question with respect to W.D. Was W.D. respectful when</p> <p>5 you spoke with him?</p> <p>6 A. He was.</p> <p>7 Q. We've talked a lot today about the dress code, but for E.N.,</p> <p>8 having L.G.B. as the background on his computer, was he</p> <p>9 violating any school rule?</p> <p>10 A. By having L.G.B. on his background?</p> <p>11 Q. Yes.</p> <p>12 A. If those letters stood for Let's Go Brandon and our</p> <p>13 interpretation of Let's Go Brandon is an innuendo for Fuck</p> <p>14 Joe Biden, then I would say that was violating -- I would</p> <p>15 say that is being profane, lewd, or vulgar.</p> <p>16 Q. What rule would it have violated in the student handbook?</p> <p>17 A. It could be gross misbehavior, conduct detrimental to the</p> <p>18 normal functioning of a school. Profanity, that's more -- I</p> <p>19 would say more profanity as opposed to gross misbehavior,</p> <p>20 just simply a profanity offense. If the meaning of those</p> <p>21 letters were an innuendo for Fuck Joe Biden, I would take</p> <p>22 back gross misbehavior. I would not classify it as gross</p> <p>23 misbehavior, it would be more just simple profanity,</p> <p>24 obscenity, whatever the heading is in the handbook.</p> <p>25 Q. Would you also still categorize it as conduct detrimental or</p>
<p style="text-align: right;">Page 51</p> <p>1 spoke to him, to clarify.</p> <p>2 Q. So the question I'm asking is just a little bit more narrow.</p> <p>3 We talked earlier about the Let's Go Brandon phrase and</p> <p>4 about whether you consider it lewd, indecent, vulgar, or</p> <p>5 profane. Do you recall us going through that?</p> <p>6 A. Yes.</p> <p>7 Q. I'm just wondering if those answers also apply to L.G.B. as</p> <p>8 the initials rather than -- instead of the whole phrase.</p> <p>9 A. If --</p> <p>10 MS. SHEA: Objection, asked and answered and</p> <p>11 mischaracterizing the prior testimony. But you can go</p> <p>12 ahead.</p> <p>13 A. If those initials stand for Let's Go Brandon, then yes, I</p> <p>14 would say that that equates to the same thing as the words</p> <p>15 Let's Go Brandon.</p> <p>16 BY MR. FITZPATRICK:</p> <p>17 Q. Do you recall where you spoke to E.N.?</p> <p>18 A. I believe I spoke to all of these students in my office.</p> <p>19 Q. So is it fair to say that E.N. was asked to come to the</p> <p>20 front office?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall who asked him to go to the office?</p> <p>23 A. I would say on all of these, if we were to go through these</p> <p>24 line by line, I would say I called them to the office. But</p> <p>25 I can't specifically remember each individual student's --</p>	<p style="text-align: right;">Page 53</p> <p>1 just profanity?</p> <p>2 A. If it -- it wasn't causing a disruption that I recall, so I</p> <p>3 would just say it would be profanity, like similar to</p> <p>4 someone swearing.</p> <p>5 Q. Have you heard kids swear at middle school before?</p> <p>6 A. I have.</p> <p>7 Q. How do you usually handle that?</p> <p>8 A. Discussions, talks.</p> <p>9 Q. How often do you call them into your office if you hear a</p> <p>10 student swearing in the hallway?</p> <p>11 A. I would say more of a way that I handle that would be in a</p> <p>12 private conversation, whether that be in my office, whether</p> <p>13 that be outside of a classroom or just a -- a private area.</p> <p>14 Q. Do you recall the last time you called a student to the</p> <p>15 office with respect to a profanity violation?</p> <p>16 A. I do not.</p> <p>17 Q. That day, as far as you know was E.N. breaking any other</p> <p>18 school rules?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Let's go to the next entry and talk about M.G. Why did you</p> <p>21 speak to M.G.?</p> <p>22 A. M.G. had written L.G.B. on her arm.</p> <p>23 Q. And did you -- where did you speak with her?</p> <p>24 A. As I stated before I assume that I spoke to all students in</p> <p>25 my office, but I do not specifically recall where I spoke to</p>

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1 her at.

2 Q. So is it fair to say that she was summoned to the office?

3 A. Yes.

4 Q. How did you know she had L.G.B. written on her arm?

5 A. **I don't recall if somebody told me that or if I saw that. I**

6 **do not recall.**

7 Q. You wrote that you asked M.G. if that, being L.G.B., was

8 appropriate. Why did you ask her that?

9 A. **She stated that it meant Fuck Joe Biden, so I was clarifying**

10 **if she thought using those words or having initials for**

11 **those words would be appropriate.**

12 Q. And like with E.N., was it just the L.G.B. initials written

13 on her arm or was it the full phrase?

14 A. **Based on what I had written it was just L.G.B., so I would**

15 **say it was L.G.B.**

16 Q. Same question that I had with respect to E.N.: What rule

17 was M.G. breaking?

18 A. **If L.G.B. referred to Let's Go Brandon, Let's Go Brandon is**

19 **an innuendo for Fuck Joe Biden; that would be a profanity**

20 **incident.**

21 Q. If she had told you it means Let's Go Bears, would it have

22 been a profanity violation?

23 A. **No, it would not.**

24 Q. This first question will sound irrelevant but I promise it's

25 going somewhere. Are you a Tigers fan, Mr. Williams?

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1 A. **Detroit Tigers fan?**

2 Q. Yes.

3 A. Yes.

4 Q. All right. Do you recall the third baseman Brandon Inge?

5 A. **I do.**

6 Q. If you had spoken to W.D. and asked him about the meaning of

7 Let's Go Brandon and he had responded that it's a reference

8 to the former Tigers third baseman, would you have still

9 considered it a profanity?

10 A. **It's difficult to say because that would have to be a**

11 **situation I'd have to be involved in at that point. I can't**

12 **say how I would react to a hypothetical situation. That's**

13 **difficult.**

14 Q. So fair to say it depends on the context?

15 A. **Absolutely.**

16 Q. Let's talk about -- jumping down to May 3rd, let's talk

17 about J.S. Why did you speak with J.S.?

18 A. **J.S. also had Let's Go Brandon written on his hand with a**

19 **marker.**

20 Q. Did you speak with him in your office?

21 A. **As I stated before, I assume I spoke to all of these**

22 **students in my office, as I recall best.**

23 Q. And again, so it's fair to say that he was summoned to your

24 office?

25 A. **True.**

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1 Q. How did you know he had Let's Go Brandon written on his

2 hand?

3 A. **It was either reported to me by a staff member or I saw it.**

4 **I do not recall specifically.**

5 Q. And it looks like, if I'm reading your notes here correctly,

6 you asked him why it was on his hand and he responded that

7 he likes what it means. Did I read that right?

8 A. **I'm going to -- I haven't reread that whole sentence.**

9 Q. Oh, excuse me.

10 A. **I haven't reread that whole thing again, so I'm going to**

11 **reread it.**

12 Q. Please do.

13 A. **(Witness complies.)**

14 **Will you restate your question please?**

15 MR. FITZPATRICK: Can you read my question back,

16 please? Thank you.

17 (Previous question read back by court reporter.)

18 A. **Yes.**

19 BY MR. FITZPATRICK:

20 Q. And does that match your recollection of what happened?

21 A. **Yes.**

22 Q. In your notes here, after J.S. told you that he likes what

23 the Let's Go Brandon slogan means, you wrote that you asked

24 him what the slogan meant to him. Why did you ask him that?

25 A. **To see what Let's Go Brandon meant to him.**

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1 Q. And what was his response?

2 A. **What I wrote was his response verbatim, because I put it in**

3 **quotes. He said Fuck Joe Biden.**

4 Q. Was J.S. respectful in the conversation you had with him?

5 A. **Yes.**

6 Q. And for M.G., who we talked about just a little bit ago, was

7 she respectful as well?

8 A. **Yes.**

9 Q. Other than M.G. having written L.G.B. on her arm, were you

10 aware of any other rules she was violating at the time?

11 A. **No.**

12 Q. Same question with respect to J.S. Other than J.S. having

13 Let's Go Brandon written in marker on his hand, were you

14 aware of him violating any other rules at the time?

15 A. **In regards to Let's Go Brandon being profane, no.**

16 Q. Right. So other than the Let's Go Brandon, as you see it,

17 being profane, was he breaking any other school rules at the

18 time?

19 A. **No.**

20 Q. And let's talk about the last entry here for R.S. Why did

21 you speak to R.S.?

22 A. **It was reported to me that he was wearing --**

23 Q. And if you would like to review your notes first, please do.

24 A. **Yeah, I'm going to do that. Thank you.**

25 Q. Of course.

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1 A. I've read it. Can you restate your question, please?

2 Q. Sure. Why did you speak to R.S.?

3 A. It was reported to me that earlier in the day R.S. was

4 wearing a Let's Go Brandon shirt.

5 Q. And who reported that to you?

6 A. According to my notes, Mrs. Bradford.

7 Q. And you wrote that R.S. was sent to you by Mrs. Bradford?

8 A. Yes.

9 Q. What does that mean, sent to you?

10 A. Sent to me means he was -- she told him to go to the office

11 to see Mr. William.

12 Q. So it's been a bit since I was in middle school, but as I

13 recall the process used to be if you were sent to the office

14 you were given kind of a slip by the teacher saying what you

15 did wrong and then they sent you to the office. Is the

16 procedure at Tri County Middle School the same or different?

17 A. Not necessarily. If I call a student down, teachers may or

18 may not give them a pass so that teachers may see them in

19 the hallway may ask them for a pass, or they may just send

20 them, they may not write a note on why they're being sent

21 or -- it is hit or miss on what sometimes teachers do to

22 send a kid to the office.

23 Q. What's supposed to happen?

24 A. If a teacher sends a student in the hallway they should

25 write a note to say so-and-so to the office.

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1 Q. Do you recall R.S. being accompanied by a note from

2 Ms. Bradford?

3 A. I do not recall that.

4 Q. And safe to say, like the other interactions we've talked

5 about so far, that this interaction occurred in your office

6 with R.S.?

7 A. Correct.

8 Q. It looks like, if I'm reading your notes correctly here --

9 and please do tell me if I'm not -- that when R.S. arrived

10 to your office he was wearing a Lakers jersey over a

11 Let's Go Brandon shirt. Do I have that right?

12 A. That's correct.

13 Q. Once he put the Lakers jersey back on was he back in

14 compliance with the dress code?

15 MS. SHEA: Objection, assumes facts not in

16 evidence, but you can go ahead and answer.

17 MR. FITZPATRICK: It's a deposition. Nothing is

18 in evidence.

19 MS. SHEA: Well, I'm not going to give a speaking

20 objection in response to that.

21 BY MR. FITZPATRICK:

22 Q. So my question was, after R.S. put his Lakers jersey back on

23 over his Let's Go Brandon shirt, in your view was he back in

24 compliance with the dress code?

25 MS. SHEA: Objection, assuming facts not in

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1 evidence. But go ahead, you can answer the question.

2 A. With R.S. wearing a Lakers jersey over something

3 inappropriate, he would be in compliance with the dress

4 code.

5 BY MR. FITZPATRICK:

6 Q. You wrote in the second-to-last sentence that you asked R.S.

7 what L.G.B. meant to him. Why did you ask him that?

8 A. I wanted to know what he thought the meaning of Let's Go

9 Brandon was.

10 Q. And what did he tell you?

11 A. He said it meant to him -- he said it means Fuck Joe Biden.

12 Q. Was R.S. respectful when you met with him?

13 A. Yes.

14 Q. To the best of your knowledge was he breaking any other

15 rules that day?

16 A. Not that I'm aware of.

17 Q. For the five students we've talked about so far, W.D., E.N.,

18 M.G., J.S., and R.S., none of them had the actual work fuck

19 on their clothes or their person, correct?

20 A. Not that I recall. I believe it was all Let's Go Brandon or

21 the initials L.G.B.

22 Q. Let's go back to Exhibit 6, please. And if we could go back

23 to the dress code on page 24.

24 Are you there?

25 A. I am, yes.

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1 Q. Great. My question here relates to the second sentence of

2 the dress code that starts with students and parents. Could

3 you read that, please?

4 A. Students and parents have the right to determine a student's

5 dress except when the school administration determines a

6 student's dress is in conflict with a state policy, is a

7 danger to the student's health and safety, is obscene, is

8 disruptive to the teaching and/or learning environment by

9 calling undue attention to oneself.

10 Q. Thank you. So I'd like to focus on the last part of that,

11 where it says calling undue attention to oneself. What does

12 that mean?

13 A. Not necessary attention.

14 Q. How much is a necessary amount of attention?

15 A. Something that would disrupt the learning environment or the

16 normal functioning of a -- of school.

17 Q. Now, is it fair to say that students can wear attire for the

18 purpose of attracting attention? For example, a sports

19 jersey, they might wish to attract attention for a sports

20 team they're supporting; fair?

21 MS. SHEA: Objection, calls for speculation. Go

22 ahead.

23 A. Students are allowed to wear sports jerseys.

24 BY MR. FITZPATRICK:

25 Q. And in fact students might wear shirts supporting a

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1 charitable cause, maybe a Race For The Cure pink shirt in
 2 October. Have you seen those on campus before?
3 A. I have.
 4 Q. And are those in compliance with the dress code?
5 A. I would have to see the shirt, but in generality I would say
6 yes.
 7 Q. So what's the dividing line between attire which calls undue
 8 attention and attire which just calls attention to oneself?
9 A. The situation at hand, with the Let's Go Brandon shirt --
 10 Q. I'm just asking generally right now.
11 A. Repeat the question then please.
 12 Q. Sure. So what's the difference between a piece of apparel
 13 that calls attention to oneself and one that calls undue
 14 attention? Where is that dividing line as you see it?
 15 MS. SHEA: Objection, that was asked and answered,
 16 but you can go ahead.
17 A. It causes disruption to the learning environment or to a
18 school function. That's the dividing line.
 19 BY MR. FITZPATRICK:
 20 Q. So then is it fair to say that whether something calls undue
 21 attention to oneself is predominantly determined by others'
 22 reaction to it, whether it's causing a disruption?
23 A. Repeat that again, please, or clarify?
 24 Q. If I understand your answer correctly, is it fair to say
 25 that whether attire is calling undue attention to oneself is

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1 predominantly determined by others' reaction to what you're
 2 wearing, whether it's causing a disruption amongst others?
 3 MS. SHEA: Objection, that mischaracterizes prior
 4 testimony, but you can go ahead.
5 A. If it causes a disruption or could cause harm for some
6 reason to a student's health or safety, that would be undue
7 attention.
 8 BY MR. FITZPATRICK:
 9 Q. Have administrators been provided any guidance by the school
 10 district about what the calls undue attention to oneself,
 11 what that language means?
12 A. Not that I'm aware of.
 13 Q. To the best of your knowledge has any guidance been provided
 14 to teachers about what that phrase means?
15 A. No.
 16 Q. To the best of your knowledge has any guidance been provided
 17 to students about what that phrase means?
18 A. No.
 19 Q. And to the best of your knowledge have parents been provided
 20 any guidance about what that phrase means?
21 A. No.
 22 MR. FITZPATRICK: I think I'm just about done.
 23 Can I take five to see if I have anything left?
 24 MS. SHEA: Of course. Yes, let's do that.
 25 (Recess taken from 10:47 a.m. to 10:53 a.m.)

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1 MR. FITZPATRICK: We're back on the record.
 2 BY MR. FITZPATRICK:
 3 Q. Mr. Williams, do you understand that you're still under
 4 oath?
5 A. Yes.
 6 Q. During the break did you talk to anybody about your
 7 testimony?
8 A. No.
 9 Q. Just a couple more questions and then I'll be all done.
 10 Prior to the break we were talking about the
 11 provision in the dress code about calling undue attention to
 12 oneself. Do you recall that conversation?
13 A. Yes.
 14 Q. In your view did the Let's Go Brandon sweatshirts violate
 15 that provision?
16 A. Let's Go Brandon violated the -- the obscene portion of that
17 sentence, of the second sentence of the dress code, because
18 the Let's Go Brandon was an innuendo for Fuck Joe Biden.
 19 Q. Did it violate the provision where it says is disruptive to
 20 the teaching and/or learning environment by calling undue
 21 attention to oneself?
22 A. Again, it was -- it violated the obscene portion of that
23 because it's an innuendo for Fuck Joe Biden.
 24 Q. But I'm asking specifically about the last part of that
 25 sentence. Did it violate the part of that prohibition

Page 65

1 against being -- against apparel being disruptive to the
 2 teaching and/or learning environment by calling undue
 3 attention to oneself?
4 A. Again, I'm just going to refer back to the reason it
5 happened was it was obscene. So the undue -- the undue
6 attention to oneself had no bearing on the actions.
 7 Q. I understand that. And this isn't my last question but I am
 8 going to need to insist on getting an answer for it. Did
 9 the Let's Go Brandon sweatshirts violate the prohibition on
 10 apparel that is disruptive to the teaching and/or learning
 11 environment by calling undue attention to oneself?
12 A. If you're asking me a yes or no question I would say it does
13 not violate that.
 14 Q. And why would you say that?
15 A. Because it didn't cause a disruption. The reason being is
16 Let's Go Brandon is obscene based on its innuendo of Fuck
17 Joe Biden.
 18 MR. FITZPATRICK: Nothing further.
 19 Mr. Williams, it was nice to meet you, and thank
 20 you for your time today.
21 THE WITNESS: Thank you.
 22 MS. SHEA: I just have a couple of follow-up
 23 questions.
 24
 25

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

**Exhibit 13 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

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

8 Plaintiffs,

Case No. 223-cv-423

9 v.

Judge Paul L. Maloney

10 TRI COUNTY AREA SCHOOLS;

Magistrate Judge:

11 ANDREW BUIKEMA, in his

Sally J. Berens

12 individual capacity; and

13 WENDY BRADFORD, in her individual

14 capacity,

15 Defendants.
16

17
18 DEPOSITION OF: TIMOTHY GOHEEN
19

20 DATE: February 28, 2024

21 TIME: 11:14 a.m.

22 LOCATION: Tri County Educational Service Center

23 94 Cherry Street

24 Sand Lake, Michigan

25 REPORTER: Kelly M. Kane, CSR-1470

Page 2

1 APPEARANCES:

2

3 FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION

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11 On behalf of Plaintiffs

12

13 GIARMARCO, MULLINS & HORTON, P.C.

14 BY: Annabel F. Shea (P83750)

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18 ashea@gmhlaw.com

19 On behalf of Defendants

20

21

22

23

24

25

Page 4

1 Sand Lake, Michigan

2 February 28, 2024; 11:14 a.m.

3 * * *

4 TIMOTHY GOHEEN,

5 having been first duly sworn to tell the truth, the whole

6 truth, and nothing but the truth, was examined and

7 testified as follows:

8 MS. BREGENZER: Before we start I just want to

9 state for the record that counsel have agreed that the

10 objection placed on the record at the beginning of the

11 30(b)(6) deposition on February 26th, and Defendants'

12 response to that objection, will run through each of these

13 depositions.

14 Do I have that right?

15 MS. SHEA: That's correct.

16 E X A M I N A T I O N

17 BY MS. BREGENZER:

18 Q. Good morning, Mr. Goheen.

19 A. **Good morning.**

20 Q. My name is Kelley Bregenzer, and I'm the attorney for the

21 Plaintiffs. It's good to meet you, and I'll be asking you a

22 few questions today.

23 A. **Okay.**

24 Q. You understand that you're here today to provide testimony

25 in connection with an ongoing lawsuit, right?

Page 3

1 I N D E X

2 WITNESS: PAGE

3 TIMOTHY GOHEEN

4 Examination by Ms. Bregenzer 4

5 Examination by Ms. Shea 36

6

7

8 E X H I B I T S

9 PAGE

10 Deposition Exhibit 14 13

11 Deposition Exhibit 15 23

12 (Exhibits are attached.)

13

14

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Page 5

1 A. **Correct.**

2 Q. And you understand that your testimony today is being given

3 under oath just as if you were testifying in a courtroom?

4 A. **Yes.**

5 Q. Have you ever given a deposition before?

6 A. **I have not.**

7 Q. Okay. So since you haven't I'm just going to go through

8 some ground rules. We have a court reporter here who is

9 taking a verbatim transcript of everything we say, so please

10 be sure to verbalize all your answers. So avoid things like

11 shakes of the head or saying uh-huh.

12 A. **(Witness nods head up and down.)**

13 Q. Does that make sense?

14 A. **It does.**

15 Q. And so we can make sure that the record is clear, we should

16 avoid speaking at the same time. So I'll let you finish

17 your answer before I ask another question, and you should

18 let me finish my questions before you answer; is that fair?

19 A. **Yes.**

20 Q. If you don't understand a question, let me know and I'll

21 rephrase. Okay?

22 A. **Okay.**

23 Q. If you do answer a question I will assume that you

24 understood the question; is that fair?

25 A. **Yep.**

Page 18

1 Q. Does the high school generally allow students to wear
2 clothing with political messages on it?
3 A. Can you repeat the question?
4 Q. Sure. Does the high school generally allow students to wear
5 clothing with political messages on it?
6 A. Yes.
7 Q. Can you provide some examples of clothing you've seen
8 students wear with political messages?
9 A. Can you explain that more about a political message?
10 Q. Sure. Something that you would deem political, maybe in
11 support of a political party or candidate.
12 A. And then what was the question again?
13 Q. Can you provide some examples of these things that you've
14 seen in the high school?
**15 A. Over the last -- from the time that I've been the high
16 school principal there?**
17 Q. Any you can remember.
18 A. I'd be speculating that kids have wore political messages.
19 Q. But you don't --
20 A. Not political messages, what did you call --
21 Q. Sure. Clothing with political messages.
**22 A. Yeah, I'm sure kids have wore political shirts before at the
23 high school.**
24 Q. Do you remember any specific examples?
25 A. Not off the top of my head.

Page 19

1 You said specific examples, right?
2 Q. Yes.
3 A. Yeah, I couldn't -- no.
4 Q. Okay. Have you heard of the slogan Let's Go Brandon?
5 A. I have.
6 Q. When did you first learn about that slogan?
7 A. Did you say where was I first or when?
8 Q. When.
9 A. I don't recall.
10 Q. Do you remember how you learned about it?
11 A. I was watching TV, I believe.
12 Q. Was it a newscast or --
13 A. It was about a race.
14 Q. Were you watching the actual race itself?
15 A. I don't recall, but I do watch NASCAR.
16 Q. And tell me about your understanding of where the phrase
17 Let's Go Brandon came from.
**18 A. I believe I was watching something on TV and the person that
19 was the one on the news said -- people were chanting
20 something in the background, they were making fun of it, and
21 they thought that they were saying Let's Go Brandon but the
22 crowd was chanting Fuck Joe Biden.**
23 Q. And have you ever heard someone mention the slogan Let's Go
24 Brandon at the high school?
25 A. Not that I recall.

Page 20

1 Q. Have you ever seen anyone wearing apparel with the slogan
2 Let's Go Brandon at the high school?
3 A. Not that I recall.
4 Q. Prior to February 2022, so two years ago, had the high
5 school experienced disruption due to students wearing
6 political apparel?
7 MS. SHEA: I'm just going to object as to
8 relevance, but you can go ahead.
9 A. Can you say that again?
10 BY MS. BREGENZER:
11 Q. Sure. So prior to February 2022 had the high school
12 experienced disruption due to students wearing political
13 apparel?
14 MS. SHEA: Same objection. Go ahead.
**15 A. What would -- can you explain disruptance? Or what was the
16 word you said?**
17 BY MS. BREGENZER:
18 Q. Disruption.
19 A. Yeah, like what do you mean by disruption?
20 Q. Sure. So let's actually look back at page 29 of this dress
21 code in front of us.
22 A. Okay.
23 Q. And I'm going to read this second -- we can strike looking
24 at the handbook.
25 Have any classes ever been disturbed -- prior to

Page 21

1 February 2022 have any classes ever been disturbed due to
2 students wearing political apparel?
3 MS. SHEA: I'm just going to make a blanket
4 objection for this line of questioning going into
5 disruption. But I don't want to keep interrupting you, so
6 go ahead.
7 A. Not that I recall.
8 BY MS. BREGENZER:
9 Q. And prior to February 2022 had the high school experienced
10 disruption due to Let's Go Brandon apparel or the slogan
11 itself?
12 MS. SHEA: Objection, foundation. Go ahead.
13 A. Not that I recall.
14 BY MS. BREGENZER:
15 Q. And after February of 2022 were any classes disturbed from
16 students wearing political apparel at school?
17 A. No.
18 Q. And after February 2022 did the high school experience -- or
19 were any classes disturbed from students wearing Let's Go
20 Brandon apparel at school?
21 A. No.
22 Q. Are you aware of any other instances of the Let's Go Brandon
23 subject coming up at the high school?
24 MS. SHEA: Objection, asked and answered, but go
25 ahead.

Page 22

1 **A. No.**

2 BY MS. BREGENZER:

3 Q. Prior to February 2022 did the high school experience

4 disruption due to students having political arguments during

5 school?

6 **A. Say that again?**

7 Q. Sure. Prior to February 2022 did the high school experience

8 disruption due to students having political arguments during

9 school?

10 MS. SHEA: I'm just going to object as to

11 foundation and relevance, but you can go ahead and answer.

12 I'd like my objection to be a standing objection for this

13 next line of questioning.

14 MS. BREGENZER: Sure.

15 MS. SHEA: Go ahead.

16 **A. One more time please?**

17 BY MS. BREGENZER:

18 Q. Prior to February 2022 did the high school experience

19 disruption due to students having political arguments during

20 school?

21 **A. Not to my knowledge.**

22 Q. And after February 2022 did the high school experience

23 disruption due to students having political arguments at

24 school?

25 **A. Not to my knowledge.**

Page 23

1 MS. BREGENZER: Let's take a quick five-minute

2 break and then we'll come back.

3 MS. SHEA: Okay.

4 (Recess taken from 11:42 a.m. to 11:47 a.m.)

5 BY MS. BREGENZER:

6 Q. Mr. Goheen, do you understand that you're still under oath?

7 **A. Yes.**

8 Q. And did you speak to anyone about your deposition during the

9 break?

10 MS. SHEA: Other than your attorney.

11 BY MS. BREGENZER:

12 Q. Other than your counsel?

13 **A. No.**

14 MS. BREGENZER: I'm going to hand you a document

15 that will be marked as Exhibit 15.

16 (Deposition Exhibit 15 was marked for

17 identification.)

18 BY MS. BREGENZER:

19 Q. Let me know if you need a second to read that.

20 **A. I'll need a second.**

21 Q. Sure. Take your time.

22 **A. (Witness complies.)**

23 **Okay**

24 Q. Do you recognize this document?

25 **A. I -- yes.**

Page 24

1 Q. This appears to be an email from you to

2 Superintendent Cumings sent on October 11, 2023; is that

3 correct?

4 **A. If that's what it says, yes. I can't remember the actual**

5 **date, but it looks like that's what the email says.**

6 Q. What is this email about?

7 **A. Do you want me to read it to you?**

8 Q. Explain what this email is documenting.

9 **A. The day after the capitol incident a staff member came to me**

10 **in the morning before school started and said student X was**

11 **running through the hallways with a flag, making a scene. I**

12 **stopped the student in the hallway and asked them to put the**

13 **flag in the office and they can get it at the end of the**

14 **day.**

15 Q. When did this event occur?

16 **A. It looks like Wednesday, October 11, 2023, at 2:09 p.m. Or**

17 **that's when the -- no, it was -- it was in the morning. So**

18 **I don't recall.**

19 Q. Do you see the subject line up here?

20 **A. Oh, incident, January 7, 2021.**

21 Q. All right.

22 **A. I'm assuming January 7, 2021.**

23 Q. And did you personally observe the event referred to in this

24 email happen?

25 **A. Yes. Probably not in its entirety, but, yes, part of it.**

Page 25

1 BY MS. BREGENZER:

2 Q. So the part you didn't observe personally, who informed you

3 about it?

4 **A. A staff member.**

5 Q. What exactly did you observe?

6 **A. I was walking in the halls and saw a student -- I can't**

7 **remember if they were going left or right at the end of the**

8 **hall, with the flag caped over their shoulders, and I told**

9 **the student to go put that flag on my desk.**

10 Q. Did the student comply?

11 **A. He did.**

12 Q. And what exactly did the staff member tell you about the

13 incident?

14 **A. I don't recall, being three years ago, but -- I'd be**

15 **guessing if I were to continue my statement since it**

16 **happened years ago.**

17 Q. You said you observed part of the incident. What part did

18 you not observe?

19 MS. SHEA: Objection, asked and answered, but go

20 ahead.

21 **A. The before and -- the before I saw it with my eyes, that kid**

22 **wearing a flag.**

23 BY MS. BREGENZER:

24 Q. So you actually saw the student in the hallway?

25 **A. I believe I already said that, yes.**

Page 30

1 **not. So I don't recall.**

2 Q. Did you receive any guidance at any time from school

3 district administrators regarding how to handle students

4 wearing Let's Go Brandon apparel?

5 **A. It never happened at the high school, so -- state that one**

6 **more time please?**

7 Q. Sure. Did you receive guidance at any time from school

8 district administrators regarding how to handle students

9 wearing Let's Go Brandon apparel?

10 **A. Sorry, I'm just trying to think of the time.**

11 Q. Sure. Take your time.

12 **A. I believe if a student were to be wearing something like**

13 **that, to allow them to but bring them -- ask them about the**

14 **apparel, something along those lines. That's what I can**

15 **remember.**

16 Q. And who issued that guidance?

17 MS. SHEA: I'm just going to object because it was

18 asked and answered, but go ahead.

19 **A. It was with the administrators. I can guess, but I don't**

20 **like to guess if it's not -- if I'm not 100 percent**

21 **accurate.**

22 BY MS. BREGENZER:

23 Q. How was that guidance issued?

24 **A. Verbally.**

25 Q. And was that the only way it was issued?

Page 31

1 **A. To my knowledge.**

2 Q. Did you issue any guidance to high school employees

3 regarding how to handle students wearing Let's Go Brandon

4 apparel?

5 **A. Specifically to that, I don't recall.**

6 **Well, say that again?**

7 Q. Sure. Did you issue any guidance to high school employees

8 regarding how to handle students wearing Let's Go Brandon

9 apparel?

10 **A. I believe in the meeting with my staff I told staff to send**

11 **a student -- or let us know if there is something that would**

12 **be a dress code violation, or something along those lines.**

13 Q. And did you mention Let's Go Brandon specifically?

14 **A. I don't recall.**

15 Q. Was that after the lawsuit?

16 **A. I can't remember about before or after the lawsuit.**

17 Q. And was that the only guidance issued to high school

18 employees regarding how to handle Let's Go Brandon apparel?

19 MS. SHEA: Objection, mischaracterizes prior

20 testimony, but go ahead.

21 **A. State that again, please?**

22 BY MS. BREGENZER:

23 Q. Was there any -- did you issue any other guidance to --

24 **A. I don't -- I don't believe so.**

25 Q. Are you aware of any high school students wearing Let's Go

Page 32

1 Brandon apparel after the lawsuit?

2 **A. At the school or --**

3 Q. Yes.

4 **A. No.**

5 Q. All right. Let's turn to page 29 of Exhibit 3. It should

6 be that one or the one in your binder. It's probably the

7 one in the binder.

8 **A. The tab with the 3? That one again?**

9 Q. Yes, yes.

10 **A. What page was that again? Sorry.**

11 Q. Page 29. And let me know when you're there.

12 **A. All right.**

13 Q. Do you see that paragraph right under dress code?

14 **A. Yep.**

15 Q. Can you please read aloud that second sentence of that

16 paragraph?

17 **A. The one that starts with students?**

18 Q. Yes, please.

19 **A. Students and parents have the right to determine a student's**

20 **dress except when the school administration determines a**

21 **student's dress is in conflict with state policies, a danger**

22 **to the student's health and safety, is obscene, is**

23 **disruptive to the teaching and/or learning environment by**

24 **calling undue attention to oneself.**

25 Q. All right, thanks.

Page 33

1 I'd like to focus on the last part of that

2 sentence. Students are prohibited from wearing clothing

3 that is disruptive to the teaching and/or learning

4 environment by calling undue attention to oneself. What

5 does calling undue attention to oneself mean?

6 MS. SHEA: I'm just going to object, it

7 mischaracterizes the evidence, but go ahead.

8 **A. You asked what does calling undue attention to oneself mean?**

9 BY MS. BREGENZER:

10 Q. Yes.

11 **A. I think just like it says, calling attention to oneself.**

12 Q. If a teacher asked you what that meant, how would you

13 explain it to them?

14 **A. I would probably just read that back to them.**

15 Q. How do students know if they're wearing something that calls

16 attention to oneself versus undue attention to oneself?

17 **A. You'd have to ask the student that question. They'd**

18 **probably all have a different opinion on what that would**

19 **mean.**

20 Q. Have administrators been provided any guidance about what

21 undue attention to oneself means?

22 **A. Specifically undue attention to oneself?**

23 Q. Yes.

24 **A. Not that I recall.**

25 Q. Have teachers?

<p style="text-align: right;">Page 34</p> <p>1 A. Not that I recall.</p> <p>2 Q. Have students?</p> <p>3 A. That specific undue attention to oneself?</p> <p>4 Q. Yes.</p> <p>5 A. Not that I recall.</p> <p>6 Q. Have parents?</p> <p>7 A. Can you state the question again?</p> <p>8 Q. Sure. Have parents been provided any guidance about what</p> <p>9 that specific "calls undue attention to oneself" language</p> <p>10 means?</p> <p>11 A. Guidance, I can't speak -- I mean, they get the handbook</p> <p>12 emailed to them, both students and parents. So if that's</p> <p>13 what you're asking, yes. But maybe that's not what you're</p> <p>14 asking.</p> <p>15 Q. But not about that specific phrase, calls undue attention to</p> <p>16 oneself?</p> <p>17 A. No, we don't highlight it to them.</p> <p>18 Q. Has the high school provided opportunities for students to</p> <p>19 wear apparel supporting particular causes? So let's say,</p> <p>20 for example, breast cancer awareness?</p> <p>21 A. Do we provide the opportunity?</p> <p>22 Q. Yes.</p> <p>23 A. They could wear something like that, yes.</p> <p>24 Q. Let's look at what's been marked Exhibit 12. I believe that</p> <p>25 is in the front pocket of your binder.</p>	<p style="text-align: right;">Page 36</p> <p>1 your time today, Mr. Goheen.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 MS. SHEA: I just have a couple follow-up</p> <p>4 questions for you.</p> <p>5 E X A M I N A T I O N</p> <p>6 BY MS. SHEA:</p> <p>7 Q. Counsel asked you a question about the dress code in</p> <p>8 Exhibit 3 on page 29. Can you open up to that page again,</p> <p>9 please? Just let me know when you're there.</p> <p>10 A. Okay.</p> <p>11 Q. So the dress code -- when it says is disruptive to the</p> <p>12 teaching and/or learning environment by calling undue</p> <p>13 attention to oneself, what does that mean in the context of</p> <p>14 the dress code?</p> <p>15 A. Can you say that again, please?</p> <p>16 Q. So the dress code talks about students and parents having</p> <p>17 the right to determine dress, and then it lists several</p> <p>18 exceptions; one of those exceptions is when the clothing is</p> <p>19 disruptive to the teaching and/or learning environment by</p> <p>20 calling undue attention to oneself. What does that full</p> <p>21 statement mean in the context of the dress code?</p> <p>22 A. So I would take that as a student is wearing something that</p> <p>23 would prohibit the teacher from teaching in the classroom.</p> <p>24 Q. And you testified earlier that you have not had any students</p> <p>25 that have worn Let's Go Brandon clothing to the high school</p>
<p style="text-align: right;">Page 35</p> <p>1 A. (Witness complies.)</p> <p>2 Q. Do you recognize this document?</p> <p>3 A. Like -- I recognize it.</p> <p>4 Q. Yes.</p> <p>5 A. I see it here in front of me.</p> <p>6 Q. Have you seen it before?</p> <p>7 A. I would be guessing. I've seen a lot of things at the high</p> <p>8 school over the years.</p> <p>9 Q. Do you remember the high school hosting -- strike that. Do</p> <p>10 you remember the high school offering opportunities similar</p> <p>11 to this, for students to wear certain apparel to support</p> <p>12 causes?</p> <p>13 A. Yes.</p> <p>14 Q. Do you remember any other examples of those instances?</p> <p>15 A. We have several football games, volleyball games, basketball</p> <p>16 games, soccer games, and there's stuff that we support in</p> <p>17 the community and different organizations, correct.</p> <p>18 MS. BREGENZER: I think I'm done, but can you give</p> <p>19 us five minutes?</p> <p>20 MS. SHEA: Yes.</p> <p>21 (Recess taken from 12:10 p.m. to 12:14 p.m.)</p> <p>22 MS. BREGENZER: I have no further questions for</p> <p>23 you, Mr. Goheen.</p> <p>24 Plaintiffs renew their reservation of rights made</p> <p>25 at the end of the Rule 30(b)(6) deposition. Thank you for</p>	<p style="text-align: right;">Page 37</p> <p>1 to the best of your recollection; is that right?</p> <p>2 A. Correct, to the best of my knowledge, yep.</p> <p>3 Q. Have you ever asked a student to take off Let's Go Brandon</p> <p>4 apparel?</p> <p>5 A. I have not.</p> <p>6 Q. Are you aware of there being an expressed ban on Let's Go</p> <p>7 Brandon apparel applicable to the high school?</p> <p>8 A. I am not aware of that.</p> <p>9 Q. What about the district at large?</p> <p>10 A. I am not aware of that.</p> <p>11 MS. SHEA: I have no further questions.</p> <p>12 MS. BREGENZER: We have no further questions.</p> <p>13 Thank you for your time.</p> <p>14 THE WITNESS: Thank you.</p> <p>15 (Deposition concluded at 12:17 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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

**Exhibit 14 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

Media file - A thumb drive containing the file will be sent to the Clerk's Office pursuant to the Clerk's instructions

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

**Exhibit 15 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

Media file - A thumb drive containing the file will be sent to the Clerk's Office pursuant to the Clerk's instructions

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

**Exhibit 16 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

Media file - A thumb drive containing the file will be sent to the Clerk's Office pursuant to the Clerk's instructions

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

**Exhibit 17 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

Media file - A thumb drive containing the file will be sent to the Clerk's Office pursuant to the Clerk's instructions

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

**Exhibit 18 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

Media file - A thumb drive containing the file will be sent to the Clerk's Office pursuant to the Clerk's instructions

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

**Exhibit 19 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

*Media file - A thumb drive containing the file will be sent
to the Clerk's Office pursuant to the Clerk's instructions*

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

**Exhibit 20 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

*Media file - A thumb drive containing the file will be sent
to the Clerk's Office pursuant to the Clerk's instructions*

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

**Exhibit 21 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

Media file - A thumb drive containing the file will be sent to the Clerk's Office pursuant to the Clerk's instructions

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

**Exhibit 22 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

Media file - A thumb drive containing the file will be sent to the Clerk's Office pursuant to the Clerk's instructions

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

**Exhibit 23 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

UNITED STATES DISTRICT COURT
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,

Judge Paul L. Maloney
Magistrate Judge Sally J. Berens
No. 23-423

v

TRI COUNTY AREA SCHOOLS, ANDREW
BUIKEMA and WENDY BRADFORD,

Defendants.

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Kelley Bregenzer
Foundation for Individual Rights and
Expression
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John L. Miller (P71913)
Annabel F. Shea (P83750)
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**DEFENDANT ANDREW BUIKEMA'S RESPONSE TO
PLAINTIFFS' REQUESTS FOR ADMISSIONS**

Defendant, Andrew Buikema, by and through his attorneys, GIARMARCO, MULLINS &
HORTON, responds to Plaintiffs' Requests for Admissions as follows:

Request for Admission No. 1:

Admit that, prior to May 27, 2022, no students complained to you about students wearing "Let's
Go Brandon" apparel to school.

Answer: Admit.

Request for Admission No. 2:

Admit that, prior to May 27, 2022, no parents or guardians complained to you about students wearing “Let’s Go Brandon” apparel to school.

Answer: Admit.

Request for Admission No. 3:

Admit that, prior to May 27, 2022, you were not aware of instances of “Let’s Go Brandon” apparel causing teachers to halt or alter their lessons.

Answer: Admit.

Request for Admission No. 4:

Admit that when you observed Plaintiff D.A. wearing “Let’s Go Brandon” apparel, he was not engaging in other conduct that violated school policy.

Answer: Admit.

Request for Admission No. 5:

Admit that when you observed Plaintiff X.A. wearing “Let’s Go Brandon” apparel, he was not engaging in other conduct that violated school policy.

Answer: Admit.

Request for Admission No. 6:

Admit that when you ordered Plaintiff D.A. to remove his “Let’s Go Brandon” apparel, he removed the apparel.

Answer: Admit.

Request for Admission No. 7:

Admit that when you ordered Plaintiff X.A. to remove his “Let’s Go Brandon” apparel, he removed the apparel.

Answer: Admit.

Request for Admission No. 8:

Admit that the sweatshirt depicted in Paragraph 27 of the Complaint is the same design you observed Plaintiffs wearing.

Answer: Admit.

/s/TIMOTHY J. MULLINS
GIARMARCO, MULLINS & HORTON, PC
Attorney for Defendants

DATED: January 5, 2024

CERTIFICATE OF ELECTRONIC SERVICE

TIMOTHY J. MULLINS states that on January 5, 2024, he did serve a copy of **Defendant Andrew Buikema’s Response to Plaintiff’s Request to Admit** via email to Conor Fitzpatrick @ conor.fitzpatrick@thefire.org.

/s/TIMOTHY J. MULLINS
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D.A., a minor, et al. v. Tri County Area Schools, et al.

**Exhibit 24 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

UNITED STATES DISTRICT COURT
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,

Judge Paul L. Maloney
Magistrate Judge Sally J. Berens
No. 23-423

v

TRI COUNTY AREA SCHOOLS, ANDREW
BUIKEMA and WENDY BRADFORD,

Defendants.

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ashea@gmhlaw.com

**DEFENDANT WENDY BRADFORD'S RESPONSE TO
PLAINTIFFS' REQUESTS FOR ADMISSIONS**

Defendant, Wendy Bradford, by and through her attorneys, GIARMARCO, MULLINS &
HORTON, responds to Plaintiffs' Requests for Admissions as follows:

Request for Admission No. 1:

Admit that, prior to May 27, 2022, no students complained to you about students wearing "Let's
Go Brandon" apparel to school.

Answer: Admit.

Request for Admission No. 2:

Admit that, prior to May 27, 2022, no parents or guardians complained to you about students wearing “Let’s Go Brandon” apparel to school.

Answer: Admit.

Request for Admission No. 3:

Admit that, prior to May 27, 2022, you were not aware of instances of “Let’s Go Brandon” apparel causing teachers to halt or alter their lessons.

Answer: Admit.

Request for Admission No. 4:

Admit that when you observed Plaintiff D.A. wearing “Let’s Go Brandon” apparel, he was not engaging in any other conduct that violated school policy.

Answer: Admit.

Request for Admission No. 5:

Admit that when you ordered Plaintiff D.A. to remove his “Let’s Go Brandon” apparel, he complied.

Answer: Deny, because untrue. Ms. Bradford did not order D.A. to remove his “Let’s Go Brandon” apparel.

Request for Admission No. 6:

Admit that the sweatshirt depicted in Paragraph 27 of the Complaint is the same design you observed Plaintiff D.A. wearing.

Answer: Admit.

/s/TIMOTHY J. MULLINS
GIARMARCO, MULLINS & HORTON, PC
Attorney for Defendants

DATED: January 5, 2024

CERTIFICATE OF ELECTRONIC SERVICE

TIMOTHY J. MULLINS states that on January 5, 2024, he did serve a copy of **Defendant Wendy Bradford's Response to Plaintiff's Request to Admit** via email to Conor Fitzpatrick @ conor.fitzpatrick@thefire.org.

/s/TIMOTHY J. MULLINS
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D.A., a minor, et al. v. Tri County Area Schools, et al.

**Exhibit 25 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

**THE 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

Judge Paul L. Maloney

Magistrate Judge Sally J. Berens

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**DEFENDANT ANDREW BUIKEMA'S ANSWER TO PLAINTIFFS'
FIRST SET OF INTERROGATORIES**

Defendant ANDREW BUIKEMA, by and through his attorneys, GIARMARCO,
MULLINS & HORTON, P.C., states his response to Plaintiffs' First Set of Interrogatories to as
follows:

INTERROGATORIES

Interrogatory No. 1

Explain in detail your basis for instructing D.A. to remove his “Let’s Go Brandon” sweatshirt on or around February 2022.

Answer: I do not recall the exact date or when it was brought to my attention. The phrase “Let’s Go Brandon” means “Fuck Joe Biden.” That is vulgar, profane and pornographic. Further, students using, conveying or expressing such vulgar, profane and pornographic language can and does lead to retorts, disputes and substantial disruption of the safe school environment.

Interrogatory No. 2

Explain in detail your basis for removing X.A. from class on May 26, 2022.

Answer: I do not recall removing X.A. from class on or around May 26, 2022.

Interrogatory No. 3

Explain in detail your basis for instructing X.A. to remove his “Let’s Go Brandon” sweatshirt on May 26, 2022.

Answer: I do not recall the exact date or when it was brought to my attention. The phrase “Let’s Go Brandon” means “Fuck Joe Biden.” That is vulgar, profane and pornographic. Further, students using, conveying or expressing such vulgar, profane and pornographic language can and does lead to retorts, disputes and substantial disruption of the safe school environment.

Interrogatory No. 4

Explain in detail your basis for instructing a student to remove a Trump campaign flag on the June 2022 Field Day.

Answer: Two students were running down the hallway with flags as capes screaming causing a major disruption to the learning environment. I told the two students to be quiet, stop causing a disruption and put their capes in their lockers. It just so happened that one of the capes was a Trump flag and the other cape was a Pride flag.

Interrogatory No. 5

Explain in detail your basis for not instructing students wearing Pride flags as capes during the June 2022 Field Day to remove them.

Answer: Interrogatory No. 5 is inaccurate. See the answer to Interrogatory No. 4.

Interrogatory No. 6

Identify each instance since October 2021 when you instructed a student to remove apparel containing a political or social message and provide the date, the name of the student, the message on the clothing, and your basis for instructing the student to remove the apparel.

Answer: Objection. This request is vague and ambiguous. More specifically, I am unsure what you mean by “political or social message”. The request is also overly broad and unduly burdensome. Without waiving the objection, and in the interest of cooperation. My memory is limited to the instances listed in Interrogatory No. 4 and 5 where there was a substantial disruption caused by the students wearing the capes during Field Day in June 2022.

/s/TIMOTHY J. MULLINS
GIARMARCO, MULLINS & HORTON, PC
Attorney for Defendants

DATED: October 13, 2023

CERTIFICATE OF ELECTRONIC SERVICE

TIMOTHY J. MULLINS states that on October 13, 2023, he did serve a copy of **Defendant Andrew Buikema’s Response to Plaintiffs’ First Set of Interrogatories** via email to Plaintiffs’ Counsel, Conor Fitzpatrick.

/s/TIMOTHY J. MULLINS
GIARMARCO, MULLINS & HORTON, PC

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

**Exhibit 26 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

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

8 Plaintiffs,

Case No. 223-cv-423

9 v.

Judge Paul L. Maloney

10 TRI COUNTY AREA SCHOOLS;

Magistrate Judge:

11 ANDREW BUIKEMA, in his

Sally J. Berens

12 individual capacity; and

13 WENDY BRADFORD, in her individual

14 capacity,

15 Defendants.
16

17
18 DEPOSITION OF: WENDY BRADFORD
19

20 DATE: February 27, 2024

21 TIME: 12:43 p.m.

22 LOCATION: Tri County Educational Service Center

23 94 Cherry Street

24 Sand Lake, Michigan

25 REPORTER: Kelly M. Kane, CSR-1470

Page 2

1 APPEARANCES:

2

3 FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION

4 BY: Conor T. Fitzpatrick (MI P78981)

5 Kelley Bregenzer (NY 5987482)

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9 conor.fitzpatrick@thefire.org

10 kelley.bregenzer@thefire.org

11 On behalf of Plaintiffs

12

13 GIARMARCO, MULLINS & HORTON, P.C.

14 BY: Annabel F. Shea (P83750)

15 101 W. Big Beaver Road, Suite 1000

16 Troy, MI 48084-5280

17 (248)457-7081

18 ashea@gmhlaw.com

19 On behalf of Defendants

20

21 ALSO PRESENT: Kathy Daum, union representative

22

23

24

25

Page 4

1 Sand Lake, Michigan

2 February 27, 2024; 12:43 p.m.

3 * * *

4 WENDY BRADFORD,

5 having been first duly sworn to tell the truth, the whole

6 truth, and nothing but the truth, was examined and

7 testified as follows:

8 MR. FITZPATRICK: Before we get started today,

9 counsel for Defendants and I have reached an agreement that

10 the objection placed on the record at the beginning of the

11 30(b)(6) deposition and Defendants' response will run with

12 the remainder of the depositions in the week.

13 Do I have that right?

14 MS. SHEA: That's correct.

15 MR. FITZPATRICK: Thank you.

16 E X A M I N A T I O N

17 BY MR. FITZPATRICK:

18 Q. Good afternoon, Ms. Bradford.

19 A. **Good afternoon.**

20 Q. My name is Conor Fitzpatrick; I'm an attorney for the

21 Plaintiffs in this action.

22 Do you understand that you're here today to

23 provide testimony in connection with an ongoing lawsuit?

24 A. **I am aware.**

25 Q. And do you understand that your testimony today is being

Page 3

1 I N D E X

2 WITNESS: PAGE

3 WENDY BRADFORD

4 Examination by Mr. Fitzpatrick 4

5 Examination by Ms. Shea 44

6

7

8 E X H I B I T S

9 PG. IDENTIFICATION

10 (No exhibits were marked.)

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Page 5

1 given under oath just like if you were in front of a judge

2 and a jury?

3 A. **Yes.**

4 Q. Have you ever given a deposition before?

5 A. **No.**

6 Q. That's okay. So I'll go over a few ground rules to make

7 sure that we do everything the right way today.

8 So we have a court reporter here today, she is

9 very nice. She is taking a verbatim transcript of

10 everything that we say, so it means you need to be sure to

11 verbalize your answers. That means no shakes of the head or

12 uh-huhs. Make sense?

13 A. **Yes.**

14 Q. And another rule is that, since she's taking a transcript of

15 both of us, it's important that we not speak at the same

16 time. So I'll make sure that I let you finish your answers

17 before I start asking a question, and all I ask is that you

18 let me finish asking my question before you start to answer.

19 Fair?

20 A. **Sounds good.**

21 Q. If you don't understand one of my questions, let me know,

22 I'll be happy to rephrase, but if you answer a question I'll

23 assume you've understood it. Fair?

24 A. **Okay.**

25 Q. If you need to take a break at any time, that's fine; all I

Page 18

1 Q. Anything else?

2 **A. I would think anything that would say or suggest any type of**

3 **profane language also being indecent.**

4 Q. Are there any examples of those that come to mind?

5 **A. Such as? Could you repeat the question?**

6 Q. Sure. Are there any examples of indecent clothing that

7 you've seen at Tri County Middle School that you can recall?

8 **A. Yes. Like I --**

9 MS. SHEA: I'm just going to object, asked and

10 answered.

11 If I'm going to state an objection, just let me

12 finish my objection and then you can go ahead. But go

13 ahead.

14 **A. Like I said, the short shorts, exposing the chest, anything**

15 **that has curse words or suggesting it, sexual content, I**

16 **think are all indecent for school and a learning**

17 **environment.**

18 BY MR. FITZPATRICK:

19 Q. And my question was a little bit more specific.

20 **A. Sorry.**

21 Q. It's okay. Do you recall any specific examples of those

22 that you've seen?

23 **A. I can speak in generalities we usually see in the**

24 **summertime.**

25 Q. So I'll be a little bit more specific. With respect to kind

Page 19

1 of the swear words, or the suggestive words I think you may

2 have said --

3 **A. Uh-huh.**

4 Q. -- I was just wondering if you recall any examples of stuff

5 you've seen kids wear at school?

6 **A. So like the Fet's Luck thing.**

7 Q. So is that something you would consider indecent as well as

8 lewd?

9 **A. Yeah. Yes, I would.**

10 Q. Okay. And we'll get into Let's Go Brandon a little bit

11 later.

12 **A. Okay.**

13 Q. But would you consider that indecent as well as lewd?

14 **A. I would put them in the same category, yes.**

15 Q. And the third one, the --

16 **A. Profane?**

17 Q. Or, no, the third one, the I "heart" Hot Moms.

18 **A. Yeah.**

19 Q. Do you consider that indecent as well as lewd?

20 **A. I would say that would be under -- I would say lewd or**

21 **decent for school, yes.**

22 Q. Let's move on to the next term, which is vulgar.

23 **A. Uh-huh.**

24 Q. What is your understanding of what vulgar means in the dress

25 code?

Page 20

1 **A. Vulgar means outright cursing or inappropriate language;**

2 **vulgar can have suggestive meanings as well. So that would**

3 **be my take on what vulgar is. Again, not appropriate for**

4 **middle school.**

5 Q. And what do you base your understanding of vulgar on?

6 **A. I guess I would say my 19 years of teaching and being around**

7 **children.**

8 Q. Is there any specific communication or guidance you received

9 from the school district or administration that informed

10 your definition of vulgar?

11 **A. No. We're given the handbook, we're given that discretion.**

12 **And it's not a decision that we make anyways, it's something**

13 **that we see and that we let our administration know to**

14 **handle it. That's their job.**

15 Q. Have you sought or received guidance on what vulgar means in

16 terms of the dress code?

17 **A. No.**

18 Q. Do you recall being a part of any meetings in which the

19 administration or the school district discussed what vulgar

20 means in terms of the dress code?

21 **A. No, we have not sat down and talked about the specific**

22 **wording. We've talked about things like short shorts,**

23 **exposed areas, and -- and to that nature, but we have not**

24 **sat and talked about the individual words of them.**

25 Q. Same question for lewd and indecent.

Page 21

1 **A. Sure.**

2 Q. Do you recall having any meetings with either administration

3 or the school district regarding what those words mean in

4 the dress code?

5 **A. No.**

6 Q. Can you provide me some examples of vulgar -- or, pardon me,

7 clothing that you would consider vulgar that you've seen

8 Tri County Middle School students wear?

9 **A. I have not seen this, but before I came to Tri County we had**

10 **a principal, his last name was Johnson, and some students**

11 **were wearing Big Johnson shirts that I would say was a bit**

12 **vulgar.**

13 Q. Did you say anything to the students who were wearing it?

14 **A. This was before I was at Tri County.**

15 Q. So while at Tri County are there any -- has there been any

16 apparel that you've seen that you would consider vulgar?

17 **A. I would say probably not vulgar, I would take it more as**

18 **indecent.**

19 Q. So for example, the hat that we talked about first --

20 **A. Yes.**

21 Q. -- would you consider that vulgar?

22 **A. I guess it's a matter of semantics. I would say its**

23 **indecent and not appropriate for school.**

24 Q. But you wouldn't necessarily consider it vulgar?

25 **A. Well, yes. Reading it as an adult from, you know, a small**

D.A. vs TRI COUNTY AREA SCHOOLS
BRADFORD, WENDY 02/27/2024

Job 28728
26..29

Page 26

1 A. **It was shortly before the student was wearing that shirt,**
2 **before this incident started. So yeah.**
3 Q. Do you recall who was part of that conversation?
4 A. **So some colleagues of mine. Would you like to know**
5 **specifically their names?**
6 Q. Sure.
7 A. **Okay. Angie Beeman, Melissa McNeill.**
8 Q. Anyone else?
9 A. **I can't -- I can't recall other than those girls.**
10 Q. Do you recall who brought it up?
11 A. **No.**
12 Q. Do you recall generally -- it's okay if you don't remember
13 word for word. Do you recall generally sort of what they
14 said about Let's Go Brandon?
15 A. **Someone mentioned it, I said what's the big deal, and they**
16 **said, well, do you know it means this.**
17 Q. And we're all adults here, it's okay.
18 A. **Fuck Joe Biden.**
19 Q. So just to make sure we have a record where we're not
20 talking over each other --
21 A. **Sorry.**
22 Q. -- what did they -- it sounds like you asked what's the big
23 deal. Do I have that right?
24 A. **Uh-huh, yes.**
25 Q. And then what did one of your colleagues respond?

Page 27

1 A. **They said, well, it means Fuck Joe Biden.**
2 Q. And do you recall what your reaction was?
3 A. **"Oh."**
4 Q. Was there any further discussion of it at lunch that day or
5 did you move on?
6 A. **We moved on.**
7 Q. Now, I think when we were doing the math earlier we had
8 figured out that you've been at Tri County Middle School
9 since around 2014-ish?
10 A. **I believe so.**
11 Q. It's always very dangerous when lawyers try to do math, so
12 if I got it wrong it's very much on me.
13 A. **Okay.**
14 Q. In the time that you spent at Tri County Middle School, as
15 far as you know had the school experienced any disruption
16 due to students wearing political apparel?
17 A. **Not to my knowledge.**
18 Q. And prior to February 2022 had Tri County Middle School, as
19 far as you're aware, experienced any disruption due to
20 either Let's Go Brandon apparel or the slogan?
21 A. **Not to my knowledge.**
22 Q. And then from February 2022 through the end of that school
23 year -- which probably would have been in June 2022?
24 A. **Yeah.**
25 Q. From February of 2022 through June of 2022 did Tri County

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1 Middle School, as far as you're aware, experience any
2 disruption from students wearing political apparel at
3 school?
4 A. **Again, not to my knowledge.**
5 **I'm not privy to that information. I only ask**
6 **about things that I see or that I think, so --**
7 Q. Of course. And I'm only asking about what you personally
8 know.
9 A. **Okay, no.**
10 Q. From February 2022 through the end of that school year did
11 Tri County Middle School, as far as you're aware, experience
12 any disruption from students wearing Let's Go Brandon
13 apparel or from the slogan?
14 A. **Was that -- that was -- so that was after the lawsuit was**
15 **filed, correct?**
16 Q. This is a year before.
17 A. **Oh, a year before. Not to my knowledge.**
18 Q. After that school year, so from the end of that school year
19 to the present, as far as you know has Tri County Middle
20 School experienced any disruption from students wearing
21 political apparel?
22 A. **Not to my knowledge.**
23 Q. And after June 2022 and continuing through the present has
24 Tri County Middle School, as far as you know, experienced
25 disruption from students wearing Let's Go Brandon apparel or

Page 29

1 the slogan?
2 A. **The incident we're in?**
3 Q. In terms of --
4 A. **Besides this?**
5 Q. In terms of the students wearing the sweatshirts or the
6 lawsuit?
7 A. **The lawsuit.**
8 Q. Okay. Are you saying the lawsuit caused disruption?
9 A. **No.**
10 Q. Okay. So does --
11 A. **Would you rephrase the question, please?**
12 Q. Of course. So after the 2021-through-2022 school year
13 ended, so June of 2022 --
14 A. **Okay, yeah.**
15 Q. -- and through today, as far as you know have students
16 wearing Let's Go Brandon apparel or the slogan itself, have
17 there been any issues with that causing disruption at
18 school?
19 A. **Not to my knowledge. I don't know.**
20 Q. Prior to February 2022, as far as you're aware has
21 Tri County Middle School experienced disruption from
22 students getting into political arguments during school?
23 A. **Not to my knowledge.**
24 Q. From February 2022 through the end of that school year, as
25 far as you're aware did Tri County Middle School experience

Page 30

1 any disruption from political arguments at school?
2 A. Not to my knowledge.
 3 Q. And then same question until the present. From June 2022
 4 through the present, as far as you know did Tri County
 5 Middle School experience any disruption from students
 6 getting into political arguments at school?
7 A. Not that I'm aware of.
 8 Q. I believe you have the stack of exhibits in front of you.
 9 If you could go to Exhibit Number 10, please.
10 A. Okay.
 11 Q. And let me know when you find it.
12 A. Got it.
 13 Q. Excellent. The first question I have is, at the very top I
 14 see it's from Assistant Principal Buikema to
 15 Principal Williams and it says CC MS staff.
16 A. Uh-huh.
 17 Q. Would you be included on an email that is to MS staff?
18 A. Yes.
 19 Q. And what is your general understanding of who is on that --
 20 who is included in MS staff?
21 A. Any staff member in the middle school.
 22 Q. So you would have received this email; fair?
23 A. Yes.
 24 Q. I'd like to direct your attention to the 8:03 email from
 25 Principal Williams, and I'd like to direct your attention to

Page 32

1 Let's Go Brandon on it. So we just didn't want that to, you
2 know, kind of spiral out of control, so --
 3 Q. And you said this occurred during class?
4 A. Correct.
 5 Q. Was R.S. otherwise behaving?
6 A. He's known to be more outspoken and he was out of his seat.
 7 Q. Was he disrupting things? Tell me a bit more about what he
 8 was doing.
9 A. From what I can recall we were turning in papers, and I
10 noticed him taking off that shirt and that's when I called
11 or -- called or emailed the office.
 12 Q. Was your primary -- was your primary concern the fact that
 13 he was wearing the Let's Go Brandon apparel or that he was
 14 out of his seat?
15 A. The Let's Go Brandon.
 16 Q. Let me ask it this way: Had he only been out of his seat
 17 and not wearing a Let's Go Brandon shirt would you have sent
 18 him to the office?
19 A. Repeat that please.
 20 Q. Sure. If he hadn't been wearing the Let's Go Brandon shirt
 21 underneath the basketball jersey would you still have sent
 22 R.S. to the office?
23 A. In the situation we were under, with -- after being on the
24 news, that's what our administration told us to do if we saw
25 it.

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1 the bullet point number 1, where Principal Williams writes,
 2 if you notice the shirt please do not ask the student to
 3 remove it but let the office know the name of the student.
 4 Did I read that right?
5 A. Correct.
 6 Q. Do you recall reporting any students or informing the office
 7 of any students for wearing Let's Go Brandon apparel?
8 A. I did.
 9 Q. Using only initials of the student who you reported, whom
 10 did you report?
11 A. R.S.
 12 Q. And why did you report R.S.?
13 A. This was right after the lawsuit became news, and we had --
14 and administration had wanted to let us know how to act
15 from -- how to respond to this. So that's why I sent the
16 email.
 17 Q. So you sent R.S. to the office because -- I just want to
 18 make sure I understand.
19 A. Uh-huh.
 20 Q. You sent R.S. to the office based on the request in the
 21 email we just talked about?
22 A. Yes, yes.
 23 Q. What was R.S. doing at the time?
24 A. He was in class, and he had a jersey on first or a -- I
25 don't know, basketball, and then he took it off and it had

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1 Q. Right. So my question is a little bit different. If he
 2 hadn't been wearing a Let's Go Brandon shirt, if he was just
 3 wearing a basketball jersey --
4 A. Sure.
 5 Q. -- and he was just out of his seat, would you still have
 6 sent him to the office?
7 A. No.
 8 Q. Do you recall what you told R.S.?
9 A. Nothing, because it says to not -- it said to not, like,
10 talk to the student.
 11 Q. Do you remember how he was summoned to the office?
 12 MS. SHEA: Objection, asked and answered, but you
 13 can go ahead.
14 A. How he was summoned? I would assume with a phone call, we
15 would get a phone call to our room asking him to come down.
 16 BY MR. FITZPATRICK:
 17 Q. Was D.A. a student of yours in the spring of 2022?
18 A. That was last year, right? Or --
 19 Q. Two years ago.
20 A. Two years? No, no.
 21 Q. Were you familiar with him?
22 A. No.
 23 Q. Did you observe D.A. wearing a Let's Go Brandon sweatshirt?
24 A. Yes.
 25 Q. And tell me about that interaction.

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1 A. **Sure. It was near the end of the year, I remember standing**
 2 **outside in the hallway with a colleague, and there was a**
 3 **sixth grader -- well, it was a sixth grade locker, and a**
 4 **small student with that, and I -- since learning about what**
 5 **it means I came up to him and I said, you might want to take**
 6 **that off, otherwise Mr. Buikema is right down the hallway,**
 7 **you can talk to him.**
 8 **I didn't know if the student knew what it meant.**
 9 Q. And did D.A. say anything in response?
 10 A. **No.**
 11 Q. Did he remove the sweatshirt?
 12 A. **I can't recall.**
 13 Q. Do you have any recollection of him sort of being rude?
 14 A. **No.**
 15 Q. Was he polite?
 16 A. **Yeah.**
 17 Q. You said you were with a colleague when you observed D.A.
 18 wearing the sweatshirt. Do you recall who you were with?
 19 A. **Angie Beeman.**
 20 Q. And how do you spell that?
 21 A. **A-n-g-i-e, B-e-e-m-a-n.**
 22 Q. And what is her role?
 23 A. **She is also a science teacher. She is in the hall that I'm**
 24 **in, next door to where I am.**
 25 Q. Did she remark on D.A.'s sweatshirt?

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1 A. **I can't recall.**
 2 Q. Is there anything else about the interaction you had with
 3 D.A. that you recall that you haven't relayed so far?
 4 A. **No.**
 5 MR. FITZPATRICK: I want to take like a
 6 five-minute break here. I don't think I have a ton more.
 7 MS. SHEA: Okay.
 8 (Recess taken from 1:32 p.m. to 1:43 p.m.)
 9 MR. FITZPATRICK: We're back on the record.
 10 BY MR. FITZPATRICK:
 11 Q. Ms. Bradford, do you understand that you're still under
 12 oath?
 13 A. **Yes.**
 14 Q. During the break did you talk to anybody about your
 15 testimony?
 16 MS. SHEA: Other than your attorneys.
 17 BY MR. FITZPATRICK:
 18 Q. Other than your attorney?
 19 A. **No.**
 20 Q. Other than Ms. Shea did you talk to anybody about your
 21 testimony?
 22 A. **No.**
 23 Q. Okay. Let's go back to the dress code, so this will be
 24 Exhibit 6. And if you could go to page 24, please, and let
 25 me know when you're there.

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1 A. **Yep, I'm there.**
 2 Q. When you saw D.A. wearing a Let's Go Brandon sweatshirt were
 3 you concerned that it violated the dress code?
 4 A. **I was concerned that he didn't know what it meant.**
 5 Q. Did you believe the sweatshirt -- actually, strike that.
 6 Why did you think he might not know what it meant?
 7 A. **A lot of times kids will come to school, especially the**
 8 **younger kids will come to school, they might have things on**
 9 **that they don't know if it's appropriate or not, they might**
 10 **just think it's just, you know, fine. So I honestly didn't**
 11 **think that he knew what it meant, so I was trying to help**
 12 **him.**
 13 Q. Did you ask him if he knew what it meant?
 14 A. **No.**
 15 Q. Did you believe that the sweatshirt violated the dress code?
 16 A. **Yes.**
 17 Q. So going back to the dress code here on page 24, which
 18 provision of the dress code do you believe the Let's Go
 19 Brandon sweatshirt violated?
 20 A. **I would say it falls under that B description.**
 21 Q. Why do you believe it -- I guess I -- do you believe it's
 22 lewd?
 23 A. **I believe it's lewd, indecent, vulgar, and profane, yes.**
 24 Q. So specifically for Let's Go Brandon, let's go through that.
 25 Why do you believe Let's Go Brandon is lewd?

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1 A. **Well, my common sense tells me, you know, when it's**
 2 **something that infers a curse word that it's not appropriate**
 3 **for middle school.**
 4 Q. What do you mean by infers a curse word?
 5 A. **It's a curse word or it suggests that it's a curse word.**
 6 **Like we said, Fet's Luck, that implies Let's Fuck.**
 7 Q. Why do you believe Let's Go Brandon suggests a curse word?
 8 A. **Because the Let's Go Brandon means Fuck Joe Biden.**
 9 Q. The sweatshirt that you observed D.A. wearing did not have
 10 an actual swear word on it, correct?
 11 A. **That is correct.**
 12 Q. Did you consider the Let's Go Brandon sweatshirt to be
 13 indecent?
 14 A. **I believed it was inappropriate for school, and that's why I**
 15 **referred him to administration.**
 16 Q. Being a little bit more specific here, do you believe it was
 17 indecent?
 18 A. **For school, yes.**
 19 Q. Why so?
 20 A. **Because it suggests Fuck Joe Biden.**
 21 Q. Same question for vulgar. Did you consider the shirt to be
 22 vulgar?
 23 A. **I would say all of the same. When I look at the dress code**
 24 **I see lewd, indecent, vulgar, and profane. I put them as**
 25 **being very similar. And so I would say it would be -- it is**

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

**Exhibit 27 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

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, **B.A.** and her minor children, **D.A. and X.A.** and **J.R.** and her minor child, **D.R.**. 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 **D.A.** 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 **X.A.** was pulled from class without warning and sent to Dean of Students Mr. Andrew Buikema’s office. Mr. Buikema informed **X.A.** that a teacher had complained about his “Let’s Go Brandon” attire, and so he asked that **X.A.** remove the same. Mr. Buikema told **X.A.** 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, **X.A.** complied and returned to class less the prohibited clothing.

On May 27, 2022, Mr. Buikema approached student **D.R.** at a morning assembly and instructed him to remove his “Let’s Go Brandon” attire. **D.R.** 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 **B.A.** and her minor children, **D.A. and X.A.**, and **J.R.** and her minor child, **D.R.** 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 28 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**



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

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

**Exhibit 29 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

Apr 26, 2023

10:42 am W.D.

I spoke to [REDACTED]. He had a T-shirt on earlier in the day that said "Let's go Brandon". When I spoke to him he had a sweatshirt on that he put on himself. No one told him to put it on. He said he saw Mr. Helfmann look at the shirt 1st hour and he thought he should put his sweatshirt on because he did not want to cause a problem. I asked him what the shirt meant to him and he said, "F B J". I said, "do you mean 'F J B'" and he said, "Yeah that is what I meant" and I said, "So to you it means Fuck Joe Biden" and said "Yes".

May 2, 2023 E.N.

Spoke to [REDACTED]. Had LGB as a background on his computer. I asked him what it meant to him. He claimed he did not know the meaning. I asked why he has a background on his computer and not know the meaning of the words. He said he did not know. He asked me if I wanted him to delete it. I asked him if he thinks he should delete it. He said yes. I then replied "Then go ahead and delete it".

May 2, 2023 M.G.

Spoke to [REDACTED]. She had LGB written on her arm. I asked her what it meant. She said "F Joe Biden". I asked her if that was appropriate. She said "no" and that someone else wrote it on her. She also stated she tried to wash it off, but could not.

May 2, 2023 B.B.

Spoke to [REDACTED]. It was reported to me that [REDACTED] was yelling "Let's go Brandon" in the lunchroom. I asked [REDACTED] why he was doing that. He said he liked Donald Trump. I asked him what that meant. He said, "F Joe Biden".

May 3, 2023 J.S.

Spoke to [REDACTED]. He has "Let's Go Brandon" written in marker on his hand. I asked him why he had that on his hand. He said he put it on his hand because he was "bored". I asked why he put that statement on his hand. He said he "Likes what it means". I asked him what it meant to him. He said, "Fuck Joe Biden". I asked him if that was school appropriate. He said, "no". He then stated he tried to wash it off, but couldn't get it off.

May 17, 2023 R.S.

[REDACTED] was sent to me by a teacher (Mrs. Bradford). She said he was wearing a Let's Go Brandon Shirt. I called him to the office and he wore a Lakers NBA jersey over a T-shirt. I asked him if he had a LGB T-Shirt on. He said yes and that he only took off his Lakers jersey because he was hot. I asked him what LGB meant to him and he said it means "Fuck Joe Biden". I told him he wasn't in trouble and thanked him for wearing the Lakers jersey over it and sent him back to class.

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

**Exhibit 30 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

Date : 4/26/2023 2:12:43 PM

From : "Andrew Buikema" abuikema@tricountyschools.com

To : "Joe Williams" jwilliams@tricountyschools.com

Cc : "MS Staff"

Subject : Re: Letter from AI

Good afternoon -

Just for clarification, the dress code should still be enforced (hats, hoods, etc). The request in point #1 is about this specific shirt / sweatshirt. This should be dealt with by the office. Let us know if you have any questions.

Thank you for a great day! Enjoy your Wednesday evening.

On Wed, Apr 26, 2023 at 8:03 AM Joe Williams <jwilliams@tricountyschools.com> wrote:
Staff,

As we begin our day we need to focus on the education of our students. Please support each other and our students on what we are to focus on for daily learning so we can move forward with a quality educational environment for the end of the school year.

We may see an increase in students who wear the "Let's Go Brandon" shirt in school today. In careful consideration, here is how the administration would like staff to respond if you see more students wearing these shirts.

1. If you notice the shirt, please do not ask the student to remove it, but let the office know the name of the student.
2. If wearing of the shirt in class becomes a distraction or disruption, please contact the administrator and they will come to your classroom to support the situation.
3. If students are wearing extra items that may be a distraction to the learning environment, please let the administrator know so they can determine if the item needs to be removed.
4. We ask that you stay focused on educating the students today and be careful of students taking the class off task with conversations or comments. If a student attempts to do this, please remind them what the focus of today's lesson is and ask them to stay on task.

We appreciate the work you have done this school year to educate our students. We need to keep this at the core of our focus today and through the end of the school year to ensure we are supporting each child.

Thank you for all you are doing.

--

Joe Williams, Ed. S.
Tri County Middle School
Principal

Ecclesiastes 1:4

--

Andrew Buikema
Assistant Principal
Tri County Middle School
231.937.4318 ext 2150
abuikema@tricountyschools.com



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

**Exhibit 31 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

Expert Report by David Moshman
D.A. v. Tri County Area Schools
22 November 2023

Background and Expertise

I am a professor emeritus of educational psychology at the University of Nebraska–Lincoln, where I taught cognitive development, adolescent development, and related courses from 1977 to 2015. I have published extensive research on human reasoning and rationality, focusing especially on the development of such competencies beyond childhood. Much of my work has consisted of integrative research-based reviews of what is known about these matters, including three books (Moshman, 2011a, 2015, 2021b).

One major theme of my work has been the role of education in promoting student reasoning and rationality. In connection with this, I have written extensively in scholarly, professional, and popular outlets, including two books (Moshman, 1989, 2009a), about the central role of intellectual freedom in learning and development.

I am being paid \$100/hour for my work in this case except for deposition and trial testimony, for which I will be paid \$150/hour. In the course of writing this report, I have read plaintiffs' complaint, defendants' answers, the plaintiffs' initial disclosures, defendants' initial disclosures, the two 2022 letters¹ preceding this case (dated May 27 and June 9), and defendants' initial responses to plaintiffs' discovery requests. I understand that defendants have not yet produced documents in response to plaintiffs' discovery requests at the time of this report. Thus, I was only able to consider the defendants' limited responses at this time. My publications are listed in my academic vita (attached as Exhibit A).

In 2022, I was retained by the plaintiff in *Morley v. Vermont*, 5:21-cv-00272 (D. Vt. 2022) to provide expert witness testimony. The case ended days before depositions occurred and my video deposition never occurred. Otherwise, I have not testified as an expert witness at deposition or trial in the past four years.

Plan for this Expert Report

I am not aware of any research looking directly at the effects of students wearing shirts that say "Let's Go Brandon." Further, I am not aware of any research on the effects of shirts with other particular messages nor am I aware of research on the effects of other means of communicating "Let's Go Brandon" or similar messages. Even if there were a study directly relevant to the present case, and even if it showed something useful and interesting, one should not rely too strongly on the results of a single study that has not been replicated.

To generate dependable and generalizable knowledge, it is important to look for patterns of replicated findings that show something theoretically meaningful. In the next section I note four such patterns I have identified in my books and other publications that seem relevant to the

¹ The first is a letter plaintiffs' prior counsel sent to the school district, and the second is the school district's response to this letter.

present case: (1) children show qualitative progress to more advanced conceptualizations, forms of reasoning, and levels of rationality over the first 11 or 12 years of life; (2) research on developmental progress in multiple domains of reasoning and rationality consistently shows a transition to basic maturity in the preteen years (ages 10-12); (3) research on brain development has not identified any structures or processes that are typical of adult brains but not seen in adolescence; and (4) intellectual development is an active, constructive process that is fostered by social contexts that respect student autonomy, including their intellectual freedom.

After that, I turn to the specific issues of this case. I conclude that (a) there was no reason for school officials to expect that the shirts in this case would cause disruption; (b) there is no reason to expect middle or high school students to assume a message on a student's shirt represents the view of the school; and (c) with respect to promoting education, development, and democracy, censoring students or punishing their expression of their ideas is unnecessary, unjustified, and counterproductive.

General Patterns in Research on Rationality and Development

1. Children show qualitative progress to more advanced conceptualizations, forms of reasoning, and levels of rationality over the first 11 or 12 years of life.

Research on child development includes thousands of publications concerning the development of multiple forms of reasoning and rationality, including the development of logical, scientific, and moral reasoning; the development of associated conceptions of knowledge, justification, and truth; and the development of associated competencies such as perspective taking and self-regulation. Even infants show emerging logical, causal, and moral competencies (Bloom, 2013; Cesana-Arlotti et al., 2018; Gopnik, 2009; Hoffman, 2000; Langer, 1980, 1986; Sodian, 2011). Virtually all developmental theories posit qualitative transformations to more advanced forms of reasoning and levels of rationality in a consistent age-related sequence over the first 12 years of life (Allen & Bickhard, 2018; Campbell & Bickhard, 1986; Demetriou & Spanoudis, 2018; Inhelder & Piaget, 1958; Karmiloff-Smith, 1992; Kazi et al., 2019; Moshman, 2011a; 2021b).

Beginning about age 4 years, children understand that people can have false beliefs and that people act on the basis of their own beliefs even when they are false (O'Madagain & Tomasello, 2021), a competence central to what is generally called "theory of mind" (Miller, 2012; Moshman, 2015; Pillow, 2012; Sodian & Kristen, 2016; Wellman, Cross, & Watson, 2001). Beginning about age 6 years, children show awareness that they are making inferences, attribute inferences to others, recognize inference as a source of knowledge for themselves and others, distinguish conclusions from premises, and recognize logical necessities (Miller, Custer, & Nassau, 2000; Moshman, 1990b, 2015; Sodian & Wimmer, 1987). By the age of 8 or 9 years, children have constructed a constructivist theory of mind, which recognizes the active and interpretive nature of the mind as a constructor of knowledge. This includes understandings of subjectivity that would have been literally unthinkable just a few years earlier (Carpendale & Chandler, 1996; Chandler, Hallett, & Sokol, 2002; Lalonde & Chandler, 2002; Miller, 2012; Moshman, 2015; Pillow, 2012; Wainryb et al., 2004).

Around the age of 11 or 12 years children begin to demonstrate forms and levels of reasoning and rationality virtually never seen before the age of 10 years. These include deliberate and reflective applications of logic, advanced understanding of the logic of hypothesis testing, ability to see a relationship from a third-party perspective, principled forms of moral reasoning, and reflections on justification and truth (Demetriou & Spanoudis, 2018; Gibbs, 2019; Helwig, 1995; Helwig, Ruck, & Peterson-Badali, 2014; Inhelder & Piaget, 1958; King & Kitchener, 1994; Kohlberg, 1984; Koslowski, 1996; Kuhn, Amsel, & O'Loughlin, 1988; Markovits, 2013, 2020; Moshman, 1990b, 2011a, 2013, 2015; Selman, 1980).

In sum, children of age 5 years (and most 4-year-olds) show rational competencies never seen in 2-year-olds, and rarely in 3 year-olds until they are close to turning 4. Children of age 8 years show rational competencies not seen in 5-year-olds. Preteens of 11 or 12 years show rational competencies not seen in 8-year-olds. Development in childhood shows qualitative progress in rationality.

2. Research on developmental progress in multiple domains of reasoning and rationality consistently shows a transition to maturity (defined as the level achieved by most or all adults) in the preteen years (ages 10-12).

Research on diverse forms of reasoning and rationality shows that teenagers, even young teens, operate at levels beyond what children under the age of 9 or 10 years are capable of. Such research also shows that teens, even young teens, generally operate at the same levels as most adults (Inhelder & Piaget, 1958; King & Kitchener, 1994; Kohlberg, 1984; Koslowski, 1996; Markovits, 2013; Selman, 1980; for reviews, see Moshman, 1990a, 1993, 2004, 2009b, 2011a, 2011b, 2013, 2021a, 2021b). Development remains possible long beyond childhood but beyond the age of about 12 years it shows relatively little relation to age. Preteens of ages 10-12 years are developing advanced conceptualizations, forms of reasoning, and levels of rationality that are beyond the capacity of children but common in adults. In contrast to the pattern of qualitative progress just described across childhood, research has not identified any cognitive competencies, forms of reasoning, or levels of rationality that are typical of adults but not yet seen in adolescents, even young adolescents.

Development generally continues beyond the age of 12 years but further development is much more specific to particular individuals and circumstances and much less related to age. Some adults sometimes show forms of logical, scientific, or moral reasoning beyond what would ever be seen in a 13-year-old (Campbell & Bickhard, 1986; Gibbs, 2019; Kohlberg, 1984; Moshman, 2011a). Some adults understand the relation of social systems to interpersonal morality in ways that would rarely be seen in a young teen (Gibbs, 2019). Some achieve advanced levels of self-regulation (Demetriou & Spanoudis, 2018; Moshman, 2011a, 2021b) or make progress in epistemic cognition toward increasingly reflective understandings of subjectivity and rationality (Boyes & Chandler, 1992; Chandler, Boyes, & Ball, 1990; Chandler et al., 2002; King & Kitchener, 1994; Kuhn, Cheney, & Weinstock, 2000; Moshman 2015). In the extensive literature on advanced forms of human cognition and rational agency, however, I have never seen any

evidence for any form or level of reasoning or rationality that is achieved by all normal adults but rarely seen in young teens (Moshman, 2021b).

As I put it in a recent chapter:

Adolescents (ages 13-19 years) use forms of reasoning and show levels of rationality not seen in children under the age of 10 years. Specifically, research shows qualitative progress during preadolescence (ages 10-12 years) to more advanced forms and levels of logical reasoning, hypothetical reasoning, metalogical understanding, epistemic cognition, scientific reasoning, argumentation, perspective taking, and moral rationality. Development often continues across adolescence and much of adulthood, but development beyond ages 12 or 13 years is much less predictable, universal, and age-related than development over the first 12 years. Claims of adolescent irrationality are stereotypes that greatly overstate the difference between adolescents and adults. (Moshman, 2021a, p. 99).

I should be clear here that by “maturity” I do not mean cognitive perfection or the most advanced possible development. Adolescents fall far short of ideal norms of reasoning and rationality, but adults fall short in the same ways (Evans & Stanovich, 2013; Kahneman, 2011; King & Kitchener, 1994; Kohlberg, 1984; Moshman, 2015, 2021b). The fact that adolescents are still developing should not be held against them:

Adolescents are often constructing advanced forms of reasoning and developing toward higher levels of rationality, but there is no universal or biological state of maturity that ends this process. Adolescents may have greater developmental potential than older adults, but the potential for development does not end in adolescence and does not make one a child. (Moshman, 2021a, p. 110)

3. Brain development may continue beyond childhood but research on brain development has not identified any structures or processes that are typical of adult brains but not seen in adolescence.

Adult assumptions of adolescent irrationality often lead us to accept loose speculation about the immaturity of adolescent brains, even in the absence of any evidence for a universally achieved state of brain maturity beyond what is already seen in early adolescence. Contrary to stereotypes of adolescents as driven by immature brains, research on adolescents in social contexts shows competent and rational engagement with their peers, parents, schools, and societies (Flanagan, 2013; Hart & Youniss, 2018; Levesque, 2007; Males, 2010; Smetana, 2011). Our brains change throughout our lives but there is nothing special about the “adolescent brain” that justifies predicting categorical differences in rational competence or behavior between adolescents and adults. Any such prediction, moreover, is disconfirmed by the psychological literature, which does not show such differences (see Pattern #2 and citations therein).

4. Intellectual development is an active, constructive process that is fostered by social contexts that respect student autonomy, including their intellectual freedom.

There has been a consensus among developmental and educational psychologists since at least the 1980s that conceptual learning and cognitive development are active, constructive processes

(Allen & Bickhard, 2018; Campbell & Bickhard, 1986; Demetriou & Spanoudis, 2018; Gibbs, 2019; Karmiloff-Smith, 1992; Kazi et al., 2019; Kohlberg, 1984; Kuhn et al., 1988; Kuhn, Hemberger, & Khait, 2016). Such processes require a context of intellectual freedom that respects the autonomy of developing rational agents and encourages developmental processes of reflection, coordination, and peer interaction (Hart & Youniss, 2018; Moshman, 2011a, 2015, 2021b; Smetana, 2011) This holds for students at all levels from kindergarten through graduate school (Moshman, 2009a, 2017).

Respect for students as rational agents has long been a central concern in the philosophy of education. Education often involves convincing students to change their views on the basis of evidence and argument, but this does not require or justify coercing or censoring them (Callan & Arena, 2009; Moshman, 2009a, 2017; Laats & Siegel, 2016; Siegel, 1988, 1997, 2018). Education can best promote conceptual learning and cognitive development by providing rich sources of information and opportunities for argumentation in a general context of respect for student autonomy (Hart & Youniss, 2018; Kuhn, Feliciano, & Kostikina, 2019; Kuhn et al., 2016), including their freedom of expression (Moshman, 1989, 2009a, 2011a, 2017).

Specific Conclusions about this Case

1. There was no reason for school officials to expect that the shirts in this case would cause disruption.

Children begin recognizing that others can have different ideas than they do about the age of 4 years (Miller, 2012; Moshman, 2015; O'Madagain & Tomasello, 2021; Pillow, 2012; Sodian & Kristen, 2016; Wellman, Cross, & Watson, 2001). Between age 4 and ages 11 or 12 they construct increasingly sophisticated theories of mind, advanced perspective taking abilities, and rational moral understandings (see General Pattern #1 above and citations therein). Beginning in Kindergarten, if not earlier, they learn that they should respond to messages they dislike with words of their own, not with disruptive behavior or violence. By the age of 7 or 8 years, if not earlier, children understand that they are responsible for their actions, and by the age of 11 or 12 years they have a deeper understanding of what this entails (Gibbs, 2019; Kohlberg, 1984; Piaget, 1932/1965). Cognitive and moral development often continue through adolescence and beyond, with some adults achieving insights and abilities rare in adolescence, but such achievements are rare at any age. There is no reason to think middle or high school students are any different from adults in their understanding of what it means for someone to have a message on their shirt and how one ought to react to that, or are more likely than adults to react disruptively (see General Pattern #2 and citations therein). Of course any message could possibly lead to unexpected reactions, but this is true regardless of age.

2. There is no reason to expect middle or high school students to assume a message on a student's shirt represents the view of the school.

Affirmative Defenses #13 and 14 posit that "impressionable" students would infer that the school is endorsing the message on the shirts if it failed to censor them. Some research has looked specifically at development of basic concepts and principles of free speech (Helwig, 1995; Wainryb et al., 2004; for reviews of research related to this topic, see Helwig et al., 2014;

Moshman, 1990a, 1993, 2011a). Such research shows that even young children value free expression and understand that people generally speak for themselves unless they indicate otherwise.

Full understanding of the concept that allowing speech is not necessarily endorsing it may require an ability to think in terms of abstract principles of civil liberties. Such abilities and understandings are generally seen beginning about age 11 years (Helwig, 1995; Helwig et al., 2014; Moshman, 1990a, 1993, 2011a). Schools can assure and enhance such understanding by explaining their policies and providing a curriculum aimed at teaching appreciation for basic principles of democracy, including intellectual freedom for all.

The Larger Picture

A school, as an institution, is a place for education, not a forum for unrestricted free expression, but education requires intellectual freedom, including freedom of expression.

My analysis of this case is not based on the assumption that free speech must always prevail over all other values. Free speech in schools is routinely and properly limited to serve the purpose of education (Moshman, 1989, 2009a, 2017). As educational institutions, schools are not forums in which everyone has the same right to say whatever they please about whatever they want. In the classroom, teachers teach a curriculum designed to help student learn about specific topics and develop critical thinking and other advanced cognitive skills. They control discussions and evaluate student speech and writing in accord with academic standards.

But censoring students or punishing them for expressing their views is indoctrination, not education. Education for democracy may be deeply undermined by the school's apparent hypocrisy about free expression. Serious efforts to promote argumentation and rationality help students clarify their positions, identify and evaluate reasons, construct arguments, anticipate counterarguments, prepare rebuttals and rejoinders, etc. (Kuhn et al., 2016). Students may be evaluated by instructors on the quality of their reasoning but censorship by those in power undermines the academic integrity of the curriculum and the institution (Moshman, 2017).

Outside the curriculum, moreover, censorship is arguably even less justified and may be especially likely to be seen by students as a gratuitous attack on their developing autonomy, thus undermining their relationship with the school and their perception of its credibility (Hart & Youniss, 2018). With respect to promoting education, development, and democracy, censoring students or punishing their expression of their ideas is unnecessary, unjustified, and counterproductive.



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Exhibit A

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Major Interests

Reasoning and rationality across the lifespan
Adolescent rationality and development
Intellectual freedom in education
The psychology of genocide and other group violence

Books

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- Moshman, D. (1998). Identity as a theory of oneself. *The Genetic Epistemologist*, 26(3), 1-9.
- (2001). Conceptual constraints on thinking about genocide. *Journal of Genocide Research*, 3, 431-450.
- (2002). Homophobia and academic freedom. In E. P. Cramer (Ed.), *Addressing homophobia and heterosexism on college campuses* (pp. 147-161). Binghamton, NY: Haworth. [Contents of book also published simultaneously as Vol. 6, No. 3/4 of the *Journal of Lesbian Studies*.]
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- (2005). Advanced moral development. In W. van Haaften, T. Wren, & A. Tellings (Eds.), *Moral sensibilities and education III: The adolescent* (pp. 13-31). Bommel, Netherlands: Concorde.
- (2007). Us and them: Identity and genocide. *Identity*, 7, 115-135.
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- (2008). Epistemic development and the perils of Pluto. In M. F. Shaughnessy, M. V. J. Veenman, & C. Kleyn-Kennedy (Eds.), *Meta-cognition: A recent review of research, theory and perspectives* (pp. 161-174). New York: Nova Science.

- (2009). Adolescence. In U. Müller, J. I. M. Carpendale, & L. Smith (Eds.), *Cambridge companion to Piaget* (pp. 255-269). Cambridge, UK: Cambridge University Press.
- (2009). The development of rationality. In H. Siegel (Ed.), *Oxford handbook of philosophy of education* (pp. 145-161). Oxford, UK: Oxford University Press.
- (2011). Identity, genocide, and group violence. In S. J. Schwartz, K. Luyckx, & V. L. Vignoles (Eds.), *Handbook of identity theory and research* (pp. 917-932). New York: Springer.
- (2012). Epistemic cognition. In R. J. R. Levesque (Ed.), *Encyclopedia of Adolescence* (pp. 847-853). New York: Springer.
- (2012). Critical thinking, intellectual freedom, and Israel/Palestine. In M. F. Shaughnessy (Ed.), *Critical thinking and higher order thinking: A current perspective* (pp. 73-85). New York: Nova Science.
- (2013). Epistemic cognition and development. In P. Barrouillet & C. Gauffroy (Eds.), *The development of thinking and reasoning* (pp. 13-33). New York: Psychology Press.
- (2013). Adolescent rationality. In R. M. Lerner & J. B. Benson (Eds.), *Embodiment and epigenesis: Theoretical and methodological issues in understanding the role of biology within the relational developmental system. Advances in Child Development and Behavior, 45*, 155-183. Amsterdam: Elsevier.
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- Amsel, E., & Moshman, D. (2015). The development of logical and hypothetical reasoning in adolescence. *International encyclopedia of the social and behavioral sciences, 2nd edition*. Amsterdam: Elsevier.
- Moshman, D., & Edler, F. (2015). Civility and academic freedom after Salaita. *Journal of Academic Freedom, 6*. <https://www.aaup.org/JAF6/civility-and-academic-freedom-after-salaita#.W1uEPo4nbUI>
- Moshman, D., & Tarricone, P. (2016). Logical and causal reasoning. In J. A. Greene, W. A. Sandoval, & I. Bråten (Eds.), *Handbook of epistemic cognition* (pp. 54-67). New York: Routledge.
- Moshman, D. (2017). Academic freedom as the freedom to do academic work. *AAUP Journal of Academic Freedom, 8*. <https://www.aaup.org/JAF8/academic-freedom-freedom-do-academic-work#.Wcqmq7I6QzuR>
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- (2020). Stages in adolescence. *Encyclopedia of child and adolescent development*. New York: Wiley.
- (2020). "Hate speech," free speech, and group violence. In R. J. Sternberg (Ed.), *Hate in the modern world* (pp. 203-224). Washington, DC: APA Books.
- (2020). Metacognition and epistemic cognition. *Oxford Research Encyclopedia of Education*. Oxford: Oxford University Press. DOI: [10.1093/acrefore/9780190264093.013.863](https://doi.org/10.1093/acrefore/9780190264093.013.863)

----- (2021). Adolescent reasoning and rationality. In D. Fasko & F. Fair (Eds.), *Critical thinking and reasoning* (pp. 99-113). Boston: Brill.

See listings below for book reviews, commentaries, replies, brief articles, blog posts, newspaper columns, and other brief publications. According to Google Scholar (see link) my academic publications had been cited over 6100 times as of 1 Jan. 2021, including over 400 citations in 2016 and each year since.

<https://scholar.google.com/citations?user=Cp--4f0AAAAJ&hl=en&oi=ao>

Teaching

At UNL from 1977-2015 I taught thousands of graduate and undergraduate students in more than a hundred classes including courses in cognitive development, lifespan development, adolescent psychology, child psychology, and developmental psychobiology, and special seminars on metacognition, constructivist metatheory, intellectual freedom in education, and the psychology of genocide.

During this period I chaired more than a dozen doctoral supervisory committees and served on more than a hundred.

University Service

Chair, Department of Educational Psychology (1994-1997). Member, department Executive Committee (1987-1992, 1994-1997, 2011-13), Graduate Committee (1993-1994; 2001-2005). Faculty liaison to Graduate Student Organization (1978-1992). Primary research ethics reviewer (1979-1986). Organizer of colloquium series (1979-1984). Organizer of annual orientation for new graduate students (1978-1983). Chair of six search committees and member of many others.

Program Coordinator, Cognition, Learning, and Development (2011-13), Developmental Psychology (1990-1992), General Educational Psychology (1987-1990).

Keynote address entitled "Us and them: Identity and genocide" presented at the UNL College of Education and Human Sciences Student Research Conference, Lincoln, November 2006.

Member of Teachers College/College of Education and Human Sciences Committees: Chair Council (1994-1997). Curriculum Committee (1984-1987). Promotion and Tenure Committee (1985-1986). Appeals, Retention, and Certification Committee (1989-1992). Graduate Coordinating Council (1993-1994). Dean's Faculty Advisory Committee (2010-2011).

President, UNL Chapter, American Association of University Professors (Jan.-Dec., 1983). AAUP Executive Committee (1982-1984; 1993-1994; 2003-9). Chair, AAUP Committee A on Academic Freedom and Tenure (1993-1994; 2003-9; member, 1991-1993).

Chair, James A. Lake Academic Freedom Award Committee (2001-2003; member, 2000-2003).

Chair, Faculty Senate Diversity Committee (2007-2008). Member, Faculty Senate Committee on the Disinvitation of Bill Ayers (2009). Academic Rights and Responsibilities Committee Panelist (2003-2006).

Member, University of Nebraska Institutional Review Board for Protection of Human Research Subjects (1983-1984).

Member, UNL Committee for Gay, Lesbian, Bisexual, and Transgender Concerns (1991-1994; 1997-1999).
Affiliated with ADAPT Program (1977-1997) and Center for the Teaching and Study of Applied Ethics (1988-1989).
Faculty Advisor, ONE Lincoln (2007-2009), Palestine Solidarity Committee (2012-2013).

Nebraska Outreach

President, ACLU Nebraska (1987-1989; 1993-1995). Board of Directors (1982-2014).
Numerous committee assignments and activities involving the rights of children, students, and teachers.
President, Academic Freedom Coalition of Nebraska (1993, 2005, 2014, and 2018).
Board of Directors since 1988. Policy Coordinator since 1997. Editor of *The Sentinel* (AFCON newsletter) since 2018. Founding member and head of committee that drafted AFCON's constitution (1987-1988).
Testimony supporting student rights in Nebraska legislature (1988, 1994, 1995, 2010, 2011, 2012, 2013, 2017, 2018).
Invited presentations on intellectual freedom at meetings of the Nebraska State Education Association, the Nebraska Library Association, the Nebraska School Library Association, the Nebraska High School Press Association, the Nebraska Conference of the AAUP, and numerous other groups.
Group Coordinator, Amnesty International Group #173 (Lincoln) (1983-1986). Active member of group (1980-1987).

National/International Activities

Book Review Editor, *Journal of Applied Developmental Psychology*, 2003-2016.
Associate Editor, *Educational Psychology Review*, 2002-2005.
Vice President, Jean Piaget Society: Society for the Study of Knowledge and Development (1998-1999). Board of Directors (1995-1999).
Invited lecture entitled "Epistemic cognition and development" presented at the Advanced Course on Thinking, Reasoning, and Development at the Archives Jean Piaget, Geneva, July 2010.
Keynote address entitled "Bias, balance, and academic freedom" presented at the Webster University Faculty Institute at Pere Marquette State Park, Illinois, October 2005.
Invited addresses at meetings of the National Council of Teachers of Mathematics (Omaha, 1983), Jean Piaget Society (Philadelphia, 1986), and Western Psychological Association (San Francisco, 1988).
Amicus briefs filed in U.S. Supreme Court supporting the First Amendment rights of adolescents (*Board of Education v. Mergens*, 1990; *F.E.C v. McConnell*, 2003).
Testimony supporting student rights in Federal District Court (1988, 2009).
Affidavit filed in the Supreme Court of British Columbia refuting a claim that reading about gay families in school is likely to harm young children (*Chamberlain v. Surrey*, ultimately decided in 2002 by the Supreme Court of Canada, which upheld the use of the books).
Life member of the American Association of University Professors.
Long-time member of the Jean Piaget Society, Society for Research in Child Development, Society for Research in Adolescence, International Society for the

Study of Behavioral Development, Cognitive Development Society, and Psychologists for Social Responsibility.

Resigned from the American Psychological Association in December 2007 (after 33 years) because of its complicity in torture.

Papers presented since 1976 at meetings of the Jean Piaget Society, Society for Research in Child Development, American Educational Research Association, American Association for the Advancement of Science, International Society for the Study of Behavioral Development, Eastern Psychological Association, and Midwest Educational Research Association; at a conference entitled Professional Ethics and Public Discourse; at an international symposium entitled Contemporary Forms of Genocide; and at the Webster University library.

Session chair, discussant, symposium organizer, symposium participant, and workshop presenter at meetings of the Jean Piaget Society, Society for Research in Child Development, Society for Research on Adolescence, American Educational Research Association, American Association for the Advancement of Science, and International Society for the Study of Behavioral Development.

Editorial Board, *Thinking & Reasoning*, since 2018; *Child Development*, 1999-2002; *Developmental Review*, 1996-2000; *Journal of Research on Adolescence*, 2000-2005; *Monographs of the Society for Research in Child Development*, 2008-2012; *British Journal of Developmental Psychology* since 2003; *Educational Psychology Review*, 1988-2002; *Journal of Adult Development*, 1989-2011; *Journal of Genetic Psychology*, 1996-2003; and *Genetic, Social, and General Psychology Monographs*, 1996-2007.

Manuscripts also reviewed for *American Psychologist*; *Psychological Review*; *Psychological Science*; *Perspectives on Psychological Science*; *Current Directions in Psychological Science*; *Behavioral and Brain Sciences*; *Journal of Experimental Psychology: General*; *Journal of Applied Psychology*; *Philosophical Psychology*; *New Ideas in Psychology*; *International Review of Social Psychology*; *American Journal of Orthopsychiatry*;

Developmental Psychology; *Developmental Science*; *Human Development*; *Child Development Perspectives*; *Cognitive Development*; *Journal of Cognition and Development*; *Journal of Experimental Child Psychology*; *Merrill-Palmer Quarterly*; *Infant and Child Development*; *Journal of Adolescent Research*; *Journal of Early Adolescence*; *Identity*; *Applied Developmental Science*; *Journal of Applied Developmental Psychology*; *Early Childhood Research Quarterly*; *Monographs of the Society for Research in Child Development*;

Applied Cognitive Psychology; *European Journal of Cognitive Psychology*; *Memory & Cognition*; *Journal of Memory and Language*; *Journal of Experimental Psychology: Learning, Memory, & Cognition*;

Cognition and Instruction; *Journal of Educational Psychology*; *Educational Psychologist*; *American Educational Research Journal*; *Educational Researcher*; *Journal of Experimental Education*; *Mind, Brain, & Education*; *Higher Education Research and Development*; *Learning and Individual Differences*; *Journal of Teaching and Learning*; *Journal of Moral Education*; *Asia Pacific Education Review*;

Political Studies; Journal of Genocide Research; Genocide Studies and Prevention; Creativity Research Journal; Synthese; Computers in Human Behavior; and Journal of Experimental and Theoretical Artificial Intelligence.

Chair, Panel 5 (Adolescence: Biological and Cognitive Processes), for review of submissions for the 2003 and 2007 biennial conferences of the Society for Research in Child Development.

Convention submissions, book proposals, book manuscripts, chapter manuscripts, dissertations, grant proposals, and promotion/tenure files reviewed for a variety of publishers, editors, professional organizations, funding agencies, and universities.

Awards

James A. Lake Academic Freedom Award, 1997, awarded annually by the UNL Faculty Senate "for helping preserve the most basic freedom of all, the freedom to seek and communicate the truth."

Robert Spire Founders Service Award, 2002, awarded annually by ACLU Nebraska "for exemplary service in defense of civil liberties."

Annual Academic Freedom Award, Academic Freedom Coalition of Nebraska, 1992, 2009.

Honorable mention, National Council of Teachers of English Intellectual Freedom Award for "courage in advancing the cause of intellectual freedom," 2006.

Book Reviews

Moshman, D. (1985). Individual differences, competence-performance, and human rationality. [Review of *Thinking and reasoning*.] *New Ideas in Psychology*, 3, 345-350.

----- (1993). [Review of *Directors of development*.] *Merrill-Palmer Quarterly*, 39, 294-297.

----- (1994). [Review of *Battleground: One mother's crusade, the religious right, and the struggle for control of our schools*.] *Journal of Church and State*, 36, 624-625.

----- (1994). [Review of three cognitive development texts.] *International Journal of Children's Rights*, 2, 335-337.

----- (1995). [Review of *Some do care* and *Final solutions*.] *Merrill-Palmer Quarterly*, 41, 114-119.

----- (2005). With liberty and development for all. [Review of *Liberty: Thriving and civic engagement among America's youth* and six other books.] *Journal of Applied Developmental Psychology*, 26, 362-369.

----- (2007). Social identity and its discontents. [Review of *Identity and violence* and two other books.] *Journal of Applied Developmental Psychology*, 28, 184-187.

----- (2007). A half-century of thinking about prejudice. [Review of *On the nature of prejudice: Fifty years after Allport*.] *Patterns of Prejudice*, 41, 539-542.

----- (2008). Social equations. [Review of *Social development, social inequalities, and social justice*.] *Human Development*, 51, 279-282.

----- (2009). A world without adolescents. [Review of *The case against adolescence and Adolescents, media, and the law*.] *Journal of Applied Developmental Psychology*, 30, 378-380.

- (2010). Psychoanalysing prejudice. [Review of *The future of prejudice*.] *Patterns of Prejudice*, 44, 309-310.
- (2011). A kinder, gentler nativism? [Review of *The philosophical baby*.] *Journal of Applied Developmental Psychology*, 32, 44-45.
- (2012). The morality of social identity. [Review of *Children and social exclusion and Narrative and the politics of identity*.] *Journal of Applied Developmental Psychology*, 33, 320-322.
- (2016). Adolescence in lifespan perspective. [Review of *Age of opportunity*.] *Journal of Applied Developmental Psychology*, 42, 98-99.
- (2018). Reasoning, logic, and development [Review of *The enigma of reason*]. *Human Development*, 61, 60-64.

Commentaries and Replies

- Moshman, D. (1977). Comments on Benefield and Capie's propositional hierarchies. *Journal of Research in Science Teaching*, 14, 575-576.
- (1978). Some comments on Bree & Coppens' 'The difficulty of an implication task.' *British Journal of Psychology*, 69, 371-372.
- (1979). Horizontal structure and the concept of stage. *Behavioral and Brain Sciences*, 2, 145-146.
- (1981). Prediction analysis and developmental priority: A comment on Froman and Hubert. *Psychological Bulletin*, 90, 185-187.
- (1983). Math and science education. *Science*, 221, 1006.
- (1985). The right to hold frivolous beliefs: A reply to Bandman. *Teachers College Record*, 86, 576-578.
- (1986). Editor's notes. In D. Moshman (Ed.), *Children's intellectual rights* (pp. 1-5). *New Directions for Child Development*, No. 33. San Francisco: Jossey-Bass.
- (1986). Belief in testing. *The Humanist*, 46(4), 49.
- (1989). Review of the Student Rights Scales. In J. C. Conoley & J. J. Kramer (Eds.), *The tenth mental measurements yearbook* (p. 797). Lincoln: Buros Institute of Mental Measurements.
- (1990). Equal access for all students: A reply to Commons and Rodriguez. *Developmental Review*, 10, 341-347.
- (1991). Universals, necessities, and social contexts. *Educational Psychology Review*, 3, 111-115.
- (1997). Pluralist rational constructivism. *Issues in Education: Contributions from Educational Psychology*, 3, 229-233.
- (2000). Diversity in reasoning and rationality: Metacognitive and developmental considerations. *Behavioral and Brain Sciences*, 23, 689-690.
- (2005). Commentary: The development of thinking. In J. E. Jacobs & P. A. Klaczynski (Eds.), *The development of judgment and decision making in children and adolescents* (pp. 327-334). Mahwah, NJ: Erlbaum.
- Gibbs, J. C., Moshman, D., Berkowitz, M. W., Basinger, K. S., & Grime, R. L. (2009). Taking development seriously: Critique of the 2008 *JME* special issue on moral functioning. *Journal of Moral Education*, 38, 271-282.
- Moshman, D. (2009). Identity, morality, and adolescent development: Commentary on Proulx and Chandler. *Human Development*, 52, 287-290.

- (2011). Foreword. In P. Tarricone, *The taxonomy of metacognition* (pp. xiv-xv). New York: Psychology Press.
- (2011). Evolution and development of reasoning and argumentation: Comment on Mercier (2011). *Cognitive Development*, 26, 192-195.
- (2011). "Ordinary men," ordinary children, and extraordinary violence: Commentary on Wainryb. *Human Development*, 54, 301-306.
- (2013). [Academic freedom in practical terms]. In R. C. Lent & G. Pipkin, *Keep them reading: An anti-censorship handbook for educators* (pp. 78-79). New York: Teachers College Press.
- (2013). Evolution and development. In P. H. Crowley & T. R. Zentall (Eds.), *Comparative decision making* (pp. 305-308). Oxford: Oxford University Press.
- (2014). Foreword. In J. C. Gibbs, *Moral development and reality: Beyond the theories of Kohlberg, Hoffman, and Haidt, 3rd edition* (pp. ix-x). Oxford: Oxford University Press.
- (2014). Sexuality development in adolescence and beyond: Commentary on Arbeit. *Human Development*, 57, 287-291.
- (2015). Identity, history, and education in Rwanda: Reflections on the 2014 Nobel Peace Prize. *Child Abuse and Neglect*, 44, 1-4.
- (2018). Metacognitive theories revisited. *Educational Psychology Review*, 30, 599-606.
- (2019). Foreword. In J. C. Gibbs, *Moral development and reality: Beyond the theories of Kohlberg, Hoffman, & Haidt, 4th edition*. Oxford: Oxford University Press.

Brief Publications

- Moshman, D. (1978, July). Schemes and tasks. *The Genetic Epistemologist*, 7(3), 6.
- (1978). Logical reasoning in young children: Case study of a paradigm clash. *The Formal Operator*, 1(4), 9-10.
- (1979). The libidinal primacy of scatos: An empirical investigation [spoof]. *Worm Runner's Digest*, 21, 83-84.
- (1979). The stage beyond [poem]. *Worm Runner's Digest*, 21, 107-108.
- (1981, Oct.). Jean Piaget meets Jerry Falwell: Genetic epistemology and the anti-humanist movement in education. *The Genetic Epistemologist*, 10(3), 10-13.
- (1985). A role for creationism in science education. *Journal of College Science Teaching*, 15, 106-109.
- (1987). On the relation of reasoning and rationality. *The Genetic Epistemologist*, 15(3), 33-36.
- Shaughnessy, M. F. (1994). An interview with David Moshman. *European Journal for High Ability*, 5, 98-102.
- Moshman, D. (1996). Does cognition develop beyond childhood? *The Genetic Epistemologist*, 24(2), 1-3.
- (1998). Intellectual freedom and intellectual development. *Family Futures*, 2(2), 37-40.
- (1999). The constructivist heart of the ADAPT program. *The Genetic Epistemologist*, 27(3), 5.

- (2002/2006). Tabula rasa. In N. J. Salkind (Ed.), *Child Development* (p. 401). New York: Macmillan Reference USA. Expanded version in N. J. Salkind, (Ed.), *Encyclopedia of Human Development* (3 vols.). Thousand Oaks, CA: Sage.
- Shaughnessy, M. F. (2006). An interview with David Moshman: The Daughters of the Plaza de Mayo. *EdNews.org*.
- Moshman, D. (2011). Adolescents and their teenage brains. *Human Development*, 54, 201-203.
- (2011). Guest editorial: Adolescents are young adults, not immature brains. *Applied Developmental Science*, 15, 171-174.
- Lent, R. C., & Moshman, D. (2015). Untangling intricacies of academic freedom: An interview between ReLeah Lent and David Moshman. *The Council Chronicle*, 24(3), 26-28. [National Council of Teachers of English]
- Moshman, D. (2016). [Remembering Gregg Schraw]. In M. McCrudden (Ed.), *Remembering Gregg Schraw. Educational Psychology Review*, 28, 678-679.
- (2017, September 29). Using free speech to stifle free speech. *Academe blog* (AAUP). <https://academeblog.org/2017/09/29/using-free-speech-to-stifle-free-speech/>
- (2018, June 14). Four campus free speech problems solved. *The Conversation*. <https://theconversation.com/four-campus-free-speech-problems-solved-97521>

Huffington Post Blog

- Moshman, D. (2010-2018). Intellectual freedom in education. *Huffington Post* blog (86 posts available at <http://www.huffingtonpost.com/author/dmoshman1-540>)
- Liberty and learning: Academic freedom as intellectual freedom (October 2010)
- Academic freedom: Not just for college professors (October 2010)
- Academic freedom in high school and kindergarten (November 2010)
- Academic freedom is not protected by the First Amendment (November 2010)
- The Academic Freedom Coalition of Nebraska (December 2010)
- Academic freedom and indoctrination (January 2011)
- Did Arizona ban ethnic studies? Not exactly (February 2011)
- Jews, Israel and free speech: A response to Rabbi Wolpe (February 2011)
- Free speech, academic freedom, and First Amendment rights of college faculty (April 2011)
- The teenage brain: Debunking the five biggest myths (May 2011)
- Thank Christian conservatives for gay-straight alliances in public schools (June 2011)
- Children, violence and the First Amendment: Video games in the Supreme Court (June 2011)
- Students need teachers with tenure (August 2011)
- Don't say gay, do say gay: The politics of curriculum (September 2011)
- Children, violence and censorship: Children's art from Gaza (October 2011)
- Compulsory patriotism: Requiring the pledge of allegiance (November 2011)
- Christians, gays and academic freedom (December 2011)
- Universities vs profs: Freedom or censorship? (December 2011)
- Christians, gays and academic freedom (Part II) (February 2012)
- Jane, you ignorant slut: Civility, speech and academic freedom (March 2012)
- Should creationist teachers have academic freedom? (May 2012)
- Ward Churchill in the *Journal of Academic Freedom* (June 2012)
- Israel, Palestine and the teaching of history (July 2012)

Free speech for college students: FIRE's guide updated (September 2012)
Hate speech, Islam and Israel (October 2012)
A university administrator who supported academic freedom (November 2012)
ACLU on campus protests against Israel (December 2012)
Unlearning liberty: Hazelwood at 25 (January 2013)
An anti-censorship handbook for educators (February 2013)
Deliberative democracy outreasons enlightened dictatorship (March 2013)
Ernie Chambers: Not pledging allegiance (April 2013)
Young Africans speaking up (May 2013)
Sexual harassment and academic freedom (May 2013)
Affirmative action for Republicans (June 2013)
Student rights: A philosophical perspective (July 2013)
Students: Exercise your intellectual freedom (August 2013)
Eichmann in Jerusalem: 50 years later (October 2013)
Christian football in Nebraska (November 2013)
Zero tolerance for intolerance (January 2014)
Academic boycotts and counterboycotts ((February 2014)
20 years ago, genocide in Rwanda (April 2014)
Education for Rwanda (May 2014)
Education for Rwanda: After the genocide (June 2014)
Colleges: Drop your speech codes (August 2014)
Academic freedom at the University of Illinois (September 2014)
Free speech: A happy ending (October 2014)
Civility, free speech, and Israel (November 2014)
English teachers adopt statement on academic freedom (December 2014)
Civility and free speech in education (January 2015)
Stanley Fish on academic freedom (February 2015)
Israel/Palestine: A constitutional democracy (March 2015)
Bibi and I discuss the one-state solution (March 2015)
'My ISIS is the police': Race and guns in Nebraska (April 2015)
Free speech at Boston University (May 2015)
Free speech at Duke (May 2015)
The pro-death movement in Nebraska (June 2015)
Free speech at Connecticut College (June 2015)
Torture, psychology, and the real APA (August 2015)
A generic trigger warning for college students (September 2015)
Genocide denial in history education (October 2015)
The Holocaust in genocide studies (October 2015)
Safe from Salaita at Illinois (November 2015)
Martin Luther King on the First Amendment (January 2016)
Adopt the University of Chicago Free Speech Statement (February 2016)
Palestinians erased from space and consciousness (February 2016)
Mohamedou takes tea with his torturers: A Guantánamo fantasy (March 2016)
Fighting "genocide ideology" in Rwanda (April 2016)
Lessons in censorship (May 2016)
Evolution education without indoctrination (June 2016)

Truth, knowledge, and academic freedom (July 2016)
Are professors too liberal? (August 2016)
Freedom of belief at the University of Nebraska (August 2016)
Boycott Hewlett Packard, not Israeli academia (October 2016)
Taking a knee for justice (November 2016)
Free speech at the University of Toronto (January 2017)
Activating Nebraska's Americanism committees (February 2017)
The libertarian socialism of public schools (March 2017)
Star Trek on "the truth of the world" (April 2017)
Transracial identities and feminist orthodoxies (June 2017)
I've been blacklisted at Canary Mission (July 2017)
"White Lives Matter" after Charlottesville (August 2017)
Giving students the finger (September 2017)
Giving the finger to TPUSA (September 2017)
Deliberative democracy in Nebraska (October 2017)
Education for deliberative democracy (November 2017)
Free speech at the University of Nebraska (January 2018)

Chapters in Instructional Manuals

Moshman, D., & Langley, J. (1978). A sneak preview of ADAPT's third-year evaluation. In *Multidisciplinary Piagetian-based programs for college freshmen* (pp. 149-150). Lincoln: UNL ADAPT program.

Moshman, D. (1980). Piaget's theory and college teaching. In R. G. Fuller (Ed.), *Piagetian programs in higher education* (pp. 1-13). Lincoln: UNL ADAPT program.

Moshman, D., Johnston, S., Tomlinson-Keasey, C., Williams, V., & Eisert, D. (1980). ADAPT: The first five years. In R. G. Fuller (Ed.), *Piagetian programs in higher education* (pp. 115-121). Lincoln: UNL ADAPT program.

Moshman, D. (1980). The man who made the world safe for epistemology [spoof]. In R. G. Fuller (Ed.), *Piagetian programs in higher education* (pp. 167-173). Lincoln: UNL ADAPT program.

Opinion Columns in Local Newspapers

Moshman, D. (1983, Nov. 16). N.U. faculty seeks role in governance. *Omaha World Herald*.

----- (1984, Dec. 10). Torture and execution linked as abuses of human rights. *Lincoln Star*.

----- (1986, Jan. 16). Religious freedom born 200 years ago. *Lincoln Star*.

----- (1988, March 1). Court ruling blow to student rights. *Lincoln Star*. Also published as "Liberty and learning: Balance shifts" in the *Lincoln Journal*, March 1.

----- (1990, July 28). Even the court is confused by teens. *Lincoln Star*.

----- (1990, Oct. 13). An open letter to David Souter. *Lincoln Star*.

Ball, D., Stimpfl, J. R., & Moshman, D. (1996, Aug. 29). Free minds, open expression: 'Behavioral expectations' trample civil rights. *Daily Nebraskan*.

- Moshman, D. (1996, Nov. 26). Tenure: Don't let history repeat itself. *Daily Nebraskan*.
Also published as "The days before tenure" in the *Omaha World Herald*, Dec. 1,
and as "A cautionary tale about tenure at UNL" in the *Lincoln Journal Star*, Dec. 3.
- (1998, Feb. 15). Multiculturalism, academic freedom two sides of same coin.
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D.A., a minor, et al. v. Tri County Area Schools, et al.

**Exhibit 32 to Plaintiffs'
Brief in Support of
Motion for Summary
Judgment**

**THE 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

Judge Paul L. Maloney

Magistrate Judge Sally J. Berens

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**DEFENDANT TRI COUNTY AREA SCHOOLS' ANSWER TO PLAINTIFFS' FIRST
SET OF INTERROGATORIES TO DEFENDANT TRI COUNTY AREA SCHOOLS**

Defendant TRI COUNTY AREA SCHOOLS, by and through its attorneys,
GIARMARCO, MULLINS & HORTON, P.C., states its response to Plaintiffs' First Set of
Interrogatories is as follows:

INTERROGATORIES

Interrogatory No. 1

Provide the information that forms the basis for your answer to Paragraph 25 of Plaintiffs' Complaint, specifically information regarding instances where "the student body has repeatedly expressed their knowledge" of the political slogan "Let's Go Brandon," and identify all documents and communications that support your explanation.

Answer: Objection. This request is overly broad and unduly burdensome. In the interest of cooperation and without waiving the objection, several students and staff have indicated that they knew that "Let's Go Brandon" means "Fuck Joe Biden".

Interrogatory No. 2

Explain in detail the factual basis of your denial of Paragraph 45 of the Complaint including but not limited to what information Defendants contend they received leading them to reasonably forecast a material disruption, substantial disorder, or invasions of the rights of others if students wore "Let's Go Brandon" or any other political apparel.

Answer: The phrase means "fuck" and the word "fuck" is a vulgar, pornographic and/or hateful word that can and does lead to altercations between students, which substantially disrupts the educational environment.

Interrogatory No. 3

Explain in detail the factual basis of your denial to Paragraph 31 of the Complaint, specifically why you believe the plain meaning of the phrase "Let's Go Brandon" is lewd, profane, indecent, vulgar, or obscene.

Answer: The phrase has entered the common parlance to mean "Fuck Joe Biden," which is vulgar, obscene and pornographic. It is so commonly understood to mean "fuck Joe Biden" that it is on bumper stickers, t-shirts, signs, etc.

Interrogatory No. 4

Explain in detail the factual basis of your denial of Paragraph 32 of the Complaint, specifically what within the plain meaning of the phrase “Let’s Go Brandon” contains “sexually explicit language or connotation.”

Answer: The phrase “Let’s Go Brandon” means “fuck,” which is sexually explicit and pornographic language. “Fuck” is a vulgar, pornographic and profane term that means to fornicate.

Interrogatory No. 5

Explain whether Tri County Area Schools permits students to wear “Dark Brandon” apparel (for example: https://shop.joebiden.com/dark-tshirt/?utm_source=om2023_ads_gs_260423_purchase_dd_us_all_EXM&utm_campaign=merch_sitelink4&utm_medium=ads&gclid=CjwKCAjwivemBhBhEiwAJxNWN8qfv7kZ48VLkN-Bf-03fpb4-_IwKoVMwJWbQMfoZgllTZnIvOeWLBoCYtYQAvD_BwE) and the basis for allowing/prohibiting students from wearing the apparel.

Answer: Objection as the request asks for speculation. Tri County Area Schools is unaware of any students wearing such apparel to school.

Interrogatory No. 6

Explain in detail the factual basis for your answer to Paragraph 57 of Plaintiffs’ Complaint, in particular, why you contend D.A.’s “Let’s Go Brandon” sweatshirt disrupted class, caused a disturbance among students, or invaded the rights of others.

Answer: The phrase “Let’s Go Brandon” means “Fuck Joe Biden.” That is vulgar, profane and pornographic. Further, students using, conveying or expressing such vulgar, profane and pornographic language can and does lead to retorts, disputes and substantial disruption of the safe school environment.

Interrogatory No. 7

Explain in detail the factual basis for your answer to Paragraph 64 of Plaintiffs' Complaint, in particular, why you contend X.A.'s "Let's Go Brandon" sweatshirt disrupted class, caused a disturbance among students, or invaded the rights of others.

Answer: The phrase "Let's Go Brandon" means "Fuck Joe Biden." That is vulgar, profane and pornographic. Further, students using, conveying or expressing such vulgar, profane and pornographic language can and does lead to retorts, disputes and substantial disruption of the safe school environment.

Interrogatory No. 8

Explain in detail the factual basis for your answer to Paragraph 72 of Plaintiffs' Complaint, including but not limited to the specific information Defendants received leading them to reasonably forecast a substantial disruption, material interference with school activities, or invasion of the rights of others if a student wore a Trump flag on field day.

Answer: On field day both the student that was wearing the trump flag as a cape and the student that was wearing the pride flag as a cape, were running through the halls screaming just before the start of the school day. This created disorder and caused a substantial disruption to the school environment. Because of this, both students were asked to put the flags in their lockers.

Interrogatory No. 9

Explain why a Tri County Area Schools employee instructed a student to remove a Trump flag during the June 2022 Field Day.

Answer: Same answer as Interrogatory No. 8 above.

Interrogatory No. 10

Identify each instance during the 2021-2022, 2022-2023, and 2023-2024 school years of students at Tri County Middle School or Tri County High School being instructed to remove, or disciplined for wearing, clothing on the basis that the clothing violated the dress code provision

regarding obscenity/profanity and include the specific messages displayed, the names of the students wearing such apparel, the employees involved, and the dates on which these instances occurred.

Answer: Objection. This Request is overly broad, and therefore, not likely to lead to the discovery of relevant information. This request is also unduly burdensome. Additionally, this request seeks information regarding student education records that if disclosed would violate the Family Education Privacy Act (FERPA).

Interrogatory No. 11

Identify and describe any guidance, constraints, clarification, or limitation Tri County Area Schools provides to employees, students, or parents on the regarding what constitutes impermissible vulgar, obscene, or profane student speech under the dress code.

Answer: Objection as the interrogatory is ambiguous and confusing. Without waiving the objection, please see the Tri County Area School's policies, administrative guidelines, and Student Handbooks containing the dress code published on its website.

<https://www.tricountyschools.com/ourdistrict/>

/s/TIMOTHY J. MULLINS
GIARMARCO, MULLINS & HORTON, PC
Attorney for Defendants

CERTIFICATE OF ELECTRONIC SERVICE

TIMOTHY J. MULLINS states that on October 13, 2023, he did serve a copy of Defendant Tri County Area Schools' Response to Plaintiffs' First Set of Interrogatories via email to Plaintiffs' Counsel, Conor Fitzpatrick.

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