



219 North Main Street, Suite 402
Barre, VT 05641 (p) 802-479-1030 | (f) 802-479-1835

MEMORANDUM

TO: Superintendents, Principals, and Headmasters
COPY: Education Partners
FROM: Rebecca Holcombe, Ed.D., Secretary of Education
SUBJECT: Advice on Banning Symbols and School Dress Codes
DATE: November 30, 2017

In the last month, several of you have written or asked for advice on how to respond to an increasing number of reports of students who are bringing Confederate emblems to schools and using them in ways that are disruptive to learning and offensive to other students. Specifically, several of you have asked whether schools have the right to “ban symbols” like Confederate flags.

As a former high school teacher, I know that many high school students love nothing so much as that which is forbidden. Unless the use of these symbols creates active disruption that destroys the ability of others to learn, it is perhaps more constructive to engage students in education both about the historical significance of these symbols and their cost to democracy.

Democracy is hard. It requires engagement to thrive. As much as possible, the best answer to hurtful speech is more speech. You cannot legislate away or prevent hateful or discriminatory thoughts. You must combat them instead with reason and affirmative protection of equity and civil rights. Your powerful speech on behalf of students in historically disadvantaged groups, and your efforts to help vulnerable students thrive and develop their own voices, will do more to promote democracy than any form of censorship. Silence in the face of hurtful speech makes us complicit.

Moreover, non-violent student political speech is protected. In the landmark *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969), the Supreme Court ruled in a 7-2 decision that school administrators cannot censor student speech unless they determine the speech will cause a material and substantial disruption of school activities or interfere with the rights of others. Specifically, simply anticipating or fearing that student speech, such as wearing black armbands to schools, will cause a disturbance is insufficient reason to censor that speech. As Supreme Court Justice Abe Fortas wrote: "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Oft forgotten in discussions about the Tinker case is that the same district that banned black armbands tolerated iron crosses worn by students. The freedom that allows students and citizens to protest injustice is the same freedom that allows expression of incivility and discord. This is one of the hardest lessons of democracy.

The Tinker decision was not unanimous. Justice Hugo Black argued that the decision would lead to "a new revolutionary era of permissiveness in this country fostered by the judiciary... I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students."

However, first and foremost, in Vermont, all schools have a legal obligation to provide a safe, orderly, civil and positive learning environment. We have attached a guidance document you can use with your Boards to think about how to preserve a safe and civil environment in your schools. As the attached guidance document explains, schools may prohibit or punish student speech that they predict will lead to substantial disruption or which will collide with the rights of others: "As long as a student's speech is likely to cause a substantial disruption, school officials can prohibit or punish the speech." See *Hardwick v. Heyward*, 711 F.3d 426 (4th Cir. 2013).

School dress codes must be viewpoint neutral both as written and in enforcement. Rather than a ban on racial symbols, a better option is prohibition on words or symbols that are *offensive* or *disruptive*. This allows for discretion by school officials for whatever the current circumstances may be at the time.

Bans, however, do not change hearts and minds and do not help us work together as one people. This is the dilemma our schools encounter today, when students in one of the whitest states in the nation - - a state with one of the longest traditions of opposition to slavery and a great historical commitment to protecting the union against what was perceived as a treasonous rebellion --ironically choose Confederate symbolism to express their identity at school.

To this former history teacher, the notion that the Confederacy was forged purely in dispute over the "noble cause" of state's rights suggests a failure on our part as educators. Indeed, the Confederacy's own vice president, [Alexander H. Stephens, declared in a speech in the spring of 1861](#) that the Confederacy had been founded to protect slavery and racial inequality. Stephens said, "The cornerstone (of the Confederacy) rests, upon the great truth that the negro is not equal to the white man; that slavery, subordination to the superior race, is his natural and moral condition. This, our new Government, is the first, in the history of the world, based on this great physical, philosophical, and moral truth."

So as educators--as those tasked with preparing young Vermonters to participate in a thriving democracy-- how do we respond to the resurgence of Confederate symbols in Vermont? (Please note that a quick Google search suggests this resurgence is a national phenomenon.) How do you do this when, as one principal reminded me recently, you are yourselves not immune to threats?

I suggest three strategies and provide sample resources in the appendix:

- 1. Educate students about the Civil War and the role of Vermonters in the war, and our history in general, so they understand the historical role of the state in combatting the Confederacy and practicing democracy.**

2. **Educate students about the origin and intent of the many Civil War monuments at the center of current controversies. In addition, encourage them to consider why there was a resurgence of interest in these monuments in the late 1800s and early 1900s (during the expansion of Jim Crow laws) and during the civil rights movement, and why there is a resurgence of interest now.**

3. **Educate yourself about implicit bias generally, and make sure your curriculum reflects the history and aspirations of all students in your classrooms.**

If we decline to teach our young Vermonters well, they will be taught by the Internet and political memes. It is no accident that our state's motto is "Freedom and Unity": our Vermont forebears knew that we could have both or neither, but not one without the other.

I understand that when students bring beliefs and symbols into classrooms that are offensive and insulting to others, it makes it harder to foster a positive and supportive classroom environment. However, the same skills and intellectual muscles we need to confront bias and foster civil and respectful dialogue in classrooms are the same skills and intellectual dispositions that are essential to building and maintaining a strong and thriving democracy. Each of these incidents is an opportunity.

Our classrooms are the cornerstone of democracy precisely because they are the one place Vermonters with all kinds of views and values are compelled to come together, and compelled to ask questions, listen to people who are different from themselves, work through disagreements and forge the compromises that are essential to any functioning democracy. Rather than shrink from the difficulty of this enterprise, we must embrace it. Our classrooms are where our young people first come together out of difference to learn to form a more perfect union and establish justice, without which we cannot ensure our shared domestic tranquility, provide for our common defense or promote our shared general welfare and liberty. Our goal is not uniformity of belief, but a commitment to civility and the shared purpose of a strong Vermont and nation, with liberty and justice for all.

Thank you for all you do to prepare the next generation of Vermonters to live this ideal.