



October 13, 2015

Kevin Siers  
Principal  
100 Independence Blvd  
Christiansburg, VA 24073  
[kevinsiers@mcps.org](mailto:kevinsiers@mcps.org)

Dear Mr. Siers:

The ACLU of Virginia has been concerned to read about Christiansburg High School's prohibition on confederate flag emblems in the parking lot and on student clothing. We understand that the school has a legal and ethical obligation to protect students from racial discrimination and harassment, while at the same time respecting free speech rights. Although the confederate flag is unquestionably associated with racism, slavery, and violence against African-Americans, it is also a form of speech protected by the First Amendment.

As you know, public school students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). School officials may prohibit student speech only when they reasonably forecast that the student expression "will substantially interfere with the work of the school or impinge upon the rights of other students." *Id.* at 508. It is not enough that school officials have an "undifferentiated fear or apprehension" of a disturbance. *Id.* Rather, there must be "substantial facts which reasonably support a forecast of likely disruption." *Quarterman v. Byrd*, 453 F.2d 54, 58 (4th Cir. 1971).

Courts have upheld bans on racially divisive speech, such as the confederate flag, when past incidents of racial disturbance make it reasonable for school officials to forecast that display of the flag will lead to further disturbances. *See, e.g., Hardwick v. Heyward*, 711 F.3d 426 (4th Cir. 2013). In *Hardwick*, for example, the school pointed to multiple instances in which racial tension caused disruption in school. Some of these incidents related specifically to the confederate flag.

By contrast, in cases in which there were no previous examples of race-based disruption in the school, courts have held that bans on the confederate flag are unconstitutional. *See Castorina v. Madison County Sch. Bd.*, 246 F.3d 536 (6th Cir. 2001); *Bragg v. Swanson*, 371 F. Supp. 2d 814, 827 (S.D.W.Va. 2005) (Striking down ban on confederate flag apparel where "there exists at the school an environment in which people of both races mix freely together and form good relationships.") Additionally, courts have expressed skepticism of school policies and practices that prohibit some racially divisive expressions but permit others. *Castorina*, 246 F.3d at 541.

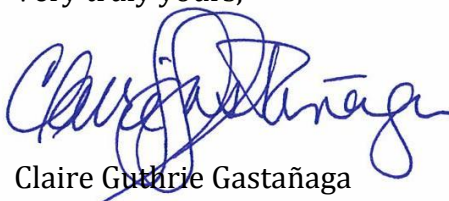
It is important to understand that the school must have a reasonable basis for forecasting disruption for each of its policies that limit student free speech. For example, even if the school has reason to believe that display of the confederate flag on clothing inside the school building is likely to cause a substantial disruption, it might not have reason to believe that display of the flag on vehicles in the parking lot would cause a similar disruption.

For these reasons, we would like to know the precise rationale for Christiansburg High School's ban on confederate flags on clothing and in the parking lot, including any reasons you have to believe that each of these is likely to cause a substantial disruption of the educational process or the school environment.

From the ACLU of Virginia's perspective, a public school should always seek to impose the fewest and most narrow restrictions on student expression possible given the special circumstances of the school environment. We urge you to examine carefully the application to confederate flag symbols of rule 11 of the Christiansburg High School Parking Policy and Contract that bans language "deemed offensive" from being displayed on cars in the parking lot and the subsequent ban imposed on confederate flag T-shirts to determine if these bans are, in fact, a constitutionally defensible incursion on student expressive activities.

Should you have any questions, please do not hesitate to contact me at 804-644-8022. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire Guthrie Gastañaga". The signature is fluid and cursive, with the last name being particularly prominent.

Claire Guthrie Gastañaga

cc: Kevin C. Castner, Ed.D., Interim Superintendent, [kevincastner@mcps.org](mailto:kevincastner@mcps.org)