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June 9, 2022

BY EMAIL

Philip Paul Glovick
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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

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.

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 by 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

Kara T. Rozin

KTR:mjz

cc: Allen Cumings, Superintendent