

March 13, 2018

Superintendent D'ette Devine
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VIA EMAIL



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Dear Superintendent Devine:

We write in response to inquiries we have received from concerned students of Cecil County Public Schools and at the request of Delegate Kevin Hornberger concerning reports that school administrators are improperly forbidding students from participating in locally-planned walkouts associated with the “Walk Out for Safe Schools” on March 14 and threatening students who participate with three-day suspensions.

Cecil County Public Schools cannot use the threat of punishment to silence students’ political speech in this way. The First Amendment prohibits schools from punishing or threatening to punish student conduct more harshly solely because that conduct is politically motivated.

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). When school officials threaten to impose discipline for particular speech, they are, in effect, prohibiting it. School officials may not lawfully prohibit student speech except 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).

We do not see any basis to forecast a substantial or material disruption here, nor planned conduct that could warrant disciplinary action for anything other than “cutting class,” based on the offenses included in the Cecil County student handbook. The national “Walk Out for Safe Schools” walkouts are being organized as peaceful walkouts from class that will last for 17 minutes, from 10 am to 10:17 am. *See, e.g., Enough: National School Walkout*, https://actionnetwork.org/event_campaigns/enough-national-school-walkout. The walkouts are part of a national student movement intended to send the message that adults have not acted to create a learning environment free from fear of being murdered in school, and that the status quo is not acceptable to the children directly

affected. There is no reason to suggest that walkouts being planned by Cecil County students are any different than those of their peers in other school systems.

In our view, a student's decision to leave the classroom is not inherently disruptive, and the absence of one's peers does not, by itself, diminish or interfere with any student's ability to participate in any other activity. Likewise, students organizing the events cannot be said to be creating a material and substantial disruption of school operations, because their only activity is to inform other students of the event and its purpose. The decision to participate is an independent one made by each student individually.

Rather, walking out of class without permission is conduct that usually amounts to cutting class (if students remain on the grounds) or leaving school without authorization. At *most*, the conduct planned with the walkouts – leaving class for 17 minutes – could be said to amount to an unexcused absence.

Even where consequences are contemplated for unexcused absences, your policies and Maryland law make clear that harsh punishment is inappropriate. The Cecil County handbook contemplates that the penalty for “cutting class” for high school students does not include short-term suspension. See CCPS Handbook at 19, 23 (consequences for “cutting class” for high school students range from categories 2-4, none of which include suspension), <https://www.ccps.org/site/handlers/filedownload.ashx?moduleinstanceid=1442&dtaid=1117&FileName=Student%20Rights%20and%20Responsibilities%20Handbook%20SY%202016-17.pdf>. Maryland law categorically prohibits schools from punishing students with out-of-school suspensions or expulsions for unexcused absences. Md. Code Ann., Educ. § 7-305(b) (West).

It is completely improper to threaten students with more severe consequences or the charging of additional offenses based on the walkout. The school system cannot hand out harsher punishment for students who engage in conduct associated with political speech than a student who walks out for a reason unknown to the administration. See *Pinard v. Clatskanie Sch. Dist.* 6J, 467 F.3d 755, 770 (9th Cir. 2006) (explaining that a school official is liable for First Amendment retaliation if students would not have been similarly punished if they had not engaged in the protected speech). If the district deviates from its code of conduct's discipline matrix or targets a particular group of students with additional provisions of the code for the purpose of silencing their speech, the district will engage in unlawful retaliation against students.

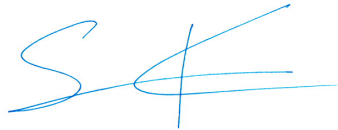
The school district's reaction to the planned walkouts risks creating a greater disruption than the walkouts themselves. Most other Maryland school systems have opted for an approach that clearly recognizes students' First Amendment rights and have explicitly affirmed that they will not single out politically-motivated absences from class for harsher punishment. See *17 minutes to memorialize 17 lives lost*, The Washington Post, March 10, 2018,

https://www.washingtonpost.com/local/education/17-minutes-to-memorialize-17-lives-lost/2018/03/10/1781c198-2319-11e8-badd-7c9f29a55815_story.html?utm_term=.923d1314d79b. We also observe that there is nothing inherently dangerous about being outside of class, and, of course, every student leaves every school building at the end of every day, at the same time. Whether or not Cecil County Public Schools “condone” the planned student protest, the school system cannot forbid students from engaging in it, nor punish them more severely for participating than for any other unexcused absence.

We urge you to clarify to school administrators and students that the school system will not punish students who participate in the walkouts any differently than any other unexcused absence from class. Our office will remain in touch with those who have reached out to us to ensure that students are not wrongly disciplined based on their First Amendment protected expression.

AMERICAN CIVIL
LIBERTIES UNION OF
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Sincerely,



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cc: Del. Kevin Hornberger
CCPS Board of Education members