

March 12, 2018

Superintendent Barbara Canavan  
Harford County Public Schools  
102 South Hickory Avenue  
Bel Air, MD 21014  
VIA EMAIL



## Maryland

### MAIN OFFICE

& Mailing Address  
Suite 350  
Baltimore, MD 21211  
T/410-889-8555  
F/410-366-7838

### FIELD OFFICE

6930 Carroll Avenue  
Suite 410  
Takoma Park, MD 20912

[www.aclu-md.org](http://www.aclu-md.org)

### OFFICERS AND DIRECTORS

Coleman Bazelon  
President

Susan Goering  
Executive Director

Andrew Freeman  
General Counsel

Dear Superintendent Canavan:

We write in response to inquiries we have received from parents, students and community members based on your March 7 letter to parents of Harford County Public School students, threatening disciplinary action for “disrupting school operations” against students who participate in locally-planned walkouts associated with the “Walk Out for Safe Schools” on March 14.

We are deeply concerned that the letter’s tone and content have created the impression that Harford County Public Schools is unlawfully forbidding students from participating in the walkouts and suggesting that students who participate may be punished more severely for leaving class than would be the case for any other unexcused absence.<sup>1</sup> 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.

---

<sup>1</sup> Various outlets have characterized the school system as having “banned,” and “not allowed” the walkouts, and referenced statements by students or parents suggesting the same. *See, e.g.*, Elizabeth Janney, *Harford Superintendent Says 'No' To Student Walkout*, Bel Air Patch, March 9, 2018, <https://patch.com/maryland/belair/harford-superintendent-says-no-student-walkout>; Ava-Joye Burnett, *Harford Co. Schools Not Allowing Students To Walk Out To Protest School Violence*, WJZ Baltimore, March 8, 2018, <http://baltimore.cbslocal.com/2018/03/08/harford-county-school-walkout/>; Erika Butler, *Harford students told they can't walk out and join Wednesday's national protest of school violence*, The Baltimore Sun, March 8, 2018, <http://www.baltimoresun.com/news/maryland/harford/aegis/ph-ag-student-walkout-0309-story.html>; Vanessa Herring, *Harford County students participating in national walkout may be disciplined*, WBAL tv, March 9, 2018, <http://www.wbal.com/article/harford-county-students-participating-in-national-walkout-may-be-disciplined/19249743>

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 "disrupting school operations." 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](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. All available information suggests that walkouts being planned by Harford students are the same as those of their peers in other school systems. *See, e.g., Elizabeth Janney, Harford Students Plan Walkouts Calling For Stricter Gun Laws*, Bel Air Patch, Feb. 27, 2018, <https://patch.com/maryland/belair/harford-students-plan-walkouts-calling-stricter-gun-laws>.

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 the special "learning module" offered in Harford County. 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.<sup>2</sup>

Rather, walking out of class without permission is conduct that usually amounts to cutting or skipping 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. We observe that, in relation to a 2011 student protest that lasted for an hour, the school system indicated that the relevant disciplinary penalty for students who missed class to protest in front of their

---

<sup>2</sup> Moreover, the assertion that the 17-minute walkout on school grounds poses such an inherent safety risk to students that the school system must forbid students from participating is not plausible. 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.

school might be an “unexcused absence.” *See* Aberdeen High Students Peacefully Demonstrate to Support Principal, <https://patch.com/maryland/aberdeen/aberdeen-high-students-peacefully-demonstrate-to-supp7ea3f1eb9a>. There was no reference or suggestion that they might be charged with disrupting school operations.

Even where consequences are contemplated for unexcused absences, your policies and Maryland law make clear that harsh punishment is inappropriate. For the purpose of recording attendance, according to the HCPS Parent-Student Handbook, “[a] student is counted present for a full day if the student is in attendance four hours or more of the school day,” and the school treats a student who is up to two hours late to school as being “tardy.” Handbook at p. 6,7. 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); *see also* HCPS Parent-Student Handbook at 6, [https://www.hcps.org/publicinformation/2016-17\\_HandbookCalendar\\_WEB.pdf](https://www.hcps.org/publicinformation/2016-17_HandbookCalendar_WEB.pdf).

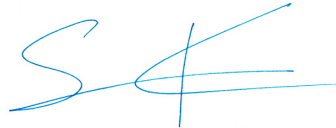
It is improper to threaten students with more severe consequences or the charging of additional offenses based on the walkout. The school system cannot hand out harsher punishment for students who engage in conduct associated with political speech than a student who walks out for a reason unknown to 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). The school system’s rationale, as described in your letter, is clear: the school system does not want students participating in walkouts. With this purpose, 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, 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. 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* Talia Richman and Erika Butler, *Schools in the Baltimore region prepare for national student walkout; Harford County opts out*, The Baltimore Sun, March 8, 2018, <http://www.baltimoresun.com/news/maryland/education/bs-md-school-walkout-plans-20180308-story.html>; Joe Heim, Debbie Truong and Donna St. George, *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](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). Whether or not Harford County 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, in writing, to the students and parents of Harford County 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 the

students and parents who have reached out to us to ensure that students are not wrongly disciplined based on their First Amendment protected expression.

Sincerely,



AMERICAN CIVIL  
LIBERTIES UNION OF  
MARYLAND

Sonia Kumar, Staff Attorney  
Gina Elleby, Intake and Investigations Manager  
ACLU of Maryland  
kumar@aclu-md.org