

December 16, 2010

Frank J. Jabbia
Superintendent
St. Tammany Parish Public Schools
321 N. Theard Street,
Covington, LA 70433

Via electronic mail to: Frank.Jabbia@stpsb.org

Dear Superintendent Jabbia,

I'm writing on behalf of a mother whose two Covington school children were recently threatened with discipline and suspended for wearing face masks that bear the phrase, "Black Lives Matter." This is a clear violation of the children's First Amendment rights under the U.S. Constitution. We ask that you immediately rectify this violation and confirm in writing that the children will be allowed to wear their masks without further discipline from school officials.

For several weeks before they were threatened and disciplined, both children had been wearing their Black Lives Matter masks to school without incident. Things changed on December 9, 2020. On that day, Suriah White, 13, wore a patterned Black Lives Matter mask to William Pitcher Junior High School, where she was told that her mask violated school policy. She was given the choice of either removing her mask and replacing it with a disposable mask or being placed in-school suspension. Suriah was about to take a science test that she did not want to miss, so she changed her mask.

That same day, Aidan White, 11, wore the same mask to Pine View Middle School. No one objected to his mask until an administration official at William Pitcher Junior High School called the middle school. Aidan was then ordered to remove his mask and replace it. He complied.

This week, both children continued to wear their Black Lives Matter masks to school. They were promptly pulled from class and sent to in-school suspension.

The vice principal at Suriah's school provided a copy of the school district's policy to the students' mother, Ebony Wright, with the following sentence highlighted: "Styles of dress and grooming should never be such that they represent a collective or individual protest."

As a threshold matter, it's worth noting that the students are not engaging in active protest, as their mother has pointed out to administration officials. The phrase Black Lives Matter is itself an affirmation, a statement of the inherent value and dignity of human beings. The Black Lives Matter movement comprises a broad array of people and organizations, and although it generally advocates for non-violent, civil disobedience in protest against racially motivated violence and discrimination, wearing or saying the phrase is not necessarily a form of protest.



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Regardless of the students’ intent, school officials cannot constitutionally prohibit non-violent protest. As the United States Supreme Court recognized more than 50 years ago, students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”¹

Suriah and Aidan—and every other student—must be allowed to peacefully protest in whatever manner they choose, so long as it does not materially and substantially interfere with school operations.² More specifically, students cannot be punished for expressing their beliefs unless the expression substantially disrupts classwork or invades the rights of others, or if the expression is lewd, vulgar, or promotes illegal drug use.³

Substantial disruption of school functioning is a high bar to meet: Speech can be controversial and even elicit hostile reactions—which Suriah and Aidan’s masks did not—without rising to the level of substantial disruption. Students engaging in “silent, passive expression of opinion, unaccompanied by any disorder or disturbance,” as Ms. Wright’ children have been doing, is protected by the First Amendment.⁴

As the United States Court of Appeals for the Fifth Circuit put it; “The choice to wear clothing as a symbol of an opinion or cause is undoubtedly protected under the First Amendment if the message is likely to be understood by those intended to view it.”⁵

Moreover, one of the foundational goals of our educational system is civic development and engagement. Public schools are essential in educating young people about democracy and their role in it. St. Tammany Schools bear the weight of that responsibility along with the rest of our nation’s schools. They may not use their gates to silence students from engaging with the central issues of the day—including police brutality, systemic racism and injustices, and the Black Lives Matter movement. They may not arbitrarily enforce policies that hinder civic curiosity and engagement. As the Supreme Court so eloquently put it, a school’s role in “educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual.”⁶

At bottom, suspending Suriah and Aidan and preventing them from continuing to express themselves silences them at the expense of schoolwide engagement in a broader discussion about an important political moment. But more dire still is the fact that this conduct on the schools’ part sends a message to *all* students that engaging in political opinion and protest is discouraged—thereby depriving all students of a valuable opportunity to engage in important and relevant civic conversations. It takes courage for students to stand up for what they believe to be right—and school administrators are

¹ See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

² *Id.* at 509.

³ *Id.* at 513; *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683, 685 (1986); *Morse v. Frederick*, 551 U.S. 393, 396 (2007).

⁴ *Tinker*, 393 U.S. at 508.

⁵ *Canady v. Bossier Parish Sch. Bd.*, 240 F.3d 437, 439-41 (5th Cir. 2001) (citing *Texas v. Johnson*, 491 U.S. 397, 404 (1989); *Spence v. Washington*, 418 U.S. 405, 410-11 (1974)).

⁶ *Tinker*, 393 U.S. at 512 (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)).



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uniquely positioned to encourage and nurture this social action. It is imperative that we foster civic participation in the next generation and strive to encourage young people to stand up against injustice.

We ask that you agree to adhere to the Constitution going forward and not discipline students—including Suriah and Aidan—for engaging in expression so long as it is not disruptive, lewd, vulgar, or promoting illegal drug use. We also ask that you make clear to all school staff and students that the school may not forbid students from engaging in such speech or protest. Because the students' constitutional rights are violated every day they face discipline for wearing a Black Lives Matter mask, we ask you to respond to this letter by Friday, December 18, 2020.

We hope that this dispute can be resolved amicably. Thank you for your attention to this matter.

Sincerely,



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