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Federal Court Supports New Hampshire School District's Suspension of Student for Refusing to Remove Symbolic Insignia

The United States District Court for the District of New Hampshire recently ruled that Kingswood Regional High School administrators did not violate a student's First Amendment rights when they suspended him for refusing to remove a "No Nazis" patch worn on his clothing. In supporting the administration's actions, Judge Steven J. McAuliffe framed the central issue as whether school authorities prohibited the patch based on their reasonable forecast that allowing it to be worn would likely have caused a substantial disruption of, or material interference with school activities.

The history of this matter dates to the 2005-05 school year, when Kingswood High School administrators learned of and monitored numerous incidents of bullying and harassment, mostly between two identifiable groups of students. (As described by the Court, the groups were identified as the "gay students" and the "rednecks.") As tensions grew between the two groups, administrators proactively conducted a school-wide "Assembly of Tolerance" that focused on encouraging students to peacefully co-exist with others of different racial, religious, social, sexual and political viewpoints. Despite the administration's efforts, the bullying and harassment continued, and in some cases, got worse. One student received threats of violence over an internet instant message; and one student threatened to burn down the house of another. One administrator characterized the tensions between the two groups as "palpable."

Recognizing the growing hostility, administrators at Kingswood Regional High School continued affirmative efforts to confront and resolve the ongoing friction among the students. They continually met with members of both groups, issued stern warnings against such actions, reminding the students of the possibility of suspensions and police involvement.

Despite the administration's efforts, in March 2005 several pupils came to school wearing a patch depicting a swastika under the "no" symbol. Administrators were concerned that this patch amounted to a specific and targeted message at the "rednecks" - with which some of these students had had several prior altercations. One student was summoned to the administrator's office and was asked to remove the patch; this student did so without protest or incident. Later that day, another student wearing the "No Nazis" patch, now aware that his friend had been asked to remove the patch, sought a meeting with administrators. At this meeting, administrators relayed their concern that the patch was intended to incite, anger or provoke the "rednecks" and asked that this student also remove his patch. Administrators even went so far as to offer the student the option of wearing a different symbol to promote tolerance that would not serve to provoke students in the rival group. The student said he did not want to consider other options. At this point, administrators told the student that if he wished to remain in school, he would have to remove the patch. The student refused and was voluntarily dismissed by his mother.

Citing concerns for potential disruption and violence, the high school principal informed school officials that students were not allowed to wear the patch in school. Nevertheless, the same student returned to school the following day wearing the same patch. Two other students joined him, each wearing the same patch.

School officials met with the three students and again reiterated their concern that the patches had the potential for inciting violence and disrupting scholastic affairs. One of these students was no longer wearing the patch because his parent had told him to remove it. A second member of this group voluntarily removed her patch, thanking the superintendent for explaining why it was a problem. However, when the superintendent of schools pointed out that the patch could lead to physical violence, the student at issue in the case responded that he “wanted to get into their [the “rednecks”] faces.” This student was again given the option of either removing the patch, being suspended, or being voluntarily dismissed from school by his parents; the student’s mother agreed to dismiss him.

Despite the fair warning and offers by the administration to find viable alternative methods of promoting tolerance, the student returned to school next day wearing the “No Nazis” patch. The student was suspended and sent home. The next day, the student again came to school wearing the patch, and he was again told that he could not be on school grounds while wearing the patch. However, without the patch, he was welcome to return to school. While the student was out of school, the District provided him with a tutor.

Unlike most student free speech cases, the Governor Wentworth Regional District brought this matter before the Court. The District asked the Court to resolve the conflict and clarify the school’s legal obligations and responsibilities; the District also sought a declaration of the parties’ respective legal rights.

In ruling for Governor Wentworth Regional School District, the Court stated evidence clearly showed the student was not advancing a particular political or social viewpoint that might be protected under the First Amendment. Rather, the Court noted the evidence, particularly the student’s statement about “getting in the faces” of his rivals, created a situation that was likely to materially disrupt the educational environment, or precipitate substantial disorder. In order to avert such disruptions, “school authorities may lawfully, and indeed are obligated to, take reasonable measures to prevent such incidents and diffuse existing tensions” the Court also said. The Court also agreed that the principal acted properly on what he reasonably believed to be actual evidence that the “No Nazis” patch would be disruptive.

The Court also discussed the fine line between a reasonable (and therefore legally sufficient) fear of disturbance, and one that is merely “undifferentiated.” The Court stated that the School District had to demonstrate that “its action was caused by something more than a mere desire to avoid” unpleasant reactions that always accompany unpopular viewpoints.

Taking substantial notice of the circumstances at the High School throughout the 2004-05 school year, the history of animosity between the two groups of students, and the verbal threats mentioned above, the Court ruled “it was not unreasonable for school authorities to put more faith in their own informed and experienced judgment as to what was really going on, than in [the student’s] not-so-plausible explanation of the patch’s intended message and purpose.” The evidence, according to the court, established that school authorities prohibited the “No Nazis” patch based on their reasonable forecast that allowing the student to wear it would likely have caused a substantial disruption or material interference with school activities.

In siding with the School District, the court also noted that the patch was much more than a passive symbolic political or social statement; rather, the court believed the patch was instead “actually a taunt, aimed directly at the opposing group of students.” Because the patch was a taunt,

school officials “were not required to put their heads in the sand and allow further escalation” of hostilities and disruption to the school environment, the court said.

This decision affirms that school authorities and administrators have the authority, if not an affirmative obligation, to take substantial steps to ensure student the district’s educational goals and environment are not disrupted. Often, taking these steps prior to significant conflicts is necessary. As the court noted, school administrators need not sit idle while conflicts fester.

The actions of Governor Wentworth Regional School District administrators are particularly commendable. The administration’s efforts to reach amicable solutions before suspending the student weighed heavily on the court’s decision. The court stated “they carefully and methodically worked, over a substantial period, to alleviate the continuing hostility between the two groups, and banned [the student’s] patch not as punishment, but only based upon their considered assessment of all that had gone on before, the then prevailing circumstances, and their expert judgment about the patch’s actual message and its likely effect. Their decision, involving as it did the safety of their students, is entitled to a fair measure of judicial deference, even when freedom of expression is involved.”

For more information on this case, or your own school district’s predicaments regarding student First Amendment issues, please contact NHSBA Staff Attorney Barrett M. Christina for legal assistance or policy recommendations at (603) 228-2061 or via e-mail at bchristina@nhsba.org.